

PART C – Decision under Appeal

The decision under appeal is the ministry's reconsideration decision dated September 19, 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 June 13, 2011, physician report dated May 24, 2011, and assessor report dated June 8, 2011;
- 2) Letter from the ministry to the appellant dated August 26, 2011 denying person with disabilities designation and enclosing a copy of the decision summary; and,
- 3) Request for Reconsideration- Reasons.

Neither the appellant nor the ministry attended the hearing. After confirming that the appellant and the ministry were notified, the hearing proceeded under Section 86(b) of the Employment and Assistance Regulation.

In his self-report, the appellant states that he has chronic kidney disease and that he is borderline for having to go onto kidney dialysis. The appellant explains that he is extremely exhausted and must rest throughout the day. He cannot lift because this causes very sharp pain in his back. The appellant states that he has trouble doing his daily living activities (DLA) because he gets tired quickly. The appellant explains that he has trouble visiting or going out because he is so tired all the time, that he gets swelling in his legs if he is up too much, and he is sleeping longer and longer (12-13 hours at night with frequent naps during the day). In his Request for Reconsideration, the appellant adds that his illness is becoming worse, that he cannot stand on his feet for longer than 45 minutes. The appellant states that when he goes for a walk, he is able to walk 3 to 4 blocks before he takes a break. The appellant explains that he gets really bad swelling in his legs, as well as pain. The appellant adds that he is on medication, his blood pressure is still high, he is still in pain and he cannot lift anything heavy. The appellant states that his family helps him out with his DLA. In his Notice of Appeal, the appellant states that the doctor who filled out the forms in the PWD application was the back-up doctor for his family doctor who was on medical leave.

The physician who completed the physician report has confirmed that he saw the appellant once and that he is normally seen by another doctor who has been on medical leave. In the physician report, the physician confirms a diagnosis of focal segmental glomerulosclerosis and notes that the appellant has "...extreme fatigue; possible muscle breakdown and decreased kidney function." In response to the request to provide additional comments regarding the significance of the medical condition, the physician also notes "...non-reversible kidney disease, allows for increased waste product build-up, may be any number of physical consequences, currently maintaining kidney function, is followed by nephrologist." The physician report indicates that the appellant has not been prescribed any medication or treatment that may interfere with his ability to perform DLA, nor does he require any prostheses or aids for his impairment. Further, the physician reports that the appellant can walk 4 or more blocks unaided on a flat surface, he can climb 5 or more stairs unaided, he can lift 5 to 15 lbs. and has no limitation with remaining seated. The physician reports that the appellant has no difficulties with communication and no significant deficits with cognitive and emotional function. In response to the question whether the impairment directly restricts the appellant's ability to perform daily living activities (DLA), the physician has indicated "no".

The social worker who completed the assessor report has confirmed that she has known the appellant approximately two months and that she has seen the appellant 2 to 10 times in that period. The assessor indicates that the appellant is independent with walking indoors ("25 minutes and then rest") and independent with walking outdoors ("2 blocks") and that he is independent but takes significantly longer than typical with climbing stairs ("very, very slow"), and that he requires continuous assistance from another person with lifting and with carrying and holding. The assessor reports that the appellant is independent with all tasks of personal care and requires continuous assistance from another person for laundry and basic housekeeping ("family member does for him"). The assessor indicates that the appellant is independent with most tasks of shopping but requires continuous assistance from another person or he is unable to carry purchases home ("family member does for him"). The assessor notes that the appellant cannot "...lift or bend with anything in his arms and so he is limited as to what he can do; (the appellant) says he can do dishes but can't put them

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away unless he does so one plate or dish at a time; (the appellant) has very, very sharp pain where the kidneys are in his back if he tries to lift anything." Further, the assessor reports that the appellant is independent with tasks of meal preparation but requires continuous assistance from another person with safe storage of food ("anything that needs to be lifted a family member helps"). The assessor indicates that the appellant is independent with all tasks relating to paying rent and bills, managing medications and transportation and adds a note that the appellant "...has to pace himself because of his extreme fatigue and can only do 1/2 hour at a time of any task that relates to self-care (cooking, bath, etc.) and must rest in between", as well as a note that the appellant uses a cane. In the assessor report, the social worker also indicates major impacts to daily functioning in the areas of bodily functions, attention/concentration, and motivation, as well as moderate impacts to consciousness, emotion, and language. The assessor also reports minimal impact on memory and no impact to 6 other areas. In the associated comments, the assessor has noted that the appellant's kidney disease "...impacts all of his functions because poison is building up in his system; he is extremely exhausted all the time and spends a large amount of his day resting due to his illness." In terms of social functioning, the assessor has assessed the appellant as independent with making appropriate social decisions, developing and maintaining relationships, interacting appropriately with others, and securing assistance from others while requiring periodic support/supervision for dealing appropriately with unexpected demands. The assessor indicates that the appellant has marginal functioning in both his immediate and extended social networks mostly as a result of his fatigue.

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 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 criteria 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 criteria 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, the use of an assistive device or the services of an assistance animal to perform these activities.

The appellant argues that the evidence establishes that he suffers from a severe physical impairment as a result of focal segmental glomerulosclerosis. The appellant did not argue that the evidence establishes that he suffers from a severe mental impairment. The appellant contends that the prescribed professionals have provided sufficient evidence that the appellant's severe physical impairment directly and significantly restricts his ability to perform many DLA, for which he requires the significant help and supervision of another person or an assistive device.

