

PART C – Decision under Appeal

The decision under appeal is the Ministry of Social Development's (the ministry) reconsideration decision dated December 12, 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* (EAPWDA) for designation as a person with disabilities (PWD). The ministry found that the appellant met the age requirement and that the appellant's impairment was likely to continue for at least two or more years. However, the ministry was not satisfied that:

- the evidence establishes that the appellant has a severe physical or mental impairment;
- 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; and that
- as a result of those restrictions, the appellant requires the significant help or supervision of another person, 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 the following:

1. Person With Disabilities ("PWD") Application: applicant self-report dated October 15, 2012 ("SR"), physician report ("PR") dated October 18, 2012 and assessor report ("AR") dated October 18, 2012;
2. A letter dated October 31, 2012 from the ministry to the appellant denying PWD designation and attaching a PWD Designation Decision Summary dated October 31, 2012;
3. The appellant's Request for Reconsideration dated November 23, 2012 ("RFR") which has attached to it the following:
 - (a) Page 11 of the PWD application which has been completed and signed by the appellant's family physician and dated November 27, 2012 ("the Page 11 Excerpt"); and
 - (b) An undated two-page letter prepared by the appellant's advocate setting out five questions which have been answered by the appellant's family physician ("2-page Letter").
4. A fax cover sheet from the ministry to the appellant's family physician dated December 6, 2012 and seeking clarification of certain words that could not be properly read including the following:
 - (a) Page 9 of the PWD application;
 - (b) Page 16 of the PWD application;
 - (c) Page 11 of the PWD application which was completed by the appellant's family physician on November 27, 2012; and
 - (d) the 2-page Letter.
5. A December 7, 2012 fax from the ministry to the appellant's family physician enclosing a three page document seeking further clarification from the physician regarding the appellant ("Clarification Log");

The ministry relied on the reconsideration decision and submitted no new information.

In his Notice of Appeal dated December 20, 2012, the appellant states that there are many other problems that he has other than cancer and his foot. The appellant states that his cancer is re-occurring and that he requires surgery on his foot. The appellant states that he does not think that the reconsideration decision covers his problems by focusing on two things and that he needs to be able to explain this properly and his situation properly examined.

The appellant provided written submissions in support of his appeal. In those submissions, the appellant comments on his physical condition, the duration and severity of his impairment, the impact of his impairments on his daily living activities ("DLA") and the assistance that he requires for daily living.

The appellant's written submissions have been endorsed by his family physician and dated January 16, 2013. Specifically, the physician signs the submissions which conclude with the following typed statement "I agree that the foregoing statement is an accurate assessment of my patient's overall physical and mental health condition and his current circumstances. After reviewing this information, I can confirm that [the appellant's] disabling conditions will continue to persist, and are severe enough to restrict his daily living activities to the point where he requires significant assistance and supervision from other people, or takes considerably longer than normal to perform."

The panel notes that the physical impairments identified by the appellant in his written submissions are also identified in the SR of his PWD application. Further, the appellant's submissions with respect to the duration and severity of impairment, DLA and assistance required for daily living expand and comment on the opinion of his family physician in the PWD application. As such, the panel admits the appellant's submissions as written testimony in support of the information and records that were before the minister when the decision being appealed was made pursuant to section 22(4)(b) of the Employment and Assistance Act ("EAA").

Physical Impairment

In the SR, the appellant states that he has been diagnosed with leukemia, relapsed from 2006 with chemotherapy treatment commenced in 2012. As a result of the chemotherapy treatment, the appellant says that he experiences nausea sickness, is very weak, has appetite problems, muscle pain, dizziness and depression. The appellant states that his doctor has recommended that he avoid crowds and public transit as he is at a high risk to catch a virus and that he has already been admitted to hospital on two occasions for infections. The appellant states that there is no remission from his leukemia which he finds depressing. The appellant also states that he has been diagnosed with severe arthritis in his right foot and that he requires surgery. The appellant says that his right foot is painful and that he is only able to be on it for one half hour or so before it becomes sore. Further, the appellant says that he injured his back in 2010 and has had problems since then off and on, he says he has nerve damage in his neck on both sides, he has hepatitis C which is not active or contagious, he receives a bi-weekly steroid shot for low testosterone levels, he has insomnia, type 2 diabetes, psoriasis, he wears progressive lenses and he is missing a valve in his heart.

