

PART C – Decision under Appeal

The decision under appeal is the ministry's reconsideration decision dated June 2, 2011 which found that the appellant did not meet three of the five 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 two years. However, the ministry was not satisfied that the evidence establishes that he has a severe physical or mental impairment. The ministry was also not satisfied 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. As the ministry found that the appellant is not significantly restricted with DLA, it could not be determined that he requires the significant help or supervision of another person, the use of an assistive device, or the services of an assistance animal 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 the time of the reconsideration decision consisted of:

- 1) Person With Disabilities (PWD) Application: applicant information dated February 18, 2011, physician report dated February 17, 2011, and assessor report dated February 23, 2011;
- 2) Letter from the ministry to the appellant dated April 26, 2011 denying his request for persons with disabilities designation and enclosing the decision summary; and,
- 3) Request for Reconsideration- Reasons.

At the hearing, after the appellant had been giving his oral testimony, he experienced an anxiety attack and had difficulty breathing. A short recess was called to allow the appellant to compose himself. After the break, the appellant indicated that he was feeling better and was able to continue with his oral testimony.

The appellant stated that he has arthritis through his whole body and, as his doctor has confirmed, he is not able to work. The appellant explained that sometimes he cannot walk properly as he will have pain in his knees, and he often cannot sleep because of pain in his shoulder. The appellant stated that he used to work with his hands, first as a carpet layer and then fixing electronics in his own business. The appellant explained that the arthritis in his elbows has now made it impossible to lift items like televisions because he cannot straighten his arms as they are stuck in a bent position. The appellant stated that his hand joints are swollen and he can no longer work and that his wife left with their 5 children because of his problems. The appellant explained that he has had anxiety attacks where he finds it hard to breathe and this has made it difficult to have medical tests completed, like a CT scan. The appellant also stated that the doctor who completed the PWD application was upset when the appellant asked that the application be completed, and the doctor did not ask the appellant how long he can sit, for example, and only gave him a few minutes at each appointment and did not listen to the appellant's description of his suffering. In response to a question, the appellant confirmed that he had been referred to a rheumatologist but that the specialist prescribed medications that the appellant believes caused him to begin spitting up blood. The appellant explained that he took the anti-inflammatory medications for a few days and then stopped. The appellant stated that he takes anti-depressant/anti-anxiety medications only when he needs them. The appellant stated that he has a friend who will help out when he has time and will occasionally bring meals over to the appellant.

The physician who completed the physician report has confirmed that the appellant is diagnosed with rheumatoid arthritis, anemia, weight loss, and depression. The physician indicates in the physician report that the appellant can walk more than 4 blocks unaided on a flat surface, climb more than 5 steps unaided, has no limitation in remaining seated, and it is unknown if the appellant has limitations in lifting. In the assessor report, the physician indicates that the appellant requires periodic assistance with standing and carrying and holding and comments that due to the deformity of both of the appellant's elbows, he is unable to do certain activities and his range of motion is very restricted. The physician indicates that the appellant is independent with walking indoors, walking outdoors, climbing stairs and standing. With the diagnosis of depression, the physician notes that this relates to the appellant's elbow joints being deformed because of the nature of his illness. The physician reports a significant deficit with cognitive and emotional functioning in the area of emotional disturbance, with a moderate impact on motor activity, minimal impacts on emotion, motivation and other emotional or mental problems and no impacts on bodily functions, consciousness, impulse control, insight and judgement, attention/concentration, executive, memory, language, psychotic symptoms, and other neuropsychological problems. In the Physician Report, the physician notes that the appellant also got depressed as at this young age he got this disease and he has been treated with anti-anxiety and anti-depressant medications. In the physician report, the physician commented that the appellant has flexion deformity of both elbows and cannot perform certain activities that involve elbow extension; however the physician indicates that the appellant's impairments do not restrict his ability to perform daily living activities (DLA). In the assessor report, the physician indicates that the appellant requires periodic assistance with safe storage of food but that the appellant performs all other DLA independently. The physician indicates that the appellant requires periodic support/supervision with his ability to interact appropriately with others, but is independent in all other areas of social functioning.

PART F – Reasons for Panel Decision

The issue on the appeal is whether the ministry reasonably concluded that the appellant is not eligible for designation as a person with disabilities (PWD) as he does not have a severe mental or physical impairment and that his daily living activities (DLA) are not, in the opinion of a prescribed professional, directly and significantly restricted either continuously or periodically for extended periods and that, as a result of those restrictions, it could not be determined that the appellant requires the significant help or supervision of another person, the use of an assistive device, or the services of an assistance animal to perform DLA.

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 person 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. The impairment must also, in the opinion of a prescribed professional, directly and significantly restrict the person's ability to perform daily living activities (DLA) either continuously or periodically for extended periods, as set out in Section 2(2)(b)(i). As a result of those restrictions, the person must require help to perform DLA, pursuant to Section 2(2)(b)(ii). Section 2(3)(b) sets out that a person requires help in relation to DLA if, in order to perform it, 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: prepare own meals, manage personal finances, shop for personal needs, use public or personal transportation facilities, perform housework to maintain the person's place of residence in acceptable sanitary condition, move about indoors and outdoors, perform personal hygiene and self care, and manage personal medication. In relation to a person who has a severe mental impairment, there are two additional activities, namely: making decisions about personal activities, care or finances, and relating to, communicating or interacting with others effectively.

