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PART C – Decision under Appeal

The decision under appeal is the ministry's reconsideration decision dated March 12, 2012 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

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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 December 19, 2011, physician report dated December 15, 2011, and assessor report dated December 19, 2011;
2) Letter dated January 27, 2012 from the ministry to the appellant, denying person with disabilities designation and enclosing a copy of the decision summary;
3) Letter dated February 6, 2012 from the appellant's physician to the ministry stating in part that the appellant has a severe physical impairment with cervical and lumbar chronic pain that impedes his ability to perform daily living activities; he does need significant help to perform activities of daily living; he has lumbar disc disease on X-Ray with arthropathy, chronic pain right shoulder and left knee and impaired memory; this will last over 2 years, i.e. indefinitely; he can no longer do janitorial work; and,
4) Request for Reconsideration.

Prior to the hearing, the appellant provided an additional document, namely a letter dated April 2, 2012 from a physician to the ministry which states in part that the diagnosis for the appellant is severe lumbar degenerative disc disease and severe Hepatitis C, that he is severely restricted in his mobility, physical stamina and ability to care for self and perform daily maintenance activities; his health has declined since his PWD application in 2011 and he now urgently requires case manager and homemaker support to receive needed services; he will soon need Hepatitis C treatment which will impair his function further for 15 months; he may require hospitalization if he worsens.

The ministry did not attend the hearing. After confirming that the ministry was notified, the hearing proceeded under Section 86(b) of the Employment and Assistance Regulation.

At the hearing, the appellant's advocate provided a written submission on behalf of the appellant, containing no new evidence but attaching a copy of the April 2, 2012 letter from a physician.

The panel reviewed the documents and admitted the letter as being a further description of the appellant's diagnosed impairments and being in support of the information and records before the ministry on its reconsideration, pursuant to Section 22(4) of the Employment and Assistance Act. The panel accepted the written submission as argument.

At the hearing, the appellant's advocate stated that the additional letter dated April 2, 2012 was written by a physician in the same clinic as the appellant's family physician, but this physician has developed an expertise in Hepatitis C and has met with the appellant regarding his treatment. The advocate stated that the appellant's physician encouraged the appellant to apply for PWD designation as he was of the opinion that the appellant is not able to care for himself. The advocate stated that there is no support available to the appellant at this time so that he has had to adapt to get things done and he will do the laundry, for example, but then for the next day or two he will be down and out. The advocate stated that the fatigue associated with Hepatitis C compounds the impact of the appellant's back condition.

The appellant stated that he has many steps to climb to get to his place since he lives on the second floor and his back will go out. The appellant stated that he has good days and he has bad days; for example, if he goes and gets groceries and walks home with them, he will have a bad day the next day. The appellant stated that the medications he takes also make it hard because he is in a 'hazy zone' and has a hard time concentrating but if he does not take the meds, he cannot walk. The appellant stated that he takes 4 different medications for his back but he is not currently taking anything for Hepatitis C or for depression. The appellant stated that his bed makes things worse because it sags and he wakes up sore and stiff or he will wake up in the middle of the night and have to take meds. The appellant stated that if he gets a really bad sleep, he will have a bad day the next day because he has exceeded his threshold of discomfort. The appellant stated that his doctor told him to stop working and to go on disability but he thought he would be bored doing nothing. The appellant stated that some vertebrae in his back are crushed and the discs are popping out and he will eventually have

to go for surgery. The appellant stated that when he can feel the bump from the bulge in the disc in his back, it is a sign that he has overdone his activity level and he sometimes gets a shooting pain down his right leg and in his right knee. In response to a question, the appellant state that he is not sure what is wrong with his left knee but that it collapses occasionally, usually when he has been overdoing it with long walking or climbing stairs. The appellant stated that an X-Ray showed that his neck is also out of alignment and he sometimes gets pain there too. In response to a question, the appellant stated that how many bad days he has is determined by how active he has been; for example, if he has been out walking and taking the bus, it will have been too far and after that he will have two down days. The appellant stated that if he has to go out a couple times in a week, then he will have a couple of days recovering, so that it can be every other day he has a bad day and sometimes most of the days in a week. In response to a question, the appellant stated that he does not use any assistive devices, that his room is small and everything is close together, and he just knows his limit and works around it and takes his meds.

