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PART C – Decision under Appeal

The decision under appeal is the reconsideration decision of the Ministry of Social Development (the ministry) dated 24 October 2012 denying the appellant designation as a person with disabilities (PWD). The ministry determined that the appellant did not meet all of the required criteria for PWD designation set out in the Employment and Assistance for Persons with Disabilities Act, section 2. Specifically the ministry determined that the information provided did not establish that the appellant has a severe mental or physical impairment that in the opinion of a prescribed professional

(i) directly and significantly restricts the person's ability to perform daily living activities (DLA) either continuously or periodically for extended periods; and,

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

The ministry did determine that the appellant satisfied the other 2 criteria: he has reached 18 years of age; and his impairment in the opinion of a medical practitioner is likely to continue for at least 2 years.

PART D – Relevant Legislation

Employment and Assistance for Persons with Disabilities Act (EAPWDA) – section 2
Employment and Assistance for Persons with Disabilities Regulation (EAPWDR) – section 2

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PART E – Summary of Facts

The ministry failed to appear at the hearing at the scheduled time and place. After verifying that the ministry had received notification of the hearing at least 2 business days before the hearing date by examining the Notice of Hearing fax transmit confirmation report, the hearing proceeded under section 86(b) of the Employment and Assistance Regulation.

The evidence before the ministry at reconsideration consisted of the following:

1. The appellant's PWD Designation Application dated 20 June 2012. The Application contained:
   - The appellant's Self Report (SR)
   - A Physician Report (PR) dated 26 June 2012 completed by the appellant's general practitioner (GP) who has known the appellant for 2 years and seen him 2-10 times over that period.
   - An Assessor Report (AR) dated 09 August 2012 completed by a social worker (SW) who has known the appellant for 2 months and seen him 2-10 times over that period.

2. The appellant's Request for Reconsideration dated 16 October 2012, to which was attached a letter from the SW.

In his SR, the appellant writes:

> "Nerve damage at C5-C6 - resulting in limited movement + pain (can't look up or down with ease) + some loss of strength & mobility of left arm + severe cramping of back & arm – (spasms). Duration 10-12 years. Total loss of use of arm for first 3 1/2 years.
> Broken vertebrae in middle back in 1980s resulting in permanent vulnerability i.e. coughing or sneezing – lifting - turning can cause pain in lower left lung for 1-2 weeks (possibly a rib?).
> Lower back left side since mid-70s has caused severe pain flare-ups of 5-10 days.
> Last seven or eight years - permanent limp & pain - unable to walk for1-200 ft without having to sit.
> Standing for more than 10-15 min – lower back seizes – acute pain.
> Sitting – must move around & stretch. Over 20-30 min. or seize up.
> This is constant.
> Have had many – many – many chiropractic appts to no avail. Massage therapy did some help for lower back."

In the PR, the GP diagnoses the appellant with spinal stenosis/chronic backache (onset may 2012), central obesity – 268 lb., sleep apnea on CPAP, angina/ischemia heart disease, previous transient ischemic event, and depression. Under health history, the GP reports:

> "Lower back ache with any exercise - walking more than 100-200 ft needs to rest, + unable swimming or using exercise bike.
> Nocturnal pain requiring pillow under pelvis to avoid stretching femoral nerve when lying on stomach.
> This is compounded by central obesity.
> Angina/chest pain on medical management."

The GP indicates that the appellant has not been prescribed any medication or treatment that interferes with his ability to perform DLA. The GP also indicates that the appellant does not require any prostheses or aids for his impairment. Under degree and course of impairment, the GP indicates

that the appellant's impairment is likely to continue for two years or more, commenting:

> "Full medical management of his ischemia heart disease with multiple drugs. Severe obstructive sleep apnea. Both medical conditions not likely to improve."

With respect to functional skills, the GP assesses the appellant able to walk unaided 1 to 2 blocks, climb 2 to 5 steps, lift 5 to 15 lb., and remain seated for less than 1 hour. The GP reports no difficulties with communications. The GP reports significant deficits with cognitive and emotional function in the areas of emotional disturbance and motivation, commenting: "decreased motivation due to depression."

