APPEAL #

PART C – Decision under Appeal

The decision under appeal is the ministry's reconsideration decision dated February 27, 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

APPEAL #

PART E – Summary of Facts

The evidence before the ministry at the time of the reconsideration decision consisted of:

1) Letter dated November 16, 2010 from an orthopaedic surgeon to the appellant's physician stating in part that an arthroscopic surgery was performed on the appellant's left knee the previous week and the appellant had developed swelling inside his knee and had some blood oozing out; there is no evidence of infection and the pain is significantly better;
2) Letter dated March 8, 2011 from a respirologist to the appellant's physician stating in part that the appellant is a non-smoker and has had problems with sleep for many years; his symptoms have become more severe over the past 3 years; sleepiness scale is significantly increased at 18 out of 24, chest x-ray is normal, desaturation index was normal at 2.9; appellant will be reassessed after his polysomnography is completed;
3) Letter dated May 17, 2011 from an orthopaedic surgeon 'To Whom It May Concern' stating in part that the appellant is unable to walk to the bus for transportation until his medical problems with his knees have resolved;
4) Letter dated June 14, 2011 from an orthopaedic surgeon to the appellant's physician stating in part that an MRI scan shows the appellant has a lateral meniscal tear and some evidence of degeneration underneath the patella on the right along with effusion; he has some synovitis and chondromalacia patellae; the appellant was offered the option of arthroscopic partial lateral meniscectomy to take away one aspect of pain, i.e. his lateral meniscal pain;
5) Consultation at a hospital dated July 11, 2011 as the appellant was reviewed with regards to sleep apnea and had a trial of a CPAP and states in part that the appellant has been using a CPAP through respiratory therapy consult and he has found a "huge difference" in his symptoms in that he sleeps much better when it is on; the appellant has severe sleep apnea and needs to go for a CPAP titration to find out the optimal pressure;
6) Operative Report form a hospital dated August 15, 2011 describing the procedure taken for an arthroscopic partial lateral meniscectomy, right knee;
7) Person With Disabilities (PWD) Application: applicant information dated October 11, 2011, physician report dated October 6, 2011, and assessor report dated October 6, 2011;
8) Letter from the ministry to the appellant dated January 16, 2012 denying person with disabilities designation and enclosing a copy of the decision summary;
9) Medical Imaging Report from a hospital dated January 30, 2012 for an ultrasound of the appellant's right upper extremity stating in part that there is a partial thickness articular surface tear of the supraspinatus measuring 10 mm in AP and about 10 mm mediolateral dimension
10) Consent for Health Care for the appellant dated February 15, 2012 for a colonoscopy and gastroscopy;
11) Undated print out from a website regarding meningococcal disease; and,
12) Request for Reconsideration which includes a summary of the decision in Hudson v. EAAT, 2009 BCSC 1461.

At the hearing, the appellant provided several additional documents, namely:

1) Medical Imaging Report from a hospital dated March 13, 2012 for an MRI of the appellant's right knee which states in part that there is abnormality pertaining to both the anterior and posterior horns of the lateral meniscus, and a radial tear is observed in the body; tear of the medial meniscus posterior horn is observed; MR arthrogram would be ideal to differentiate residual/recurrent tear vs. scarring; chondromalacia patella and mild patellofemoral joint osteoarthritis; mild medial and lateral knee joint compartment osteoarthritis;
2) Medical Imaging Report from a hospital dated March 14, 2012 for an MRI of the appellant's left knee which states in part that there is chondromalacia of the patella, chondromalacia in the medial compartments; a tear in the body and posterior horn of the lateral meniscus; unfortunately there are no previous examinations for comparison to determine whether there is a meniscectomy in the region; probable artifact at the inner aspect of the anterior horn of the medial meniscus;
3) Orthoses- Request and Justification for a shoulder immobilizer to prevent surgery, assist in physical healing from injury and disease, and to improve physical functioning that has been impaired by a neuro-musculo-skeletal condition. The appellant's physician notes that "...partial thickness articular surface tear needs to

be treated (right upper extremity), see copy of ultrasound January 30, 2012; client has difficulty with heavy lifting and limited to 90 degree shoulder.

The ministry did not object to the admissibility of these documents. The panel reviewed the documents and admitted them 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.

