

### PART C – Decision under Appeal

The decision under appeal is the Ministry of Social Development (ministry) reconsideration decision dated August 23, 2012 which found that the appellant did not meet three of the five statutory requirements of Section 2 of the Employment and Assistance for Persons with Disabilities Act for designation as a person with disabilities (PWD). The ministry found that the appellant met the age requirement and that his impairment is likely to continue for at least two years. However, the ministry was not satisfied that the evidence establishes that he has a severe physical or mental impairment. The ministry was also not satisfied that the appellant's daily living activities (DLA) are, in the opinion of a prescribed professional, directly and significantly restricted either continuously or periodically for extended periods. As the ministry found that the appellant is not significantly restricted with DLA, it could not be determined that he requires the significant help or supervision of another person, the use of an assistive device, or the services of an assistance animal to perform DLA.

### PART D – Relevant Legislation

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

## PART E – Summary of Facts

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

- 1) Person With Disabilities (PWD) Application: applicant information dated March 6, 2012, physician report dated February 27, 2012, and assessor report dated May 24, 2012;
- 2) A copy of the original decision summary dated July 18, 2012; and,
- 3) Request for Reconsideration.

The ministry did not attend the hearing. After confirming that the ministry was notified, the hearing proceeded under Section 86(b) of the Employment and Assistance Regulation. The appellant stated that he had an advocate assist him with the process but he wished to proceed with the hearing and represent himself.

At the hearing, the appellant stated that he has had two heart attacks and a broken spine, that his 5th and 6th vertebrae are sideways because of a previous injury, that he has no cartilage in his right knee and torn cartilage in his left hip. The appellant stated that he has a heck of a time walking any duration, that he cannot stand for any length of time and he cannot climb stairs or hills. The appellant stated that he uses his cane all the time, every day. The appellant stated that he cannot pick things up off the floor, that he cannot squat. The appellant stated that he does not have any carrying ability, that he finds it hard. The appellant stated that his body has taken a beating with various industrial accidents. The appellant stated that he can have emotional outbursts when he is in a lot of pain, that he goes through spasms in his back so often and it scares people, it puts them on edge. The appellant explained that the spasm looks a bit like an epileptic seizure but "feels like leaning against an electric fence", that he gets them in his back and legs, that he gets them "all the time", sometimes 20 to 30 per day, sometimes every day for a month and sometimes none at all. The appellant stated that he has difficulty sleeping because he also gets spasms in his sleep. The appellant stated that his jaw is also very painful and he sometimes gets migraine headaches and can be vomiting within 10 minutes. The appellant stated that he was given a cart and there is a grocery store nearby so he can do his shopping and a girl who lives next door helps him with his dishes and laundry. The appellant stated that he has to sit down now to get dressed since he has fallen getting dressed.

The appellant stated that he has problems with his short term memory, that he used to work at a shelter and when someone would call with a message he sometimes would forget the message before he had a chance to write it down. The appellant stated that whereas he used to be good at multi-tasking, now he can only do one task at a time. The appellant stated that he has also experienced a couple of nervous breakdowns due to trying to keep up with changing jobs, trying to do a job properly with the challenge of a lack of education. The appellant stated that he went through severe trauma as a child growing up, that he first ran away from home at the age of 8, that he was hit by a drunk driver at the age of 12 and had black-outs every other day and he still occasionally has black-outs and he does not do well with stress. The appellant stated that he takes anti-depressant medications, that he has attempted suicide 3 times but he has not been referred to a psychiatrist. The appellant stated that when he brought the reports to his physician to have them filled out, the doctor asked him a few questions but he got the impression that the doctor was in a rush, that he wanted to get them completed and get him out of his office. The appellant stated that the doctor was going to refer him to a specialist for nerve testing, but that never came about.

In his self-report included in the PWD application, the appellant states that he has depression, degenerative disc disease in his lower back and osteoarthritis in his right knee. The appellant explains that he has chronic back pain all the time which prevents him from walking very far, a few city blocks. With climbing stairs, going down is more painful than going up, that he needs to hold on to the rail to get to the next step. The appellant states that he uses a cane all the time for stability and this makes it hard for carrying anything. The appellant states that he has been taking medication for depression for the past 8 months but he does not always remember to take them, and he has gone to counseling in the past. The appellant states that he is not always on top of cleaning his room, that sometimes the pain in his knee and back is such that he cannot attend to daily living activities. The appellant states that although his doctor said that he could lift up to 35 lbs., this is not correct as he needs to use a cane for mobility and he would not be able to lift that weight and stay on his feet.