In response to a question, the appellant stated that with his Hepatitis C he has been told he has an extremely high viral count, where it can be in the 100,000 to 150,000 range, his count is in the millions and he has concerns whether the treatment will help him. The appellant stated that he has not yet started the Hepatitis C treatments, but they are hoping that it will begin this summer. The appellant stated that with his back problems and the Hepatitis C, it sometimes feels like too much to deal with and he gets down because he has worked all his life and he feels lost. The appellant stated that with his accommodation he shares a washroom and there is only one shower for the whole building and if he has to take a bath it is very difficult and it takes a long time to get out of the bathtub. In response to a question, the appellant clarified that he is left-handed and he sometimes experiences numbness in his right hand, which he believes is associated with his shoulder and neck, but he usually uses his left hand. The appellant stated that he uses dictation software because his hand cramps up after writing for a while. The appellant stated that he can lift up to 5 lbs. but it is a question of how far he can carry it; for example, he can lift a kettle or pot of water and it's not too bad.

The physician who completed the physician report has confirmed that the appellant has been his patient for close to 2 years and that he has seen the appellant 11 or more times in the past 12 months. In the physician report, the physician confirms a diagnosis of chronic Hepatitis C, chronic L5-S1 disc disease with space narrowing and arthropathy, chronic pain right shoulder with calcific tendonitis, chronic pain left knee, chronic depression and organic brain syndrome with impaired recent memory (may be from substance abuse, alcohol stopped 2008). The physician adds comments that the appellant suffered an injury to his back in 2008 and since then has low back pain that is chronic and radiates down right leg to right knee and his left knee collapses off and on ever since. The physician notes that "...this is his main problem now for 3 years... he cannot lift buckets of water at work or at home to wash floor, cannot lift vacuum at work or at home, or propane tank at work. Cannot carry load of wet laundry unless very light or more than light load of groceries or garbage out. In other words, he cannot do janitorial work; if he does lift more than light loads get low back pain and right shoulder pain that lasts for several days." The physician report indicates that the appellant has not been prescribed medication that may interfere with his ability to perform DLA, and he does not require aids for his impairment. The physician reports that the appellant can walk 2 to 4 blocks unaided on a flat surface but notes "...if moderate or severe low back pain is limited to 3-4 blocks, if back doing well, can walk 8 to 10 blocks before has to stop due to low back", he can climb 5 or more stairs unaided, he can lift under 5 lbs. with the note "...this is now all the time re low back and right shoulder", and he can remain seated less than 1 hour "...before squirms and wriggles about and has to stand."

In the physician report, the physician indicates that the appellant has no difficulties with communication. The physician reports that there are significant deficits with cognitive and emotional function in 2 out of 11 areas, namely memory and emotional disturbance, with the comment that "...recent memory is not as good as used to be, may be from chronic alcohol use stopped with diagnosed Hepatitis C; has been chronically depressed in past; has to make lists and has a board at home to put up reminders of what he has to do otherwise forgets." The physician has indicated that the appellant is restricted with the daily living activities (DLA) of basic housework (continuous), daily shopping (continuous), and mobility outside the home (periodic), with no further

details noted regarding the periodic restriction but comments that "...main issue is he is limited in physical activity such as carrying anything more than a light weight, he cannot carry more than a light load of groceries home, or wash floors, or vacuum, or carry more than light load of wet laundry or garbage out." The physician has assessed the appellant as not restricted in personal self care, meal preparation, management of medications, mobility inside the home, use of transportation, management of finances, and social functioning.