In his Notice of Appeal, the appellant states that he is going for MRI's on his knees and getting a letter from his orthopedic surgeon to report whether his knees will ever get better or continue to get worse. The appellant states that he has further information on the help he needs each day and the results of his colonoscopy and gastroscopy. In his Request for Reconsideration, the appellant states that he has also been diagnosed with a shoulder problem which will require surgery. The appellant states that he is booked for MRI's on both knees which may require further surgery. The appellant states that he is now consulting with 4 specialists and his family doctor.

At the hearing, the appellant stated that his concentration is impacted by his sleep apnea and he was recorded as having 87 incidents in a one hour period. The appellant stated that he is now using a CPAP machine so that he is no longer waking up during the night and blacking out, like before. The appellant stated that he has had sleeping problems for 7 to 8 years and because it took so long to diagnose, it has had an impact on his memory and he still gets tired and sometimes sleeps for most of the day. The appellant stated that he will have a couple good days in a week, but the other days it feels like he is in a fog. The appellant stated that about 9 years ago he was working as an outreach worker and he got meningitis which affects his memory and mood. The appellant stated that he has severe osteoarthritis, that he was shot in his hand as a child but both hands have required surgery due to the arthritis. The appellant explained that he was run over by a drunk driver in 1980 and there was trauma to both knees and some metal pierced his left knee. The appellant stated that he has had 8 surgeries on his left knee and 3 surgeries on his right knee since the cartilage continually tears and breaks down. The appellant referred to the recent Medical Imaging Reports of his knees and stated that they show both knees have tears in the meniscus and that there is deterioration in the ligaments and his arthritis has gotten much worse. The appellant stated he has to have more surgery which has been scheduled for May 18, 2012 for his right knee and June 5, 2012 for his left knee and he has been told the next step may be a knee replacement. The appellant explained that he has a raised toilet seat to help him get up and down. The appellant stated that he is going to see a specialist about his shoulder, that it will take 3 to 12 months to get an appointment and then about another year to have the surgery completed. The appellant stated that the pain from his shoulder further limits what he is able to do and he requires help every day with putting on his leg brace and that one of his family members come every day to help him with this.

The appellant stated that he has to be careful how much he does every day because it can increase the pain and his doctor has said he cannot take narcotic pain killers after about 3:00 in the afternoon due to his sleep apnea. The appellant stated that he does not do shopping for himself because it impacts his knees and causes pain and he tries to limit his activity and mobility because he cannot take pain medications. The appellant stated that he cannot lift and carry because of his knees and shoulder. The appellant stated that he lives alone in a basement suite and he has had to get help preparing his meals since his shoulder injury because he is afraid even opening a can will cause pain to his shoulder and make it harder to sleep. The appellant stated that he cannot use his cane because of his shoulder and his fear that it will cause more pain. The appellant stated that he has been to the clinic 7 times to have the CPAP machine adjusted and he is at the maximum pressure and the specialist has said that the next step is a major surgery to his throat but that this can cause other problems so it is not being pursued at this time. The appellant stated that he pays extra to have his laundry done because he cannot carry or lift due to his shoulder problem. The appellant stated that he can physically sit on the bus, but the problem is with walking to the bus and going up stairs since it increases his pain and affects his sleep apnea. The appellant stated that he can get in and out of his bed but he has been sleeping on the couch to keep his shoulder in one position and to avoid rolling onto his face mask that is used with the CPAP machine.

In his self-report included with the PWD application, the appellant states that he has joint pain and he stops breathing at night which causes anxiety. The appellant states that there are days when he is so tired that he sleeps most of the day or does not function well. The appellant states that when he has anxiety he also gets diarrhea. The appellant states that he will start wearing a full-length leg brace. The appellant states that he had an operation on both hands and has pain with repetitive movements. The appellant states that he has episodes at night where he could not breathe or catch his breath. The appellant explains that he now sleeps with a full face mask on every night which is attached to a CPAP machine. The appellant states that there are days when he sleeps 12-17 hours and he finds himself forgetting what he is doing in the middle of a task.

