

PART C – Decision under Appeal

On October 6, 2010 the ministry in its reconsideration decision denied the appellant's request to be designated a Person with Disabilities (PWD). The ministry stated in the decision that the appellant did not have a severe mental or physical impairment, that the appellant's impairment did not significantly restrict his ability to perform daily living activities and that it cannot be determined that the appellant requires significant help from other persons.

PART D – Relevant Legislation

EAPWDA Employment and Assistance for Persons with Disabilities Act, Section 2
EAPWDR Employment and Assistance for Persons with Disabilities Regulation, Section 2

PART E – Summary of Facts

The evidence before ministry is the appeal record and statements given at the hearing by the ministry, the appellant and his advocate. Contained in the appeal record are:

- The reconsideration decision, October 6/10
- The request for a reconsideration, June 14/10
- A letter from Active Support Against Poverty, June 16/10
- An attachment "Supplemental Medical Opinion: Checklist of Restrictions to Daily Living Activities (DLA) Due to Physical and Mental Impairment" (SMOC) dated July 15/10
- Letter to appellant's doctor from Active Support Against Poverty dated July 14/10 and signed by appellant
- Service Canada Medical Report signed by appellant's doctor with a stamp identifying the doctor's name and address
- A letter from the ministry adjudicator, May 31/10 to the appellant
- Person with Disabilities Designation Decision Summary, May 31/10
- The appellant's Person's with Disabilities Designation Application, February 19/10

In the PWD application the appellant writes is that he has been "diagnosed with liver failure, cirrhosis of the liver, edema, ascites, hypertension and esophageal varices (sic). Each day presents a different challenge and degrees of discomfort. Everyday there is considerable swelling in the abdomen and moderate to extreme swelling in feet and legs depending on activity level.... Standing or walking for any period of time causes pain in my feet and abdomen and often result in dizziness. As a result of the abdominal swelling I have a large hernia in my groin and a navel hernia Please note I also cannot sit for extended periods or severe pain results."

During the Hearing appellant stated that he needs considerable help on a continuous basis. When cooking he needs to use a chair as he can not stand for lengthy periods. While bathing he uses a seat and grab bars. He requires help to carry or to lift items. This restricts his ability to shop on his own. As well he cannot sit in a car for more than 20 minutes. There are occasions when he needs help with his cooking and doing housework. When asked if his condition had got worse between February/10, when he first applied for the PWD designation and July/10 when the appellant's doctor dated the SMOC document he said his condition had not worsened.

The appellant's doctor states in the appellant's "Person's with Disabilities" application that the appellant "has severe liver failure/ascites/cirrhosis/portal hypertension.... His condition is stable. There is no expectation of further improvement.... His mobility & ability to function is limited as per his description. He is unable to return to his previous employment..."

The doctor noted in the PWD application heading "Degree and Course of Impairment" that the appellant has a permanent disability. He noted under the category "Functional Skills" that the appellant can walk 1 to 2 blocks; he can climb 5+ stairs; he can lift under 2 kg.; he can remain seated for 1 to 2 hours. The doctor states in the additional comments, "Patient is able to do ADLs but he must take a longer than normal time to do it due to fatigue & pain from his hernia & feet". In the Physical Impairments section the doctor wrote that "fatigue & pain" are impairments that impact his ability to manage Daily Living Activities. The doctor wrote "(the patient) can not lift greater than 10

lb, even with assistance". Regarding the appellant's ability to manage his Daily Living Activities the doctor states that fatigue and pain are his primary impairments.

In the Daily Living section of the application the doctor listed basic housekeeping and carrying purchases home as areas where the appellant would require periodic assistance. All other areas of this section are checked as "independent". He wrote "Unable to lift/carry >10 lb." and "unable to walk >2 blocks w/o resting".

The appellant's doctor wrote in the PWD application that he had known the appellant for ">10yr" and had seen the appellant 2 – 10 times in the previous year.

