

PART C – Decision under Appeal

The decision being appealed is the August 1, 2012 reconsideration decision of the Ministry of Social Development (the “Ministry”) which denied the Appellant Persons with Disabilities (“PWD”) designation. The Ministry determined that the Appellant had not met all of the required criteria for PWD designation as set out in section 2(2) of the Employment and Assistance for Persons with Disabilities Act (the “EAPWDA”). Specifically the Ministry was not satisfied that the Appellant has a severe mental or physical impairment that:

1. In the opinion of a medical practitioner is likely to continue for at least 2 years; and,
2. In the opinion of a prescribed professional:
 - (i) directly and significantly restricts his ability to perform daily living activities either continuously or periodically for extended periods; and,
 - (ii) as a result of those restrictions he requires help to perform those activities.

The Ministry was satisfied that the Appellant has reached 18 years of age.

PART D – Relevant Legislation

Employment and Assistance for Persons with Disabilities Act (the “EAPWDA”) Section 2(2) and 2(3).

Employment and Assistance for Persons with Disabilities Regulation (the “EAPWDR”) Section 2.

PART E – Summary of Facts

The Ministry sent a message to the Panel that it would not attend the hearing and it did not appear at the hearing. The Panel confirmed that the Ministry was notified of the hearing and then proceeded with the hearing under section 86(b) of the Employment and Assistance Regulation.

For its reconsideration decision the Ministry had the following evidence:

1. Appellant's April 30, 2012 PWD application consisting of:
 - a. Self report.
 - b. Physician's Report (the "PR") dated May 3, 2012 and completed by the Appellant's family physician who indicated that the Appellant had been his patient for 3 years and that he had seen the Appellant for 11 or more times in the 12 months preceding the report.
 - c. Assessor's Report (the "AR") dated April 30, 2012 and completed by a social worker who indicated she had known the appellant for 2 weeks and that this was her first contact with the applicant. The social worker also indicated she had seen the Appellant 2-10 times in the year preceding the report.
 - d. Letter dated February 21, 2012 from a neurologist to the Appellant's family doctor.
 - e. Letter dated March 6, 2012 from the Appellant's family doctor to the Ministry.
2. Appellant's July 26, 2012 Request for Reconsideration with a statement from the Appellant and a letter dated July 25, 2012 from the Appellant's family physician who completed the PR.

In his self-report the Appellant listed his health challenges as follows:

1. Cyst on the back of his brain affecting his eyesight.
2. Seizures, black-outs and grey out. He wrote that he had about 12 major seizures since November 2011 that he knows about. His friends tell him that they frequently observed that he goes blank and is not in focus or present.
3. Childhood epilepsy until age 11.
4. Loss of peripheral vision in the left eye and left eye wanders without glasses causing migraine headaches.
5. High blood pressure.
6. Driver's license taken away because of sight and seizure impairments.

As for how his health challenges affect his daily living, the Appellant stated that he can generally do all personal hygiene routines, but finds that he blanks out (grey-outs) for short moments. He has not suffered injuries to this point. The Appellant wrote that generally he has grey-out events at irregular and unpredictable times. He will be doing something and then wonders why he was doing it. He will also find himself headed in directions that he had not planned to go and when he becomes aware again he makes the necessary changes. He stated that his friends frequently comment that he can go blank for short moments. He does not remember most of these but he trusts his friends.

The Appellant also wrote that major seizures tend to occur more often in the night and early morning. He has fallen out of bed because of them. The Appellant stated that he had room mates who reported that he thrashed about and they had a very hard time waking him. He indicated that they were so concerned that they phoned the ambulance 3-4 times to admit him to the hospital. The Appellant also stated that he called the ambulance a couple of times himself. He has found himself on the floor with his dog licking his face trying to wake him. The Appellant indicated that although he does not remember the major seizures, he always knows when one has occurred because it leaves

him with a migraine headache for extended periods, and he is disoriented and very weak. He wrote that the disorientation can last between 30-60 minutes.

In the PR the doctor described the Appellant's diagnoses as epilepsy with cerebral cyst (onset December 2011) and peripheral visual field defect (onset June 2009). Regarding the severity of the Appellant's medical conditions the doctor wrote: "currently uncontrolled generalized seizures, treated and maintained, not yet controlled; associated cerebral parenchymal cyst likely as primary cause; associated secondary visual field loss bilaterally." The doctor indicated that the Appellant has not been prescribed any medications or treatments that affect his ability to perform daily living activities. The doctor also answered "no" to the question whether the impairment was likely to continue for 2 years or more from the date of the report. The doctor added: "anticipated symptomatic improvement within the span of one year may allow [appellant] to return to safe functional ability."

