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PART C – Decision under Appeal

The decision under appeal is the ministry's reconsideration decision dated January 18th 2012, which held that the appellant does not meet the legislative criteria for designation as a Person with Disabilities (PWD).

Section 2, EAPWDA and Section 2, EAPWDR list five criteria that must be met in order for an applicant to be designated as a PWD. The ministry held that the appellant met two of the five criteria – age requirement and that the appellant's physician has confirmed that his medical condition will continue for at least two years. However, the ministry is not satisfied that the appellant has a severe physical or mental impairment, that his impairment in the opinion of a prescribed professional directly and significantly restricts his ability to perform his Daily Living Activities (DLA), or that as a result of significant restrictions the appellant requires help as defined to perform DLA.

PART D – Relevant Legislation

Employment and Assistance for Persons with Disabilities Act (EAPWDA), Section 2
Employment and Assistance for Persons with Disabilities Regulation (EAPWDR), Section 2

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PART E – Summary of Facts

In the appeal record, as part of the evidence, were copies of the following documents:

1) The appellant's original PWD application dated June 21st, 2011 in which he describes his medical problems along with a self-assessment of his limitations in performing his DLA. The appellant stated that he suffers from arthritis, compressed discs, and debilitating headaches; that his disability has contributed to feelings of depression, lack of motivation, anxiety and fear, extreme apathy and loss of interest in daily activities, intense nausea, dizziness and disorientation, and significant sleep disturbances; that he takes medication daily such as anti-inflammatory, pain relief, sleeping aids, among others. He stated that he can walk less than a block, is unable to climb stairs, and is able to lift 5 to 15 pounds due to back pain and fatigue. He added that he requires assistance with shopping, preparing meals and accessing the community. The appellant submitted that as a result of his disability he experiences social isolation, is unable to develop social networks and often relationships are minimal.

2) The Physician Report, dated June 30, 2011, provided by the appellant's family doctor (who has been seeing him over a 2 year period, 11 or more times over the last twelve months), who diagnosed him with degenerative disc disease in the lower cervical spine with bilateral nerve impingement, onset August 2008; chronic myofascial pain, onset August 2008; depression since childhood; ankle fracture – open reduction and plate and screws, onset April 2010. The physician identified the appellant's functional skills mentioning that he is able to walk unaided 1 to 2 blocks, dependent on pain level, sometimes less; climb 5+ steps unaided; lift 15 to 35 lbs; remain seated less than 1 hour; and has no difficulties with communication. The prescribed professional stated that because of depression, the appellant has significant deficits with cognitive and emotional functions, specifically with emotional disturbance (depression), motivation and insomnia. The report indicated that the appellant has no deficits with consciousness, executive, language, memory, perceptual psychomotor, psychotic symptoms, impulse control, motor activity and attention or sustained concentration. As additional comments, the physician stated that the appellant suffers from "low mood with low ambition" and sleep disturbance.

   With respect to the appellant's DLA, the physician indicated that his impairment directly and periodically restricts his ability to prepare his own meals, do his daily shopping, and be mobile outside his home; that his impairment directly and continuously restricts his ability to do basic housework and manage his finances. The report indicated that appellant has no restrictions performing his personal self care; managing his medications; moving inside the house, and using public transportation. The physician also informed that the appellant has periodic restrictions in social functioning due to impulse control issues and difficulty managing his own finances; that the appellant continuously suffers varying degrees of pain and discomfort in his back and right ankle. Regarding the need for assistance, the prescribed professional informed that the appellant has the support of his common-law spouse.

   In additional comments, the physician explained that the appellant suffers from a chronic pain syndrome that has no cure due to multiple previous injuries to his neck and back; that he has fluctuating levels of discomfort and has days when he functions well and perform his DLA well; that when he has pain he needs support from his common law spouse.

3) The Assessor Report, dated July 15, 2011 completed by a registered social worker (who met the appellant for the first time to complete the Assessor Report), which informed that the appellant has satisfactory ability to communicate. With respect to his mobility and physical ability, the prescribed professional informed that the appellant takes significantly longer than typical to walk indoors/outdoors (1 to 2 blocks), climbing stairs (needs handrail, standing (5 min max), lifting (needs periodic assistance

from another person for more than 15 lbs), carrying and holding (needs help from another person for more than 15 lbs). In additional comments, the prescribed professional informed that "all moving about takes at least 3X longer due to severe chronic pain and fatigue".