The ministry's position is that although the appellant meets criterion 1 and 3 as set out in the legislation, in that he has reached the age of 18 and his impairments are likely, in the opinion of a medical practitioner, to continue for at least 2 years, the evidence does not establish that he has met criterion 2, 4 and 5. In particular, the ministry argues that the evidence does not show that the appellant has a severe mental or physical impairment and the prescribed professional did not confirm that the appellant's physical or mental impairment directly and significantly restricts his ability to perform DLA either continuously or periodically for extended periods so that he requires the significant help or supervision of another person to perform these activities. The ministry also points out that employability was not one of the criteria on the application, nor is it at issue on the appeal.

The appellant argues that the evidence establishes that he suffers from a severe physical impairment as a result of rheumatoid arthritis, anemia, and weight loss. The appellant's position is that the evidence also establishes that he suffers from a severe mental impairment as a result of the diagnosis of depression. The appellant contends that the prescribed professional has provided sufficient evidence that the appellant's severe mental and physical impairments directly and significantly restrict his ability to perform many DLA, for which he requires the significant help and supervision of another person, namely his friend.

With respect to the existence of a severe physical impairment, the panel finds that the evidence of a medical practitioner confirms a diagnosis of rheumatoid arthritis, anemia and weight loss. The physician adds in the report that the appellant has flexion deformity of both elbows and was referred to a rheumatologist who treated with anti-inflammatory medications. The physician indicates in the physician report that the appellant can walk more than 4 blocks unaided on a flat surface, climb more than 5 steps unaided, has no limitation in remaining seated, and it is unknown if the appellant has limitations in lifting. The appellant describes arthritis in his whole

body, including his elbows, wrists, finger joints, knees, hips, ankles, toes and also in his spine. The physician confirms in the assessor report that the appellant is independent with walking indoors and outdoors, and climbing stairs but requires periodic assistance with standing and carrying and holding, with the comment that the appellant is unable to do certain activity which involves flexion and that his range of motion is very restricted. The physician does not comment on the assistance that the appellant requires or whether he requires the assistance periodically for extended periods of time. The appellant stated that he stopped taking the anti-inflammatory medications prescribed by the specialist because of the potential side effects, and he does not currently use any assistive devices such as braces. Overall, the panel finds that the ministry's determination that the appellant's physical impairment was not severe was reasonable.

With respect to the existence of a severe mental impairment, the panel finds that the evidence of a medical practitioner confirms a diagnosis of depression, with a note that this relates to the appellant's elbow joints being deformed because of the nature of his illness. In the Physician Report, the physician notes that the appellant also got depressed as at this young age he got this disease and he has been treated with anti-anxiety and anti-depressant medications. The physician indicates that the appellant has significant deficits with cognitive and emotional functioning in the areas of emotional disturbance with no further comments provided. In the Assessor Report, the physician indicates that there are no major impacts to the appellant's daily functioning, but reports moderate impacts to daily functioning as a result of motor activity. The physician also indicates minimal impacts in the areas of emotion, memory and other emotional or mental problems, and provides the comment that the appellant has chronic rheumatoid arthritis with no cure, just symptomatic relief and that it could get worse with time. The physician has reported no impact on the remaining areas of daily functioning. The appellant explained that he has anxiety attacks where he has difficulty breathing, as he experienced at the hearing, but he only takes the anti-anxiety medications when he needs them as he generally does not like taking medications. With respect to social functioning, the physician indicates that the appellant is independent in making appropriate social decisions, developing and maintaining relationships, and dealing appropriately with unexpected demands, but requires periodic support/supervision with interacting appropriately with others. The physician has not provided further note or comment regarding a description of the degree and duration of the support/supervision required. The physician indicates that the appellant has good functioning with his extended social networks, and only marginal functioning with his immediate social network. Again, the physician does not comment regarding a description of how the mental impairment impacts the appellant's relationships. Overall, the panel finds that the ministry's decision, which concluded that the evidence does not establish a severe mental impairment, was reasonable.

Regarding the appellant's ability to manage daily living activities (DLA), the panel has relied on the evidence of the physician who completed both the physician and assessor reports in the PWD application. In the physician report, the physician has responded "no" to the question whether the appellant's impairment directly restricts his ability to perform DLA. The physician has further indicated that there is no restriction in the areas of personal self care, meal preparation, management of medications, daily shopping, mobility inside and outside the home, use of transportation, management of finances, and social functioning, and that it is unknown if there is a restriction in the area of basic housework. In the assessor report, the physician indicates that the appellant requires periodic assistance with safe storage of food but that the appellant performs all other DLA independently. Therefore, the panel finds that the ministry's determination that the evidence of a prescribed professional does not establish a direct and significant restriction on the appellant's ability to perform DLA either continuously or periodically for extended periods, as required by Section 2(2)(b)(i) of the EAPWDA, was reasonable.

In determining whether the ministry reasonably concluded that the appellant does not require the significant help or supervision of another person, the panel relies on the information from the physician in the PWD application that the appellant lives alone and that assistance is provided by the appellant's friends. The panel finds the appellant has stated that he has a friend who helps out when he has time and will occasionally bring the appellant meals. Although the physician has indicated that splints and braces would be appropriate assistive devices "as needed", the appellant stated that he does not currently use any assistive devices. As it

has not been established that the appellant's DLA are significantly restricted, the panel finds that the ministry reasonably determined that that the requirement for significant help or supervision of another person to perform DLA under Section 2(2)(b)(ii) of the EAPWDA has not been met.

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