For functional skills the doctor indicated that the Appellant can walk 4+ blocks unaided on a flat surface, climb 5+ stairs unaided, and has no limitations with lifting or remaining seated. The doctor also noted that the Appellant has significant deficits with cognitive and emotional function, and specifically with consciousness, perceptual psychomotor (visual spatial) and motor activity. The doctor added: "seizure disorder for current high risk for recurrence and possible safety concerns." As for restrictions to daily living activities, the doctor indicated that all aspects of daily living activities listed in the PR are periodically restricted; that is, personal self care, meal preparation, management of medications, basic housework, daily shopping, mobility inside and outside the home, use of transportation, management of finances and social functioning. Regarding the term "periodic" the doctor explained: "periodic unpredictable episodes of seizures that can affect all areas of functioning". As for degree of restriction the doctor wrote: "unpredictable, unprovoked seizures still a current concern."

In the PR the doctor added the following additional comments: "This patient has a combined impact in terms of visual field and seizure disorder secondary to a cerebral cyst." The doctor indicated that he is currently managing these risks with an ophthalmologist and a neurologist. He also wrote that: "It may take up to a year before we will have a sense of safety/return to function and the impact may be indefinite."

The social worker noted in the AR that the Appellant's ability to communicate is satisfactory, but ranges from poor to unable in terms of speaking, reading, writing and hearing during seizure episodes or migraines. She added: "less likely or unable to carry on communication." As for mobility, the social worker indicated that the Appellant takes significantly longer with all aspects; that is, walking indoors and outdoors, climbing stairs, standing, lifting, and with carrying and holding. She added; "all is possible unless in an episode of seizure or during a migraine, when such actions are limited to impossible."

Regarding impacts to the Appellant's cognitive and emotional functioning, the social worker indicated major impacts to consciousness – specifically orientation and confusion, adding "following an episode of epilepsy and to a lesser degree, migraine"; to emotion – specifically anxiety, depression adding "loss of meaning in life, would rather work"; to attention/concentration "lapses during episodes"; and, to language – specifically inability to understand, mute, disorganization of speech "during episodes. The social worker noted minimal to moderate impacts to executive and to memory, adding "can learn

but more slowly". She also noted minimal to moderate impact to motivation. The social worker indicated minimal impact to bodily function, impulse control, insight and judgment, and to motor activity, and no impact on psychotic symptoms or other neuropsychological problems. The social worker added that the Appellant "wants very much to be able to contribute and use the many skills he has learned but is inhibited and prevented by these impairments. Very let down by these problems."

As for assistance required with daily living activities, the social worker indicated that the Appellant needs continuous assistance with all aspects of personal care, basic housekeeping and shopping, and all of these take significantly longer. She added "can perform DLAs while always aware of possibility of seizure and aftermath at any time, then unable." The social worker also indicated that the Appellant needs continuous assistance with and takes significantly longer with all aspects of meals, paying rent and bills, and medications. As for transportation the social worker noted that the Appellant needs continuous assistance with getting in and out of a vehicle, with using public transit, and with using transit schedules and arranging transportation. He also takes significantly longer getting in and out of a vehicle. The social worker added "public transit is a difficult option due to episode possibilities. Also limited to day time hours only. Every other hour. No evening or night time hours."

Regarding restrictions to social functioning, the social worker did not complete the assistance portion; however, she did write that the Appellant is "very socially capable, but still has ongoing concerns about seizure activity". She indicated that the Appellant has good functioning with his immediate social network, adding, "has good relationships with family and friends, but all have own activities and responsibilities." He has marginal functioning with extended social networks and "is vulnerable when in public alone with possibilities of seizure." The social worker indicated that the Appellant receives assistance from family and friends, adding "when they are available, they will assist." She noted no assistance provided by assistance animals or assistance devices.