Regarding the appellant's cognitive and emotional functioning, the report identifies deficits in bodily functions (major impact), emotion (major impact), motivation (major impact), and attention/concentration (moderate impact). The report indicated that the appellant has no deficits in the areas of consciousness, impulse control, insight and judgement, executive, memory, motor activity, language, psychotic symptoms, other neuropsychological problems and other emotional or mental problems. As additional comments, the prescribed professional informed that the appellant suffers from severe and long standing depression, since childhood, sleep disturbance, and that he was in foster care as a child due to family dysfunction.

Concerning the assistance the appellant needs to perform his DLA, the prescribed professional informed that the appellant needs continuous assistance from another person when it comes to regulating his diet; doing laundry and performing basic housekeeping; going to and from stores, reading prices and labels, making appropriate choices, paying for purchases, carrying purchases home, filling/refilling prescriptions, and taking medication as directed. The report indicated that the appellant needs periodic assistance from another person on the following DLA: meal planning, food preparation, cooking, banking, using transit schedules and arranging transportation.

The prescribed professional informed that the appellant takes significantly longer than typical to perform the following DLA: dressing, grooming, bathing (needs grab bars), toileting (needs grab bars), feeding self, transfer in/out of bed and on/off of chair, laundry, basic housekeeping, going to and from stores, reading prices and labels, making appropriate choices, paying for purchase, carrying purchases home, food preparation, cooking, banking, filling/refilling prescriptions, taking medication as directed, getting in and out of a vehicle, using public transit, using transit schedules and arranging transportation.

The Assessor Report indicated that the appellant can independently perform the following DLA: safe storage of food, budgeting, pay rent and bills, safe handling and storage of medications.

In additional comments, the prescribed professional explained that the appellant "often goes 2 – 3 days without performing personal care due to depression and lack of motivation. He relies on his wife for assistance with household chores or they are not done. All moving about/attempting tasks take at least 3 – 5X longer. Always needs reminders for medications."

Concerning social functioning, the Assessor Report indicated that the appellant can independently make appropriate social decisions and interacts appropriately with others; that he needs continuous assistance from another person to develop and maintain relationships (depressed, withdrawn and isolated), and to deal appropriately with unexpected demands (stressed and overwhelmed); that the appellant periodically needs help to secure assistance from others. The prescribed professional also informed that the appellant has marginal functioning in his relationship with his immediate social network (partner, family, and friends) and with his extended social network (neighbourhood contacts, acquaintances, storekeepers, public officials, etc). In additional comments the prescribed professional stated that the appellant needs counselling for depression and treatment to manage chronic pain, and that the appellant was a former cocaine addict.

The prescribed professional also reported that the appellant receives assistance from his family; that he makes periodic use of a cane as an assistive device and would benefit from the use of grab bars in the bathroom. Finally, that the appellant does not have assistance from an assistance animal.

As final comments, the prescribed professional stated that the appellant suffers from "long standing depression with history of traumatic childhood. Severe and debilitating chronic pain – requires assistance with all household DLA and significantly extra time to move about."

4) Copy of a Medical Image Report dated April 22, 2009 informing that the appellant suffers from moderate C5/6 disc space narrowing; that a small circumferential disc/osteophyte complex is present, which results in mild foraminal narrowing on the right; that the other cervical levels from C3 through C1 are normal. The final Impression is: "spondylosis restricted to the C5/6 level where there is mild narrowing of the right foremen".

5) The appellant's Reason for Request for Reconsideration, dated December 08, 2011, stating that the medical evidence confirmed that he meets the requirements to be designated as a person with disabilities.