In the PR, the family physician has diagnosed the appellant with arthritis (May 2012 onset) and hairy cell leukemia (March 2012 onset) and comments that the arthritis leaves the appellant unable to walk any appreciable distance and he is no longer able to deliver newspapers. The family physician goes on to comment that the treatment for leukemia relapse gives him fatigue and malaise and impacts his cognitive function and that the leukemia treatment will last at least 6 months. Functional skills reported in the PR indicate that the appellant can walk 2 – 4 blocks, can climb 5+ steps unaided, is limited to lifting 7 to 16 kg (15 to 35 lbs), and has no limitation in remaining seated.

In the AR, the family physician reports that the appellant has fatigue due to leukemia chemotherapy which is cyclical. The appellant's ability to communicate in all aspects including speaking, reading, writing and hearing is listed as good. The family physician indicates that the appellant is independent with all aspects of mobility and physical ability including walking indoors and outdoors, climbing stairs, standing, lifting, carrying and holding. For those aspects of DLA that involve physical functioning, the family physician indicates that the appellant is independent with all aspects of personal care including dressing, grooming, bathing, toileting, feeding self and regulating diet and transfers in and out of bed and chairs. With respect to basic housekeeping, the family physician notes that the appellant requires continuous assistance from another person or is unable due to fatigue and weakness.

In the Clarification Log, the following question is asked of the family physician:

Many of the symptoms and associated symptoms for [the appellant] appear to be related to the chemotherapy he is currently undergoing for hairy cell leukemia, as opposed to the disease itself or his other diagnosis of arthritis. You indicated the treatment will last at least six months. You have also indicated that his impairment is likely to continue for two years or more; can you confirm whether this refers solely to impairments directly related to the conditions of hairy cell leukemia and arthritis, or whether the impairments related to his treatment itself are also expected to continue for two years?

In response to this question, the family physician states that the side effects of chemotherapy are not expected to continue beyond treatment and that the appellant has been advised not to consider surgery on his foot until at least 6 months after the last date of chemotherapy. The family physician goes on to indicate that it is possible that treatment for leukemia relapse will continue for two or more years but that the fatigue malaise from that therapy will not last for more than 2 years.

In the 2-page Letter, in response to the question of whether the appellant has a "severe impairment" the family physician answers "Yes" and goes on to comment that the appellant experiences recurrence of leukemia requiring chemotherapy

In his written submissions, the appellant states that he has been diagnosed with leukemia and arthritis in his right foot and that he also suffers from back pain, nerve damage in his cervical spine, chronic depression and anxiety, Hepatitis C, Type II diabetes, psoriasis and chronic insomnia. The appellant says that all of these physical and mental health impairments severely restrict his DLA to the point where he requires significant assistance from others or take considerably longer than normal to perform them. The appellant submits further that considering all of his disabling conditions, the impact on his DLA will persist for two or more years.

With respect to his physical functioning, the appellant argues that he can only walk 1-2 blocks unaided on flat, level ground, that walking any distance outdoors or shopping takes him at least two to three times longer than normal and requires that he stop frequently to rest and that walking indoors also takes him two to three times longer than normal. The appellant says that he can climb up to five steps unaided but requires a handrail and doing so causes significant pain in his right foot requiring several minutes rest before going on. The appellant goes on to say that his is, practically speaking, limited to lifting no more than 2 – 5 kg and that he requires medication to help him sleep which makes him drowsy and mentally dull during the day which in turn impacts his memory and ability to concentrate requiring daily reminders for simple tasks.

Mental Impairment

In the SR, the appellant states that because there is no remission from hairy cell leukemia he finds this depressing. He further states that he has been taking medication for depression and anxiety for 15 years.

In the PR, the general physician does not diagnose the appellant with a mental impairment nor does he indicate that the appellant has been prescribed medication for depression or anxiety. He indicates that the appellant does not suffer from any significant deficits with cognitive or emotional function but comments that the appellant's difficulty comes with maintaining attention over long periods especially with learning new items.

In the AR, for section 4, cognitive and emotional functioning, where asked to complete for an applicant with an identified mental impairment or brain injury, the family physician reports that 4 of the 14 listed items are majorly impacted (consciousness, attention/concentration, executive and memory), 3 items are moderately impacted (emotion, motivation and motor activity) with the remaining 7 items having no impact. The family physician comments that the appellant's cyclical chemotherapy will impact his cognitive function on an episodic basis.

