

## PART C – Decision under Appeal

The decision under appeal is the ministry's reconsideration decision dated February 15, 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 a PWD application comprised of a Physician Report (PR) and Assessor Report (AR) and a November 26, 2010 advocate's letter comprised of questions for the physician who completed the PWD application which was completed and signed by the physician on November 30, 2010.

In the PR, completed by the appellant's general practitioner of 7 years, the appellant is diagnosed with "hypogonadism-congenital" with narrative that the appellant feels tired a lot, confused at times, with low mood and poor concentration. The physician reports that the appellant does not take treatment for hypogonadism. Regarding functional skills, the appellant is able to walk 1 to 2 blocks and climb 2 to 5 steps unaided, lift 15 to 35 lbs, and has no limitations remaining seated. The physician indicates that there are no difficulties with communication but also responds to the question "If yes, what is the cause" with the answer "cognitive". Significant deficits with cognitive and emotional function are reported for 2 of 11 specified aspects with narrative "when untreated condition is [illegible] and causes fatigue."

In the AR, completed by the same general practitioner, the medical condition impacting the appellant's ability to manage DLA is identified as fatigue. The appellant's ability to communicate is reported as good for speaking, reading, hearing, and writing. All aspects of mobility and physical ability are managed independently - walking indoors and outdoors, climbing stairs, standing, lifting and carrying/holding. No information is provided in the section respecting impact on daily functioning regarding cognitive and emotional functioning. Regarding DLA, all aspects of personal care, paying rent and bills, medications (Doesn't take [medication] daily"), transportation, and social functioning as well as 4 of 5 aspects of shopping and 3 of 4 aspects of meals are managed independently. Periodic assistance is indicated for both aspects of basic housekeeping, the remaining 1 aspect of shopping, carrying purchases home, and the remaining 1 aspect of meals, cooking ("can't cook). Additional narrative is that the appellant "needs regular medicating and to be [illegible] to take it" and "needs regular tests [illegible] injections..." Good functioning with both immediate and extended social networks is reported. Respecting assistance provided by other people, the assessor writes "needs funding for medication."

The information provided by the appellant's general practitioner in response to the advocate's questions is as follows. In response to the appellant's statements that (1) he has pain in his right knee and that sometimes when walking it feels like it dislocates and causes severe pain to the point he falls and (2), the knee problem happens approximately every 2-3 months and he cannot walk for a week necessitating the use of a cane or crutches to go to the bathroom, the physician indicates that he disagrees and writes "needs physiotherapy." In response to the appellant's assertion that, during these periodic episodes, he needs help with laundry, basic housekeeping, shopping, carrying purchases home, and cooking, the physician responds that the appellant does not require help with any of those activities. The physician writes "needs Rx for hypogonadism" and agrees with the appellant's statement that he suffers from chronic fatigue and takes at least twice as long as the typical person to move about with all mobility being slow.

On appeal, the appellant provided a December 3, 2010 letter from an endocrinologist and the results of a November 30, 2010 right knee x-ray. The endocrinologist writes that the appellant has not taken testosterone for a year because the appellant feels "it's not helping" but that when treatment was at 100mg monthly, the appellant notices better energy level. The endocrinologist concludes that the appellant "simply must take his testosterone or he will have more weight gain, osteoporosis and fatigue." Results of the x-ray are: normal joint alignment; minimal osteophytic lipping at articular margins indicating degenerative changes; no definite evidence of joint effusion; and no focal bony lesion seen. The panel admitted both documents under section 22(4) of the Employment and Assistance Act as being new written testimony in support of the information and records before the ministry at reconsideration. The ministry stated that the new information confirmed the

diagnosis and did not significantly change the information before it at reconsideration and had no objections to the admission of both documents.

At the hearing, the appellant provided oral testimony as follows. He completed high school in a special needs program as he has a slow pace of doing and learning things. He is, and has always been, dependent upon his mother for meals, shopping, managing personal finances, and most transportation. He does not know how to cook as he is confused as to what ingredients to use and loses concentration to ensure food is properly cooked. His mother checks his bank account and checks to see if he has overpaid or not paid for something. Regarding the use of public transportation, he is confused by the various routes and where to stop though he can use public transportation if provided with written instructions. He cannot use personal transportation as he has been unable to obtain a driver's license as he has not passed the written test. He is unable to do tasks around the home unless asked by his mother who, does not trust that he will do anything right. As a result, his mother yells at him which adds to his emotional distress. He can do the dishes and receives assistance from his mother with laundry. He is unable to stand long enough to vacuum as his legs weaken after a certain time. He stays home most of the time watching television or using the computer and naps 2-3 times a day. He has attempted to make friends without success as he does not go out without his mother. Currently, he is not taking testosterone injections because they do not help with his emotional distress though they would help with energy.

No additional evidence was provided by the ministry at the hearing.

## PART F – Reasons for Panel Decision

The issue under appeal is whether the ministry reasonably concluded that the appellant has not met the criteria for designation as a PWD because he does not have a severe physical or mental impairment, which, 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 was met and that he 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 pain in his right knee, which prevents him from walking for a week every 2-3 months, and by chronic fatigue from hypogonadism which results in him taking twice as long with all mobility. The appellant further contends that, as a result, he needs help with laundry, basic housekeeping, shopping, carrying purchases home, transportation, and cooking. The ministry's position is that the physician's evidence respecting the appellant's physical functional skills and independence with all aspects of mobility and physical ability does not establish a severe physical impairment.