As to DLA, the GP assesses the appellant actively restricted for basic housework and with mobility outside the home, both on a periodic basis, commenting: "Has to rest with cleaning, cannot do bending to reach floors/sweep etc. Has to rest walking> 1-200 ft." the GP indicates the appellant is not actively restricted for the other DLA listed: personal self care, meal preparation, management of medications, daily shopping, mobility inside the home, use of transportation, management of finances and social functioning. In terms of assistance required, the GP comments: "Needs to rest frequently when walking/doing chores."

Under additional comments, the GP writes: "Combination of angina/obesity/severe backache all compounding decreasing mobility."

In the AR, the SW indicates that the appellant's mental or physical impairments that impact his ability to manage DLA are: COPD, angina/ischemia heart disease, OA & chronic backache - lumbosacral spine, sleep apnea and depression. With respect to ability to communicate, the SW assesses the appellant good at speaking, writing and hearing and satisfactory for reading. With respect to mobility and physical ability, the SW assesses the appellant requiring continuous assistance from another person or unable for walking indoors, walking outdoors, climbing stairs, standing, lifting, and carrying and holding, with comments that he can walk a maximum of 100 ft. then needs to rest for 2 to 6 min., that he can lift a maximum of 10 lbs. and that he cannot bend over or climb stairs.

In terms of cognitive and emotional functioning, the SW assesses a major impact for emotion, insight and judgment, attention/concentration, executive, memory, and motivation. A moderate impact is assessed for bodily functions, consciousness, impulse control and motor activity (decreased goal–oriented activity, extreme tension) and other neuropsychological problems. A minimal impact is assessed for language and other emotional or mental problems and no impact for psychotic symptoms. The SW comments that for depression, the appellant is currently taking an antidepressant and that motivation, attention, planning are very restricted due to depression.

With respect to DLA, the SW has made the following assessments (her comments in parenthesis): For personal care, continuous assistance from another person or unable and takes significantly longer than typical for dressing, grooming, bathing, transfers in/out of bed and transfers on/off chair (takes 3 min. to stand up from getting out of bed: must rest after each personal care activity); periodic assistance required for toileting and independent for feeding self and regulating diet. For basic housekeeping, continuous assistance required from another person or unable and takes significantly longer than typical for laundry and basic housekeeping (must take 4 times longer than typical to do housekeeping). For shopping, continuous assistance required from another person or unable and takes significantly longer than typical going to and from stores and carrying purchases home and

periodic assistance required for reading prices and labels, making appropriate choices and paying for purchases (must take four times longer than typical: can't lift, bend, stand, walk or reach for more than 3-5 min.) For meals, independent for meal planning and continuous assistance from another person or unable and takes significantly longer than typical for food preparation and cooking and periodic assistance required for safe storage of food (makes very basic meals -- can't stand or lift enough). For paying rent and bills, independent in all aspects. For medications, independent for filling and refilling prescriptions and safe handling and storage and periodic assistance from another person required for taking as directed (waits until absolutely needs pain relief or sleep before taking meds.) For transportation, periodic assistance required for getting in and out of vehicle and continuous assistance from another person or unable and takes significantly longer than typical using public transit and using transit schedules and arranging transportation (can't walk to bus stop).

As for social functioning, the SW assesses the appellant requiring periodic support/supervision for making appropriate social decisions (isolated due to chronic pain, etc.), independent for able to develop and maintain relationships and interacting appropriately with others and continuous support/supervision required to be able to deal appropriately with unexpected demands and to secure assistance from others. The SW assesses the appellant as having good functioning with both his immediate and extended social networks.

With respect to assistance provided by other people, the SW reports that the appellant requires 25 hours of assistance by other family and friends each week. Peer support and counseling is also required.

The SW does not report the routine use or need of any assistive device or of an assistance animal.

The SW indicated that she used as information sources: an office interview, the PR and the appellant's CPP disability medical file, as well as her organization's lens assessment.

In the letter attached to the Request for Reconsideration, the SW states that she has seen the appellant numerous times since she filled out the AR. She mentions that the appellant requires on average 4 hours of assistance per day. His mental health is deteriorating significantly; he is struggling to maintain any quality of life even with a prescribed antidepressant medication.

In his Notice of Appeal dated 05 November 2012 the appellant writes:

> "Have had a disability for over 30 yrs and in the last 3 or 4 years it has become unbearable to work and daily living is dramatically impaired."

