

PART C – Decision under Appeal

The decision under appeal is the Ministry of Social Development (the ministry) reconsideration decision dated March 28, 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

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 September 19, 2011, physician report dated October 28, 2011, and assessor report dated October 28, 2011;
- 2) Medical Report for Service Canada dated October 28, 2011 which states in part that the appellant has a diagnosis of alcoholism, chronic liver disease due to alcoholism, left hand injury- permanent (nerve and tendon damage); chronic alcoholism leading to liver disease and, on one occasion, severe bone marrow suppression leading to life threatening illness; injury to left hand after being intoxicated leading to permanent disability left hand with decreased movement and sensation and chronic pain; prognosis is poor for his left hand- unlikely to recover, likely will remain on permanent disability, chronic liver disease will hopefully reverse if he abstains from alcohol; the relevant physical findings and functional limitations are that the appellant is unable to use his left hand, chronic pain/numbness, loss of function;
- 3) Second copy of the assessor report completed by a physical therapist dated November 3, 2011;
- 4) Letter from the ministry to the appellant dated January 24, 2012 denying person with disabilities designation and enclosing a copy of the decision summary; and,
- 5) Request for Reconsideration- Reasons.

In his Notice of Appeal, the appellant states that he has a mental impairment due to alcoholism with loss of memory and at this time he cannot make proper decisions and that he may not return back to work in real estate. The appellant states that he needs daily assistance with food preparation, decision making, and his impairment is likely to continue for more than 2 years. The appellant states that he has a severe physical impairment with the loss of use of his left hand as set out in the physiotherapist and physician reports.

In his Request for Reconsideration, the appellant states that he had surgery on his left hand in 2011 and the status has not changed from his doctor's report. The appellant states that his fingers are still numb and his left hand does not close. The appellant states that he is compliant with A.A. and he needs financial assistance to get a partial pension until he is able to re-instate his driver's license, that he is a realtor who needs to get around with a car. The appellant states that his left hand is a permanent disability.

At the hearing, the appellant stated that he has an impairment due to depression and alcoholism and he had surgery on his left hand that left him with a 6 inch scar down to his wrist and a hand that does not work. The appellant stated that two fingers on his left hand are totally numb and the tips of his fingers are numb and he can only move the fingers about an inch. The appellant stated that this affects his daily living activities (DLA) such as cleaning and cooking since he has difficulty with tasks like cutting for meal preparation. The appellant stated that he also needs help with shopping since he can only use one hand to carry bags. The appellant explained that he has tried physiotherapy for his hand but after a series of treatments the physiotherapist has said there is not much more that can be done. In response to a question, the appellant stated that his last physiotherapy session was in February 2011 and that he was told to do some exercises at home. The appellant stated that he cannot close his left hand so he cannot hold onto objects for food preparation or cleaning, that he cannot carry the vacuum up the stairs and to do other little things around the house and that his sister-in-law helps him approximately every 2-3 days. The appellant stated that he does not need help cleaning every day but that he needs to eat every day and his sister-in-law will provide frozen meals that he can heat up later. The appellant stated that he has problems with tying his shoelaces so he leaves them laced or wears slip-ons. In response to a question, the appellant stated that he is right-handed and that his difficulty is with any task that requires the use of two hands. The appellant stated that for buttoning his shirt he has to push down on his shirt with his left hand and button with just his right hand. The appellant stated that he is not restricted with mobility because it is not related to his hand, but he cannot play some of the sports that he used to enjoy, like street hockey and football.

The appellant stated that he also suffered from severe depression after his divorce. The appellant stated that he has been trying to get back to work but he knows he cannot go back full-time. The appellant explained that he has been attending A.A. and that it has been working but he still has problems sometimes with being able to

focus and to make decisions. The appellant stated that he was in a treatment facility for 60 days and he was abstinent for the first few months and then had 2 relapses for a few days, the last one being about 3 weeks ago. The appellant explained that it has been recommended that he continue with A.A. meetings and that he would need to go back into treatment if he had a relapse for a longer period of time, like a month. The appellant stated that he has also applied for a CPP disability benefit and the Service Canada Medical Report has been included. The appellant also explained that his physician focused more on his alcoholism in the assessor and physician reports whereas the physical therapist focused more on his left hand impairment in the second assessor report.