6) Copy of an advocate-prepared questionnaire dated December 15, 2012 and answered by the same medical professional who wrote the Physician Report, stating the following points:

- The appellant suffers from significant impact on DLA – some intermittent, others continuous due to degenerative disc disease and chronic pain syndrome.
- Daily pain restricts his ability to lift and carry pot/pans and do dishes.
- He is forgetful at times due to pain, pain medication and depression, which negatively impacts his ability to manage his finances.
- He needs a seat on the bus and is restricted in the amount of bending, standing, lifting and carrying he can perform.
- As a result of his health conditions, the appellant needs significant help from other people and/or assistive devices.
- Some assistance is required daily, but that the appellant also has periods of time that he does better.
- The appellant has informed the physician that around 1/3 of his time he is significantly restricted in his DLA by one or more medical conditions.

7) An excerpt from the Physician Report (E – Daily Living Activities - page 11) dated December 15, 2011 and signed by the appellant's doctor with information that varied from that provided in the previous report, dated June 30, 2011. The December 15, 2011 assessment stated that the appellant is restricted in all DLA, the restriction being continuous for meal preparation, management of medications, basic housework and daily shopping. Concerning personal care, mobility inside/outside the home, use of transportation, management of finances and social functioning the restriction is periodic (around a third of the time) because of crippling pain. As additional comments, the physician explained that the appellant has a constant underlying spinal pathology that restricts him from doing certain physical chores, but also periodically immobilizes him. That the appellant needs intermittent use of a cane, grabs bars in the bathroom, shower seat, and needs help from his wife for domestic chores or, if she is not available, house cleaning services.

8) The appellant's Notice of Appeal, dated February 2, 2012, with the appellant stating that he disagrees with the ministry's decision because he believes that "not enough proper information was submitted". Through an advocated-prepared written submission, the appellant reaffirms the severity of his medical conditions and the impact of them on his ability to perform his DLA. The appellant states that the evidence demonstrated that he has periodic restriction with 6 activities of the DLA and continuous restrictions with the other 4.

The appellant stated that the evidence also demonstrated that because of these restrictions, he makes intermittent use of a cane; that he is in need of grab bars in the bathroom and a shower seat; and that he requires significant assistance from his spouse to perform DLA. In the same written submission the appellant also provided excerpts from the decision in Hudson v EAAT, 2009 BCSC 1461.

As new evidence, the appellant submitted the following documents:

1) A copy of a letter dated March 15, 2012, signed by a worker from a community mental health and substance use liaison program, who has been working with the appellant since December 2011, affirming that he presents symptoms of anxiety and depression; that these have been longstanding and that the plan is for the appellant to be seen by a psychiatrist for a consultation/medication assessment. The worker added that the appellant's ongoing chronic pain contributes to his psychiatric symptoms; that he is quite visibly in pain and that it even affects his ability to remain seated in the worker's office for any length of time.

2) A copy of a letter dated May 10, 2012 and signed by the appellant's physician. In this letter the prescribed professional agrees with the Assessor Report's information and also clarifies that when he previously wrote that the appellant was restricted 1/3 of the time, that this "1/3 of the time is when the patient is severely restricted and at other times he is also significantly restricted but to a lesser degree". The physician stated that in his estimation, the appellant "is significantly restricted, as a result of his medical conditions, more than 50% of the time. He gets assistance to perform daily living activities from his spouse".

The ministry did not object to the admission of the above new evidence. The panel reviewed the submitted documents and they were held to be in support of the information and records that were before the ministry when the reconsideration decision was made. As a result, and in accordance with the Employment and Assistance Act, section 22(4), the panel admitted the appellant's evidence.

As its submission, the ministry referred to the reconsideration decision's summary and did not introduced new evidence.

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PART F – Reasons for Panel Decision

The issue on the appeal is whether the ministry reasonably concluded that the appellant is not eligible for designation as a PWD as he does not have a severe mental or physical impairment and that his 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, it could not be determined that the appellant requires the significant help or supervision of another person to perform DLA.

The eligibility criteria for PWD designation are set out in the following sections of the EAPWDA:

2(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.

Employment and Assistance for Persons with Disabilities Regulation, Part 1, Section 2, for the purposes of the Act and the Regulation, defines the meaning of "Daily Living Activities" as being:

a) In relation to a person who has a severe physical impairment or a severe mental impairment:

(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.

