

PART C – Decision under Appeal

The decision under appeal is the Ministry of Social Development (ministry) reconsideration decision dated May 3, 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 the appellant 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, the ministry also determined that the appellant does not require 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 November 7, 2011, physician report dated January 20, 2012, and assessor report dated November 8, 2011;
- 2) Undated checklist completed by the appellant regarding his ability to perform various activities- notes in part with respect to personal care, difficult to do 8/10 tasks: standing in the shower- "can't stand long- need to sit down", reaching out to wash- "back problems", shaving- "need to do slowly", brushing teeth- "start to shake and need to take prescriptions", brushing hair- "pain in back, neck and shoulders", daily bathing- "sometimes too much pain", "can forget to brush teeth in early a.m. and will do in p.m. when remembered"; for preparing meals, difficult to do 8/11 tasks: "kids cook for me due to problems standing in the kitchen or forget and burn things", using a can opener- "finger freezes", knowing when food has gone bad- "sometimes problems with smell"; taking medication, difficult to do 2/3 tasks: "sometimes forget, sometimes run out"; for housework, difficult to do 9/12 tasks: making beds- "slow", for washing dishes and putting the dishes away- "do not eat at home", carrying laundry- "shopping cart", "do it when no more clothes clean"; for shopping, difficult to do 6/7 tasks: carrying groceries into house- "small cart", being in crowded store- "problems with lots of people"; for moving around inside/outside home, difficult to do all 11/11 tasks- "pain can't sit for long and can't stand for long", getting into and out of bed- "make 3 times a night- nightmares (PTSD)", walking very far- "very difficult", walking on uneven ground- "need it flat", going out- "am scared a lot"; with using transportation, difficult to do 6/7 tasks: on bus- "need to sit", "avoid rush hour"; for managing money, difficult to do 3/4 tasks: remembering to pay bills on time- "need help to remember", budgeting- "difficult"; with eating, difficult to do 3/5 tasks: being able to swallow- "hurt when eat with chest", not throwing up after a meal- "once a month"; for communication, difficult to do all 7/7 tasks: "problem to read and write", "headaches frequently", "trouble listening"; with mental and emotional skills, difficult to do all 12/12 tasks; for social skills, difficult to do 5/6 tasks; the appellant reports that he needs eye glasses, ear plugs, a cane, bath tub or shower chair, grab bars, and sound or light insulated space;
- 3) Letter from the ministry to the appellant dated February 13, 2012 denying person with disabilities designation and enclosing a copy of the decision summary; and,
- 4) Request for Reconsideration dated March 14, 2012.

Neither the appellant nor the ministry attended the hearing. After confirming that both the appellant and the ministry were notified, the hearing proceeded under Section 86(b) of the Employment and Assistance Regulation. An interpreter attended and was available to assist the appellant at the hearing. Although an advocate had previously represented the appellant, the panel received notice from the advocate prior to the hearing that the appellant had been advised that the advocate would not be attending the hearing or be representing him, and that the appellant had stated that he would attend the hearing on his own behalf.

In his Notice of Appeal, the appellant states that he submitted some letters of support to the ministry on May 3, 2012 and they were not received prior to a decision being made. The appellant states his psychiatrist's letter of support has been forthcoming "...Spanish speaking doctor".

In his Request for Reconsideration dated March 14, 2012, the appellant states that he would like an extension of his reconsideration deadline as he is in the process of obtaining additional medical support plus other letters of support.

The panel notes that no additional documents were submitted prior to the hearing by either the appellant or by the ministry.

In his self report included with the PWD application, the appellant states that he has post traumatic stress disorder (PTSD) due to war in his country of origin, that he had family members who were killed and he lost contact with his family for a time and he has bad dreams due to this. The appellant states that he was in a car accident in January 2008 with a car hitting him while he was in the crosswalk. The appellant states that the car hit his left back and left side and he has problems with pain and difficulty staying asleep. The appellant states

that he can no longer do things like he used to. The appellant states that he has great difficulty bending and picking up something from the floor or standing for long. The appellant states that he is not able to walk fast or only about 2-3 blocks and he needs to sit before walking back home. The appellant states that he tries to get out every day but pain in his back and everywhere causes him to stay in 1-2 days a week. The appellant explains that if he has a headache, he is not able to walk, go shopping, or carry his groceries, and that he gets help from his children to get his laundry done. The appellant states that his wife and his children live apart from him due to his need for quiet and he goes to his room when he has headaches and pain, that he needs to be by himself. The appellant states that he has to sit down to bathe and if he has too much pain he does not bathe daily. The appellant states that he has difficulty cooking, using a can opener or standing to prepare food. The appellant states that he has difficulty making new friends and he spends a lot of time alone. The appellant states that he forgets what he is doing, where he is going, he misses his bus and gets off at the wrong stop. The appellant states that he experiences confusion, has problems concentrating and difficulty staying focused.