In the SMOC document the appellant's advocate asked the doctor to reply to various questions regarding the appellant's ability to cope with Daily Living Activities. The doctor wrote in reply to these questions as follows:

- The appellant's ability to respond to making decisions regarding his personal care, activities and finances is normal.
- The appellant's ability to communicate or interact with others effectively is normal.
- The appellant takes longer to prepare meals and for personal needs takes longer "due to back pain ..(?)...to ascites & fatigue".
- The appellant "can't sit in vehicle >20 minutes)" in reference to the appellant's use of public transport.
- The appellant takes more time to do housework.
- The appellant's ability to move about indoors and outdoors the doctor wrote "Somedays (sic) not as able to do as other".
- The appellant manages personal medication normally.
- "In your professional opinion, is" the appellant's "ability to perform these daily living activities severely restricted either continuously and/or periodically for extended periods?" The doctor indicated "yes" and "continuously".
- "Please circle how many times longer than typical it takes" the appellant "to perform these daily living activities due to restrictions on mobility and physical ability?" The doctor circled 2x-3x.
- "In your professional opinion, does" the appellant "require help with his daily living activities?" The doctor circled "yes".
- "In your professional opinion, how many times per week is help required?" The doctor wrote "on a daily basis".
- "In your professional opinion, does" the appellant "have a severe physical impairment"? The doctor wrote "moderate to severe physical impairment".

The ministry refers to the appellant's PWD application where the appellant's doctor records that the appellant can walk 1 to 2 blocks unaided, climb 5+ steps unaided, lift 5 lbs, and sit for 1 – 2 hours. The ministry states that the "Mobility and Physical ability" are performed independently except for the need for continuous help to lift/carry/hold if greater than 10 lbs and an inability to walk more than 2 blocks without resting. No assistive devices are routinely used to help compensate for impairment. The ministry states "The functional skill limitations described are more in keeping with a moderate degree of impairment. As you (the appellant) are mostly independent with mobility and physical abilities, the ministry is not satisfied from reviewing the information provided that you have a severe

physical impairment”.

The ministry refers to the document (SMOC) from the appellant's advocate requesting additional information regarding the appellant's impairment. The ministry notes that in this document when the appellant's doctor was asked to describe the appellant's impairment he states moderate to severe physical impairment. The ministry states that the additional information “elaborates somewhat” on the information in appellant's PWD application but “the ministry is not satisfied that the information demonstrates a severe physical impairment that significantly restricts your (the appellant) ability to perform daily living activities either continuously or periodically for extended periods”.

The ministry states that the appellant's doctor indicated that the appellant functioned independently in 26 out of 28 daily living activities listed in his application. Periodic assistance is required from another person to do basic housekeeping and to carry purchases home. ...with the degree of independent functioning described in the application, the information does not establish that the impairment directly and significantly restricts your (the appellant's) ability to perform Daily Living Activities either continuously or periodically for extended periods”.

PART F – Reasons for Panel

The issue under appeal is whether the ministry reasonably concluded that the appellant was not eligible for a PWD designation.

EAPWDA

2 (1) In this section:

"**assistive device**" means a device designed to enable a person to perform a daily living activity that, because of a severe mental or physical impairment, the person is unable to perform;

"**daily living activity**" has the prescribed meaning;

"**health professional**" repealed

"**prescribed professional**" has the prescribed meaning;

(2) The minister may designate a person who has reached 18 years of age as a person with disabilities for the purposes of this Act if the minister is satisfied that the person has a severe mental or physical impairment that

(a) in the opinion of a medical practitioner is likely to continue for at least 2 years, and

(b) in the opinion of a prescribed professional

(i) directly and significantly restricts the person's ability to perform daily living activities either

(A) continuously, or

(B) periodically for extended periods, and

(ii) as a result of those restrictions, the person requires help to perform those activities.

(3) For the purposes of subsection (2),

(a) a person who has a severe mental impairment includes a person with a mental disorder, and

(b) a person requires help in relation to a daily living activity if, in order to perform it, the person requires

(i) an assistive device,

(ii) the significant help or supervision of another person, or

(iii) the services of an assistance animal.

(4) The minister may rescind a designation under subsection (2).