In the February 21, 2012 letter, the neurologist wrote that the Appellant described recurrent episodes which typically occur when he is asleep. He has been witnessed to have what sounds like generalized tonic-clonic seizures in his sleep, lasting 2 minutes and resulting in evaluation at an emergency department. The doctor wrote that the Appellant had an episode about a week before when he woke up on the floor next to his bed, and two weeks ago when he woke up on the living room floor after watching television. The Appellant estimated he lost awareness for 10-12 minutes and he has had similar episodes over the past 3-4 months. He has been advised to stop driving and has started on Dilantin, currently 700 mg daily in two divided doses. The neurologist wrote that the Appellant also acknowledged episodes in which friends commented that he seemed to not be paying attention, up to minutes in duration. The Appellant also described sensations when he feels "like something is missing – something not right – it's the same – it's hard to explain". The Appellant has had such episodes over the past year and recalled similar ones in his teens, up until his early 20s.

The neurologist wrote that the Appellant was treated for childhood epilepsy between the ages of about 6-11 and was treated with Dilantin and Phenobarb. The Appellant achieved grade 12 but felt that although he is able to think in a normal fashion, his reasoning might be somewhat slower than average. The neurologist stated that the Appellant recently was noted to be hypertensive and was started on ramipril about 3 months ago. The Appellant has been advised that his vision is poor through his left eye and he feels he may have had poor vision for about a year on the left side. The

Appellant has been advised not to drive until further notice because of the visual concerns and possible seizures. The neurologist noted that there was a dense left homonymous hemianopia to confrontation testing, a mild drift into pronation of the left arm and plantar response was equivocal/withdrawal bilaterally with normal muscle tone and reflexes.

In the March 5, 2012 letter the Appellant's family doctor wrote that the Appellant has a seizure disorder which is currently unstable and not yet under control. He is continuing with management provided by the doctor and neurologist. The doctor wrote that the Appellant should be considered disabled from his current employment due to safety risks until such time as they can prove stable functioning in the absence of seizures for at least 6 months. The doctor indicated that it is difficult to estimate the total term of disability but it is likely that the term of disability would extend for 6-12 months from March 5, 2012.

In his request for reconsideration the Appellant wrote that due to his medical condition he is unable to support himself. Rent, hydro, phone and food are just a few things he cannot afford without assistance. His phone is something that his physician and his various specialists insist that he have for emergency situations, but his phone is not covered by the provincial medical services plan. He stated that he has no family to help support him or help him in any way, shape or form. The Appellant wrote that he if wants to go anywhere, such as for medical appointments or tests he is not allowed to drive anymore. This means he has to use public transit or taxis, and neither is cheap. He wrote that with his basic assistance he is unable to take care of these things, after paying his rent, hydro and food. There is no money left to pay for transportation or for a phone or anything else if needed. The Appellant indicated that his physician has also suggested he take up swimming which is not only good for his health but also for concentration. But this is not covered by the provincial medical services plan either.

The Appellant's family physician addressed his July 25, 2012 letter to the Ministry. He wrote that he reviewed correspondence dated May 30, 2012 that was sent to the Appellant, and in which the nature of the Appellant's disability and its impact on employability were questioned. The physician stated he was writing the July 2012 letter in his capacity as family physician to the Appellant, a gentleman who currently still, in his opinion, is prevented from gainful employment on account of a medical condition. The physician wrote that his report indicated that the Appellant cannot do his job but that this would not prevent him from doing any suitable work within his limitations. The physician pointed out that the form as designed does not specifically ask questions about alternative types of occupation, just directs doctors to outline the medical condition at hand. The physician wrote that he wanted "to make it absolutely clear that at this time that [the Appellant] has a seizure disorder currently considered disabling and dangerous." The physician added that they are continuing to adjust and improve the Appellant's medication strategies with the hope to render him seizure free. Also, "while his job certainly poses a high risk to his safety and the safety of others, it is undoubtedly true that other occupations could pose similar risks as he could have frequent unpredictable seizures." The doctor added that the Appellant's mobility is severely curbed on account of not being able to drive on the recommendation of the ophthalmologist, neurologist and himself. The doctor further indicated that the typical protocol is for neurologists to recommend a minimum of six months of driving prohibition and in some cases one year. The doctor wrote that that is why the form indicated that the Appellant might have an absence from the ability to continue working for 6-12 months.

In his notice of Appeal the Appellant wrote that he is unable to work. His doctor is concerned that his seizures put him and others at risk in the workplace. The Appellant stated that currently he is having 1-2 seizures per week for which he requires ambulatory care.

At the hearing the Appellant said that his family doctor told him it will take about 6 months to 1 year to assess whether his seizure condition will last more than 2 years. The seizures started in about November 2011 and the Appellant feels that he will hit the 2 year requirement by the time the doctor does his assessments. The Appellant said that according to his doctor, it will also take 6 months to 1 year to determine if the medications and treatments will get his seizures under control and take him out of the "danger zone". He said that his doctor describes this as being able to go out safely and even work. In the meantime, the Appellant said he sits around with not much to do.