In his Request for Reconsideration, the appellant states that his depression has been an issue for him all his life. The appellant states that he has spent time in prison and he has continued to have many ongoing issues with adjusting into society. The appellant explains that when he was hit by a drunk driver at the age of 12, he ended up in hospital for about 6 months with over 100 fractures and he suffered black-outs for over 3 years. The appellant states that he is currently in a treatment program for addiction issues. The appellant states that he is not able to walk any distance due to pain, that he might be able to walk 4 blocks but it takes him a considerable amount of time to do so, that it takes him 30 minutes to walk 4 flat city blocks since he often stops to rest. The appellant states that if he could lift 15-35 lbs., he could not walk anywhere and could not pass it to anyone and would not be able to move by the end of the day.

The physician who completed the physician report indicates the appellant has been his patient for 2 years and that he has seen the appellant 11 or more times in the past 12 months. In the physician report, the physician confirms a diagnosis of depression, anxiety (1960), degenerative disc disease (1970's) and right knee osteoarthritis (1970's). In describing the severity of the medical condition relevant to the appellant's impairment, the physician notes "...he complains that he has aching in his back with spasms, it feels like it gives out, he has spasms in his calves and right and left buttocks, his left hip goes out and he loses his balance, he has difficulty going up stairs and crouching to the floor, he has constant pain in his right knee." The physician indicates that the appellant has not been prescribed medications or treatments that interfere with his ability to perform daily living activities (DLA) and he does require a cane for balance and support. The physician reports that the appellant can walk 4 or more blocks unaided on a flat surface, that he cannot climb any steps unaided, that he can lift 15 to 35 lbs. and can remain seated for less than 1 hour. The physician indicates that there are no difficulties with communication. The physician reports that there are significant deficits with cognitive and emotional function in the areas of memory, emotional disturbance, motivation and attention or sustained concentration, with the comment that "...he is treated for depression which has stabilized on medication." The Physician has not responded to the question whether the impairment directly restrict his ability to perform DLA but goes on to assess the appellant as not restricted with the DLA of personal self care, meal preparation, basic housework, daily shopping, use of transportation, and management of finances. The physician reports that the ability is restricted on a periodic basis with mobility inside the home ("he has balance problems which cause him to fall") and restricted on a continuous basis with mobility outside the home. Although the physician does not assess restrictions to social functioning, he notes that the appellant "does not socialize much." For a description of the assistance the appellant needs with DLA, the physician has written "none."

The physician also prepared the assessor report and indicates that the appellant has a good ability to communicate in all areas. The physician indicates that the appellant uses an assistive device (cane) with walking indoors and walking outdoors, that he uses an assistive device (railing) for climbing stairs and an assistive device for standing ("poor balance"), and requires continuous assistance from another person with lifting and carrying and holding ("he drops things"). The physician indicates that the appellant is independent with all tasks of personal care including dressing, grooming, bathing, toileting, feeding self, regulating diet, and with transfers in/out of bed and transfers on/off chair, with no other explanation or description provided. The physician reports that the appellant requires periodic assistance from another person with doing laundry and with basic housekeeping, with no further comments. The physician indicates that the appellant is independent with most tasks of shopping, including reading prices and labels, making appropriate choices, and paying for purchases, while requiring periodic assistance with going to and from stores and continuous assistance with carrying purchases home ("he uses a buggy"). The physician reports that the appellant is independent with all of the tasks of managing meals, including meal planning, food preparation, cooking and safe storage of food. The physician indicates that the appellant is independent with all tasks of paying rent and bills including banking and budgeting. The physician also indicates that the appellant is independent with managing medications (filling/refilling prescriptions, taking as directed and safe handling and storage), and with managing transportation, with no further comments provided.