The assessor report has been completed by a registered nurse who has known the appellant for 18 months and has seen him 2 to 10 times in the last year. The assessor reports that the appellant is independent with walking indoors and standing and requires periodic assistance with walking outdoors ("3-4 blocks when pain worse") and climbing stairs ("no stairs when pain bad") and requires continuous assistance with lifting and carrying and holding ("can lift/carry few lbs. only due to pain"). The assessor adds comments that "...severe low back pain worsening with activity, takes several days to resolve, when pain worse only ambulates few blocks, no stairs; requires mobility aid- possibly cane and cart for loads; requires bus pass, pool pass, physiotherapy; requires accommodations on ground floor or with elevator." The assessor indicates that the appellant is independent with all tasks of personal care including dressing, grooming, bathing, toileting, feeding self, regulating diet, and takes significantly longer than typical with dressing, grooming, bathing ("takes approximately 1 1/2 hours to do basic a.m. care due to pain"), and transfers in/out of bed and transfers on/off chair ("difficult due to back pain"). The assessor reports that the appellant requires continuous assistance from another person with doing laundry and basic housekeeping ("unable due to back, knee, shoulder pain"). The assessor indicates that the appellant is independent with most of the tasks of shopping, including reading prices and labels, making appropriate choices, paying for purchases, but requires periodic assistance with going to and from stores ("unable to walk when pain worse") and requires continuous assistance carrying purchases home ("unable due to back pain"). The assessor comments that the appellant "....requires weekly laundry and housekeeping assist, requires weekly assist to purchase and deliver groceries, requires safety aids- bath rail or bench." Further, the assessor reports that the appellant is independent with all of the tasks of managing meals, including meal planning, food preparation, cooking ("has to stop and rest due to pain while cooking"), and safe storage of food. The assessor indicates that the appellant is independent with all tasks of paying rent and bills (including banking and budgeting), managing medications (filling/refilling prescriptions, taking as directed and safe handling and storage) and transportation, including getting in and out of a vehicle, using public transit ("very sore when bus moving, especially if standing"), and using transit schedules and arranging transportation.

In the assessor report, the registered nurse has completed the section applicable to an applicant with an identified mental impairment or brain injury, indicating two major impacts to cognitive and emotional functioning in the areas of emotion and memory. The assessor reports that the appellant has moderate impacts to his daily functioning in attention/concentration and executive with no impacts in the remaining 7 areas. The assessor adds comments that the appellant has "...approximately 10 year history of depression; taking several medications with moderate effect; prone to bouts with extreme negative emotions; prone to insomnia, sleep disturbance; feelings exacerbated by inability to work due to pain and subsequent loss of income." The assessor has not completed the section of the report that assesses areas of social functioning, including making appropriate social decisions, developing and maintaining relationships, interacting appropriately with others, dealing appropriately with unexpected demands and securing assistance from others.

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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 argues that the evidence does not show that the appellant has a severe physical impairment. The ministry argues that the functional skill limitations described in the assessor and physician reports are more in keeping with a moderate degree of impairment as the appellant is able to walk 8 to 10 blocks when his back is doing well or 3 to 4 blocks when he has moderate or severe pain in his low back, and no information is provided on how often the appellant suffers with moderate to severe pain in his low back. The ministry points out that the physician indicates the appellant can climb 5 or more steps unaided, he can remain seated under 1 hour and the appellant needs assistance with lifting, carrying and holding heavy loads, carrying heavy purchases home, and with doing housework and laundry.

The appellant, through his advocate, argues that the evidence establishes that he suffers from a severe physical impairment as a result of a combination of conditions including chronic Hepatitis C, chronic L5-S1 disease with space narrowing and atrophy, chronic pain to the right shoulder with calcific tendonitis, and chronic pain to the left knee. The advocate points to the letter from the appellant's physician dated February 6, 2012 and argues that the physician has summarized the appellant's level of impairment as a "severe" physical impairment with cervical and lumbar chronic pain that impedes his ability to perform daily living activities. The advocate also highlighted the letter dated April 2, 2012 from another physician which states the appellant is severely restricted in his mobility, physical stamina and ability to care for self and perform daily maintenance activities. The advocate argues that as these two physicians have clearly formed the opinion the appellant is severely impaired as a direct result of medical diagnoses, it is incumbent upon the ministry to respect the medically informed position that clearly supports a severe level of impairment. The advocate also argues that the ministry put too much weight on the quantified numbers, i.e. how many blocks can be walked or steps climbed, and has not considered the language used throughout the application such as "chronic", "ongoing", and "severe". The advocate highlights Section 8 of the Interpretation Act RSBC 1996 c. 238 as requiring that

every enactment be construed as being remedial and given such fair, large and liberal construction and interpretation that best ensures the attainment of its object. The advocate also points to case law as authority for the position that if there is any ambiguity in the interpretation of the criteria, it is to be resolved in favour of the appellant [Abrahams v. Canada 1983 142 D.L.R. (3d) 1] and that the evidence of the physician and the assessor must be read in its entirety and in a broad way and the legislation interpreted with a benevolent purpose in mind [Hudson v. EAAT 2009 BCSC 1461].