In the Clarification Log, the family physician indicates that the side effects of chemotherapy are not expected to continue beyond treatment and that the following symptoms are also not expected to last for two or more years: cognitive and emotional functioning, consciousness, attention/concentration, executive, memory, emotion, motivation and motor activity.

In his written submissions, the appellant states that he is being treated for severe, chronic depression and anxiety and that while medication is beneficial, he is socially isolated, stays mostly at home and has difficulty motivating himself to get through each day. The appellant says that he feels constantly exhausted from interrupted sleep and stressed from worry and that he feels he would benefit from regular counseling and daily supervision.

DLA

In the SR, the appellant states that he has been told by his family physician to avoid public transit as he is at a high risk of catching a virus and that he is unable to drive as his right foot hurts and cramps when applying the gas pedal.

In the PR, the family physician did not initially complete the section relating to DLA. However, on November 27, 2012 (more than one month after he completed the PR), the family physician completed this section. In it, he indicates that the appellant's impairment directly restricts his ability to perform DLA and that specifically, the

appellant is actively and continuously restricted with personal self care, meal preparation, management of medications, basic housework, daily shopping, mobility inside and outside the home, use of transportation and social functioning. The family physician indicates that the appellant is not restricted in management of finances. The family physician then provides additional comments that the appellant has tendencies to isolate and depression and that the appellant's restrictions with DLA are ongoing and significant. The family physician comments that the appellant requires orthotics, supportive shoes, bathroom grab bars, a shower chair, help with meal preparation and with remembering to take medication, help with shopping and transportation and psychological counseling for depression.

In the AR, the family physician reports with respect to the appellant's DLA. In the area of Personal Care, the appellant is noted as independent with all aspects including dressing, grooming, bathing, toileting, feeding self and regulating diet and transfers (in/out of bed) and transfers (on/off of chair). In the area of Basic Housekeeping, the appellant is noted as requiring continuous assistance from another person or unable to do laundry and basic housekeeping due to fatigue and weakness. In the area of Shopping, the appellant is noted as independent reading prices and labels, making appropriate choices and paying for purchases but requires continuous assistance or is unable to go to and from stores or carry purchases home due to his risk of infection and necessity to avoid public places.

Continuing with the appellant's DLA in the AR, the family physician comments that in the area of Meals, the appellant is independent with meal planning and safe storage of food but requires periodic assistance with meal food preparation and cooking. The appellant is noted by the social worker to be independent in all areas of paying rent and bills (banking, budgeting and paying rent and bills) and medications (filling/refilling prescriptions, taking as directed, safe handling and storage) and that with respect to Transportation, the appellant is independent getting in and out of a vehicle and using transit schedules and arranging transportation but that he has been advised not to use public transit due to the risk of infection.

With respect to his mental impairment, the family physician reports that the appellant is independent making appropriate social decisions, with the ability to develop and maintain relationships, interacting with others, dealing appropriately with unexpected demands and securing assistance from others. The family physician also reports that the appellant has good functioning with respect to his relationships with his immediate social network and extended social networks.

In the 2-page Letter, the family physician states that the appellant's therapy, chronic fatigue and nausea restrict his daily functioning and that he cannot drive due to his feet, cannot stand on public transit for any length of time and has impaired concentration and cognition.

In the Clarification Log, after noting that the side effects of chemotherapy treatment are not expected to continue beyond treatment, the family physician notes that the following restrictions with DLA are expected to last for less than 2 years: laundry, food preparation, cooking, using public transit, personal self care, meal preparation, management of medications, basic housework, mobility inside and outside of the home, use of transportation and social functioning. Conversely, the family physician notes that the following restrictions with DLA are expected to last for more than 2 years: housekeeping, carrying purchases home, daily shopping.

In his written submissions, the appellant states that the minister has confirmed that he requires continuous, long-term assistance with DLA including laundry, housekeeping duties, shopping for daily needs, transportation and ongoing psychological counseling. The appellant says that he needs weekly assistance with laundry, vacuuming, washing floors, bending low, reaching high, lifting and carrying purchases home or performing any daily household task that requires physical effort. The appellant says he is unable to take public transit and therefore requires someone to drive him to appointments and shopping.

Need for Help

In the PR, the family physician states that the appellant does not require any prostheses for his impairment as they will not help.