The Appellant stated that he is taking Carbamazepine for seizure prevention and control, and Olmesartan medoxomil for his blood pressure. The Appellant said the medications make him drowsy and he needs a 3-4 hour nap during the day. The seizure medication also affects his blood pressure and so he needs medication for that. Because of the unpredictable seizures the Appellant said he could not go to major industrial or commercial zones where he worked as a traffic controller. He also cannot work at that job because he has to have a driver's licence for his traffic control ticket. His doctors have taken away his license.

The Appellant said his last seizure was about 2- 3 weeks ago when his medication was changed. Before then he had 2-3 seizures a week and up until April he was experiencing 2-3 a day. The Appellant described his seizures as sporadic. He doesn't know when he will have one. Sometimes he gets a migraine about half an hour before, but not always. The Appellant also said he loses his memory for the period of about half an hour before a seizure. His ophthalmologist said that the cyst at the back of his brain is giving him the seizures and is affecting his eyesight, especially his peripheral vision.

The Appellant stated that at present he lives by himself. He said he does his meals on his own and for the most part does not have a problem with them. However, he worries about having a seizure with the memory loss and then burning things. The Appellant also said he worries when he showers that he will end up on the floor with a seizure. He stated that he gets around mainly on foot and occasionally uses the bus. He lives close to places he can walk to. However, he said his assistance payments only cover rent, groceries and utilities, so he does not have much left for transportation.

At the hearing the Appellant also submitted copies of the following documents:

1. Pharmacy information sheets regarding the side effects and cautions for the following medications – Olmesartan Medoxomil (for hypertension) and Carbamazepine (for seizure prevention and control).
2. Letter dated December 8, 2011 from his family doctor to Service Canada stating that the Appellant is undergoing consultant reviews and specialized investigations to determine his ability to safely return to driving. This might not be until mid February 2012 when all appropriate consultations and investigations would be done.
3. Letter dated February 21, 2012 from the neurologist to the Appellant's family doctor. Page 1 of this letter is in the appeal record and described above. The second page of the letter indicates that a CT brain scan show a SCF density cystic area occupying the occipital, parietal and temporal lobes on the right side. The history suggests partial seizures as well as generalized seizures of an epileptic nature,

likely related to the Appellant's underlying congenital brain cystic anomaly. His visual field defect is likely attributable to the same cause. The neurologist stated that he encouraged the Appellant to stay on Dilantin and also provided a prescription for Topamax. The neurologist also stated that if the Appellant continues to experience partial or generalized seizures that the doctor should ask the Appellant to gradually increase the dosages. The neurologist indicated that the Appellant should not drive until his vision has been formally assessed. If the Appellant achieves complete control of all seizures, remains compliant on medications and seizure free for 6 months he could resume driving with his class 5 license. The neurologist also wrote that pending resolution of these medical issues, he believes that the Appellant should qualify for some disability income supplement and indicated this report should be used if necessary to support such an application.

4. Letter dated May 22, 2012 from the same neurologist to the Appellant's family doctor stating that the Appellant may have had one or two seizures during his sleep since he saw him on February 21, 2012. The neurologist reviewed the Appellant's medications and dosage, and wrote that the Appellant is experiencing some episodic feel of postural instability, like he was drunk, with partial loss of balance. The neurologist indicated that there was no change in the neurologic examination. According to the neurologist, the episodic instability was likely a side effect of the Appellant's medication dosages. The neurologist reviewed alternative medications and stated that if there are continued problems with seizures, an alternative anticonvulsant may be necessary.

5. Letter dated June 13, 2012 from the Appellant's family doctor to Service Canada which is the same as the letter in the appeal record dated July 25, 2012 and described above.

The Panel finds that the Appellant's oral testimony, his written statement in his notice of appeal, and the documents he submitted at the hearing are all related to information that the Ministry had at the time of reconsideration regarding the Appellant's health conditions and his doctors' opinions. Therefore the Panel admits all of these as being in support of the evidence that the Ministry had for its reconsideration decision pursuant to section 22(4) of the Employment and Assistance Act.

Because the Ministry did not appear at the hearing the Panel will consider its reconsideration decision to be its position in this appeal.