The physician who completed the physician report has confirmed that the appellant has been her patient for 9 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 severe sleep apnea, severe osteoarthritis, and mood disorder, adjustment disorder. The physician adds comments that "...the patient has multiple problems: 1) severe sleep apnea- very fatigued and dizzy most of the time, has CPAP, mild improvement, 2) severe osteoarthritis- had multiple surgeries, has difficulty walking, climbing stairs, needs brace for his left knee and cane, 3) mood disorder- because of chronic pain of joints, has poor motivation and depressed mood." The physician report indicates that the appellant has not been prescribed medication that may interfere with his ability to perform DLA, but he requires aids for his impairment, namely a knee brace, medial unloader, and cane. The physician reports that the appellant can walk less than 1 block unaided on a flat surface, he can climb no stairs unaided, he can lift 15 to 35 lbs., and he has no limitation 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 5 out of 11 areas, namely executive, memory, emotional disturbance, motivation, and attention or sustained concentration, with the comment that the appellant "...has problems with executive function, memory, attention due to the severe sleep apnea." The physician has indicated that the appellant is not restricted with the daily living activities (DLA) of personal self care, meal preparation, management of medications, basic housework, daily shopping, and management of finances, but is restricted with mobility inside and outside the home, with no further details or comments provided.

The physician has also completed the assessor report and has assessed the appellant with respect to mobility and physical ability. The physician 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 transfers in/out of bed and transfers on/off chair. The physician reports that the appellant also takes significantly longer than typical with doing laundry and basic housekeeping. The physician indicates that the appellant is independent with most of the tasks of shopping, including going to and from stores, reading prices and labels, making appropriate choices, paying for purchases, but requires continuous assistance with carrying purchases home. The physician comments that the appellant "...has problems of transferring due to severe pain of multiple joints for many years." Further, the physician reports that the appellant is independent with all of the tasks of managing meals, including meal planning, food preparation ("eats 'simple' food), cooking ("does simple cooking"), and safe storage of food. The physician 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).

For transportation, the physician indicates that the appellant requires continuous assistance from another person with getting in and out of a vehicle and using public transit, while being independent with using transit schedules and arranging transportation. In the assessor report, the physician has completed the section applicable to an applicant with an identified mental impairment or brain injury, indicating no major impacts to cognitive and emotional functioning. The physician reports that the appellant has moderate impacts to his daily functioning in bodily functions, consciousness, attention/concentration, and memory with minimal or no impacts in the remaining 9 areas. The physician adds comments that the appellant has severe sleep apnea and is dizzy, confused sometimes, memory is poor, and has problems with executive function. The physician has indicated that the appellant is independent in most areas of social functioning, including making appropriate

social decisions, developing and maintaining relationships, interacting appropriately with others, and securing assistance from others, while requiring periodic support/supervision for dealing appropriately with unexpected demands ("has poor executive function due to sleep apnea"). The physician reports that the appellant has good functioning in both his immediate and extended social networks.

The appellant's physician has also provided a Questionnaire dated February 21, 2012 in which she agrees with several statements made by the appellant, namely: (1) he requires his knee brace (from upper thigh to his shin) for all mobility, i.e. standing, walking, climbing stairs, meal preparation, housework and laundry;(2) he needs but cannot use his cane for mobility as he has a torn muscle in his right shoulder and he cannot tolerate the pain; (3) he cannot carry more than 10 lbs. and no further than 100 feet as it increases the pain in his knee; (4) he has a raised toilet seat to assist with transfers on/off the toilet ("his condition may get better in the future"); (5) he is unable to use public transit as he is unable to walk to catch the bus ("not able to walk fast, but able to use public transit, able to walk slowly"),(6) his severe impairment significantly restricts his ability to perform his ADL's continuously and as a result he requires continuous help or the use of an assistive device in order to perform the majority of his activities of daily living ("his condition may get better after proper treatment"). The physician did not agree with the statement that the appellant cannot shop for his personal needs and his mother does the shopping, his mobility is too limited to be able to go throughout a store, and comments that the appellant "...may do shopping, but walks slowly."

APPEAL #

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 refers to the physician report, where it is indicated that the appellant is able to walk less than 1 block unaided, he cannot climb any steps unaided, can lift 15 to 35 lbs., and has no limitation with remaining seated, and argues that the physician did not assess the appellant's mobility and physical ability in the assessor report to provide more detail of his restrictions. The ministry acknowledges that the appellant recently began to use a knee brace (medial unloader) and that the physician agrees in the Questionnaire that lifting is limited to 10 lbs. for 100 feet, but argues that while the appellant walks slowly, the functional skill limitations described are more in keeping with a moderate degree of physical impairment. The ministry argues that the appellant's physician has commented in the Questionnaire dated February 21, 2012 that the appellant's conditions may get better in the future after proper treatment. The appellant argues that the evidence establishes that he suffers from a severe physical impairment as a result of a combination of conditions including severe sleep apnea, severe osteoarthritis, a torn muscle in his shoulder, the effects of meningococcal meningitis, irritable bowel syndrome and reflux (GERD). The appellant argues that the orthopedic surgeon has contradicted the evidence of his family doctor in having MRI's conducted and scheduling further surgeries indicating that the osteoarthritis is causing further deterioration and that it will not get better. The appellant argues that his mobility is significantly restricted because increased activity causes more pain and, because of his sleep apnea, he cannot get relief from the pain by taking medication after 3:00 p.m. in the afternoon, and increased pain also impacts his sleep.