In the AR, the family physician states that the appellant receives help for DLA from friends and does not require the help of an assistance animal.

In the 2-page Letter, the family physician states that the appellant needs orthotics/supportive shoes, bathroom grab bars, a shower chair, help remembering and psychological counseling and emotional support.

In the Clarification Log, the family physician notes that the appellant will require the following assistance for a period of 2 years or more: orthotics, supportive shoes, help with shopping and transportation and psychological counseling. Conversely, the family physician notes that the appellant will require assistance of a grab bar, shower chair and with remembering to take medication for less than 2 years.

PART F – Reasons for Panel Decision

The issue on the appeal is whether the ministry's decision to deny the appellant designation as a PWD was reasonably supported by the evidence or was a reasonable application of the applicable enactment in the circumstances of the appellant. In particular, was the ministry reasonable in determining that the appellant:

- does not have a severe physical or mental impairment;
- that the appellant's DLA's 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, the appellant does not require the significant help or supervision of another person, 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.

Severe physical impairment:

The appellant argues that he has a constellation of physical impairments including hairy cell leukemia, arthritis in his right foot, back pain, nerve damage in his cervical spine, hepatitis C, type 2 diabetes, psoriasis and insomnia. The appellant argues further that his functional capacity as set out by his family physician in the PR must be qualified. Specifically, he says that he can only walk 1-2 blocks unaided on flat, level ground, that walking any distance outdoors or shopping takes him at least two to three times longer than normal and requires that he stop frequently to rest and that walking indoors also takes him two to three times longer than normal. The appellant says that he can climb up to five steps unaided but requires a handrail and doing so causes significant pain in his right foot requiring several minutes rest before going on. The appellant goes on to say that he is, practically speaking, limited to lifting no more than 2 – 5 kg and that he requires medication to help him sleep which makes him drowsy and mentally dull during the day which in turn impacts his memory and ability to concentrate requiring daily reminders for simple tasks.

The appellant's advocate argues that a severe physical impairment has been demonstrated due to the factors set out above and he cites section 8 of the *Interpretation Act* as support for the argument that the appellant's impairments should be interpreted in a large and liberal manner rather than a restrictive one and that further, the legislation should be interpreted with a benevolent purpose in mind with any ambiguities resolved in favour of the appellant: *Hudson v. British Columbia (Employment and Assistance Appeal Tribunal)*, 2009 BCSC 1461.

The ministry argues that only those impairments that relate to the appellant's arthritis and hairy cell leukemia are relevant for consideration as those physical impairments will continue for two years or more. The ministry argues further that any impairment related to the leukemia chemotherapy treatment is not relevant given the family physician's advice that the impacts of treatment are not expected to exceed two years. That being said, the ministry takes the position that based on the impairments that are expected to last two years or more, a severe physical impairment has not been made out.

Panel Decision

The legislation clearly provides that the determination of severity of impairment is at the discretion of the minister, taking into account all of the evidence including that of the appellant. However, the legislation is also clear that the fundamental basis for the analysis is the evidence from a prescribed professional respecting the nature of the impairment and its impact on daily functioning.

The panel finds that a medical practitioner, the appellant's general practitioner, has diagnosed the appellant with arthritis in his right foot and hairy cell leukemia. The panel also finds that the functional limitations noted in the PR and AR are largely consistent with each other and indicate that at the time the PWD application was completed, the appellant's functional limitations were in the moderate range rather than severe. For example,

in the AR, the appellant is noted as being able to independently manage all tasks of personal care. The panel notes in the AR that the appellant requires continuous assistance or is unable to do laundry and basic housekeeping due to fatigue and weakness but that the subsequent Clarification Log indicates that the inability to do laundry is due to symptoms secondary to the appellant's leukemia treatment which is, according to the family physician, not expected to continue for at least two years as is required under the legislation.

While the 2-page Letter provides the family physician's opinion that the appellant does have a severe impairment, that answer is expanded upon insofar as it relates to the appellant's recurrence of leukemia requiring chemotherapy treatment. This is reinforced by the appellant's own evidence in the SR in which he states that following his first chemotherapy treatment, he has experienced nausea sickness, weakness, appetite problems, muscle pains, dizziness and depression. In other words, the panel is satisfied that on balance it is the chemotherapy treatment rather than the underlying condition of leukemia that creates the impairment and, as the evidence of the family physician does not support a finding that the effects of each of the appellant's chemotherapy treatments will continue for at least 2 years, the legislative requirement of section 2(2)(a) of the EAPWDA has not been made out.