The physician who completed the physician report confirms that the appellant has been his patient since September 2009 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 anxiety/depression (?PTSD), ? Etoh dependency/abuse, and multitude of somatic complaints related to Etoh. The physician adds a comment regarding the severity of the medical condition relevant to the appellant's impairment that the "...main disability seems to consist of significant depressive state with anxiety and a multitude of somatic complaints. There is little objective evidence on examination other than flat and depressed affect." The physician indicates that the appellant has not been prescribed any medications that interfere with his ability to perform DLA, and he does not require any prostheses or aids for his impairment. The physician also comments that the appellant "...appears to be clinically depressed and unwell, ??PTSD, likely unemployable because of this." The physician reports that it is unknown how far the appellant can walk unaided on a flat surface, how many steps he can climb unaided, how much weight he can lift and how long he can remain seated. The physician indicates that there are no difficulties with communication other than a lack of fluency in English. The physician reports that there are significant deficits with cognitive and emotional function in the areas of emotional disturbance and motivation, with no additional comments. In response to the question whether the appellant's impairment directly restricts his ability to perform daily living activities (DLA), the physician has indicated "unknown" and has reiterated that it is unknown whether the appellant is restricted with personal self care, meal preparation, management of medications, basic housework, daily shopping, mobility inside the home, mobility outside the home, use of transportation, management of finances and social functioning, with the additional comment that he is "...unable to ascertain level of functioning and assistance needed." In response to the request to add information relevant to an understanding of the significance of the appellant's medical condition, the nature and extent of the impairment and the impact on daily functioning, the physician has written "...NIL else of note."

The assessor report was completed by a social worker who met with the appellant once for a disability assessment and relied on an office interview with the appellant which was interpreted by the appellant's friend. The social worker (assessor) indicates that the appellant's impairments that impact his ability to manage DLA are "...both mental and physical impairments impacting ADL's, he suffers from PTSD with flashbacks and hallucinations, he had a car accident 3 years ago causing back and knee injuries." The assessor reports that the appellant has a poor ability to communicate in all areas, namely with speaking ("English is third language, English not primary language, memory poor forgets what he is going to say"), reading ("blurry vision, cannot read well"), writing ("only 3 1/2 years formal education"), and hearing ("damage to left ear-fall"). The assessor indicates that the appellant takes significantly longer than typical with walking indoors ("knee injury, very weak"), walking outdoors ("2 or 3 blocks, painful- back and knee pain"), climbing stairs ("knee and back pain-needs railing"), standing ("only about 15 minutes"), lifting ("bending difficulty- 5 lb. limit") and carrying and holding ("avoids carrying"). The assessor indicates that the appellant requires periodic assistance from another person with most of the tasks of personal care, namely dressing ("painful to put on clothes, sometimes gets assistance"), grooming (painful, sometimes gets assistance), bathing (painful, sometimes gets assistance), feeding self and regulating diet ("eats at mother of children often"), transfers in/out of bed ("needs

help get out of bed sometimes") and transfers on/off chair ("takes longer, very slow"), and also takes significantly longer than typical with most tasks, including toileting. The assessor reports that the appellant requires periodic assistance from another person with doing laundry ("mother of children assists") and basic housekeeping ("does not do housework"). The assessor indicates that the appellant takes significantly longer than typical with all tasks of shopping, including going to and from stores ("forgets what he is going to buy"), reading prices and labels, making appropriate choices and paying for purchases ("poor reading ability, language difficulty") and carrying purchases home ("cannot carry large amount"). The assessor adds a comment that "...in most ADL's he receives continual assistance from mother of his children." Further, the assessor reports that the appellant requires continuous assistance from another person with all of the tasks of managing meals, including meal planning, food preparation, cooking and safe storage of food ("eats at mother of his children"). The assessor indicates that the appellant requires continuous assistance and takes significantly longer than typical with all tasks of paying rent and bills (including banking and budgeting), with the comment "...rent right from ministry of social services." The assessor also reports that the appellant requires continuous assistance and takes significantly longer than typical with managing medications, including filling/refilling prescriptions ("mother of children keeps medications"), taking as directed ("side effects so doesn't always take as prescribed") and safe handling and storage. The assessor indicates that the appellant takes significantly longer than typical with all tasks of transportation, including getting in and out of a vehicle ("slowly"), using public transit ("forgets his stop often, nervous, gets off bus if crowded"), and using transit schedules and arranging transportation ("does not use"). The assessor adds a comment that the appellant "...requires much assistance to perform ADL's; without this assistance he would not be able to do these well."