With respect to the existence of a severe physical impairment, the panel finds that the evidence of a medical practitioner confirms a diagnosis of focal segmental glomerulosclerosis, or non-reversible kidney disease. In response to the request to provide additional comments, the physician also notes "...allows for increased waste product build-up, may be any number of physical consequences, currently maintaining kidney function." The physician report indicates that the appellant does not require any prostheses or aids for his impairment. Further, the physician reports that the appellant can walk 4 or more blocks unaided on a flat surface, he can climb 5 or more stairs unaided, he can lift 5 to 15 lbs. and has no limitation with remaining seated.

In his Request for Reconsideration, the appellant adds that his illness is becoming worse, he is able to stand for 45 minutes and that, when he goes for a walk, he is able to walk 3 to 4 blocks before he takes a break. The appellant explains that he gets really bad swelling in his legs, as well as pain. The appellant adds that he is on medication, his blood pressure is still high, he is still in pain and he cannot lift anything heavy. The social worker also indicates that the appellant is independent with mobility inside the home and with mobility outside the home, but limited to 2 blocks outdoors. The assessor report indicates that the appellant requires continuous assistance from another person with lifting and carrying and holding and takes significantly longer than typical with climbing stairs. Although the social worker indicated that the appellant uses a cane, the panel finds that it is not reported for which tasks the appellant uses an assistive device. The panel finds that, reading these reports together, the appellant is independent with lifting weights of 5 to 15 lbs. and requires assistance for lifting heavier loads, in excess of 15 lbs. The panel finds that the appellant is not restricted in mobility inside or outside the home and is able to climb 5 or more stairs unaided. The panel finds that the evidence demonstrates that the appellant is currently maintaining kidney function and that his disease is causing fatigue and that the appellant experiences restrictions in lifting but maintains a relatively high level of mobility and physical functioning. Overall, the panel finds that the ministry's determination that the evidence does not establish a severe physical impairment, was reasonable.

With respect to the existence of a severe mental impairment, the panel finds that the evidence of a medical practitioner does not confirm a diagnosis of a mental disorder. In the physician report, it is also indicated that the appellant has no significant deficits with cognitive and emotional function and that the appellant's social functioning is not restricted. In the assessor report, the social worker indicates major impacts to daily functioning in the areas of bodily functions, attention/concentration, and motivation, as well as moderate impacts to consciousness, emotion, and language. However, the panel finds that this section of the application is designed to assess the impact of an identified mental impairment or brain injury, for which the appellant has not been diagnosed. In the associated comments, the assessor has noted that the appellant "...is extremely exhausted all the time and spends a large amount of his day resting due to his illness." The assessor has also assessed the appellant in terms of social functioning, which is relevant if the appellant has an identified mental impairment, including brain injury. The assessor has assessed the appellant as independent with making appropriate social decisions, developing and maintaining relationships, interacting appropriately with others, and securing assistance from others while requiring periodic support/supervision for dealing appropriately with unexpected demands. The assessor indicates that the appellant has marginal functioning in both his immediate and extended social networks mostly as a result of his fatigue. Therefore, as a mental impairment has not been diagnosed and the assessor's narrative identifies impacts on cognitive, emotional and social functioning due to a physical and not a mental impairment, 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 provided in the PWD application, as well as the social worker as provided in the assessor report. In the physician report, the doctor has indicated that the appellant's impairment does not directly restrict his ability to perform DLA. In terms of preparing his own meals, the physician has indicated no restriction in this activity and the assessor confirms that the appellant is independent with all tasks with the exception of requiring continuous assistance from another person for safe storage of food, which the assessor notes relates to lifting. For managing personal finances, the assessor reports that the appellant is independent with all tasks, including banking, budgeting and paying rent and bills. In terms of shopping for his personal needs, the appellant's physician has reported that the appellant is not restricted and the assessor indicates that the appellant is independent with all tasks of shopping, including going to and from stores, reading prices and labels, making appropriate choices and paying for purchases, except that he requires continuous assistance from another person or he is unable to carry purchases home.

For use of public or personal transportation facilities, the physician indicates that the appellant is not restricted and the assessor indicates the appellant is independent with all tasks. The assessor has noted that the

appellant must pace himself because of his extreme fatigue. For performing housework to maintain the appellant's place of residence in an acceptable sanitary condition, the physician has reported that the appellant is not restricted and the assessor indicates, on the other hand, that the appellant requires continuous assistance from another person with laundry and with basic housekeeping. The panel also relies on the handwritten notes of the social worker as indicating that the appellant can do some chores ("says he can do dishes but can't put them away unless he does so one plate or dish at a time") and the information specifying that the appellant can lift 5 to 15 lbs. and finds that his restriction relates to heavier loads (in excess of 15 lbs.). With respect to performing personal hygiene and self care, the physician indicates that the appellant is not restricted and the assessor reports that the appellant is independent with all tasks. The physician reports that the appellant is not restricted with managing his personal medications and the assessor confirms that the appellant is independent with all tasks. Looking at the evidence as a whole, the panel finds that it demonstrates that the appellant is able to perform a majority of his DLA without restriction or the need for assistance, that continuous assistance is required from another person for the DLA of housekeeping/laundry, for 1 out of a total of 5 tasks for the DLA of shopping (carrying purchases home), and for 1 out of 4 aspects of the DLA of managing meals (safe storage of food), or those tasks which involve lifting heavier loads. 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 or the use of an assistive device, the panel relies on the information from the assessor that the appellant lives with family, friends or caregiver and that help is provided by friends and family. As it has not been established that DLA are significantly restricted, the panel finds that the ministry's conclusion that the requirement for significant help or supervision of another person, an assistive device, or the services of an assistance animal to perform DLA, under Section 2(2)(b)(ii) of the EAPWDA, has not been met was reasonable.

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