Further, the panel finds that based on the functional skills as set out in the PR and the evidence of the appellant's mobility and physical ability as described in the AR and SR, the evidence of impairment that relates to the appellant's arthritis in his right foot is more in keeping with a moderate severity rather than a severe one.

Finally, while the family physician has endorsed the appellant's written submissions, the endorsement notes that the physician agrees that the submissions are an accurate assessment of the appellant's "physical and mental health condition" and that they are "severe enough to restrict his DLA". Section 2 of the EAPWDA requires the opinion of a medical practitioner that a person have a severe mental or physical impairment that is likely to continue for at least two years and directly and significantly restrict the person's ability to perform DLA either continuously or periodically for extended periods. The panel finds that when considering this endorsement in light of the physician's comments in the Clarification Log, it does not meet this legislative test insofar as it simply references the appellant's "disabling conditions" which are "severe enough to restrict his DLA." The endorsement does not address whether the appellant's DLA are "directly and significantly restricted" nor does it address whether the restrictions are continuous or periodic for extended periods. The panel finds that this endorsement simply does not satisfy the legislative requirement of the EAPWDA as set out above.

The panel concludes that at the time of the reconsideration decision, the ministry reasonably determined that the appellant's level of independent physical functioning does not establish that the appellant has a severe physical impairment under section 2(2) of the EAPWDA. Therefore, the panel finds that the ministry's decision, which concluded that the evidence does not establish a severe physical impairment under section 2(2) of the EAPWDA, was reasonable.

Severity of mental impairment:

The appellant's position is that he suffers from depression and anxiety. The appellant's advocate argues that the appellant has significant deficits in terms of his memory and ability to concentrate.

The ministry argues that the information provided does not establish a severe mental impairment.

Panel Decision

The panel finds the family physician in the PR fails to diagnose the appellant with a mental impairment and confirms no deficits with cognitive and emotional function other than maintaining attention over long periods especially with learning new items. The panel also finds that there is no reference in the PR to any medication being prescribed to the appellant to manage his stated conditions of depression and anxiety.

Considering the AR, the panel notes that the appellant's ability to speak, read, write and hear are all good. While the family physician who completed the AR notes that the appellant experiences major impact to consciousness, attention/concentration, executive and memory, there is only moderate impact on emotion, motivation and motor activity and no impact to the remaining cognitive and emotional functioning areas. The panel notes further the family physician's comments that the appellant's cyclical chemotherapy impacts the appellant's cognitive function on an episodic basis which is again, consistent with the physician's comments in the Clarification Log and his notation that none of the factors of mental impairment are expected to continue for two years or more.

The AR notes that the appellant is independent in all aspects of social functioning and that he experiences good functioning in immediate and extended social networks. The AR further indicates that the appellant is able to independently manage decision making responsibilities including paying his rent and bills and managing his medications.

The panel notes that section 2(2)(a) of the EAPWDA requires that the minister be satisfied that the appellant has a severe mental impairment that, in the opinion of a medical practitioner, is likely to continue for at least 2 years. In the present case, the panel finds that the appellant's family physician has not diagnosed him with a severe mental impairment in the PR and that in the Clarification Log, all symptoms that are related to a mental impairment are noted to be of duration that is less than two years. Finally, the panel notes that while the appellant's family physician has endorsed his submissions, the evidence there, while suggesting that the appellant does suffer from depression and anxiety, does not address the duration of that condition as is required by the legislation set out above. Considering all of the evidence the panel concludes that the ministry reasonably determined that the evidence does not establish that the appellant has a severe mental impairment under section 2(2) of the EAPWDA.

Restrictions in the ability to perform DLA

The appellant's position is that his physical and mental impairments directly and significantly restrict his ability to perform all DLA to the point that he requires continuous assistance with laundry, housekeeping, shopping for daily needs, transportation and ongoing psychological counseling.

The ministry's position is that a severe impairment has not been established which, in the opinion of a prescribed professional, directly and significantly restricts his ability to perform the DLA set out in the legislation. The minister takes the position that the appellant has certain restrictions to his DLA in the short term during his chemotherapy treatment but that the information provided does not establish that for impacts expected to last for two or more years, an impairment significantly restricts DLA continuously or periodically for extended periods.

