

PART C – Decision under Appeal

The decision under appeal is the ministry's reconsideration decision dated July 12, 2011 which held that the appellant did not meet 2 of the 5 statutory requirements of section 2 of the Employment and Assistance for Persons with Disabilities Act for designation as a person with disabilities (PWD). The ministry found that the appellant met the age requirement and that he had a severe physical impairment that is likely to continue for 2 years. However, the ministry found that the appellant's daily living activities (DLA) are not, in the opinion of a prescribed professional, directly and significantly restricted either continuously or periodically for extended periods. The ministry also found that because it had not established that the appellant's DLA are significantly restricted, it cannot be determined that the significant help or supervision of another person is required to perform his DLA.

PART D – Relevant Legislation

Employment and Assistance for Persons with Disabilities Act (EAPWDA), section 2
Employment and Assistance for Persons with Disabilities Regulation (EAPWDR), section 2

PART E – Summary of Facts

The evidence at the time of the ministry's reconsideration decision was :

1. PWD application undated and submitted by the appellant. The appellant indicates that his affected rotator cuff(sic), left shoulder is in constant pain and creates a lack of mobility and that he cannot do all housekeeping duties, cleaning, and cannot sit for more than 15-20 minutes. He reports that due to his heart problems he cannot move about and walks small distances.
2. In the Physician's Report (PR) dated January 27, 2011 the physician diagnoses the appellant with Left>Right shoulder capsulitis, aortic valve replacement, coronary heart disease and diffuse arthralgias. The physician reports that the appellant suffers from low energy levels from each condition. With respect to functional skills it is indicated the appellant can walk unaided for less than 1 block, climb 5+ stairs, can do no lifting and has no limitations with sitting. The physician indicates the appellant cannot walk very far, develops chest pains and has to rest and that he is unable to fully move his left shoulder.
3. The Assessor Report (AR) dated February 7, 2011 was also completed by the appellant's physician. In the Assessor Report, the appellant's physician reports that the appellant's ability to communicate is good in all aspects. The physician also in this report indicates that the appellant is independent in 2 of 6 mobility and physical abilities, but takes significantly longer walking outdoors, climbing stairs lifting, carrying and holding and requires periodic assistance with lifting, carrying and holding. The physician reports that the appellant can walk only 50 m, can climb only 1 flight and has no one to help him with lifting and does this piecemeal. The physician reports he can only lift 10 pounds. With regard to cognitive and emotional functioning no impacts are noted. With regard to the applicable 28 aspects of DLA the appellant is reported to be independent in 20 of these, but indicates the appellant takes significantly longer bathing, doing laundry, basic housekeeping, going to and from stores, carrying purchases home, food preparation and cooking. No indications are provided for the DLA "Using Public Transit" and the physician comments "None near him-too far away". With regard to 3 aspects of DLA: laundry, basic housekeeping and carrying purchases home the assessor indicates that the appellant requires periodic assistance. The assessor also provides comments with regard to several DLA as follows: bathing.... "hard to move shoulder"; laundry and basic housekeeping... "struggles with basic housework due to arm pain"; going to and from stores... "problems(sic) walking"; carrying purchases home... "ok if only carries one bag"; food preparation and cooking.... "due to shoulder pain takes longer-needs to rest". The assessor also provides an additional comment with respect to the appellant's DLA ..."Daily pain with shoulder movement. There is a limit to what he can do and how much he can do. He tends to pace himself to minimize his pain." Attached to the application were the results of several medical consultations and examinations related to interventional cardiology, echocardiography and a shoulder ultrasound.
4. A letter undated but received by the ministry from the appellant on May 12, 2011 that recounts his experience concerning a ministry visit on March 25, 2011 concerning his delayed income assistance and information that he had provided earlier that caused him to experience an angina attack at the ministry office.

5. The appellant's Request for Reconsideration signed and dated June 9, 2011. The appellant points out that his physician indicates that several areas of his DLA require assistance and/or takes significantly longer to complete. The appellant states that "I am unable to do basic housework, cooking, laundry, shopping. I receive assistance with these activities from friends and neighbours."

At the hearing, the appellant reports that he lives in 20 foot trailer. He describes that when he goes shopping he always needs a friend to accompany him and help him carry bags, etc. The appellant indicates that his left shoulder is always in pain and that he can only sit at the computer for 15 minutes at a time and cannot dress himself in a speedy fashion. He always requires assistance from others when travelling by car, does not go out by himself and when he shops he uses a push cart, but requires others to carry his purchases. The appellant reports that he can only walk 50 yards and then is out of breath and must stop and rest. The appellant further indicates that because of his physical restrictions his floor has not been cleaned since last October, his walls have not been cleaned for years as he cannot do this and that doing his dishes can take an hour to do. He also notes that when he does laundry at the facility where he lives he always gets help carrying it back and forth to his trailer. He reports that for the most part he sits, reads a book or watches T.V.