The physician who completed the physician report has confirmed that the appellant has been his patient for 7 years and that he has seen the appellant 2 to 10 times in the past 12 months. In the physician report, the physician confirms a diagnosis of alcoholism (substance-related mental disorder), left hand injury (nerve damage left middle finger and left index finger and multiple lacerations to middle, index, and ring finger), and chronic liver disease due to alcoholism. The physician comments that with the alcoholism the appellant has "...frequent relapses necessitating hospital admission on several occasions with bone marrow suppression/ withdrawal seizures and injuries to self post alcohol ingestion." 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 an aid for his impairment. 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, and he has no limitations with lifting or with remaining seated. The physician reports that the appellant has no difficulties with communication. The physician indicates that there are significant deficits with cognitive and emotional function in the areas of consciousness, executive, memory, emotional disturbance, motivation, and attention or sustained concentration, with the note "...all related to alcoholism." The physician reports that the appellant's impairment directly restricts his ability to perform DLA on a periodic basis in the areas of personal self care, meal preparation, basic housework, daily shopping, and social functioning, with the note "...all related to relapses-alcoholism" and "...would need assistance in above when under influence of alcohol." For additional comments, the physician has noted that the appellant's "...left hand injury (nerve/tendon damage) is unlikely to improve any further, he has very limited movement in this hand and suffers from neuropathic pain, he is unable to flex his right (sic) index, middle and ring fingers."

The physician has also completed the assessor report and indicates that the appellant is independent with walking indoors and walking outdoors, as well as with climbing stairs and standing, with lifting and carrying and holding, and no further notes are provided. The physician indicates that the appellant is independent with all tasks of personal care including dressing, grooming, bathing, toileting, feeding self, regulating diet, transfers in/out of bed and transfers on/off chair, with no additional notes. The physician reports that the appellant requires periodic assistance from another person for doing laundry and basic housekeeping, with no explanation or description added. The physician indicates that the appellant is independent with all of the tasks of shopping, including going to and from stores, reading prices and labels, making appropriate choices, paying for purchases, and carrying purchases home, with no further comments provided. The physician reports that the appellant requires periodic assistance from another person with all of the tasks of managing meals, including meal planning, food preparation, cooking and safe storage of food, with no further explanation set out. The physician indicates that the appellant is independent with all tasks of paying rent and bills (including banking and budgeting), managing transportation (getting in and out of a vehicle, using public transit, and using transit schedules and arranging transportation). The physician reports that the appellant is independent with two tasks of managing medications (filling/refilling prescriptions and taking as directed) while requiring periodic assistance from another person with safe handling and storage, with no further notes provided. The physician has also assessed moderate impacts to the appellant's daily cognitive and emotional functioning in the areas of bodily functions, consciousness, emotion, insight and judgement, executive, motivation, and motor activity, with minimal or no impacts in the remaining 7 areas. The physician has added a comment that "...when under influence of alcohol- most of the time he would find it very difficult to look after himself, decreased motivation and difficulty planning." The physician assesses the appellant as requiring periodic support/supervision from another person in all 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. The physician reports that the appellant has marginal functioning in both his immediate and extended social networks.

The second copy of the assessor report was completed by a physical therapist (PT) who has known the appellant for approximately 2 months and has seen him for physical therapy treatments 2-10 times in that period. The PT indicates that the appellant is independent with walking indoors and walking outdoors, as well as with climbing stairs and standing, while requiring continuous assistance from another person with lifting and carrying and holding, with the note that the appellant is "...unable to lift or carry with left hand due to decrease in function, uses right hand only." The PT indicates that the appellant is independent with 5 out of 8 tasks of personal care but requires periodic assistance from another person with dressing ("unable to do buttons, zippers, shoe laces") and feeding self ("unable to hold knife to cut food") and takes significantly longer than typical with bathing ("increased time, up to 15 minutes, as trouble with soap and shampoo"). The physician reports that the appellant requires continuous assistance from another person for doing laundry and basic housekeeping, with the note "...has hired help." The PT indicates that the appellant is independent with most of the tasks of shopping, but requires periodic assistance from another person with carrying purchases home, with the note that "...if has more than 1-2 bags, needs assistance as he is unable to fully grip." The PT reports that the appellant requires continuous assistance from another person with 2 out of 4 of the tasks of managing meals, including food preparation and cooking, with the note "...has hired help." The PT indicates that the appellant is independent with all tasks of paying rent and bills, and managing medications and transportation, with no further comment provided. The PT indicates that the sections of the report relating to an applicant with an identified mental impairment are "N/A" or not applicable, including the assessment of daily impacts to cognitive and emotional functioning and to social functioning. The PT indicates that the help required for DLA is provided by family, friends, and health authority professionals, with the comment that "...has hired care aid workers to help with cooking and cleaning 2 times per week" and that no assistive devices are used.