The assessor indicates that there are several major impacts to cognitive and emotional functioning in the areas of bodily functions ("sleep problems- wakes 3-4 times a night, 4 hours"), emotion ("depressed, low motivation to do ADL's"), attention/concentration ("difficulty, has flashbacks"), memory ("poor memory of names and faces"), motivation ("low, lack of interest, worries/pain"), language ("English third language"), psychotic symptoms ("delusions- flashback appear like present times; hallucinations- hears voices at night, paranoia"), other neuropsychological problems ("learning disability- never diagnosed but possible"), and other emotional or mental problems ("emotional problems"). The assessor also reports several moderate impacts to cognitive and emotional functioning in the areas of consciousness ("confusion- doesn't understand what is going on/drowsiness"), impulse control ("occasional binge drinking, drinks to help pain"), insight and judgment, executive ("calculations difficult- avoids at times"), motor activity ("very weak/ decreased mobility"), and other neuropsychological problems. The assessor indicates that the appellant requires continuous support/supervision in all areas of social functioning, including making appropriate social decisions ("is very dependent on mother of his children"), developing and maintaining relationships ("is very dependent"), interacting appropriately with others, dealing appropriately with unexpected demands, and securing assistance from others ("asks when needed but feels ashamed"). The assessor reports marginal functioning in both the appellant's immediate social network ("is very dependent") and his extended social network ("he has a few neighbourhood contacts"). The assessor adds comments that "...if mother of his children stopped assisting him, it would be difficult for him to perform own ADL's" and he is "...very effected by the PTSD and the symptoms of flashbacks, hallucinations and paranoia; also English is his third language... he had only 3 years of schooling... so his reading and writing are limited."

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 as follows:

Persons with disabilities

2 (1) In this section:

"**assistive device**" means a device designed to enable a person to perform a daily living activity that, because of a severe mental or physical impairment, the person is unable to perform;

"**daily living activity**" has the prescribed meaning;

"**prescribed professional**" has the prescribed meaning.

(2) The minister may designate a person who has reached 18 years of age as a person with disabilities for the purposes of this Act if the minister is satisfied that the person has a severe mental or physical impairment that

(a) in the opinion of a medical practitioner is likely to continue for at least 2 years, and

(b) in the opinion of a prescribed professional

(i) directly and significantly restricts the person's ability to perform daily living activities either

(A) continuously, or

(B) periodically for extended periods, and

(ii) as a result of those restrictions, the person requires help to perform those activities.

(3) For the purposes of subsection (2),

(a) a person who has a severe mental impairment includes a person with a mental disorder, and

(b) a person requires help in relation to a daily living activity if, in order to perform it, the person requires

(i) an assistive device,

(ii) the significant help or supervision of another person, or

(iii) the services of an assistance animal.

(4) The minister may rescind a designation under subsection (2).

Section 2(1)(a) of the EAPWDR defines DLA for a person who has a severe physical or mental impairment as follows:

Definitions for Act

2 (1) For the purposes of the Act and this regulation, "**daily living activities**" ,

(a) in relation to a person who has a severe physical impairment or a severe mental impairment, means the following activities:

(i) prepare own meals;

(ii) manage personal finances;

(iii) shop for personal needs;

(iv) use public or personal transportation facilities;