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 appellant's position is that due to the combination of his severe medical conditions – degenerative disc disease C-spine, chronic myofascial pain, depression, ankle fracture - he is restricted performing DLA and needs assistance doing daily shopping, preparing meals and accessing the community. That as a result of his disability, the appellant experiences social isolation, is unable to develop social networks and often relationships are minimal. The appellant's advocate argues that the decision in Hudson v EAAT, 2009 BCSC 1461 is authority for the position that there must be evidence from a prescribed professional indicating a direct and significant restriction on at least 2 DLA and that significant weight must be placed on the evidence of the appellant unless there is a legitimate reason not to do so.

The ministry's position is that the appellant meets criteria 1 and 2 as described above, as he is over the age of 18, and his medical practitioner has confirmed that his condition will continue for at least two years. Regarding the other three criteria, however, the ministry maintained that the Physician and Assessor reports did not confirm the appellant suffers from severe physical or mental disability. Concerning the severity of the appellant's physical condition, the ministry pointed out the evidence in the appeal record demonstrates that the appellant's chronic pain syndrome fluctuates in levels of discomfort; that he has days when he functions well and can perform daily living activities well and that when he has pain he has the support of his spouse; that his functioning skills are more in keeping with a moderate impairment. In terms of mental status, the ministry stated that the narrative in the evidence provided is not supportive of a severe mental health condition that severely limits the appellant ability to function either continuously or periodically for extend periods. Therefore, the ministry is not satisfied that the evidence provided meets the criteria for a severe physical or mental impairment and that it speaks more to a moderate degree of physical impairment.

Concerning the appellant's ability to perform DLA, the ministry submitted that the evidence demonstrated that the appellant is independent to perform most of the activities; that he requires periodic help from others on "bad days" - about one-third of the time according to the appellant information; that he makes use of medication to ease his pain and allow functionality on his "bad days"; therefore, it was not established that the appellant's medical conditions significantly restrict his ability to perform DLA either continuously or periodically for extend periods. Finally, the ministry stated that it was not determined that significant help was required to assist the appellant in performing DLA. The ministry stated that the medical condition and physical restrictions as pointed out in those reports were not sufficient to establish that the appellant met the legislative criteria for designation as a Person with Disabilities (PWD).

Severe impairment:

With respect to mental impairment, in his application for PWD designation the appellant stated that the combination of his medical conditions contributed to feelings of depression, lack of motivation, anxiety and significant sleep disturbances.

In the Physician Report the prescribed professional indicated that the appellant has suffered from depression since childhood. In the assessment of significant deficits with cognitive and emotional function, the Physician Report indicated that the appellant has deficits with emotional disturbance (e.g. depression, anxiety), motivation (loss of initiative or interest) and insomnia. The physician did not report deficits with consciousness (orientation, confusion); executive (planning, organizing, sequencing, calculations and judgement); language (oral, auditory, written comprehension or expression); memory (ability to learn and recall information); perceptual psychomotor (visual spatial); psychotic symptoms (delusions, hallucinations, thought disorders); impulse control; motor activity (goal oriented activity, agitation, repetitive behaviour) or any other deficits in attention or sustained concentration. Finally, that the appellant is periodically restricted in his social functioning due to improper impulse control and difficulties managing his finances. However, when assessing the appellant's deficits with cognitive and emotional function the physician did not mark "impulse control" as a deficit for the appellant in this category. Also, the physician did not explain how the appellant's difficulties

managing his own finances would impact his ability to make social daily decisions, interacting, relating and communicating with others. In his comments, the physician observed that the appellant suffers from "low mood with low ambition and sleep disturbance".

The Assessor Report indicated that the appellant has satisfactory ability to communicate. The report also pointed out that the appellant has restrictions with bodily functions (e.g. eating problems, toileting problems, poor hygiene, sleep disturbances) – major impact; emotion (e.g. orientation, alert/drowsy, confusion) – major impact; motivation (e.g. lack of initiative, loss of interest) – major impact; attention/concentration (e.g. distractible, unable to maintain concentration, poor short term memory) – moderate impact.