The panel finds that the evidence of a medical practitioner confirms diagnoses of chronic Hepatitis C, chronic L5-S1 disc disease with space narrowing and arthropathy, chronic pain right shoulder with calcific tendonitis, and chronic pain left knee. Part B of the physician report asks the physician to indicate the severity of the medical conditions relevant to the person's impairment. In completing this section, the physician relates how the appellant's back was injured in a work accident, how he has since suffered low back pain that is chronic and radiates down his right leg to right knee; he has numbness and tingling in both feet and the left knee collapses off and on ever since. The physician goes on to describe how the appellant can no longer work or carry/lift heavy objects. However, the physician has not provided a detailed description of the severity of the appellant's back condition including the relative seriousness of the space narrowing and arthropathy. Nor has the physician described how the appellant's Hepatitis C affects his daily functioning in terms of symptoms such as fatigue and how this might affect the appellant's ability to recover from exertion-related back pain. Although the advocate argues that a "chronic" condition (long lasting or recurring) is severe, and that the ministry must defer to a physician's assessment as such, the panel finds that it is not unreasonable for the ministry to require that this assessment is substantiated by a more detailed analysis and description. In the absence of such a description, the panel finds it reasonable for the ministry to rely on the numeric functional skills indicators provided.

The physician report indicates that the appellant has not been prescribed medication that may interfere with his ability to perform DLA, and he does not require aids for his impairment. The physician reports that the appellant can walk 2 to 4 blocks unaided on a flat surface but notes "...if moderate or severe low back pain is limited to 3-4 blocks, if back doing well, can walk 8 to 10 blocks before has to stop due to low back", he can climb 5 or more stairs unaided, he can lift under 5 lbs. with the note "...this is now all the time re low back and right shoulder", and he can remain seated less than 1 hour "...before squirms and wriggles about and has to stand." In the physician report, the appellant's physician also indicates that the appellant is restricted on a periodic basis with mobility outside the home, with no further details noted regarding the periodic restriction but comments that "...main issue is he is limited in physical activity such as carrying anything more than a light weight, he cannot carry more than a light load of groceries home, or wash floors, or vacuum, or carry more than light load of wet laundry or garbage out." In the assessor report, the registered nurse reports that the appellant is independent with walking indoors and standing and requires periodic assistance with walking outdoors ("3-4 blocks when pain worse") and climbing stairs ("no stairs when pain bad") and requires continuous assistance with lifting and carrying and holding ("can lift/carry few lbs. only due to pain"). The assessor adds comments that "...severe low back pain worsening with activity, takes several days to resolve, when pain worse only ambulates few blocks, no stairs." The appellant stated that how many bad days he has is determined by how active he has been; for example, if he has been out walking and taking the bus, it will have been too far and after that he will have two down days. The appellant stated that if he has to go out a couple times in a week, then he will have a couple of days recovering, so that it can be every other day he has a bad day and sometimes most of the days in a week. The appellant stated that he does not use any assistive devices and he just knows his limit and works around it and takes his meds.

The panel finds that the evidence demonstrates that the appellant's mobility is in the good to moderate range while his ability to lift and carry and hold heavier loads (in excess of 5 lbs.) is continuously restricted. Although the advocate argues that the ministry must defer to the conclusions of the medical practitioners that the appellant's impairment is severe, the panel finds that this is part of the evidence that the ministry must consider, along with the numerical assessment of the appellant's functional skills, in exercising its discretion to determine severity. The appellant's physician states in a letter that the appellant has a severe physical

impairment with cervical and lumbar chronic pain and the panel finds that the ministry reasonably determined that the evidence in the reports, together with the evidence from the appellant, does not currently support the conclusion of the appellant's physician. The physician with expertise in treating Hepatitis C states in a letter that the appellant is severely restricted in his mobility, physical stamina and ability to care for self and perform daily maintenance activities and that he will soon need Hepatitis C treatment which will impair his function further for 15 months, and the panel finds that the evidence in the reports and that of the appellant does not support the physician's conclusion and that possible impacts from future treatment cannot be considered. Therefore, the panel finds that the ministry's determination that the evidence does not establish a severe physical impairment, was reasonable.

