

PART C – Decision under Appeal

The decision under appeal is the ministry's reconsideration decision dated March 10, 2011 which held that the appellant did not meet 3 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 his impairment is likely to continue for at least 2 years. However, the ministry was not satisfied that the appellant has a severe physical or mental impairment or that the appellant's daily living activities (DLA) are, in the opinion of a prescribed professional, directly and significantly restricted either continuously or periodically for extended periods. The ministry also found that a prescribed professional has not confirmed that, as a result of direct and significant restrictions, the appellant requires help to perform 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 before the ministry at reconsideration was comprised of a PWD application, Self-report (SR), Physician Report (PR), and Assessor Report (AR), an undated and unsigned "Follow Up Instructions" form, and a 2–page document prepared by the appellant's advocate and signed on April 2, 2011 by the physician who completed the PR and AR.

In the SR, the appellant writes that he was physically and mentally healthy 3 years ago when he moved to Canada but as a result of the fast living pace of society he became sick. He reports having memory loss, lack of concentration, stress and tension which make him angry all of the time. He is not comfortable working with other people and spends most of the time at home doing nothing productive and always under stress. With time, he is suffering from physical diseases such as bad stomach, fever, general weakness, and more.

In the PR, completed by the appellant's general practitioner since 2007, the appellant is diagnosed with mood disorder, anxiety disorder, acid peptic disease, digestive disorders, and situational adjustment reaction. The physician reports that the appellant is always angry and cannot focus his attention. He has trouble recalling what he has been told to do. He can sleep but his mind is busy as he gets thoughts continuously. He also has gastrointestinal disorder and gets bloating for which he takes medication with seems to help. Regarding Functional Skills, the appellant is able to walk 4+ blocks and climb 5+ steps unaided with no limitations for lifting or the time he can remain seated. There are no difficulties with communication. The section respecting significant deficits with cognitive and emotional function was not completed. Joint pain in the right ring finger due to a malunion is also reported.

In the AR, completed by the same general practitioner, the appellant's Ability to Communicate is reported as good for speaking, reading, and hearing and as "unable" for writing. Respecting Mobility and Physical Ability, walking indoors and outdoors, climbing stairs, standing, lifting, and carrying/holding are all managed independently. Respecting Cognitive and Emotional Functioning, a major impact on daily functioning is reported for emotion, attention/concentration, memory, motivation, motor activity, psychotic symptoms, and other emotional problems with a moderate impact reported for insight/judgement and language; no impact is reported for the remaining 5 of 14 aspects. Regarding DLA, with the exception of meals ("no motivation"), the appellant is reported to independently manage without any noted restriction all other aspects of all other DLA (personal care, basic housekeeping, shopping, paying rent and bills, medications, transportation, and social functioning). No information is reported respecting functioning with extended social networks while functioning with immediate social networks is reported as good, marginal, and very disrupted. Assistance is provided by family with narrative "He feels so tired."

The undated, unsigned Follow Up Instructions form is from an orthopaedic surgeon's office and indicates a diagnosis of "malunion R D4 prox phalanx" and referral for a consult appointment/2nd opinion.

The document signed by the appellant's physician on April 2, 2011 is comprised of advocate prepared statements respecting the appellant's medical conditions and functioning with corresponding boxes alongside the statements which the physician may "tick" to confirm that he agrees with the statement. The document provides a space for additional written comments from the physician but none were provided. The physician agrees that the appellant suffers from severe medical conditions, naming those previously diagnosed in the PR and adding "damaged left ring finger", and that, as a result of those conditions, the appellant is directly and significantly restricted in his ability to perform DLA continuously. Periodic restrictions are identified for basic mobility (walking, sitting, standing, and bending) as a result of mental (anxiety, lack of motivation) and/or physical conditions (pain and nausea from digestive disorders). Difficulties with cognitive and emotional functioning are identified in the areas of concentration, short-term memory loss, lack of motivation, racing thoughts which disturb sleep resulting in fatigue, and interacting with others. Continuous restrictions and the

need for continuous assistance are indicated for using public transportation, social interaction, and written comprehension due to problems with anxiety, increased agitation around others, and an inability to concentrate. Continuous restrictions and the need for continuous assistance are also identified for meals and basic housekeeping due to both the aforementioned mental problems and physical problems (difficulties grasping objects, standing, and bending). Periodic restrictions and the need for periodic assistance are indicated for refilling prescriptions/medication management and accessing banking services/bill management due to both mental and physical conditions.