The prescribed professional did not report restrictions with consciousness (e.g. orientation, alert/drowsy, confusion); impulse control (e.g. inability to stop doing something or failing resist doing something); insight and judgement (e.g. poor awareness of self and health condition(s), grandiosity, unsafe behaviour); executive (e.g. planning, organizing, sequencing, abstract thinking, problem-solving, calculations); memory (e.g. can learn new information, names, etc. and then recall information, forgets over-learned facts); motor-activity (e.g. increased or decreased goal oriented activity, co-ordination, lack of movement, agitation, ritualistic or repetitive actions, bizarre behaviours, extreme tension); language (e.g. expression or comprehension problems – e.g. inability to understand, extreme stuttering, mute, racing speech, disorganization of speech); psychotic symptoms (e.g. delusions, hallucinations, disorganized thinking, etc); other neuropsychological problems (e.g. visual/spatial problems, psychomotor problems, learning disability, etc); or other emotional or mental problems (e.g., hostility).

With respect to social functioning, the Assessor Report indicated that the appellant can make appropriate social decisions independently and interacts appropriately with others; that he needs continuous assistance from another person to develop and maintain relationships (depressed, withdrawn and isolated), and to deal appropriately with unexpected demands (stressed and overwhelmed); that the appellant needs periodic help from another person to secure assistance from others. The prescribed professional also informed that the appellant has marginal functioning in his relationship with his immediate social network (partner, family, and friends) and with his extended social network (neighbourhood contacts, acquaintances, storekeepers, public officials, etc).

Concerning the assessment provided by the social worker in the Assessor Report with respect to the appellant's mental condition, the panel concludes that the ministry reasonably found that because the prescribed professional had no access to the appellant's medical records and saw the appellant only once – the interview for the assessment – greater weight should be given to the physician's report, which was based on a more in-depth relationship with the appellant, both in terms of the length of time (more than two years) and the frequency of visits (12 times over 12 months).

Finally, the content of the letter dated March 15, 2012 and signed by a community mental health and substance use liaison worker, submitted that the appellant "presents with symptoms of anxiety and depression. These have been long-standing and the plan is for (the appellant) to be seen by a psychiatrist..." Although future treatment by a psychiatrist is planned, the panel notes no evidence that previous treatment at this level has been provided to the appellant.

The panel finds that the collective evidence as detailed above demonstrates that the appellant's mental health does not severely impact his daily functioning. Because the evidence provided is not supportive of a severe mental health condition that significantly limits the appellant's ability to function either continuously or periodically for extended periods, the panel finds that the ministry reasonably determined that based on the evidence the appellant does not have a severe mental impairment.

In terms of the appellant's physical impairment, in his application for PWD designation the appellant stated that he suffers from arthritis, compressed discs and headaches; that he can walk less than a block, is unable to climb stairs and is able to lift only 5 to 15 lbs because of back pain and fatigue. The appellant provided a copy of a medical imaging report dated April 22, 2009, which informed that the appellant suffers from moderate C5/6 disc space narrowing; that a small circumferential disc/osteophyte complex is present, which results in mild foraminal narrowing on the right; that the other cervical levels from C3 through C1 are normal. The final impression is: "spondylosis restricted to the C5/6 level where there is mild narrowing of the right foramen".

In the Physician Report the prescribed professional indicates that the appellant suffers from degenerative disc disease in the lower cervical spine with bilateral nerve impingement; chronic myofascial pain; ankle fracture (open reduction and plate and screws). Concerning the functional skills assessment, the Physician Report stated that the appellant is able to walk unaided 1 to 2 blocks, depending on the level of pain, sometimes less; climb 5+ steps unaided; lift 15 to 35 lbs; remain seated less than 1 hour; and has no difficulties with communication.

The prescribed professional also informed that the appellant has periodic restrictions in meal preparation, daily shopping, and in his mobility outside the house; that he has continuous restriction in doing basic housework and managing his finances. The report indicated that the appellant has no restrictions with his personal self care, managing his medications, in his mobility inside his home and in the use of transportation.