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 points to the physician report, where it is indicated that the appellant is able to walk 4 or more blocks unaided, to climb 5 or more steps unaided, with no limitations in lifting and remaining seated and the original assessor report which assessed the appellant as independent in all areas of mobility and physical ability. The ministry argues that although the PT indicates that the appellant requires continuous assistance with lifting and carrying and holding ("unable to lift or carry with left hand... uses right hand only"), the PT also assesses the appellant as independently able to carry out all other activities including walking indoors, walking outdoors, climbing stairs and standing and there is no indication of the use of an assistive device to help compensate for a physical impairment. The appellant argues that the evidence establishes that he suffers from a severe physical impairment as a result of his left hand injury. The appellant argues that the damage to his hand is permanent and he cannot close his left hand to grip any object. The appellant points out that he is not restricted with mobility because it is not related to his hand, but he cannot play some of the sports that he used to enjoy, like street hockey and football because of his loss of use of his left hand. The appellant argues that his left hand injury restricts him in the ability to do any activity that requires the use of two hands and that he will always require help for these activities.

The panel finds that the evidence of a medical practitioner confirms a diagnosis of left hand injury (nerve damage left middle finger and left index finger and multiple lacerations to middle, index, and ring finger), and chronic liver disease due to alcoholism. For additional comments, the physician has noted that the appellant's left hand injury (nerve/tendon damage) is unlikely to improve any further, he has very limited movement in this hand and suffers from neuropathic pain, he is unable to flex his right (sic) index, middle and ring fingers." In the Medical Report for Service Canada dated October 28, 2011, the appellant's physician indicates that the prognosis is poor for his left hand, that it is unlikely to recover and that the chronic liver disease will hopefully

reverse if he abstains from alcohol. 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 an aid for his impairment. 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, and he has no limitations with lifting or with remaining seated. The appellant stated that his physician completed the reports with a focus on his alcoholism rather than his left hand injury and that the PT placed more emphasis on his physical impairment. The PT assesses the appellant as independent with walking indoors and walking outdoors, as well as with climbing stairs and standing, while requiring continuous assistance from another person with lifting and carrying and holding, with the note that the appellant is "...unable to lift or carry with left hand due to decrease in function, uses right hand only." The appellant points out that he is not restricted with mobility because it is not related to his hand, but he cannot play some of the sports that he used to enjoy, like street hockey and football. The appellant also stated that he is right-handed and that he cannot grip with his left hand to perform tasks that require two hands. Given that the evidence demonstrates that the appellant is independently able to carry out all activities of mobility and physical ability with the exception of lifting and carrying and holding with his left hand, that he is able to lift and carry and hold with his right hand, and there is no indication of the use of an assistive device to help compensate for a physical impairment, the panel finds that the ministry reasonably determined that the evidence does not establish a severe physical impairment.

The ministry argues that the evidence does not show that the appellant has a severe mental impairment. The ministry argues that the physician has indicated that the appellant has significant deficits with cognitive and emotional functioning in the areas of consciousness, executive functioning, memory, emotional disturbance, motivation and attention or sustained concentration which the comments state "...all related to alcoholism." The ministry points out that in terms of the impacts to the appellant's daily functioning, the physician indicated all areas as ranging from no impact to moderate impact. The ministry points to the physician's comment that "...when under influence of alcohol- most of the time he would find it very difficult to look after himself" and argues that, based on the information provided, a severe mental impairment cannot be established. The appellant argues that the evidence establishes that he suffers from a severe mental impairment as a result of depression and alcoholism. The appellant argues that he had severe depression after his divorce, that he has been attending A.A. and that it has been working but he still has problems sometimes with being able to focus and to make decisions.