- (v) perform housework to maintain the person's place of residence in acceptable sanitary condition;
 - (vi) move about indoors and outdoors;
 - (vii) perform personal hygiene and self care;
 - (viii) manage personal medication, and
- (b) in relation to a person who has a severe mental impairment, includes the following activities:
- (i) make decisions about personal activities, care or finances;
 - (ii) relate to, communicate or interact 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 the physician indicates that the appellant's ability to walk and climb stairs and to lift and remain seated is unknown. The ministry argues that although the physician has known the appellant since 2009 and has seen him 2 to 10 times in the last year, there is no indication that the appellant has any functional limitations due to his impairments. The ministry points out that the assessor indicates that the appellant takes significantly longer than typical to accomplish all of his mobility and physical functions due to knee and back pain, however the appellant's long term physician has not diagnosed the appellant with knee and back pain and the physician indicates that the appellant does not require any prostheses or aids for his impairment. The ministry points out that although the assessor indicates that the appellant requires a cane to use in bad weather, it is unclear why the appellant would require this assistive device as the physician has not diagnosed the appellant with any functional impairments. The appellant argues that he has a severe physical impairment as a result of knee and back pain. The appellant argues that he was in a car accident in January 2008 with a car hitting his left back and side and he has problems with pain and difficulty staying asleep. The appellant argues that he can no longer do things like he used to, that he has great difficulty bending and picking up something from the floor or standing for long, he is not able to walk fast or only about 2 to 3 blocks and he needs to sit before walking back home. The appellant argues that he tries to get out every day but pain in his back and everywhere causes him to stay in 1 to 2 days a week.

The panel finds that the evidence of a medical practitioner does not confirm a diagnosis of knee and back pain. Although the social worker, as assessor, identifies back and knee injuries as a result of a car accident, it has not been confirmed by a medical practitioner that these conditions are likely to continue for at least 2 years, as required by the legislation. In the physician report, the physician who has known the appellant since 2009 adds a comment regarding the severity of the medical condition relevant to the appellant's impairment that the "...main disability seems to consist of significant depressive state with anxiety and a multitude of somatic complaints. There is little objective evidence on examination other than flat and depressed affect." The physician indicates that the appellant has not been prescribed any medications that interfere with his ability to perform DLA, and he does not require any prostheses or aids for his impairment. The physician reports that it is unknown how far the appellant can walk unaided on a flat surface, how many steps he can climb unaided, how much weight he can lift and how long he can remain seated. In response to the request to add information relevant to an understanding of the significance of the appellant's medical condition, the nature and extent of the impairment and the impact on daily functioning, the physician has written "...NIL else of note." The social worker, who based her assessment on a single office interview with the appellant, indicates that the appellant takes significantly longer than typical with walking indoors ("knee injury, very weak"), walking outdoors ("2 or 3 blocks, painful- back and knee pain"), climbing stairs ("knee and back pain- needs railing"), standing ("only about 15 minutes"), lifting ("bending difficulty- 5 lb. limit") and carrying and holding ("avoids carrying"). The physician who has known the appellant for over 2 years comments that the appellant has a multitude of somatic complaints but that there is little objective evidence on examination. 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 appellant's physician indicates that the appellant has significant deficits in the areas of

emotional disturbance and motivation and does not corroborate the information from the assessor. The ministry points out that the social worker completed the assessor report on the first meeting with the appellant (November 9, 2011), approximately 8 weeks before the physician report was completed (January 20, 2012). The assessor reports that the appellant's impairments have a major impact in the majority of his emotional and cognitive functioning, such as psychotic symptoms, delusions, flashbacks that appear like hallucination, that he hears voices at night and has paranoia, however the appellant's long term physician does not indicate that the appellant has a deficit in this area of cognitive and emotional functioning. The ministry points out that the appellant's physician indicates that his ability to manage social functioning is unknown while the assessor indicates that the appellant requires continuous assistance with all his social functioning and that he has marginal functioning with his immediate and extended social networks. The ministry argues that there is not sufficient corroborating evidence from the appellant's long term physician to support a severe mental impairment. The appellant argues that he has a severe mental impairment as a result of anxiety/depression (PTSD) and Etoh dependency/abuse. The appellant argues that that he has PTSD due to war in his country of origin, that he had family members who were killed and he has bad dreams due to this, and the assessor confirms in her report that he suffers from PTSD with flashbacks and hallucinations. The appellant argues that he has difficulty making new friends and he spends a lot of time alone, that he experiences confusion, has problems concentrating and difficulty staying focused and that he forgets what he is doing, where he is going.