The panel notes that the prescribed professional in the Physician Report changed this assessment (page 11 of the Physician Report) in a subsequent version, which was provided with an advocate-prepared questionnaire. In the new assessment, the physician indicated that the appellant was restricted in all 9 listed activities, 4 being continuously restricted and 5 periodically. However, the doctor provided no explanation for the difference between his first and second assessment, nor did the doctor indicate or explain if the appellant's medical condition had worsened during the 6 month period between the two assessments. Finally, the panel notes that this new assessment is not supported by the information provided by the same physician concerning the appellant's functional skills. Therefore the panel gives the assessment provided with the advocate-prepared questionnaire less weight.

In the Physician Report the prescribed professional added that the appellant has fluctuating levels of discomfort and has days when he functions and perform DLA well. In the advocate-prepared questionnaire, the physician stated that some assistance is required daily, but that the appellant has periods of time that he does better. The physician submitted that the appellant had informed that he is severely restricted about a 1/3 of his time. In a subsequent letter, the prescribed professional explained that "this 1/3 of the time is when the patient is severely restricted and at other times he is also significantly restricted but to a lesser degree." The doctor submitted that it was his opinion that the appellant was significantly restricted more than 50% of the time.

From the physician's assessment, the panel determines that the appellant has severe restrictions 1/3 of the time; moderate restrictions 1/6 of the time, when his restrictions are significant but to a lesser degree (which amounts to the approximately 50% of the time the doctor notes that the appellant is "significantly restricted"), and no restrictions during ½ the time when, according to the physician, he functions and performs DLA "well".

Regarding the appellant's functional skills and restriction with DLA, the information in the Assessor Report indicated small differences to the assessment provided by the physician in the Physician Report, adding that the appellant makes sporadic use of an assistive device – a cane.

The evidence submitted demonstrated that the appellant has been diagnosed with a number of health conditions but that the combination of these conditions does not significantly affect his ability to manage his physical activities including mobility. Consequently, the panel finds that the evidence demonstrates that the ministry's determination that the evidence does not establish a severe physical impairment was reasonable.

Restrictions with Daily Living Activities:

Concerning the restrictions that the appellant's impairments cause in his ability to perform his DLA, the evidence in the Physician Report demonstrated that the appellant's medical conditions directly restrict his ability to perform in the following areas:

Continuously – (1) basic housework and (2) management of finances, due to a complex regional pain syndrome. In the advocate-prepared questionnaire the physician explained that the appellant's daily pain restricts his ability to lift and carry pot/pans and do dishes; that he is forgetful at times due to pain, pain medication and depression, which impacts his ability to manage his finances. The panel notes that in assessing the appellant's deficits with cognitive and emotional function the physician indicated the appellant had no limitation with executive function – planning, organizing, sequencing, calculations, and judgement, which relates in part to the ability to manage finances.

Finally, that the appellant is periodically restricted in his social functioning due to improper impulse control and difficulties managing his finances. However, when assessing the appellant's deficits with cognitive and emotional function the physician did not mark "impulse control" as a deficit for the appellant in this category. Also, the physician did not explain how the appellant's difficulties managing his own finances would impact his ability to make social daily decisions, interacting, relating and communicating with others. In his comments, the physician observed that the appellant suffers from "low mood with low ambition and sleep disturbance".

Periodically - (1) meal preparation; (2) daily shopping; and (3) mobility outside the home, due to chronic pain syndrome. The physician also indicated that the appellant suffers periodic restriction in (4) social functioning due to improper impulse control; however, the physician did not explain why the appellant is restricted in this area since he did not note any deficit with impulse control when assessing the appellant's cognitive and emotional function.

In the Physician Report the prescribed professional specified that the appellant's periodic restrictions in the above cited DLA are for extended periods, indicating that the appellant has "fluctuating levels of discomfort and has days when he functions well and perform DLA well". In the Reasons for Request for Reconsideration, answering the advocate-prepared questionnaire, the physician added that the appellant had "periods of time that he does better" and that the appellant had informed that he was "severely restricted about 1/3 of the time". Later, with the submission for the Reasons for Appeal the same physician submitted that "this 1/3 of the time is when the patient is severely restricted and at other times he is also significantly restricted but to a lesser degree." The doctor submitted that it was his opinion that the appellant was significantly restricted more than 50% of the time. From the physician's assessment, the panel determines that the appellant has periodic, severe restrictions amounting to 1/3 of the time; moderate restrictions 1/6 of the time, when his restrictions are significant but to a lesser degree (which amounts to the approximately 50% of the time the doctor notes that the appellant is "significantly restricted"), and no restrictions approximately ½ the time when, according to the physician, he functions and performs DLA "well".