The panel finds that a medical practitioner has diagnosed the appellant with congenital hypogonadism which results in fatigue. While the x-ray report indicates degenerative changes in the right knee, the appellant's physician has not diagnosed a related medical condition which is likely to continue for at least 2 years but, has instead indicated that the appellant requires physiotherapy. The evidence of the appellant's physician is that, although the appellant takes twice as long to mobilize, he independently manages all aspects of mobility and physical ability and is able to walk 1 to 2 blocks, climb 2 to 5 steps, lift 15 to 35 lbs and remain seated without limitation. Additionally, both the general practitioner and the endocrinologist provide evidence that the appellant's fatigue can be treated with the medication the appellant is unwilling to take. The panel finds that the appellant's evidence respecting his impairment due to knee/leg problems is not supported by a diagnosed medical condition by a medical practitioner and further, that the appellant's physician disagrees with the appellant's assessment of his knee impairment. In the absence of a confirmed medical diagnosis respecting the appellant's knee problems, and in light of the evidence of the appellant's physician of 7 years respecting physical functional skills and independence with all aspects of mobility and physical ability and the evidence of both the endocrinologist and general practitioner that medication will lessen the appellant's fatigue, the panel finds that the ministry reasonably determined that a severe physical impairment was not established under section 2(2) of the EAPWDA.

Regarding the existence of a severe mental impairment, the appellant's position is that he is severely impaired due to his lack of concentration and being easily confused which results in total dependency on his mother to manage cooking, shopping, personal finances, and transportation. The appellant also contends that the information provided by his physician conflicts in that significant deficits with cognitive and emotional functioning are reported in the PR but no impact on daily functioning is reported in the AR. The ministry's position is that, although the physician reports significant deficits in the areas of emotional disturbance and motivation, the physician provides no evidence that the deficits impact daily functioning and further, reports that all activities related to social functioning are managed independently and that the appellant has good functioning with both immediate and extended social networks.

The panel finds that a medical practitioner has not diagnosed the appellant with a mental impairment but has reported significant deficits with 2 of 11 aspects of cognitive and emotional functioning, emotional disturbance and motivation, with narrative that "when untreated condition is [illegible] and causes fatigue." Additionally, the physician writes that the appellant is confused at times, has low mood and poor concentration. While the appellant has given oral evidence of his mental impairment, it is not supported by the diagnosis of a mental condition by the physician. Additionally, the narrative respecting the cognitive and emotional deficits with emotional disturbance and motivation suggests that they relate to fatigue when the hypogonadism is untreated rather than to a diagnosed mental impairment. Thus, while the panel acknowledges the appellant's assertion that he is dependent upon his mother to manage the mental aspects of a number of activities and that he has no friends, this evidence is not supported by a diagnosed mental condition. Additionally, the panel finds that although the physician reports confusion at times, low mood, and poor concentration, he provides no evidence of a resulting impact on any of the 14 aspects of cognitive and emotional daily functioning and reports that the appellant independently manages 29 of 33 aspects of DLA, including all aspects of social functioning. For these reasons, the panel finds that the ministry reasonably determined that a severe mental impairment was not established under section 2(2) of the EAPWDA.

Regarding the degree of restriction with DLA, the appellant argues that he is directly and significantly restricted continuously in his ability to perform DLA because he is completely dependent on his mother for shopping and cooking, is unable to stand long enough to vacuum, has a limited ability to use public transportation relying primarily on his mother to drive him, and requires the ongoing supervision of his mother for laundry and management of personal finances. The ministry's position is that the evidence of the appellant's physician does not establish that the appellant is significantly restricted in his ability to perform DLA as he independently performs 24 of 28 aspects of DLA. The ministry further contends that, as the physician does not define the frequency and duration of the periodic assistance required for the remaining 4 aspects of DLA, it cannot be determined that the periodic assistance is required for extended periods.

In considering the reasonableness of the ministry's decision respecting DLA restrictions, the panel notes that the legislation requires that the direct and significant restriction with DLA be in the opinion of a prescribed professional. The panel finds that the evidence of the appellant's physician, a prescribed professional, in the AR is that the appellant manages 24 of 28 aspects of DLA independently with the remaining 4 aspects requiring periodic assistance (laundry, basic housekeeping, carrying purchases home, and cooking). The physician writes that the appellant "can't cook" and writes, in 3 separate entries, of the need for the appellant to take his medication for hypogonadism. In his response to the advocate's questions, the physician reports that the appellant takes at least twice as long to move about and again reiterates the need for the appellant to take the medication for hypogonadism. Additionally, the physician indicates that he does not agree that the appellant has periods of being unable to walk for a week every 2-3 months and that he does not agree that during these periods the appellant requires periodic assistance with laundry, basic housework, shopping, carrying purchases, and cooking.

Based on the above evidence, the panel finds that the ministry reasonably determined that there is insufficient evidence to establish that the periodic assistance indicated for 4 aspects of DLA is for extended periods as required under the legislation. The panel also finds that the physician's narrative throughout the PR, AR and in the advocate's questionnaire repeatedly indicates that the appellant's fatigue will be improved if he takes the prescribed treatment. Furthermore, the appellant is, even without medication, reported to be able to independently manage 24 of 28 aspects of DLA. In view of the physician's evidence, the panel finds that the ministry reasonably determined that the appellant is not, in the opinion of a prescribed professional, directly and significantly restricted either continuously or periodically for extended periods in his ability to perform DLA as required under 2(2)(b)(i) of the EAPWDA.

Regarding the need for help with DLA, the appellant argues that due to the severity of his impairments, he requires the significant ongoing assistance of another person, his mother, to complete many DLA. The ministry argues that it has not been established that DLA are significantly restricted and therefore it cannot be determined that significant help is required from other persons.

The panel finds that the ministry reasonably determined that, as it has not been established that DLA are directly and significantly restricted in the opinion of a prescribed professional, 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 reasonably supported by the evidence and confirms the decision.