At the hearing, the appellant reviewed his physical difficulties: he has nerve damage in his neck and shoulder so he can not look up or down and arthritis in his left hip and in the shoulders and as a result lives in constant pain. He also suffers from heart disease and emphysema, the latter from fumes from working as a welder. He stated that despite these conditions he can get by feeding himself and manage his personal care, but has difficulties in other areas. In answer to questions, he stated the following:

- He tries to do some work in his shop, doing welding fixing up trucks to supplement his income assistance. He can only do this for a couple of hours a day, so a particular project might take several weeks. He needs help from friends in the shop to move things around and set things up for him. He has become creative in learning to brace himself so he can complete tasks. He

clarified that the 25 hours/week or 4 hours/day help required mentioned in his SR and the SW's letter referred to help he gets in his workshop, not around the home.

- His house is a mess: because he is unable to bend, he does not wash or sweep the floors or clean the toilet or use the vacuum, and since there is no garbage pick-up, it tends to accumulate.
- His house is heated by a wood stove. Sometimes his pain is so bad that his daughter has to come over and bring wood in for him. Bringing in a quantity of wood himself will exhaust him for several days. Once he was found out by the wood-pile in his dressing gown on the ground in the cold for 2 hours, not being able to get up.
- He puts up with the pain to do what he has to do -- such as bending over the sink for a minute to brush his teeth or leaning over to put chicken or chops under the broiler in the stove, despite the agony caused from leaning forward. As for housework such as washing dishes, he does only what is absolutely necessary, finding ways to brace himself when doing standing tasks but unable to vacuum or wash or sweep floors. Pride has stopped him from asking for help.
- On good days he can walk, slowly, as much as a block, but because of the pain and shortness of breath he needs to take rests, sometimes having to resort to sitting on the curb. Going even a block or two this way exhausts him and puts him out for the day and for the next day or two. On bad days he cannot move about at all. He does not use a cane because he thinks it would not be of any help. He takes his truck to go shopping and if there is not a parking space near the store entrance, he will come back later. Because of the bending required, he does not use a shopping cart but uses a basket and makes only enough purchases for a day or two.
- After his heart attack, his GP and other health professionals advised him to do at least 20 min. of cardiovascular exercise every day. He was conscientious about exercise for some time until the pain became too great, but now the pain is so bad that he is not able to swim or to use an exercise bicycle and cannot get the exercise he needs.

A friend appeared as a witness. He reviewed the changes he had seen in the appellant over the years -- a job that would take him a day or two now takes him several weeks, so instead of paying him by the hour, he pays him by the job. The friend confirmed that the appellant's home is a mess and that "it needs to be shoveled out." He sometimes sees him at the grocery store where he is carrying a basket rather than pushing the cart. The friend noted that due to his pain the appellant "walks like [a penguin]," with no hip rotation.

The appellant's daughter also appeared as a witness. She stated that she often does shopping for him, particularly for clothes and for other items that it is difficult for him to shop for. She said that she will go over to his house several times a season to bring in wood for him. She mentioned that visiting with him was difficult, as her home does not have the furniture that is comfortable for him and for her to go to his place is not a good idea because of her asthma and the unsanitary condition of the house.

The SW appeared as the appellant's advocate. She stated that she had met the appellant twice before doing the AR and eight times since. She has got to know the appellant quite well, helping him out with other disability related applications. The assessment she has done for him is based on the disability resource center's bio-psychological-social model and is designed, along with the SW's professional experience, to help identify issues and their impact on the client's mental health and

functioning.

The panel finds that, with the exception noted below, the new information provided by the appellant at the hearing is in support of the information and records that were before the ministry at the time of reconsideration, clarifying many aspects of the comments in the PR and the AR regarding the appellant's health condition. In particular, the appellant's testimony about his recommended exercise regime clarifies the GP's reference to "unable swimming or using exercise bike." The panel therefore admits the new information as evidence pursuant to section 22(4) of the Employment and Assistance Act. The panel does not admit as evidence the appellant's testimony that he has emphysema, as that diagnosis was not before the ministry at reconsideration.

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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 the requirements in section 2 of the EAPWDA. Specifically the Ministry determined that the information provided did not establish that the appellant has a severe mental or physical impairment that 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 did determine that he met the 2 other criteria in EAPWDA section 2(2) set out below.

The following section of the EAPWDA applies to this appeal:

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 following section of the EAPWDR applies to this appeal:

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. As the ministry did not attend the hearing, the panel considers the ministry position to be that set out in the reconsideration decision.