No restrictions – The prescribed professional indicated that the appellant has no restrictions in the following DLA: 1) personal self care; (2) management of medication; (3) mobility inside the house; and (4) use of transportation.

The panel notes that the new assessment provided with the advocate-prepared questionnaire and answered by the same prescribed professional, has changed the findings related to the appellant's restrictions with DLA. In this new assessment, the physician indicated that the appellant was restricted in all 9 listed activities, 4 continuously restricted and 5 periodically. However, the doctor provided no explanation for the difference between his first and second assessment, nor did the doctor indicate or explain if the appellant's medical condition had worsened during the 6 month period between the two assessments. Finally, the panel notes that this new assessment is not supported by the information provided by the same physician concerning the appellant's functional skills. Therefore the panel gives the assessment provided with the advocate-prepared questionnaire less weight.

The evidence in the Assessor Report demonstrated that the appellant's medical conditions directly restrict his ability to perform in the following areas:

Continuously - (1) basic housekeeping; (2) shopping; (3) managing his medications (needs help and reminders); (4) ability to develop and maintain relationships; and (5) dealing appropriately with unexpected demands. With respect to restrictions with Social Functioning the report indicated that the appellant is depressed, withdrawn, isolated, stressed and overwhelmed. In doing shopping, the prescribed professional indicated that the appellant has continuous restrictions reading prices and labels, making appropriate choices and paying for his purchases. However, the social worker has indicated previously in the same report that the appellant's ability to communicate (speaking, reading, writing and hearing) is satisfactory and did not explain the appellant's restriction in reading prices and labels or making appropriate choices while shopping. Also, the professional did not explain the reason she indicated the appellant's restriction to pay for his purchases when doing his shopping if in the same report the prescribed professional indicated that the appellant was able to do his budgeting and pay rent and bills. Finally, concerning the appellant's continuous restriction managing his medications (filling/refilling prescriptions and taking as directed), the panel notes that in the Physician Report the physician indicated the appellant has no restrictions with this DLA. Based on the fact that the social worker did not have access to the appellant's medical records and that the physician's length and frequency of contact with the appellant in contrast to the one and only session conducted by the assessor – the interview for the assessment -- the panel concludes that the ministry reasonably found that precedence should be given to the information provided in the Physician Report.

Periodically – (1) meal preparation; (2) banking; (3) using transit schedules and arranging transportation (poor executive functions); (4) to secure assistance from others. The panel points out that the prescribed professional did not explain why the appellant is restricted using transit schedules and arranging transportation because of poor executive functions. Similarly, the social worker offered no explanation as to why the appellant needed periodic assistance with banking yet was able to manage budgeting and the payment of rent and bills independently. The evidence in the Physician Report demonstrated that the appellant has no limitations with executive function (planning, organizing, sequencing, calculations, and judgement) to base a finding of restrictions in these activities (banking, using transit schedules and arranging transportation).

Takes significantly longer than typical to perform – (1) Personal Care; (2) housekeeping; (3) shopping; (4) meal preparation; (5) banking; (6) managing his medications; and (7) with transportation. The prescribed professional informed that the appellant takes at least 3-5 times longer to perform all these DLA.

No restrictions – the Assessor Report indicated that the appellant has no restrictions performing (1) safe storage of food (ability, not environmental circumstances); (2) budgeting and paying bills and rent; (3) safe handling and storage of medications; (4) making appropriate social decisions and interacting appropriately with others.

Based on all of the evidence submitted and the above consideration, the Panel finds that 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.

Assistance with Daily Living Activities:

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 reports that he lives with his family, receives periodic assistance from his spouse, and makes intermittent use of a cane as an assistive device. 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.