The panel finds that the evidence of a medical practitioner confirms a diagnosis of alcoholism as a substance-related mental disorder, but there is no diagnosis of depression. The physician adds comments that with the alcoholism the appellant has "...frequent relapses necessitating hospital admission on several occasions with bone marrow suppression/ withdrawal seizures and injuries to self post alcohol ingestion." The appellant explained that he was in a treatment facility for 60 days and he was abstinent for the first few months and then had 2 relapses for a few days, the last one being about 3 weeks ago. The physician reports that the appellant has no difficulties with communication. The physician indicates that there are significant deficits with cognitive and emotional function in the areas of consciousness, executive, memory, emotional disturbance, motivation, and attention or sustained concentration, with the note "...all related to alcoholism." The physician has also assessed moderate impacts to the appellant's daily cognitive and emotional functioning in the areas of bodily functions, consciousness, emotion, insight and judgement, executive, motivation, and motor activity, with minimal or no impacts in the remaining 7 areas. The physician has added a comment that "...when under influence of alcohol- most of the time he would find it very difficult to look after himself, decreased motivation and difficulty planning." The physician assesses the appellant as requiring periodic support/supervision from another person in all areas of social functioning, with no further explanation or description provided. The physician reports that the appellant has marginal functioning in both his immediate and extended social networks, again with no further narrative provided. The appellant stated that he is currently attending A.A. meetings which he finds are working although he still has problems sometimes with being able to focus and to make decisions. Although the physician indicates that the appellant has frequent relapses with his alcoholism, the appellant has also stated that he has completed a 60-day treatment program, and the panel finds that it is not clear from the evidence how often the impacts occur. The panel finds that the evidence demonstrates that

the impacts from alcoholism are episodic in nature and occur primarily when the appellant ingests alcohol, from which he is currently abstaining. Therefore, 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 argues that the appellant's physician indicates that the appellant is periodically restricted in the areas of personal care, meal preparation, basic housework, daily shopping and social functioning and explains "periodic" as "all related to relapses (alcoholism)", but this does not establish the frequency and duration of the periodic restrictions. The ministry also argues that the physician indicates the appellant is not restricted in the other activities, including management of medications, mobility inside and outside the home, use of transportation and management of finances. The ministry points out that the physician indicates in the assessor report that the appellant requires periodic assistance with laundry, basic housekeeping, meal planning, food preparation, cooking, safe storage of food, safe handling and storage of medications, getting in and out of a vehicle, using public transit and using transit schedules and arranging transportation, however the physician does not provide additional information to explain the frequency or the duration of the periodic assistance required. The ministry argues that in the additional assessor report, the PT indicates that the appellant requires continuous assistance with laundry, basic housekeeping, food preparation and cooking, however, there is an indication that the appellant is able to independently manage 20 out of 28 tasks of DLA, including most other activities related to personal care, shopping, meals, paying rent and bills, mediations and transportation. The appellant argues that the evidence of the his physician and the PT, as prescribed professionals, establishes that his DLA are directly and significantly restricted either continuously or periodically for extended periods.

The panel finds that the legislation requires that the ministry be satisfied that the opinion of a prescribed professional confirms that the appellant's ability to perform DLA is directly and significantly restricted either continuously or periodically for extended periods. In terms of preparing his own meals, the physician has indicated in the physician report that the appellant is restricted on a periodic basis ("related to relapses-alcoholism") and the PT has assessed the appellant as independent with 2 tasks and as requiring continuous assistance from another person with food preparation and cooking ("has hired help"). The appellant stated that the injury to his left hand affects his daily living activities (DLA) such as cooking since he has difficulty with tasks like cutting for meal preparation and that his sister-in-law prepares frozen meals for him. For managing personal finances, the physician indicates in that the appellant is not restricted and the PT assesses him as 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 the appellant is restricted on a periodic basis with daily shopping ("related to relapses- alcoholism") and the PT assesses the appellant as independent with most of the tasks of shopping, including going to and from stores, reading prices and labels, making appropriate choices, and paying for purchases, while requiring periodic assistance from another person with carrying purchases home. The appellant stated that he needs help with shopping since he only has one hand to carry bags.