The panel finds that the evidence of a medical practitioner confirms a diagnosis of anxiety/depression (?PTSD), ? Etoh dependency/abuse, and a multitude of somatic complaints related to Etoh. The physician adds a comment regarding the severity of the medical condition relevant to the appellant's impairment that the "...main disability seems to consist of significant depressive state with anxiety and a multitude of somatic complaints. There is little objective evidence on examination other than flat and depressed affect." The physician indicates that the appellant has not been prescribed any medications that interfere with his ability to perform DLA, and comments that the appellant "...appears to be clinically depressed and unwell, ??PTSD, likely unemployable because of this." Although the appellant argues that he suffers from PTSD and that this has been confirmed by the assessor, the panel finds that his physician has referred to PTSD in the physician report with question marks in each instance so that a diagnosis of PTSD appears questionable; the assessor based her assessment solely on the office interview with the appellant and does not have a history of contact with the appellant or the benefit of clinical data and experience. The physician indicates that there are no difficulties with communication other than a lack of fluency in English, whereas the assessor reports that the appellant has a poor ability to communicate in all areas, namely with speaking ("English is third language, English not primary language, memory poor forgets what he is going to say"), reading ("blurry vision, cannot read well"), writing ("only 3 1/2 years formal education"), and hearing ("damage to left ear-fall"). The panel finds that the notes by the assessor indicate that the identified difficulties with communication relate primarily to issues not connected with the diagnosed mental disorder, namely English not being his primary language, vision and education deficits and injury to his left ear.

The physician reports that there are significant deficits with cognitive and emotional function in two areas, specifically emotional disturbance and motivation, with no additional comments. The assessor, on the other hand, indicates that there are several major impacts to cognitive and emotional functioning in the areas of bodily functions ("sleep problems- wakes 3-4 times a night, 4 hours"), emotion ("depressed, low motivation to do ADL's"), attention/concentration ("difficulty, has flashbacks"), memory ("poor memory of names and faces"), motivation ("low, lack of interest, worries/pain"), language ("English third language"), psychotic symptoms ("delusions- flashback appear like present times; hallucinations- hears voices at night, paranoia"), other neuropsychological problems ("learning disability- never diagnosed but possible"), and other emotional or mental problems ("emotional problems"). The assessor also reports several moderate impacts to cognitive and emotional functioning in the areas of consciousness ("confusion- doesn't understand what is going on/drowsiness"), impulse control ("occasional binge drinking, drinks to help pain"), insight and judgment, executive ("calculations difficult- avoids at times"), motor activity ("very weak/ decreased mobility"), and other neuropsychological problems. Given that the physician has known the appellant for over 2 years and the assessor only had the benefit of one office interview with the appellant and relies primarily on the appellant's

self-report of his symptoms and no other files or reports, the panel finds that the ministry reasonably placed more weight on the information from the appellant's physician. The panel also finds that some of the comments by the assessor indicate impacts by issues other than the diagnosed mental disorder, such as English not being the appellant's primary language and a possible learning disability.

The physician indicates it is unknown whether the appellant is restricted with social functioning, with the additional comment that he is "...unable to ascertain level of functioning and assistance needed." In response to the request to add information relevant to an understanding of the significance of the appellant's medical condition, the nature and extent of the impairment and the impact on daily functioning, the physician has written "...NIL else of note." The assessor indicates that the appellant requires continuous support/supervision in all areas of social functioning, including making appropriate social decisions ("is very dependent on mother of his children"), developing and maintaining relationships ("is very dependent"), interacting appropriately with others, dealing appropriately with unexpected demands, and securing assistance from others ("asks when needed but feels ashamed"). The assessor reports marginal functioning in both the appellant's immediate social network ("is very dependent") and his extended social network ("he has a few neighbourhood contacts"). The assessor adds comments that "...if mother of his children stopped assisting him, it would be difficult for him to perform own ADL's" and he is "...very effected by the PTSD and the symptoms of flashbacks, hallucinations and paranoia; also English is his third language... he had only 3 years of schooling... so his reading and writing are limited." In view of the physician's comments that he has been unable to ascertain the level of the appellant's social functioning and the assessor's note that refers to both PTSD and English not being the appellant's primary language, the panel finds that it is unclear whether the appellant's dependency is as a result of his mental disorder or due to his language and communication barriers. Overall, 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 that the appellant's ability to manage DLA is unknown and that he is "...unable to ascertain level of functioning and assistance needed." The ministry points out that the assessor indicates the appellant requires periodic assistance and takes significantly longer to complete the majority of his DLA, and that he requires continuous assistance with managing meals. The ministry argues that the narrative "eats at mother of his children" does not explain why the appellant requires this level of assistance. The ministry argues that the assessor indicates that the appellant requires continuous assistance with banking, budgeting, and the paying of rent and bills, however the narrative "rent right from ministry of social services" does not explain why the appellant requires this level of assistance. The ministry argues that the assessor reports that the appellant requires continuous assistance with medications due to side effects of the medications and that he does not always take the medications as prescribed, however the physician reports that the appellant has not been prescribed any medications and/or treatments that would interfere with his ability to perform DLA. The ministry acknowledges that the appellant's impairments impact his ability to manage his DLA, but argues that the degree of assistance required and the time it takes to manage these tasks as indicated by the assessor have not been corroborated by the appellant's long time physician. The appellant argues that the evidence of his assessor, as a prescribed professional, establishes that he is directly and significantly restricted in his ability to perform his DLA, either continuously or periodically for extended periods of time.