The ministry representative stood by the record.

PART F – Reasons for Panel Decision

At issue is the reasonableness of the ministry's decision to deny the appellant Persons with Disabilities designation on the basis that he failed to meet the following legislative criteria:

- the appellant's daily living activities are, in the opinion of a prescribed professional, directly and significantly restricted either continuously or periodically for extended periods
- a prescribed professional has confirmed that as a result of direct and significant restrictions, the appellant requires help to perform daily living activities.

The criteria for being designated a Person with Disabilities (PWD) are set out in Section 2 of the EAPWDA. It states:

2(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.

Section 2(3)(b) of the EAPWDA states that 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.

Section 2(1)(a) of the EAPWDR defines daily living activities:

(a) in relation to a person who has a severe physical impairment or a severe mental impairment as preparing own meals, managing personal finances, shopping for personal needs, using public or personal transportation, performing housework to keep one's residence in acceptable sanitary condition, moving about indoors and outdoors, performing personal hygiene and self care and managing personal medication.

Section 2(1)(b) adds two additional activities for a person with a severe mental impairment: making decisions about personal activities, care or finances; and, relating to, communicating or interacting with others effectively.

The ministry's position is that the appellant's ability to perform DLA are not directly and significantly restricted by his severe physical impairment continuously or periodically for extended periods, and, that as a result, the appellant does not require help performing DLA. The ministry referred to the assessor's indications that the appellant requires periodic assistance with 3 aspects of DLA including laundry, basic housekeeping and carrying purchases home and that it takes him significantly longer to do bathing, laundry, basic housekeeping, going to and from stores, carrying purchases home, food

preparation and cooking. However, it determined the narrative provided by the assessor does not describe the frequency or duration of the periodic assistance required or the amount of time taken for these DLA. Without this information it could not conclude that these activities are significantly restricted for extended periods or that the extra time taken represents a significant restriction to daily functioning. The ministry also notes that the appellant's physician indicates that he is independently able to perform a majority of DLA. It further determined that because it was not established that DLA are significantly restricted, it cannot be determined that significant help is required from other persons.

The appellant's position is that his severe physical impairment particularly is rotator cuff in his left shoulder creates constant pain and lack of mobility which prevents him from doing basic housekeeping duties, laundry and that he cannot sit for more than 15-20 minutes, requires assistance when travelling by car and needs others to carry his purchases home. The appellant argues also that his heart problems cause pain and soreness in his upper chest and he can only walk small distances. He further argues that his severe physical impairment as confirmed by a prescribed professional, directly and significantly restricts his ability to perform DLA and that he requires assistance to perform them.

Regarding the ministry's position that the appellant's ability to perform DLA are not directly and significantly restricted by his severe physical impairment continuously or periodically for extended periods, the panel relied on the information contained in the pages of the AR. It finds that the information in the AR from the physician confirms the appellant requires periodic assistance and takes significantly longer to perform 3 aspects of DLA in terms of the overall applicable 28 DLA assessment categories of the AR. These 3 aspects include basic housekeeping, laundry and carrying purchases home. The AR also confirms that the appellant takes significantly longer than typical to perform 4 other aspects of DLA that include: bathing, going to and from stores, food preparation and cooking. No further information from the appellant's physician is provided to assist a determination of quantification as to the level, extent or duration of help and assistance required by the appellant to perform these DLA. The appellant's testimony suggests he has limitations and requires assistance with only a small number of aspects of DLA primarily some components of basic housekeeping, laundry, going to and from stores and carrying purchases home. As a result, the panel finds the appellant is not significantly restricted with these DLA. In this regard, the panel also finds the physician's comments "there is a limit to what he can do and how much he can do. He tends to pace himself to minimize his pain" and with respect to carrying purchases home "ok if only carries one bag" as supporting this finding. The panel further finds that the appellant is fully independent in performing the remaining aspects of DLA. In the absence of information concerning significant restrictions from a prescribed professional the panel finds that the ministry was reasonable in its decision that determined the severe physical impairment of the appellant does not directly and significantly restrict his ability to perform DLA continuously or periodically for extended periods.

The evidence of a prescribed professional demonstrates the appellant requires periodic assistance in only 3 aspects of DLA including laundry, basic housekeeping and carrying purchases home and has limitations with these and others such as bathing, going to and from stores, food preparation and cooking. The appellant's testimony and the evidence from the appellant's physician indicate, to some degree, the appellant requires help lifting laundry and purchases, but that it is not significant. The appellant is able to perform some components of these DLA. Further, the panel also concludes overall that the appellant does not require the significant help or supervision of another person to

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perform the majority of remaining DLA. Therefore, the panel finds the ministry decision as reasonable that the appellant does not require the significant help of another person to perform DLA.

The panel finds that the ministry's reconsideration decision is reasonably supported by the evidence and confirms the decision.