The panel finds that the evidence of a medical practitioner confirms diagnoses of severe sleep apnea, severe osteoarthritis, meningococcal meningitis approximately 9 years ago, inflammatory bowel disease and GERD. However, the panel finds that the diagnoses of severe sleep apnea and osteoarthritis are the only physical conditions for which a physician has confirmed they will likely continue for two or more years, as required by the legislation. The physician report indicates that the appellant can walk less than 1 block unaided on a flat

surface, he cannot climb any stairs unaided, he can lift 15 to 35 lbs., and has no limitation with remaining seated. Although the physician indicates in the physician report that the appellant is restricted with mobility inside and outside the home, no further detail is provided as to whether the restriction is continuous or periodic for an extended period. The physician has also not completed an assessment of the appellant's mobility and physical ability in the assessor report to provide more detail of the appellant's restrictions. However, the physician has added, in the Questionnaire dated February 21, 2012, that the appellant cannot carry more than 10 lbs. for further than 100 feet as this increases the pain in his knee and he always has his leg brace on when carrying. The physician also clarifies in the Questionnaire that the appellant requires his knee brace for all mobility, including standing, walking, and climbing stairs. In the physician report, the appellant's physician indicates that, with the sleep apnea, the appellant is very fatigued and dizzy most of the time and has had mild improvement with the CPAP machine, and that he has had multiple surgeries as a result of the osteoarthritis, has difficulty walking, climbing stairs, and he needs a brace for his left knee and a cane. The letter from the orthopedic surgeon dated May 17, 2011 confirms that the appellant is unable to walk to the bus for transportation "...until his medical problems with his knees have resolved", and the appellant's physician also states in the Questionnaire dated February 21, 2012 that his condition may get better after proper treatment. In the consultation report dated July 11, 2011, the physician reports that the appellant started using a CPAP machine for his sleep apnea and that the appellant found "a huge difference" in his symptoms and that he sleeps much better when it is on. The appellant stated that he is no longer waking up during the night and blacking out, like before, but that he still feels like he is in a fog for most of the days in a week. The panel finds that the evidence demonstrates that many of the symptoms of the appellant's sleep apnea have been alleviated with the use of a CPAP machine and that the ministry was reasonable in finding that while the appellant walks slowly with his knee brace, the functional skills limitations described indicate a moderate degree of impairment. 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 argues that the physician has indicated that the appellant has significant deficits with cognitive and emotional functioning which are described as "...problems with executive function, memory, attention due to severe sleep apnea." The ministry argues that the impacts to daily functioning as set out by the physician are all related to severe sleep apnea while this section is meant for applicants with an identified mental impairment or brain injury. The ministry points out that the physician indicates that there is no impact to 8 out of 13 aspects of daily functioning, including executive. The appellant argues that the evidence establishes that he suffers from a severe mental impairment as a result of mood disorder, adjustment disorder. The appellant argues that there are days when he does not function well, and that when he has anxiety he also gets diarrhea.

The panel finds that the evidence of a medical practitioner confirms a diagnosis of a mood disorder, adjustment disorder in the physician report, and comments further that "...because of chronic pain of joints, has poor motivation and depressed mood." The physician reports that the appellant has no difficulties with communication. The physician also indicates that there are significant deficits with cognitive and emotional function in 5 out of 11 areas, namely executive, memory, emotional disturbance, motivation, and attention or sustained concentration, with the comment that the appellant "...has problems with executive function, memory, attention due to the severe sleep apnea." In the assessor report, the physician has indicated no major impacts to cognitive and emotional functioning. The physician reports that the appellant has moderate impacts to his daily functioning in bodily functions, consciousness, attention/concentration, and memory with minimal or no impacts in the remaining 9 areas. The physician adds comments that the appellant has severe sleep apnea and is dizzy, confused sometimes, memory is poor, and has problems with executive function. The panel finds that the ministry reasonably concluded that the impacts to daily functioning as set out by the physician are all related to severe sleep apnea while this section is meant for applicants with an identified mental impairment or brain injury. Further, the physician has indicated that the appellant is independent in most areas of social functioning, including making appropriate social decisions, developing and maintaining relationships, interacting appropriately with others, and securing assistance from others, which requiring