The ministry argues that the evidence does not show that the appellant has a severe mental impairment. The ministry points out that the physician has indicated that the appellant has significant deficits with cognitive and emotional functioning in the areas of memory and emotional disturbance which are described as "...recent memory is not as good as used to be, may be from alcohol use stopped with diagnosis of Hepatitis C" and the assessor has indicated major impacts to daily functioning in emotion and memory, moderate impacts to attention/concentration and executive and no impacts to impulse control, insight and judgement, motivation, motor activity, language, psychotic symptoms, or other neuropsychological problems. The ministry argues that these limitations are more in keeping with a moderate degree of impairment as the appellant is able to make decisions about personal activities, care and finances. The appellant argues that the evidence establishes that he suffers from a severe mental impairment as a result of chronic depression and organic brain syndrome with impaired recent memory. The advocate argues that the ministry's finding that the appellant is not severely impaired by medical diagnoses directly contradicts the opinion of the appellant's physician. The advocate argues that an additional medical opinion has been provided that the appellant is severely restricted in his mobility, physical stamina, and ability to care for self, and it is incumbent upon the ministry to respect the medically informed position that clearly supports a severe level of impairment.

The panel finds that the evidence of a medical practitioner confirms a diagnosis of chronic depression and organic brain syndrome with impaired recent memory. In the physician report, the physician indicates that the appellant has no difficulties with communication. The physician reports that there are significant deficits with cognitive and emotional function in 2 out of 11 areas, namely memory and emotional disturbance, with the comment that "...recent memory is not as good as used to be, may be from chronic alcohol use stopped with diagnosed Hepatitis C; has been chronically depressed in past; has to make lists and has a board at home to put up reminders of what he has to do otherwise forgets." The physician has assessed the appellant as not restricted in social functioning and the assessor has not completed the section of the report relating to detailed social functioning in the areas of making appropriate social decisions, developing and maintaining relationships, interacting appropriately with others, dealing appropriately with unexpected demands and securing assistance from others. In the assessor report, the registered nurse has indicated two major impacts to cognitive and emotional functioning in the areas of emotion and memory and moderate impacts to attention/concentration and executive, with no impacts in the remaining 7 areas. The assessor adds comments that the appellant has "...approximately 10 year history of depression; taking several medications with moderate effect; prone to bouts with extreme negative emotions; prone to insomnia, sleep disturbance; feelings exacerbated by inability to work due to pain and subsequent loss of income." The appellant stated that with his back problems and the Hepatitis C, it sometimes feels like too much to deal with and he gets down because he has worked all his life and he feels lost. The panel finds that the ministry reasonably concluded that these limitations are more in keeping with a moderate degree of impairment and the appellant is able to make decisions about personal activities, care or finances, and relate to, communicate or interact with others effectively. The panel finds that the ministry's decision, which concluded that the evidence does not establish a severe mental impairment, was reasonable.

The ministry argues that the evidence does not establish 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 points out that the physician indicates in the physician report that the

appellant is not restricted in 7 of 10 identified DLA, with continuous restrictions noted to basic housework and daily shopping and periodic restriction to mobility outside the home. The ministry argues that the assessor has indicated that the appellant needs continuous assistance with laundry/basic housekeeping and carrying purchases home and that he needs periodic assistance with going to and from stores and takes significantly longer with dressing, grooming, bathing, transferring in/out of bed and on/off chairs, food preparation and cooking due to back, shoulder and knee pain, but that the remainder of the DLA are independent. The advocate argues that the evidence in the PWD application along with the additional letters from the physicians establishes that the appellant is restricted and requires assistance with many DLA. The advocate argues that while it is within the ministry's discretion to make a determination regarding a severe impairment, the EAPWDA provides that that it is a medical practitioner, not the ministry, who must form the opinion on whether or not the appellant's impairment directly and significantly restricts the appellant's ability to perform DLA. The advocate further argues that the Hudson decision is authority for the position that the evidence from a prescribed professional must indicate a direct and significant restriction on at least two DLA and that there is no statutory requirement that more than two DLA be restricted. The advocate argues that the appellant's physician has demonstrated that the appellant is significantly restricted, periodically or continuously, in performing 5 out of 8 legislated DLA relating to physical impairment, namely prepare own meals, shop for personal needs, perform basic house work to maintain the place of residence in an acceptable sanitary condition, move about indoors and outdoors, and perform personal hygiene and self care.