PART F – Reasons for Panel Decision

The issue in this appeal is whether the Ministry reasonably determined that the Appellant is ineligible for PWD designation because he did not meet all of the requirements in section 2(2) of the EAPWDA, and specifically that he does not have a severe mental or physical impairment that: in the opinion of a medical practitioner is likely to continue for at least 2 years; in the opinion of a prescribed professional directly and significantly restricts his ability to perform daily living activities either continuously or periodically for extended periods; and, also in the opinion of a prescribed professional, as a result of the restrictions, he does not require help to perform those activities.

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.

The "daily living activities" referred to in EAPWDA section 2(2)(b) are defined in the following section of the EAPWDR:

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 Panel will consider each party's position regarding the reasonableness of the Ministry's decision under the applicable PWD criteria at issue in this appeal.

Duration of Impairment

In its reconsideration decision the Ministry referred to the Appellant's family doctor's opinion that symptomatic improvement within one year may allow a return to safe functional ability. The Ministry cited the doctor's March 5, 2012 letter in which he stated it was difficult to estimate the total term of disability but would likely extend for 6-12 months from that date.

The Appellant acknowledged that his doctor initially told him the assessment of his condition and return to safe functional abilities would take 6-12 months. However, the Appellant submitted that he was given the same time frame again in August 2012 by his doctor. Therefore, his position is that by

the time the doctor completes the assessment the required 2 years will have gone by, and even by then there is no certainty that the seizures will have stopped.

The Panel notes that the legislation setting out the criteria for PWD designation requires a medical practitioner to confirm that an applicant's severe impairment is likely to continue for at least 2 years. In this case, in the PR completed on May 3, 2012 the Appellant's family doctor answered "no" to the question "is the impairment likely to continue for two years or more from today?" The evidence from the same doctor, including information in the PR, indicates that he expects to make a final verdict about a return to safe functioning ability after the Appellant undergoes assessments and treatments for 6-12 months. The Panel also finds that there is no firm statement from the neurologist or ophthalmologist indicating that the Appellant's impairment is likely to continue for two years or more. Therefore the Panel finds that it was reasonable for the Ministry to conclude that in the opinion of a medical practitioner the Appellant's impairment is not likely to continue for at least 2 years.

Severe Impairment

In the reconsideration decision the Ministry indicated that it reviewed the information from the family doctor in the PR, from the social worker in the AR, the letter from the neurologist dated February 21, 2012, and the March 5, 2012 and July 25, 2012 letters from the Appellant's family doctor. The Ministry determined that the family doctor reported no untoward functional skill limitations and the social worker indicated mobility/physical abilities were performed independently except during a seizure or migraine. The Ministry decided that there was no evidence to demonstrate a significant functional limitation either continuously or periodically for extended periods and therefore it was not satisfied that the information constituted a severe physical impairment.

In terms of mental status the Ministry cited the doctor's report of deficits to cognitive and emotional function in 3 areas as well as the doctor's additional notes. The Ministry also cited the assessor's reports of impacts on daily functioning after an episode of epilepsy and a lesser degree during a migraine. However, the Ministry decided that the narrative did not support a severe mental health condition that significantly limits the Appellant's ability to function either continuously or periodically for extended periods, and therefore it was not satisfied that the information provided was evidence of a severe mental impairment.

The Appellant's position is that his health conditions severely impair his abilities to function. His seizures are unpredictable so the risk to him is continuous. His seizures result in loss of memory and black-outs or grey-outs. He has seizures 1-2 times a week when he blanks out. His friends have reported that he thrashed about and they had a very hard time waking him. They phoned the ambulance 3-4 times to admit him to the hospital. The Appellant stated that he called the ambulance a couple of times himself. He has also found himself on the floor with his dog licking his face trying to wake him. The Appellant indicated that although he does not remember the major seizures, he always knows when one has occurred because it leaves him with a migraine headache for extended periods. He is disoriented and very weak after his seizures. He wrote that the disorientation can last between 30-60 minutes. The Appellant also indicated that the medications he takes make him drowsy and he also loses his balance. He referred to the various letters and reports from the doctors and the social worker.