The physician reports there are major impacts to the appellant's cognitive and emotional functioning in the areas of bodily functions, emotion, attention/concentration and motivation, as well as moderate impacts in insight and judgement, executive and other emotional or mental problems ("has spasms in muscles, gets depression"). The physician assesses minimal or no impact on the remaining 7 areas of functioning. For social functioning, the physician has assessed the appellant as independent in all areas, including with making appropriate social decision, developing and maintaining relationships, interacting appropriately with others, dealing appropriately with unexpected demands, and securing assistance from others. The physician indicates that the appellant has marginal functioning in both his immediate and extended social networks, with the comment that "...he doesn't socialize much."

## 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.

*Severity of physical impairment:*

The ministry argues that the evidence does not show that the appellant has a severe physical impairment, that the physician diagnoses the appellant with degenerative disc disease and right knee osteoarthritis and reports that the appellant complains that he has back spasms, his left hip goes out and he loses his balance, and he has constant pain in his knee. The ministry points out that in terms of physical functioning, the physician indicates that the appellant is able to walk 4 or more blocks unaided, however he also indicates that the appellant requires the use of a cane. The physician reports that the appellant cannot climb any steps unaided and, as the assessor, indicates that the appellant can climb stairs if he uses the railing. The physician indicates that the appellant can lift 15 to 35 lbs. and that his ability to sit is unknown. The ministry argues that as the assessor, the physician indicates that the appellant requires continuous assistance with lifting and carrying and holding but in his functional assessment he reports that the appellant can lift 15 to 35 lbs. and can walk 4 or more blocks unaided. The ministry argues that upon reviewing the appellant's ability to manage his daily living activities (DLA), it appears that he is able to physically manage the majority of these tasks independently.

The appellant argues that he has a severe physical impairment as a result of his degenerative disc disease and right knee osteoarthritis. The appellant argues that he has had two heart attacks and a broken spine, that he has no cartilage in his right knee and torn cartilage in his left hip. The appellant argues that he has chronic back pain all the time which prevents him from walking very far, a few city blocks, that he cannot stand for any length of time and he cannot climb stairs or hills. The appellant points out that he uses his cane all the time, every day. The appellant points out that while he might be able to walk 4 blocks, it takes him a considerable amount of time to do so, that it takes him 30 minutes to walk 4 flat city blocks since he often stops to rest. With climbing stairs, the appellant argues that going down is more painful than going up, that he needs hold on to the rail to get to the next step. The appellant argues that although his doctor said that he could lift up to 35 lbs., this is not correct as he needs to use a cane for mobility and he would not be able to lift that weight and stay on his feet and he does not have any carrying ability, that he finds it hard. The appellant argues he goes through spasms that "feels like leaning against an electric fence", that he gets them in his back and legs, that he gets them "all the time", sometimes 20 to 30 per day, sometimes every day for a month and sometimes none at all. The appellant argues that his jaw is also very painful and he sometimes gets migraine headaches. The appellant argues that the physician asked him a few questions when he was filling out the reports, but the appellant got the impression that the doctor was in a rush, that he just wanted to get the appellant out of his office.

The panel finds that the evidence of a medical practitioner has confirmed a diagnosis of degenerative disc disease and right knee osteoarthritis and, in describing the severity of the medical condition relevant to the appellant's impairment, the physician notes "...he complains that he has aching in his back with spasms, it feels like it gives out, he has spasms in his calves and right and left buttocks, his left hip goes out and he loses his balance, he has difficulty going up stairs and crouching to the floor, he has constant pain in his right knee." The appellant described numerous accidents that he has experienced and the toll these have taken on his body, and that he has experienced two heart attacks and problems with his jaw and migraine headaches, however, the panel finds that these conditions have not been identified by the medical practitioner and confirmed as lasting for 2 or more years. The physician indicates that the appellant has not been prescribed medications or treatments that interfere with his ability to perform daily living activities (DLA) and he does