The panel finds that the legislation requires that the ministry must 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 indicated in the physician report that it is unknown whether the appellant is restricted in this area. In the assessor report, the social worker indicates that the appellant requires continuous assistance from another person with all tasks, including meal planning, food preparation, cooking and safe storage of food, with the note "...eats at mother of his children." In the undated checklist completed by the appellant regarding his ability to perform

various activities, for preparing meals he reports difficulty with 8/11 tasks with notes that "kids cook for me due to problems standing in the kitchen or forget and burn things", using a can opener- "finger freezes", knowing when food has gone bad- "sometimes problems with smell." The panel finds that these notes indicate that some of the restrictions in this area may be due to issues unrelated to diagnosed conditions, including problems standing, with smell, and with his finger. In his self report included with the PWD application, the appellant states that he has difficulty cooking, using a can opener or standing to prepare food. For managing personal finances, the physician reported that it is unknown whether the appellant is restricted in this area and the assessor reports that the appellant requires continuous assistance and takes significantly longer than typical with all tasks of paying rent and bills (including banking and budgeting), with the comment "...rent right from ministry of social services." In the checklist, the appellant has indicated that for managing money, he has difficulty with 3/4 tasks, with the notes for remembering to pay bills on time- "need help to remember" and budgeting- "difficult." The panel finds that these notes indicate that the appellant is able to perform these tasks although he finds them difficult and needs reminders. In terms of shopping for his personal needs, the physician indicated that it is unknown whether the appellant is restricted in this area and the assessor reported that the appellant takes significantly longer than typical with all tasks, including going to and from stores ("forgets what he is going to buy"), reading prices and labels, making appropriate choices and paying for purchases ("poor reading ability, language difficulty") and carrying purchases home ("cannot carry large amount"). In the checklist, the appellant stated that for shopping, he has difficulty with 6/7 tasks with the notes for carrying groceries into house- "small cart" and being in crowded store- "problems with lots of people." The panel finds that these notes indicate that some of the restrictions in this area may be due to issues unrelated to diagnosed conditions, including language barriers and lifting restrictions. In his self report, the appellant explains that if he has a headache, he is not able to walk, go shopping, or carry his groceries.

For use of public or personal transportation facilities, the physician indicates that it is unknown whether the appellant is restricted in this area, and the assessor reports that the appellant takes significantly longer than typical with all tasks of transportation, including getting in and out of a vehicle ("slowly"), using public transit ("forgets his stop often, nervous, gets off bus if crowded"), and using transit schedules and arranging transportation ("does not use"). In the checklist, the appellant states that with using transportation, he has difficulty performing 6/7 tasks, with notes that on the bus- "need to sit" and "avoid rush hour." With respect to performing housework to maintain the appellant's place of residence in an acceptable sanitary condition, the physician indicated that it is unknown whether the appellant is restricted in this area and the assessor reported that the appellant requires periodic assistance from another person with doing laundry ("mother of children assists") and basic housekeeping ("does not do housework"). In the checklist, the appellant stated that for housework, he has difficulty doing 9/12 tasks, with notes that for making beds- "slow", for washing dishes and putting the dishes away- "do not eat at home", carrying laundry- "shopping cart", "do it when no more clothes clean." In his self report, the appellant states that he gets help from his children to get his laundry done.