periodic support/supervision with dealing appropriately with unexpected demands ("has poor executive function due to sleep apnea"). The physician reports that the appellant has good functioning in both his immediate and extended social networks. The physician does not provide additional information regarding a mental impairment in the Questionnaire dated February 21, 2012. 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 6 of 8 identified DLA, with restrictions noted to mobility inside and outside the home. The ministry argues that although the physician agrees in the Questionnaire that the appellant's severe impairment significantly restricts the ability to perform ADL's continuously, he also reports that the appellant's condition may get better after proper treatment. The appellant argues that the evidence of the physician in the PWD application along with the Questionnaire dated February 21, 2012, establishes that he requires assistance with many DLA. The appellant argues that he pays an additional amount to have his laundry done for him and that he needs help every day putting on his knee brace and he sometimes needs help preparing meals.

The panel finds that the legislation requires 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 not restricted with meal preparation and in the assessor report that the appellant is independent with all tasks, including meal planning, food preparation, cooking and safe storage of food. Although the appellant states that he now requires help sometimes with meal preparation, this has not been reflected in the Questionnaire completed by the appellant's physician although the physician states that the appellant requires his knee brace for all mobility which includes meal preparation. For managing personal finances, the physician indicates that the appellant is not restricted in this area and, in the assessor report, 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 not restricted and, in the assessor report, that the appellant is 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 continuous assistance from another person with carrying purchases home. In the Questionnaire dated February 21, 2012 page, the physician does not agree that the appellant cannot shop for his personal needs and that his mother does the shopping and that his mobility is too limited to be able to go throughout the store, and notes that the appellant "...may do shopping, but walks slowly."

For use of public or personal transportation facilities, the physician indicates in the assessor report, that the appellant is independent with using transit schedules and arranging transportation but requires continuous assistance from another person with getting in and out of a vehicle and with using public transit. In the Questionnaire, the physician indicates that the appellant is not able to walk fast to catch the bus, but he is able to use public transit as he is able to walk slowly. 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 not restricted and, in the assessor report, that the appellant takes significantly longer than typical with doing laundry and basic housework. The appellant stated that he now pays extra for his laundry to be done for him and, in the Questionnaire, the physician has indicated that the appellant requires his knee brace for all mobility which includes housework and laundry.

For moving about indoors and outdoors, the physician has indicated in the physician report that the appellant is restricted in both areas, but does not provide any detail or comments about the extent of this restriction in this assessment. The section of the assessor report relating to mobility and physical ability has not been completed by the physician. In the Questionnaire, the physician agrees that the appellant requires his knee brace for all mobility, that the only time he is not wearing it is in the shower or sleeping, and that although he

needs a cane he currently cannot use it as a result of the torn muscle in his shoulder. Regarding performing personal hygiene and self care, the physician indicates that the appellant is not restricted in the area of personal self care and, in the assessor report, that the appellant is independent with all tasks of personal care, but takes significantly longer than typical with transfers in/out of bed and transfers on/off a chair. In the Questionnaire, the physician agrees that the appellant has a raised toilet seat to assist with transfers on/off the toilet and adds a comment that "...his condition may get better in the future." With respect to managing his personal medications, the physician again indicates that there are no restrictions in this area and that the appellant is independent with all tasks including filling/refilling prescriptions, taking as directed and safe handling and storage. In the assessor report, the physician reports that the appellant is independent with making appropriate social decisions and with interacting appropriately with others, and that his communication is good.

Looking at the consistent evidence of the physician, the panel finds that the prescribed professional has confirmed that the appellant is restricted with 1 out of 5 tasks of shopping and with 2 out of 3 tasks of managing transportation and with mobility inside and outside the home. The panel finds that the evidence demonstrates that the appellant performs a majority of his DLA independently and without restriction and that he functions in the restricted areas with assistance although he walks slowly. 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 and that assistance is provided by friends and family, and he uses a knee brace and needs a cane, as 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.

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.