require a cane for balance and support. The physician reports that the appellant can walk 4 or more blocks unaided on a flat surface, that he cannot climb any steps unaided, that he can lift 15 to 35 lbs. and can remain seated for less than 1 hour. In the assessor report, the physician indicates that the appellant uses an assistive device (cane) with walking indoors and walking outdoors, that he uses an assistive device (railing) for climbing stairs and an assistive device for standing ("poor balance"), and requires continuous assistance from another person with lifting and carrying and holding ("he drops things"). The panel finds that the appellant acknowledges that he could walk 4 blocks unaided but that it would take him significantly longer than typical to do so and while he may be able to lift up to 35 lbs., he could not carry it anywhere and the physician reports that the appellant requires continuous assistance since he drops things, and the panel finds that this would be for the heavier weights. The appellant stated that he can climb stairs but needs to use the railing and the panel finds that the handrail is not an assistive device, as defined in the legislation. The panel finds that the evidence demonstrates that the appellant is impaired by his condition and uses his cane for mobility but that the ministry reasonably concluded that he maintains a moderate level of functionality overall. Therefore, the panel finds that the ministry's determination that the available evidence does not establish a severe physical impairment was reasonable.

*Severity of mental impairment:*

The ministry argues that the evidence does not show that the appellant has a severe mental impairment. The ministry points out that the physician reports deficits to cognitive and emotional functioning in the areas of emotional disturbance, motivation and attention/concentration and that the appellant has been treated for depression which "has stabilized on medications." The ministry argues that the physician reports that the appellant's impairments have moderate, minimal to no impact on the majority of his cognitive and emotional functioning. The ministry points out that although the physician indicates that the appellant's impairments have a major impact in the areas of emotions, attention and motivation, the narrative "has spasms in muscles- gets depressed" does not explain why the impairments have this level of impact. The ministry argues that the physician indicates the appellant can independently manage all of his social functioning. The ministry points out that while the physician indicates the appellant has marginal functioning with his immediate and extended social networks, the indication that the appellant "doesn't socialize much" does not explain this level of functioning.

The appellant argues that he has a severe mental impairment as a result of depression and anxiety. The appellant argues that he has problems with his short term memory and that he can only do one task at a time. The appellant points out that he has also experienced a couple of nervous breakdowns, that he was hit by a drunk driver at the age of 12 and he still occasionally has black-outs and he does not do well with stress. The appellant also points out that he takes anti-depressant medications, that he has attempted suicide 3 times but he has not been referred to a psychiatrist although he has gone to counseling in the past. The appellant points out that he is currently in a treatment program for addiction issues.

The panel finds that the evidence of a medical practitioner confirms a diagnosis of depression and anxiety. In the physician report, the physician indicates that there are no difficulties with communication. The physician reports that there are significant deficits with cognitive and emotional function in the areas of memory, emotional disturbance, motivation and attention or sustained concentration, with the comment that "...he is treated for depression which has stabilized on medication." The physician reports there are major impacts to the appellant's cognitive and emotional functioning in the areas of bodily functions, emotion, attention/concentration and motivation, as well as moderate impacts in insight and judgement, executive and other emotional or mental problems ("has spasms in muscles, gets depression"). The physician assesses minimal or no impact on the remaining 7 areas of functioning. For social functioning, the physician has assessed the appellant as independent in all areas, including with making appropriate social decision, developing and maintaining relationships, interacting appropriately with others, dealing appropriately with unexpected demands, and securing assistance from others. The physician indicates that the appellant has marginal functioning in both his immediate and extended social networks, with the comment that "...he doesn't socialize much." The panel finds that the ministry reasonably concluded that the description provided by the

physician indicates that the appellant's depression has stabilized on medication, the appellant stated he had received counseling in the past, and that the appellant is independent in all areas of social functioning and does not require support or supervision but does not socialize much. Therefore, the panel finds that the ministry's decision, which concluded that the evidence does not establish a severe mental impairment, was reasonable.

*Whether ability to perform DLA is directly and significantly restricted:*

The ministry argues that the evidence does not establish that the appellant's ability to perform daily living activities (DLA) is, in the opinion of a prescribed professional, directly and significantly restricted either continuously or periodically for extended periods. The ministry points out that it is reported in the physician report that the appellant can independently manage the majority of his DLA. The appellant requires periodic assistance with basic housekeeping, however no narrative is included to explain the frequency and duration of this assistance. Although the physician indicates that the appellant requires continuous assistance with carrying purchases home since he uses a buggy for groceries, the ministry argues that this limitation in and of itself does not provide evidence of a significant restriction in the appellant's ability to manage DLA.