For moving about indoors and outdoors, the physician reported in the physician report that it is unknown whether the appellant is restricted in these areas and the assessor reports that the appellant takes significantly longer than typical with walking indoors ("knee injury, very weak"), walking outdoors ("2 or 3 blocks, painful-back and knee pain"), climbing stairs ("knee and back pain- needs railing"), and standing ("only about 15 minutes"). In the checklist, the appellant stated that for moving around inside/outside home, he has difficulty with all 11/11 tasks with notes that "pain can't sit for long and can't stand for long", getting into and out of bed- "make 3 times a night- nightmares (PTSD)", walking very far- "very difficult", walking on uneven ground- "need it flat", going out- "am scared a lot." Regarding performing personal hygiene and self care, the physician indicated in the physician report that it is unknown whether the appellant is restricted in this area. The assessor indicated that the appellant requires periodic assistance from another person with most of the tasks of personal care, namely dressing ("painful to put on clothes, sometimes gets assistance"), grooming (painful, sometimes gets assistance), bathing (painful, sometimes gets assistance), feeding self and regulating diet ("eats at mother of children often"), transfers in/out of bed ("needs help get out of bed sometimes") and transfers on/off chair ("takes longer, very slow"), and also takes significantly longer than typical with most tasks, including toileting. The appellant states in his self report that he has to sit down to bathe and if he has

too much pain he does not bathe daily. The panel finds that the narrative indicates that some restrictions relate to undiagnosed conditions. With respect to managing his personal medications, the physician indicated that it is unknown whether the appellant is restricted in this area but reported that the appellant has not been prescribed medications that interfere with his ability to perform DLA. The assessor reported that the appellant requires continuous assistance and takes significantly longer than typical with filling/refilling prescriptions ("mother of children keeps medications"), taking as directed ("side effects so doesn't always take as prescribed") and safe handling and storage. The assessor adds a comment that the appellant "...requires much assistance to perform ADL's, without this assistance he would not be able to do these well."

For making decisions about personal activities, care or finances, the physician reported that it is unknown whether the appellant is restricted with social functioning, that he is "...unable to ascertain level of functioning and assistance needed" and that the appellant "...appears to be clinically depressed and unwell, ??PTSD, likely unemployable because of this." In the assessor report, the assessor indicated that the appellant requires continuous support/supervision in all areas of social functioning, including making appropriate social decisions ("is very dependent on mother of his children"). The assessor adds comments that "...if mother of his children stopped assisting him, it would be difficult for him to perform own ADL's" and he is "...very effected by the PTSD and the symptoms of flashbacks, hallucinations and paranoia; also English is his third language... he had only 3 years of schooling... so his reading and writing are limited." In view of the physician's comments that he has been unable to ascertain the level of the appellant's social functioning and the assessor's note that refers to both PTSD and English not being the appellant's primary language, the panel previously found that it is unclear whether the appellant's dependency is as a result of his mental disorder or due to his language barriers.

For relating to, communicating or interacting with others effectively, the physician indicates that there are no difficulties with communication other than a lack of fluency in English, whereas the assessor reports that the appellant has a poor ability to communicate in all areas, namely with speaking ("English is third language, English not primary language, memory poor forgets what he is going to say"), reading ("blurry vision, cannot read well"), writing ("only 3 1/2 years formal education"), and hearing ("damage to left ear-fall"). The panel previously found that the notes by the assessor indicate that the identified difficulties with communication relate primarily to issues not connected with the diagnosed mental disorder, namely English not being his primary language, vision and education deficits and injury to his left ear. The assessor indicates that the appellant requires continuous support/supervision in all areas of social functioning, including developing and maintaining relationships ("is very dependent") and interacting appropriately with others and securing assistance from others ("asks when needed but feels ashamed"). The assessor reports marginal functioning in both the appellant's immediate ("is very dependent") and extended social networks ("he has a few neighbourhood contacts").

Looking at the evidence as a whole, the panel finds that the physician who has known the appellant for some time reports that he cannot ascertain whether the appellant is restricted with any of his DLA, whereas the assessor relied on information garnered from one office interview with the appellant and reported restrictions in a number of areas. Given the reservations of the appellant's physician, the panel finds that the evidence of the prescribed professional does not clearly establish restrictions to DLA relating to one of the diagnosed conditions, namely anxiety/depression and Etoh dependency/abuse. 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 assistance is provided by the mother of his children, and he does not regularly use an assistive device. As it has not been established that the ability to perform DLA is significantly restricted, the panel finds that the ministry's conclusion that the requirement for significant

APPEAL #

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.