EAPWDR**Daily living activities**

2 (1) For the purposes of the Act and this regulation, "**daily living activities**",

(a) in relation to a person who has a severe physical impairment or a severe mental impairment, means the following activities:

(i) prepare own meals;

(ii) manage personal finances;

(iii) shop for personal needs;

(iv) use public or personal transportation facilities;

(v) perform housework to maintain the person's place of residence in acceptable sanitary condition;

(vi) move about indoors and outdoors;

(vii) perform personal hygiene and self care;

(viii) manage personal medication, and

(b) in relation to a person who has a severe mental impairment, includes the following activities:

(i) make decisions about personal activities, care or finances;

(ii) relate to, communicate or interact with others effectively.

(2) For the purposes of the Act, "**prescribed professional**" means a person who is authorized under an enactment

to practice the profession of

- (a) medical practitioner,
- (b) registered psychologist,
- (c) registered nurse or registered psychiatric nurse,
- (d) occupational therapist,
- (e) physical therapist,
- (f) social worker,
- (g) chiropractor, or
- (h) nurse practitioner.

The appellant's position is that he should receive the PWD designation as he requires continuous assistance to manage his Daily Living Activities because of the pain and fatigue he suffers from and which is caused by his several physical impairments. He cited his need to use a chair when he is cooking as he cannot stand for any length of time as well needing a stool and grab bars while he bathes. He states that he needs help to carry or lift items when he shops or he needs to have someone shop for him.

The ministry states that the appellant meets the age requirement of at least 18 years old and that his impairment will last at least 2 years. The ministry finds that the evidence does not establish that the appellant's physical impairment is severe. The ministry does not agree that the appellant's impairment directly and significantly restricts his Daily Living Activities and therefore it cannot determine that significant help is required. The ministry states that "the functional skill limitations described are more in keeping with a moderate degree of impairment". The ministry points out that the doctor indicated, with regard to the appellant, that he was functioning independently in 26 out of 28 of daily living activities. The ministry accepts that periodic assistance is required from another person to assist with basic housekeeping and to carry the appellant's purchases home. But the ministry states that with the degree of independent functioning described in the application, it has not been established that the impairment directly and significantly restricts the appellant's ability to perform Daily Living Activities either continuously or periodically for extended periods.

Regarding EAPWDA s2(2) the panel finds that the ministry reasonably determined that the appellant does not have a severe physical or mental impairment. Although the doctor states that the appellant has a moderate to severe impairment in the PWD application he states that the appellant is relatively independent in his mobility and physical abilities. Specifically, the PWD application shows that the appellant can walk 1 to 2 blocks; he can climb 5+ stairs; he can lift under 2 kg and he can remain seated for 1 to 2 hours. The appellant states that he takes longer to do everything because of pain and fatigue and may need to sit down while cooking or while bathing. There was no evidence submitted to show the doctor's findings did not reflect the appellant's functioning. The panel finds that the decision of the ministry was reasonably supported by the evidence.

Regarding EAPWDA s2(2)(b)(i) the panel finds that the ministry reasonably determined that the appellant's impairment does not directly and significantly restrict his ability to perform Daily Living Activities. The evidence available from the appellant's doctor shows that the appellant is able to perform most Daily Living Activities independently. Specifically he functions independently in 26 out of 28 aspects of the daily living activities listed in his PWD application. The doctor states that the appellant requires help with lifting/carrying/holding but is able to function independently in all

other areas of Daily Living Activities. The restrictions of walking and lifting and carrying impact the appellant's ability to do house keeping, cooking and shopping necessitating periodic assistance but the doctor does not provide specific information to show how often and for what duration help is required to perform Daily Living Activities. The panel finds that the decision of the ministry was reasonably supported by the evidence.

Regarding EAPWDA s2(2)(b)(ii) the panel finds that the ministry reasonably determined that as the evidence does not establish that the appellant's ability to perform Daily Living Activities is significantly restricted, it therefore could not be determined that significant help is required. The panel finds that the decision of the ministry was reasonably based on the evidence.

The panel finds that the decision of the ministry was reasonably based on the evidence and therefore upholds the decision of the ministry pursuant to Section 24(2)(a) of the EAA.