The appellant argues that the evidence of his family physician establishes that he is directly and significantly restricted in his ability to perform his DLA either continuously or periodically for extended periods. The appellant points out that he cannot pick things up off the floor, that he cannot squat. The appellant argues that there is a grocery store nearby so he can do his shopping but he needs to use a cart, and a girl who lives next door helps him with his dishes and laundry. The appellant argues that he has to sit down now to get dressed since he has fallen getting dressed. In his self-report, the appellant states that he is not always on top of cleaning his room, that sometimes the pain in his knee and back is such that he cannot attend to daily living activities.

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 indicates in the physician report that the appellant is not restricted in the area of meal preparation and, in the assessor report, that the appellant is independent with all tasks, including meal planning, food preparation, cooking, and safe storage of food). For managing personal finances, the physician indicates, in the physician report, that the appellant is not restricted and, in the assessor report, that the appellant is independent with all tasks of paying rent and bills including banking and budgeting. In terms of shopping for his personal needs, the physician indicates in the physician report that the appellant is not restricted in this area and, in the assessor report, that the appellant is independent with 3 out of 5 tasks of shopping, including reading prices and labels, making appropriate choices, and paying for purchases, while requiring periodic assistance with going to and from stores and continuous assistance with carrying purchases home ("he uses a buggy for groceries"). The appellant stated that there is a grocery store nearby so he can do his shopping but he needs to use a cart.

For use of public or personal transportation facilities, the physician indicates, in the physician report, that the appellant is not restricted and, in the assessor report, that the appellant is independent with managing all tasks of transportation. With respect to performing housework to maintain the appellant's place of residence in an acceptable sanitary condition, the physician indicated, in the physician report, that the appellant is not restricted and, in the assessor report, the physician reports that the appellant requires periodic assistance from another person with both laundry and basic housekeeping, with no further comments provided. The appellant states that a neighbour helps him with doing his dishes and laundry and that he is not always on top of cleaning his room, that sometimes the pain in his knee and back is such that he cannot attend to his DLA.

For moving about indoors and outdoors, the physician reports that the appellant is restricted on a periodic basis with mobility inside the home ("he has balance problem which causes him to fall") and on a continuous basis with mobility outside the home. In the assessor report, the physician indicates that the appellant uses a cane for walking indoors and walking outdoors and standing ("poor balance"). The appellant states that he has



chronic back pain all the time which prevents him from walking very far, a few city blocks, and that he uses his cane all the time, every day. The appellant points out that while he might be able to walk 4 blocks, it takes him a considerable amount of time to do so, that it takes him 30 minutes to walk 4 flat city blocks since he often stops to rest. Regarding performing personal hygiene and self care, the physician indicates that the appellant is not restricted with personal self care and, in the assessor report, the physician indicates that the appellant is independent with all tasks, including dressing, grooming, bathing, toileting, feeding self, regulating diet, transfers in/out of bed and on/off chair, with no further comments provided. The appellant stated that he has to sit down now to get dressed since he has fallen getting dressed. With respect to managing his personal medications, the physician indicates in the physician report that the appellant is not restricted and, in the assessor report, the physician reports that the appellant independently performs all tasks. For making decisions about personal activities, care or finances and relating to, communicating or interacting with others effectively, the physician reports no restrictions and no requirement for support or supervision.

The panel finds that the physician reports that the appellant is restricted in 2 out of 10 areas of DLA (mobility inside and outside the home), however, the physician assesses the appellant as independent and not requiring assistance with almost all of his DLA. For those tasks for which the physician indicates the appellant requires periodic assistance from another person, the panel finds that the ministry reasonably determined that there is no explanation or description provided to show that this assistance is required for extended periods of time. When asked for a description of the assistance the appellant needs with DLA, the physician commented "none" and the panel finds that the ministry reasonably determined that the appellant is able to perform most tasks of DLA independently, without assistance. 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.

*Whether help to perform DLA is required:*

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 notes the information from the physician and the appellant that he lives alone, that he receives assistance from a neighbour and an advocate, and that he uses a cane as 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 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.

*Conclusion:*

The panel finds that the ministry's reconsideration decision was reasonably supported by the evidence and confirms the decision.