Evidentiary issues

In the reconsideration decision, the ministry stated that the appellant's PWD application was problematic as the AR was completed by the SW who met the appellant for the first time to complete the AR and used the PR, CPPD medical report and medical file notes and attachments as sources of information. While the ministry has access to the PR, none of the other reports were provided to the ministry to assess their content. The ministry stated that the AR is intended to be completed by a prescribed professional having a history of contact and recent experience with the applicant and is to be based on knowledge of the applicant, observations, clinical data and experience. With respect to the first point, the panel notes that the SW indicated in the AR that she had met with the appellant 2 --10 times in the past year and that at the hearing had stated that she had met with the appellant twice before meeting with him to complete the report.

As to the CPPD medical report and other medical documentation consulted by the SW, it would have been helpful if these materials had been attached to the application, as the SW had found in them additional conditions not listed by the GP that may have an impact on the appellant's daily functioning: COPD and OA. In this connection, the panel notes that the determination of the severity of impairment is at the discretion of the minister, taking into account all the evidence, including that of the appellant. However, the starting point must be medical evidence, with the legislation requiring that a medical practitioner identify the impairment and confirm that impairment will continue for at least two years. In the present appeal, the physical impairments identified by the GP that will continue for at least two years are spinal stenosis/chronic backache, central obesity, sleep apnea on CPAP, and angina/ischemia heart disease, with a previous transient ischemic event. The appellant in his SR has listed other conditions as well, including nerve damage at C5-C6 and how his injuries give rise to pain in different ways. In addressing the severity of physical impairment, the panel is limited to considering the diagnosis of the GP for the above reasons, but considers the nerve damage condition and the appellant's description of how his pain manifests as being subsumed under "chronic backache." Despite some differences between the diagnoses reported by the GP and those indicated by the SW and the appellant, the panel considers it reasonable to focus on the common elements, which in general terms can be described as a combination of cardio-pulmonary issues and pain-related back and mobility/flexibility muscular-skeletal difficulties. As explained below, what is important are the impacts of these conditions on daily functioning.

In light of the above, the panel finds no reason to discount the evidence of the SW in the AR.

Severity of physical impairment

In the reconsideration decision, the ministry noted the functional skill limitations reported by the GP (able to walk1-2 blocks, etc.). The ministry also noted the SW's assessments that continuous help is required from another person with all aspects of mobility/physical abilities -- explaining that the appellant can walk a maximum of 100 feet then needs to rest for 2 to 6 min. and he can lift a

maximum of 10 pounds. He cannot bend over or climb stairs. The ministry noted that no assistive devices are routinely used to help compensate for his impairment -- specifically no cane or walker is used to assist mobility. The ministry found that functional skill limitations reported by the GP are moderately restricting: the appellant is able to continue to walk after resting for a few minutes and his ability to lift 10 pounds is not severely limiting in terms of ability to perform DLA. The ministry noted that there is a discrepancy in estimating physical abilities between the two medical professionals and stated that as the GP knows the appellant better and has access to all his medical records, radiographs etc. information from him was given precedence in the adjudication. The ministry also referred to the letter from the SW submitted at reconsideration, stating that it had been considered in conjunction with that presented with the original application. The ministry concluded that as the functional skill limitations are in the moderate range and require no assistive device to mobilize, the ministry was not satisfied that the information provided is evidence of a severe physical impairment.

The position of the appellant, as set out in the advocate's letter at reconsideration and at the hearing, is that the appellant's functional skills limitations, when put into everyday context, means he is unable to go up a full flight of stairs, or walk to or from the pharmacy, unless he gets a parking spot right in front on the street. He is unable to sit through watching the evening news, without having to shift positions to reduce the constant pain. Further, he is unable to lift anything without severe exertion required. For a male of his stature, he should be able to lift up to 90 pounds. According to his physician, he cannot lift an eighth of what he should be able to lift and sustain. In this context, it can be reasonably inferred that in fact these functional deficits are severe in terms of overall functionality, due to the constant daily and hourly impact of the functional limitations.