For use of public or personal transportation facilities, the physician indicates that the appellant is not restricted and the PT assesses him as independent with all tasks, including getting in and out of a vehicle, using public transit, 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 indicates in the physician report that the appellant is restricted on a periodic basis ("related to relapses- alcoholism") and, in the assessor report, the PT has indicated that the appellant requires continuous assistance with doing laundry and basic housework ("has hired help"). The appellant stated that he cannot close his left hand so he cannot hold onto objects for cleaning, that it is impossible to vacuum and to do other little things around the house and that his sister-in-law helps him approximately every 2-3 days.

For moving about indoors and outdoors, the physician has indicated in the physician report that the appellant

is not restricted with mobility inside or outside the home and, in the assessor report, the PT assesses the appellant as independent with walking indoors, with walking outdoors, climbing stairs and standing. The appellant stated that he is not restricted with mobility because it is not related to his hand, but he cannot play some of the sports that he used to enjoy, like hockey and football. Regarding performing personal hygiene and self care, the physician indicates that the appellant is restricted on a periodic basis with personal care ("related to relapses- alcoholism") and the PT assesses the appellant as independent with most tasks of personal care, while requiring periodic assistance from another person with dressing ("unable to do buttons, zippers, shoe laces") and feeding self ("unable to hold knife to cut food"), and taking significantly longer than typical with bathing ("increased time, up to 15 minutes, as trouble with soap and shampoo"). The appellant stated that he has problems with tying his shoelaces so he leaves them laced or wears slip-ons and that for buttoning his shirt he has to push down on his shirt with his left hand and button with just his right hand. With respect to managing his personal medications, the physician indicates in the physician report that the appellant is not restricted and the PT assesses the appellant as independent with all tasks including filling/refilling prescriptions, taking as directed and safe handling and storage. For making decisions about personal activities, care or finances, the physician reports that the appellant is restricted on a periodic basis with social functioning ("related to relapses- alcoholism") and the physician assesses the appellant as requiring periodic support/supervision from another person for making appropriate social decisions, but does not provide a description of the duration of the assistance. The appellant explained that he has been attending A.A. and that it has been working but he still has problems sometimes with being able to focus and to make decisions. For relating to, communicating or interacting with others effectively, the physician assesses the appellant as having no difficulties with communication but requiring periodic support/supervision from another person with interacting appropriately with others and having marginal functioning in both his immediate and extended social networks.

Looking at evidence overall, the panel finds that the appellant's physician, who focused his report on the appellant's alcoholism, has indicated that the appellant is periodically restricted in the areas of personal care, meal preparation, basic housework, daily shopping and social functioning. The periodic restrictions all relate to relapses with the appellant's alcoholism which are elsewhere reported by the physician to be "frequent", without further clarification of the frequency or duration of the relapses either in the physician or assessor reports. Therefore, the panel finds that the ministry reasonably determined that there is not sufficient information provided by the physician regarding the duration or frequency of the restriction in these DLA to establish that the appellant requires periodic assistance for extended periods of time, as required by the legislation. The panel finds that the PT, who is also a prescribed professional and who focused on the appellant's left hand injury, has confirmed that the appellant is continuously restricted with basic housekeeping and with 2 out of 4 tasks of managing meals, and also periodically restricted with 2 out of 8 tasks of personal care and 1 out of 5 tasks of shopping. However, the panel finds that the ministry reasonably concluded that although the appellant has some limitations as a result of his medical condition, he is still able to independently manage the majority of his DLA, or 20 out of a total 28 applicable tasks. 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 prescribed professionals and the appellant that he lives alone, that assistance is provided by his sister-in-law and care aid workers, and that he does not use assistive devices. 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 pursuant to Section 24(2)(a) of the Employment and Assistance Act.