The Panel notes that in the PR the Appellant's family doctor described the severity of the Appellant's

medical conditions as "currently uncontrolled generalized seizures, treated and monitored, not yet controlled". In the same report, the doctor noted that the Appellant did not have restrictions in aspects of physical functionality such as walking, lifting, etc. The doctor did indicate that the Appellant had significant deficits with cognitive and emotional function, specifically in the areas of consciousness, perceptual psychomotor and motor activity during seizures. Also, the doctor noted that all aspects of daily living activities listed in the PR were periodically restricted and then explained "periodic" as "periodic unpredictable episodes of seizures that can affect all areas of functioning". To explain degree of restriction the doctor wrote "unpredictable, unprovoked seizures still a current concern." In July 2012, the same doctor wrote that he wanted to make it absolutely clear that the Appellant has a "seizure disorder currently considered disabling and dangerous", and he "could have frequent unpredictable seizures." However, the Panel finds that the doctor did not report that the Appellant's seizure episodes or their after affects continuously impaired the Appellant's physical or mental functioning. Nor did the doctor report that the Appellant's condition results in periodic restrictions over an extended time.

The Appellant also described his seizures as frequent and unpredictable, and causing him to worry about his safety. In addition, he stated that he is disoriented and weak after a seizure. However, the Appellant also stated that he can function and manage his daily living activities, except when he has seizures, which he said had been occurring 1-2 times a week. The Panel finds that the family doctor, the social worker and the Appellant all described the Appellant's seizures as episodic in nature and as affecting his daily functioning when they occur. However, their evidence does not indicate long term or extended durations of impairment from the seizures. Therefore, based on all of the evidence, the Panel finds that it was reasonable for the Ministry to determine that the Appellant does not have a severe physical or mental impairment.

Restrictions to Daily Living Activities

In its reconsideration decision the Ministry referred to the family doctor's report of periodic restrictions to all daily living activities and his explanation of periodic as "periodic unpredictable episodes of seizures that can affect all areas of functioning". The Ministry determined that while unpredictable, the episodes of seizure are not described as continuous or periodic for extended periods of time. The Ministry also referred to the social worker's report that continuous assistance is required with all daily living activities during a seizure, and that the Appellant is independently able to perform all aspects of social functioning. Based on this review the Ministry concluded that all daily living activities are performed independently except during seizure activity which is not continuous or periodic for extended periods of time. Therefore the Ministry determined that the information from the prescribed professionals does not establish that the Appellant's impairment significantly restricts his daily living activities either continuously or periodically for extended periods.

The Appellant's position is that the doctor and the social worker have reported that his seizure condition is episodic in nature, and that during those episodes his daily living activities are significantly restricted.

Section 2(2)(b) of the EAPWDA requires the opinion of a prescribed professional to satisfy the requirements in section 2(2)(b)(i) and (ii). In this case, both the Appellant's family doctor and the social worker are the prescribed professionals. The family doctor, in the PR, specifically indicated that the Appellant's impairment directly restricts his ability to perform all the daily living activities listed

in the PR, which are similar to those activities defined in section 2 of the EAPWDR. Also, the doctor explained periodic as "periodic, unpredictable episodes of seizures that can affect all areas of functioning." The social worker also reported restrictions to daily living activities during episodes of seizure or migraine. For example, for aspects of mobility she added "all is possible unless in an episode of seizure or during a migraine when such actions are limited to impossible." The social worker also reported marginal functioning in extended social networks, adding "is vulnerable when in public, alone with possibilities of seizure."

The Panel finds that, although the prescribed professionals in this case described the unpredictable, episodic and dangerous nature of the Appellant's seizure condition, neither the doctor nor the social worker described the restrictions to daily living activities as continuous. Nor did they indicate that the Appellant experienced restrictions over extended periods during or after a seizure. Therefore based on all of the evidence from both prescribed professionals, the Panel finds that it was reasonable for the Ministry to determine that the Appellant's impairment does not directly and significantly restrict his ability to perform daily living activities continuously or periodically for extended periods.

Help with Daily Living Activities

The Ministry decided that because it determined that the Appellant's daily living activities are not significantly restricted by a severe impairment it could not determine that significant help is required from other persons. It did note that no assistive devices are required.

The Appellant relied on the information in PR and the AR, and the letters from his doctors.

Section 2(3)(b) of the EAPWDA states that for the purposes of subsection (2) 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. In this case the Panel notes that the prescribed professionals indicated that no help was provided by an assistance animal or assistive devices. In the AR, the social worker reported only that help is provided by family and friends when they are available. Therefore, based on the evidence, the Panel finds that it was reasonable for the Ministry to determine that as a result of his restrictions the Appellant does not require help to perform daily living activities.

Panel Decision

The Panel finds that the Ministry's reconsideration decision was reasonable based on all of the evidence. Therefore the Panel confirms that decision.