In the discussion below concerning the information provided regarding the severity of the appellant's impairments, the panel has drawn upon the ministry's definition of "impairment," as set out in section A, Diagnoses of the PR. This definition consists of "cause" and "impact" components: "impairment is a loss or abnormality of psychological, anatomical or physiological structure or function [the cause] causing a restriction in the ability to function independently, effectively, appropriately or for a reasonable duration [impact]." The cause is usually set out as a disease, condition, syndrome or even by a symptom (e.g. pain). In the present appeal, the cause is a combination of health issues identified by the GP – heart disease (with a previous heart attack), central obesity and sleep apnea, together with physiological issues, namely spinal stenosis leading to severe backache. A severe impairment requires the identified cause to have a severe impact. The assessment of severity is therefore based on the impact on daily functioning, in such areas as functional skill limitations, cognitive and emotional deficits, restrictions on the ability to manage DLA and assistance required.

The evidence points to several severe impacts restricting the appellant's physical abilities. His ability to walk any distance is limited: after walking 100 to 200 feet, the combination of his angina, obesity and back pain requires him to stop and take a rest for a few minutes; he can only repeat this sequence a couple of more times before he is exhausted and is "done for the day." His back issues also restrict torso movement, particularly bending. While he has learned to tolerate the pain associated with tasks that take a few seconds, such as bending over the sink to brush his teeth or to put food into the oven, the pain prevents him from doing any typical day-to-day activities that require bending for over a minute or so, such as sweeping the floor, using the vacuum cleaner or even pushing a shopping cart in the grocery store. Further, the pain associated with his physiological condition precludes such activities as using an exercise bicycle or swimming to get the cardiovascular exercise recommended to prevent exacerbating his health conditions. Given these impacts on the

appellant's ability to function effectively, the panel finds that the ministry was not reasonable in determining that the information provided did not establish a severe physical impairment.

Severity of mental impairment

In the reconsideration decision, the ministry noted that the GP describes "decreased motivation due to depression" with two deficits to cognitive and emotional functioning (emotional disturbance and motivation). The ministry also noted that the GP did not report a restriction to social functioning nor any difficulty with communication. The ministry then referred to the SW's assessment as describing a much different picture, with major and moderate impacts on the majority of aspects of daily functioning, explaining that for the depression the appellant is currently taking an antidepressant and attention and planning are very restricted due to depression. The ministry notes that the SW does not describe whether the antidepressant medication is having an effect on the appellant's mood. As the GP's narrative is not supportive of a severe mental health condition that significantly limits the appellant's ability to function either continuously or periodically for extended periods, the ministry was not satisfied that the information provided is evidence of a severe impairment.

In her letter at reconsideration and at the hearing, the appellant's advocate stated that his mental health is deteriorating significantly, and he is struggling to maintain any quality of life even with the prescribed antidepressant medication. She submits that the cognitive and emotional deficits and impacts and social functioning support/supervision required as reported in the PR and AR point to a severe mental impairment.

In light of the GP's diagnosis of depression and his comment that the appellant has "decreased motivation due to pain" the panel considers it reasonable that the ministry would expect more evidence of the impact in how this restricts the appellant's daily functioning, including social functioning, in order to substantiate a severe mental impairment. The SW has identified major impacts in several areas of cognitive and emotional functioning, However, the narrative does not include any analysis, or even examples, as to how these impacts manifest in daily functioning. For example, for executive functioning, no description is provided as to how the appellant's mental impairment affects his planning, organizing, sequencing, abstract thinking, problem-solving or calculations. Without such a description or examples, and with social functioning described as "good" for both immediate and extended social networks, the panel finds that the ministry reasonably determined that the information provided did not establish a severe mental impairment.

Whether ability perform DLA is significantly restricted

As to whether the information establishes that the impairment directly and significantly restricts DLA either continuously or periodically for extended periods, the ministry noted that a severe impairment had not been established. The ministry noted that the GP reports no restrictions to 8 of 10 DLA including social functioning. Periodic restriction is reported for basic housework and mobility outside the home, described as: "has to rest with cleaning, cannot do bending to wash floors/sweep, etc. - has to rest walking >1-200 feet." The ministry also noted that the SW reports that many activities require either periodic or continuous help from another person and many tasks take longer than typical. However the narrative provided does not substantiate the need for continuous help - e.g. food preparation and cooking -- makes basic meals, can't stand or lift enough:: taking meds as directed -- waits until absolutely needs pain relief for sleep before taking meds: social functioning-- isolated due

to chronic pain, etc. Moreover, there is a significant discrepancy in the restrictions to daily living activities reported by the GP -- only to periodic restrictions. The ministry concludes that for these reasons, the information from the prescribed professionals does not establish that this criterion has been met.