No additional evidence was provided by the ministry on appeal.

PART F – Reasons for Panel Decision

The issue under appeal is whether the ministry reasonably concluded that the appellant has not met the all of the eligibility criteria for designation as a PWD because he does not have a severe physical or mental impairment that, in the opinion of a prescribed professional, directly and significantly restricts his ability to perform DLA either continuously or periodically for extended periods resulting in the need for help to perform DLA. The ministry determined that the age requirement had been met and that the appellant has an impairment that will last for 2 years.

The criteria for being designated as a person with disabilities (PWD) are set out in section 2 of the EAPWDA. The minister may designate a person as a PWD when the following requirements are met. Pursuant to section 2(2) the applicant must have reached the age of 18 and the minister must be satisfied that the person has a severe mental or physical impairment. Under section 2(2)(a) the impairment must be likely, in the opinion of a medical practitioner, to continue for at least 2 years. Section 2(2)(b)(i) requires that the impairment, in the opinion of a prescribed professional, directly and significantly restricts the person's ability to perform daily living activities (DLA) either continuously or periodically for extended periods. Section 2(2)(b)(ii) states that as a result of those restrictions the person must require help to perform DLA. Section 2(3)(b) of the EAPWDA states that a person requires help in relation to a DLA if the person requires an assistive device, the significant help or supervision of another person, or the services of an assistance animal.

Section 2(1)(a) of the EAPWDR defines DLA for a person who has a severe physical or 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.

Respecting the existence of a severe physical impairment, the appellant's position is that he is severely impaired by both his gastrointestinal disorders and his damaged right ring finger. The appellant also contends that the ministry has narrowly interpreted and applied the legislative criteria for PWD designation. The ministry's position is that the physician's evidence in the PR and AR identifies no restrictions with physical functional skills or mobility and physical ability and therefore does not establish a severe physical impairment. The ministry further contends that, while the subsequent information provided by the physician indicates the need for continuous assistance with meals and basic housework, the accompanying narrative does not support a need for continuous assistance and that, when this information is taken in conjunction with other descriptions of the impacts and restrictions to functioning, a severe physical impairment has not been established.

The panel finds that a medical practitioner has diagnosed the appellant with acid peptic disease, digestive disorders and a damaged 4th digit on his right hand, the latter of which was incorrectly identified by the advocate in the April 2, 2011 document as the left hand. The panel finds that while some limitations in terms of physical functioning resulting from these medical conditions are identified in the April 2, 2011 document, namely periodic restrictions with walking, standing and bending, there is no indication how often or for what duration these restrictions occur. Furthermore, the same physician's evidence in both the PR and AR identifies no limitations in the appellant's ability to walk, climb stairs, lift, remain seated and that the appellant manages all areas of mobility and physical ability without any identified limitation. In the PR, the physical also wrote that the appellant takes medication for his gastrointestinal disorder which seems to help. The panel also finds that, while the appellant is reported to have continuous difficulty grasping objects due to his damaged right ring finger, there is no evidence that the functioning of his other 9 digits is impaired at all. The appellant's own evidence identifies physical ailments but does not describe an impact on physical functioning. For these

reasons, the panel finds that the ministry reasonably determined that the evidence does not establish that appellant's medical conditions result in a severe physical impairment under section 2(2) of the EAPWDA.