The panel finds that the legislation requires that the ministry is satisfied that, in the opinion of a prescribed professional, the appellant's ability to perform DLA is directly and significantly restricted either continuously or periodically for extended periods by a severe impairment. In terms of preparing his own meals, the physician has indicated in the physician report that the appellant is not restricted with meal preparation and in the assessor report the registered nurse has assessed the appellant as independent with all tasks, including meal planning, food preparation, cooking and safe storage of food. For managing personal finances, the physician indicates that the appellant is not restricted in this area and the assessor reports that the appellant is independent with all tasks of banking, budgeting and paying rent and bills. In terms of shopping for his personal needs, the physician indicates in the physician report that this DLA is continuously restricted and the assessor confirms that the appellant requires continuous assistance with the task of carrying purchases home and periodic assistance from another person with going to and from stores ("unable to walk when pain worse"), and is independent with the tasks of reading prices and labels, making appropriate choices, and paying for purchases. The appellant stated that he has good days and he has bad days, that he has bad days when he overdoes the activity level, like if he goes and gets groceries and walks home with them, he will have a bad day the next day.

For use of public or personal transportation facilities, the physician indicates in the physician report that the appellant is not restricted with use of transportation and the assessor confirms that the appellant is independent with getting in and out of a vehicle, using public transit ("very sore when bus moving, especially if standing"), and using transit schedules and arranging transportation. With respect to performing housework to maintain the appellant's place of residence in an acceptable sanitary condition, the physician has indicated in the physician report that the appellant is continuously restricted and comments that the appellant cannot wash floors or vacuum or carry more than a light load of wet laundry or garbage out. In the assessor report, the registered nurse confirms that the appellant requires continuous assistance from another person with laundry and basic housekeeping ("unable due to back, knee, shoulder pain").

For moving about indoors and outdoors, the physician has indicated in the physician report that the appellant is not restricted with mobility inside the home while being periodically restricted with mobility outside the home, but does not provide any detail or comments about the extent of this restriction in mobility. The assessor confirms that the appellant is independent with walking indoors and that he requires periodic assistance from another person with walking outdoors, with the comment "...3-4 blocks when pain worse" and "requires mobility aid- possibly cane." Regarding performing personal hygiene and self care, the physician indicates that the appellant is not restricted in the area of personal self care and the assessor reports that the appellant is

independent with all tasks of personal care, but takes significantly longer than typical with some tasks including dressing, grooming, bathing, transfers in/out of bed and transfers on/off a chair . The appellant stated that there is only one shower for the whole building and if he has to take a bath it is very difficult and it takes a long time to get out of the bathtub. With respect to managing his personal medications, the physician again indicates that there are no restrictions in this area and that the appellant is assessed as independent with all tasks including filling/refilling prescriptions, taking as directed and safe handling and storage.

Overall, the panel finds that the prescribed professional has confirmed that the appellant is continuously restricted with basic housekeeping, and 1 out of 5 tasks of shopping. Although the appellant is also periodically restricted with 1 task of shopping (going to and from stores) and with moving about outdoors, he is not restricted with mobility inside the home, and the panel finds that there is not sufficient information to determine that the appellant is periodically restricted in these tasks for extended periods of time. Although the appellant's physician concludes, in his letter of February 6, 2012, that the appellant's back condition 'impedes' his ability to perform DLA, the panel finds that the ministry reasonably determined that the evidence does not demonstrate a direct and significant restriction on two or more DLA, but rather that the appellant performs a majority of his 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 or the use of an assistive device, the panel relies on the information from the physician and the appellant that he lives alone, that no support is currently available and the appellant does not currently use an assistive devices, although a cane and home safety aids are recommended. As it has not been established that a severe impairment significantly restricts DLA, 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.

Overall, the panel finds that the ministry's reconsideration decision was reasonably supported by the evidence and confirms the decision pursuant to Section 24(2)(a) of the Employment and Assistance Act.