

PART C – Decision under Appeal

The decision under appeal is the ministry's reconsideration decision dated October 18, 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 and section 2 of the Employment and Assistance for Persons with Disabilities Regulation for designation as a person with disabilities (PWD). The ministry determined that the appellant met the age requirement and was satisfied that he had a severe hearing impairment, which in the opinion of a medical practitioner is likely to continue for at least 2 years. However, the ministry was not satisfied that, in the opinion of a prescribed professional, the appellant's impairment directly and significantly restricts his ability to perform daily living activities (DLA) either continuously or periodically for extended periods and that as a result of those 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 a PWD application comprised of a Self-Report (SR), Physician Report (PR), and Assessor Report (AR), and the Request for Reconsideration.

In the PR, the appellant is diagnosed with deafness since birth and is reported to have poor speech development and use sign language. The appellant has a cochlear implant for his impairment. With respect to functional skills, the appellant can walk 4+ blocks and climb 5+ steps unaided, has no limitations lifting or remaining seated, has a sensory difficulty with communication (deafness), and no significant deficits with cognitive and emotional function. The physician indicates that the appellant's impairment does not restrict his ability to perform any of the listed DLA (personal self care, meal preparation, management of medications, basic housework, daily shopping, mobility inside and outside the home, use of transportation, management of finances, and social functioning). However, where asked to explain if social functioning is impacted, the physician writes "very limited – difficult to find friends outside family." The physician describes the appellant's deafness as a severe disability, which impacts social networking and leaves the appellant dependent on family to help with communication.

In the AR, completed by the physician who completed the PR, the appellant's is reported to have good communication via reading and writing, poor communication via speaking (has "deaf accent" – hard to understand) and is unable to hear. The appellant independently manages all listed aspects of mobility and physical ability (walking indoors and outdoors, climbing stairs, standing, lifting and carrying/holding). A major impact on daily functioning is reported for 1 of 14 aspects of cognitive and emotional functioning, language (oral communication is extremely difficult) and a moderate impact for 1 aspect, emotion (depression issues due to limited amount of friends) and a minimal impact on 1 aspect, motivation (associated with depression). No impact is reported for the remaining 11 aspects. Regarding DLA, the appellant is reported to independently manage all listed aspects of personal care, basic housekeeping, shopping, meals, paying rent and bills, medications, and transportation. With respect to social functioning, the appellant independently manages 4 aspects and requires periodic assistance for 1 aspect, appropriate social decisions ("has a hard time in group setting due to communication issues). Marginal functioning is reported with extended social networks (needs interpreter to communicate effectively) and no information is provided respecting the appellant's functioning with his immediate social network. Help required to maintain the appellant in the community is an interpreter, hearing dog, and cochlear implant. The appellant receives assistance from his family and requires a texting phone and an updated cochlear device.

In the SR, the appellant reports that he is deaf and uses sign language to communicate. It is difficult to communicate with others if they don't know sign language. He is unable to use the phone, hear doorbells or emergency vehicles, and has limited friends due to communication problems. For communication, including banking and doctor visits, he must take someone to interpret or use pen and paper.

In his Request for Reconsideration, the appellant reaffirms that he cannot communicate with people on an everyday basis whether it be at a grocery or other store, bank, restaurant, or with the ministry or border guards when traveling out of country. When his only means of communication broke, his cell phone, he required someone to interpret for him to arrange for its repair. Any time he wants to talk with someone or someone wants to talk with him, he requires an interpreter. The appellant also provided a copy of an audiogram and stated that his audiogram results indicate that he cannot hear above 100dB, meaning that he cannot hear any speech.

On appeal, the appellant provided a November 1, 2011 letter from his past physician stating that the appellant is deaf and needs an interpreter for all his communication and a November 23, 2011 letter from the physician who completed the PR and AR stating that the appellant requires an interpreter to be with him for assistance

regarding any speech or listening interactions.

The ministry did not object to the admission of the letters. The panel admitted the above letters new evidence under section 22(4) of the Employment and Assistance Act as they were found to be in support of the information and records before the ministry at reconsideration as elaboration of said information and records.

At the hearing, the appellant confirmed that his inability to communicate with other people affects him everyday including being unable to talk to other people when he needs help. The appellant also stated that life is made harder for him because he lives in a small town where few people communicate via sign language, but that this is where his family lives and therefore where he wants to live. The appellant stated that he needs some help with everyday living.

At the hearing, the appellant's mother stated that the appellant is able to perform the DLA set out in the AR but that those activities do not address the appellant's communication difficulties arising from his sensory impairment.

The ministry did not provide any additional evidence at the hearing.

PART F – Reasons for Panel Decision

The issue under appeal is whether the ministry reasonably concluded that the appellant's impairment does not, in the opinion of a prescribed professional, directly and significantly restrict his ability to perform DLA either continuously or periodically for extended periods and that the appellant does not require help to perform DLA as a result of those restrictions. The ministry determined that the age requirement had been met and that the appellant has a severe impairment, which is likely to continue for 2 years or more.

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.

The panel first considered the legislative requirement 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. The appellant's position is that he falls within the ministry's meaning of a person with a disability as he has a hearing impairment that substantially limits a major life activity, namely speaking and hearing in order to communicate and deal with people independently for everyday interaction. The ministry's position is that the information provided by the appellant's physician does not establish that the appellant's DLA are significantly restricted. Specifically, the ministry argues that although social functioning is reported to be very limited, the physician indicates that the appellant's impairment does not directly restrict his ability to perform DLA and he is able to perform all 28 aspects of DLA independently with no assistance required.

The panel finds that the physicians' evidence in the PWD application and letters admitted on appeal clearly identifies that the appellant's ability to communicate or interact with others effectively is significantly restricted by his hearing impairment on a daily basis thus establishing a direct and significant continuous restriction in the appellant's ability to manage this DLA. However, the evidence of the appellant's physician is that all other DLA set out in section 2 of the EAPWDR, mobility indoors and outdoors, personal self care, basic housekeeping, shopping, meals, managing personal finances, medications, and transportation, are managed independently. Therefore, while the panel acknowledges the appellant's evidence respecting the impact his hearing impairment has on his daily life and the argument that the DLA set out in the legislation do not address communication difficulties resulting from sensory impairment, the panel finds that the ministry reasonably determined that the criteria of section 2(2)(b)(i) of the EAPWDA was not met.

Regarding the criteria set out in legislation respecting the appellant's need for help with DLA, the appellant's position is that he requires the ongoing assistance of another person as an interpreter for all communication

with people who do not use sign language. The ministry's position is that because it has not been established that the appellant's severe impairment directly and significantly restricts his ability to perform DLA, it could not be determined that the appellant requires significant help from another person.

Regarding the need for help with DLA, the panel finds that the ministry reasonably determined that as it has not been established that DLA are directly and significantly restricted, it cannot be determined that help is required under section 2(2)(b)(ii) of the EAPWDA.

The panel finds that the ministry's decision was a reasonable application of the legislation in the circumstances of the appellant and confirms the decision.