Regarding the existence of a severe mental impairment, the appellant argues that he is continuously impacted by his mood disorder, racing thoughts, anger, and anxiety. The ministry argues that, while some major impacts have been noted respecting cognitive and emotional function, the narrative provided does not describe major impacts on daily functioning. Further, the physician reports that the appellant is independent in all areas related to social functioning. The ministry also contends that, while the physician's subsequent information indicates the need for periodic assistance with specific activities, the physician does not describe whether the assistance is required periodically for extended periods. Additionally, while continuous assistance is indicated for some activities, the narrative does not support the need for continuous assistance. The ministry concludes that when all information is viewed together, the impacts and restrictions to functioning do not establish a severe mental impairment.

The panel finds that a medical practitioner has diagnosed the appellant with mood disorder, anxiety disorder, and situational adjustment reaction. While no significant deficits with cognitive and emotional function are identified in the PR, the physician does therein report that the appellant is always angry, gets thoughts continuously and cannot focus his attention. In the AR, the physician identifies a major impact on a daily functioning in half of all listed aspects of cognitive and emotional function, including emotion, attention/concentration, memory, motivation, and psychotic symptoms as well as a moderate impact on daily functioning for 2 additional aspects. In the April 2, 2011 document, the physician confirms lack of motivation, memory loss, and difficulty concentrating and newly identifies problems dealing with other people in the community due to anxiety. The appellant's evidence is that he has difficulties with anger and concentration. The panel finds that, in view of the above evidence respecting the degree of impact that the appellant's mental conditions have on daily functioning, the ministry unreasonably determined that the appellant's mental conditions do not result in a severe mental impairment under section 2(2) of the EAPWDA.

Regarding the degree of restriction with DLA, the appellant argues that as a result of his physical and mental impairments he requires both periodic and continuous assistance with DLA. The ministry argues that the physician's evidence in the PWD application is that all DLA are managed without restriction with the exception of having no motivation for all areas related to meals, and that, while the subsequent information identifies both continuous and periodic restrictions with aspects of daily living, the accompanying narrative does not support the need for continuous assistance or indicate that the periodic assistance is required for extended periods. Thus, the ministry argues that it has not been established that a severe mental or physical impairment significantly restricts the appellant's DLA.

The panel finds that, with the exception of a restriction noted for the DLA meals, the evidence of the prescribed profession, the appellant's physician, in the PWD application conflicts with his evidence in the April 2, 2011 document. In the PWD application, no restrictions are reported for any DLA other than having no motivation respecting all aspects of meals and a need for assistance with DLA is not reported. In the April 2, 2011 document, periodic restrictions and the need for periodic assistance are reported for mobility and aspects of managing medications and personal finances. Additionally, continuous restrictions and the need for continuous assistance are reported for using public transportation, appropriate social interaction, meals, and basic housekeeping. While the panel notes that there is no accompanying explanation as to why the physician has markedly changed his evidence, the panel has placed greater weight on the information respecting DLA in the April 2, 2011 document as it is the most recent evidence and as it is consistent with the degree of impact on daily cognitive and emotional functioning reported in the AR. The panel finds that the most recent information does not indicate either the frequency or duration of the periodic assistance required in order to determine if the periodic assistance is for extended periods. Regarding the continuous restrictions reported for aspects of transportation, social functioning, meals, and basic housekeeping, the panel finds that the physician also

indicates that the need for assistance is continuous and that, in light of this evidence, the ministry unreasonably determined that a direct and significant continuous restriction in the appellant's ability to perform DLA was not established under section 2(2)(b)(i) of the EAPWDA.

Regarding the need for help with DLA, the appellant argues that he requires the significant help of others to manage DLA. The ministry argues that, as it has not been established that DLA are directly and significantly restricted, it cannot be determined that help is required to perform DLA.

The panel finds that, as the prescribed professional indicated the need for continuous assistance from others with basic housekeeping, meals, and aspects of transportation and social functioning, the ministry unreasonably determined that the appellant does not require the significant assistance of another person with DLA which are directly and significantly restricted continuously under section 2(2)(b)(ii) of the EAPWDA.

The panel finds that the ministry's decision was not reasonably supported by the evidence and rescinds. Therefore, the ministry's decision is overturned in favour of the appellant.