Panel Decision

The legislation requires that a severe impairment directly and significantly restrict the appellant's ability to perform DLA either continuously or periodically for extended periods. While the legislation must be interpreted in a large and liberal manner, there still must be sufficient evidence on each of the legislative criteria to reasonably satisfy the ministry that they have been met.

The family physician initially did not complete the section in the PR that relates to DLA because the application directs the author not to if they are also completing the AR. However, approximately 5 weeks after completing the PR, the family physician completed the section at page 11 that relates to DLA. The family physician indicates that the appellant's impairment directly restricts his ability to perform DLA and that he is actively restricted in personal self care, meal preparation, management of medications, basic housework, daily shopping, mobility inside and outside of the home, use of transportation and social functioning although he is

noted as not being restricted in management of finances. The family physician adds that the appellant's restrictions to his DLA are "significant and ongoing."

In the AR, the family physician indicates that the appellant is independent with his ability to dress, groom, bathe, toilet, feed himself and regulate his diet, transfer in and out of bed and chairs, read prices and labels, make appropriate shopping choices, pay for purchases, plan meals, store food safely, all aspects of paying rent and bills and management of medications. However, the panel notes that with respect to basic housekeeping, the family physician notes that the appellant requires continuous assistance due to weakness and fatigue and that he also requires continuous assistance with food preparation, cooking, and carrying purchases home also due to fatigue and weakness.

The panel notes the conflict between the family physician's evidence in the AR as opposed to the excerpt from the PR that was done some five weeks later by the same physician. To resolve this conflict, the panel looks to the Clarification Log in which the family physician comments that the side effects of the appellant's chemotherapy are not expected to continue beyond the treatment period which is approximately six months as set out in the PR. In the Clarification Log, the family physician indicates that a number of the appellant's restrictions on his DLA are expected to last for less than two years including laundry, food preparation, cooking, use of public transit, personal self care, meal preparation, management of medication, basic housework, mobility inside and outside the home, use of transportation and social functioning.

The panel acknowledges that the excerpt from the PR indicates that the appellant has significant and ongoing restrictions to his DLA but the legislation requires that these restrictions arise out of 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 present case, the medical practitioner's evidence in the Clarification Log indicates that many of the restrictions on the appellant's DLA flow from symptoms secondary to the appellant's chemotherapy treatment which are of duration that is less than 2 years.

Based on the evidence, the panel concludes that the ministry was reasonable in finding that the appellant's impairment does not directly and significantly restrict his ability to perform DLA, either continuously or periodically for extended periods. In particular, the panel finds that the noted restrictions in the appellant's ability to perform some aspects of some DLA were reasonably viewed by the ministry as not constituting a direct and significant restriction of the appellant's ability to perform DLA in the opinion of a prescribed professional thereby not satisfying the legislative criteria of section 2(2)(b)(i) of the EAPWDA.

Help with DLA

The appellant argues that he requires weekly assistance with laundry, housekeeping, shopping and going to and from appointments.

The ministry's position is that as it has not been established that DLA's are directly and significantly restricted, it cannot be determined that significant help is required from other persons or assistive devices although it acknowledges that the appellant's family physician has noted that in the short term he requires the assistance of a grab bar and shower chair and in the long term orthotics/supportive shoes are required.

Panel Decision

Section 2(2)(b)(ii) of the EAPWDA requires that, as a result of direct and significant restrictions in the ability to perform DLA, a person requires help to perform those activities. Section 2(3) of the EAPWDA provides that a person requires help in relation to a DLA if, in order to perform it, the person requires an assistive device, the significant help or supervision of another person, or the services of an assistance animal.

While the panel finds that the evidence of a prescribed professional establishes that the appellant requires

some assistance with tasks of some DLA, the panel also finds that the ministry reasonably determined that, as direct and significant restrictions in the appellant's ability to perform DLA have not been established, it cannot be determined that the appellant requires help to perform DLA as a result of those restrictions.

Conclusion

Having reviewed and considered all of the evidence and relevant legislation, the panel finds that the ministry's reconsideration which determined that the appellant was not eligible for PWD designation was reasonably supported by the evidence and a reasonable application of the applicable legislation in the circumstances of the appellant, and therefore confirms the decision.