The position of the appellant is that the GP reports that the appellant is actively restricted in the DLA requiring physical effort in mobility outside the home and basic housework. The SW reports further restrictions in the areas of personal care, shopping, meals and transportation, many sub-activities of which requiring continuous assistance from another person or unable and taking significantly longer than typical. As a result, it is reasonable to infer that the appellant's ability to manage DLA is significantly restricted on a continuous basis.

The panel has found that a severe physical impairment has been established, but not a severe mental one. With respect to the DLA relating to a person with a mental impairment, i.e. EAPWDR section 2(1)(b)(i) make decisions about personal activities, care or finances; and 2(1)(b)(ii) relate to, communicate or interact with others effectively, the panel notes that there is no evidence that the appellant has difficulties with respect to (b)(ii). The SW indicates that the appellant requires continuous support/supervision regarding dealing with unexpected demands and securing assistance from others. The panel finds that as a severe mental impairment has not been established, and as there is little evidence, apart from him being "too proud" to ask for help to clean his home, the ministry was reasonable in determining that it had not been established that these two DLA were significantly restricted.

As to the DLA requiring physical effort, the panel finds that the ministry did not give sufficient weight to the evidence or did not have the benefit of the testimony of the appellant and the witnesses at the hearing. The evidence, from both the GP and SW, as clarified by the appellant at the hearing, is that the appellant's angina/obesity/backache conditions significantly limit his ability to move about indoors and outdoors, as he cannot walk more than 100-200 feet without stopping to take a few minutes' rest and cannot repeat this sequence more than a couple of times. Further, he is restricted in using public transit because he cannot walk to the bus stop. While he can use his vehicle, that takes him only to a parking lot, and unless he can find a parking space near the entrance to his destination, he is limited to how far he can walk to get to where he needs to go. In the opinion of the GP and SW, the appellant's back condition and the pain from any bending preclude him from such tasks as sweeping, vacuuming or washing floors and therefore perform housework needed to maintain his place of residence in acceptable sanitary condition. The ministry noted that the GP assesses these restrictions as being only "periodic," and not consistent with the SW's assessment. However the GP explained his use of "periodic" as meaning "Has to rest with cleaning, cannot do bending to reach floors/sweep etc. Has to rest walking> 1-200 ft." The panel interprets this to mean the restrictions are ongoing and part of day-to-day life – i.e. continuous. The SW has identified elements of personal care, shopping and meals where the appellant requires continuous assistances from another person or unable, and takes significantly longer than typical. Given the evidence and the commentary, the panel takes what would appear to be mutually exclusive assessments to mean takes significantly longer than typical, with difficulty. In the opinion of the GP, the appellant is unable to use an exercise bicycle or swim. This results in him not being able to get the recommended exercise and therefore that he is unable to meet an important part of the "self care" under the DLA listed as "perform personal hygiene and self care." All these restrictions are ongoing and continuous. It is difficult for the panel to consider these restrictions to DLA as being anything other than significant and continuous.

Accordingly the panel finds that the ministry was not reasonable in determining that the information provided did not establish that this criterion has not been met.

Whether help is required to perform DLA

The position of the ministry is that as it has not been established that DLA are significantly restricted, it cannot be determined that significant help is required from other persons. No assistive devices are required.

The position of the appellant, as stated by his advocate at the hearing, is that he benefits from the help of his daughter for some shopping and for bringing in wood for the stove and that, while he is too proud to ask for it, it is clear that he requires help to clean his house.

The evidence is that there is a demonstrable need for the appellant to get significant help from someone to maintain his home in a clean and sanitary condition. Due to his mobility limitations, he also requires assistance for tasks where significant walking and/or bending are required, such as bringing wood into the home or shopping in large stores. Therefore, the panel finds that the ministry was not reasonable in determining that the information provided did not establish that the appellant requires help of another person in relation to housework and mobility outside the home and that this criterion had not been met.

Conclusion

Having reviewed and considered all of the evidence and the relevant legislation, the panel finds that the ministry's decision that the appellant was not eligible for PWD designation was not reasonably supported by the evidence. The panel therefore rescinds the ministry's decision in favour of the appellant.