

PART C – Decision under Appeal

The decision under appeal is the Ministry of Social Development (ministry) reconsideration decision dated October 18, 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 established 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 February 21, 2012, physician report dated April 19, 2012, and assessor report dated May 30, 2012;
- 2) Letter dated July 17, 2012 from the ministry to the appellant denying his request for PWD designation and enclosing a copy of the original decision summary; and,
- 3) Request for Reconsideration set out in a letter dated September, 2012 to the ministry from the social worker who completed the assessor report.

At the hearing, the advocate provided a written submission on behalf of the appellant as well as a letter dated November 11, 2012 from the appellant's daughter. The ministry did not object to the admissibility of these documents. The panel reviewed the letter which provided details of the appellant's need for assistance, and admitted it as being evidence in support of the information before the ministry on reconsideration, pursuant to Section 22(4) of the Employment and Assistance Act. The panel accepted the written submission as argument only, containing no new evidence.

In his Notice of Appeal, the appellant stated that his physical impairments are progressive and his physician has confirmed that he has significant problems in performing daily living activities. As a result of pain and restricted mobility, he has major issues with cognitive and emotional functioning.

In the Request for Reconsideration, the social worker stated that regarding the date of onset of the appellant's arthritic condition, he was referred by his physician for an MRI in October 2011 prior to being referred to a specialist. The appellant advised that the specialist report was forwarded to his physician in November 2011. The appellant stated that the physician asked him questions during the 5 to 10 minute interview but did not record statements in the PWD application form itself. Since the initial application, the appellant has fashioned his own walking cane to help him move indoors and outdoors. On an average of once a week, the appellant could not go down stairs. There is no railing for the stairs in his home so he uses his cane extensively to help him climb up and down. The appellant advised that he could not lift 15 to 25 lbs. and he now avoids lifting and bending altogether. The appellant stated that he might lift 8 to 10 lbs. one time from floor to counter or table top using one hand only. He asks his daughter to carry groceries from the car into the house. He uses a post at the end of a railing to pull himself to his feet out of his bed on the floor, and he uses his cane regularly to get out of chairs and up from the toilet. The appellant stated that his daughter is taking more responsibility for the housework and the social worker found that his apartment was substantially more cluttered than during the previous visit. The appellant stated that any repetitive motion is causing increased pain in the lumbar region. The pain is moving into his hips and is exacerbated by repetitive swinging motions such as vacuuming, sweeping, or mopping floors. The appellant stated he is far less inclined to go out to visit people because he feels he has less to contribute in terms of events of his life and for the purchase of beverages. The social worker indicated that a deeper depression is indicated as the appellant's pain increases. He has markedly reduced interests and motivation to participate or engage. In the social worker's opinion, the appellant's overall condition has deteriorated, both physically and mentally.

In his self-report included with the PWD application, the appellant stated that he has arthritis in his neck which is "bone on bone" and a back problem with a numb spot in the centre of his back. The appellant stated that he cannot take any opiates because he is allergic to them. The appellant stated that he has poor eyesight which limits his ability to read. The appellant stated that he only sleeps 3 to 4 hours at a time, that he sleeps on a mattress on the floor, and that he has to sit up for a couple of hours or soak in the tub in order to go back to sleep for a couple of hours. He uses a bar to pull himself up off the floor. The appellant stated that getting dressed is painful so he will stay in his pajamas if he has no appointments. He has to hold on to a bar in the shower for support. His daughter goes with him for shopping and she carries the groceries. His daughter does the cooking because of the appellant's back and neck issues. The appellant stated that he gets stiff legs all the time and his feet get red. Once or twice a month his back gets twisted in the night and the appellant will stay in

bed the next day. The appellant stated that he relies on his vehicle for transportation because of limited mobility and public transportation would be painful because of the sudden stops and jerky motions. His daughter does the majority of housework because of his restricted motion. He has poor dental health which makes his gums sore and it is difficult to chew, and he has a minimal social life because of limited mobility and his depression.

In the letter dated November 11, 2012, from the appellant's daughter, she stated that she lives with the appellant and the problems she has observed are that he sleeps odd hours, 3 to 4 hours at a time. He does not bathe regularly, has a hard time with stairs and does not walk anywhere. The daughter stated that the appellant's depression is getting worse and his diet is not healthy. He is becoming more forgetful and his friends do not visit as much. The house is always a mess. The daughter stated that the appellant's mobility has suffered more in the last couple of years. The appellant's daughter stated that she helps him with cooking most of the meals, and cleaning the house (dishes, vacuum, laundry). She grocery shops and packs the groceries. The daughter stated that she helps the appellant climb the stairs in the house since there are no hand rails and he has fallen twice. The daughter stated that she drives him to his appointments. The daughter stated that she has less and less time to help the appellant due to her other commitments and worries about him when she leaves for full-time college.

At the hearing, the appellant's advocate stated that the self-report had been dictated by the appellant and the advocate had written out his comments since the appellant has difficulty with understanding and with writing. The advocate stated that the social worker who prepared the assessor report had the advantage of actually interviewing the appellant at his residence twice, which made it possible to actually see the physical challenges that are present there. The advocate stated that the social worker made a third home visit to the appellant in August 2012 and he observed an increase in the appellant's restrictions to mobility.

The appellant stated that his doctor had him go for an MRI and two CAT scans for the specialist to look at. The appellant stated that he had an accident when he was younger and there were a couple of discs in his back that were "splintered" and it has left a numb spot in the middle of his back, with an area about the size of a grapefruit. The appellant stated that the problem in his neck is "wear and tear", that it is now "bone on bone" and it gets inflamed. The appellant stated that when he went to the specialist, he was told that there was nothing that could be done except for him to go to physiotherapy. The appellant stated that he did not want to go to physiotherapy because any kind of movement irritates the pain. The appellant stated that his doctor agreed that physiotherapy would be "too hard" on him. The appellant stated that he figures he had a sore back from working too hard and then he went to see a doctor about it in 2011 and that is when he was referred to the specialist. In response to a question, the appellant stated he believes that the consult with the specialist was for his degenerative disc disease and that is when it was discovered that he also has arthritis in his neck. The appellant stated that he is not seeing any more specialists because there is nothing that can be done. The appellant stated that he has tried 3 or 4 different medications but they either had negative side effects or he found they were not effective. The appellant stated that he is also concerned by the possible side effects described for some of the medications, including possible damage to the kidneys. The appellant stated that his doctor suggested he look into the chronic pain clinic but he discovered that it is expensive since only a small portion of the cost is covered. In response to a question, the appellant stated that his doctor has not recommended any bracing or supports for his neck or his back that might serve to stabilize these areas. The appellant stated that he gets frustrated by the restriction with what he can do and he feels that the government does not want to help him.

The physician who completed the physician report indicated the appellant has been his patient for one year and that he has seen the appellant 2 to 10 times in the past 12 months. In the physician report, the physician confirmed a diagnosis of arthritis and degenerative disc disease, with no date of onset indicated. In describing the severity of the medical condition relevant to the appellant's impairment, the physician noted that the appellant "...reports significant pain, restricted mobility, which has caused significant problems in performing daily living activities, he is unable to complete basic tasks, easily fatigued, dependent on daughter to perform

significant daily tasks. Unable to tolerate oral medications and complains of increasing visual disturbance, patient also reports low mood, consequently he is unable to obtain/maintain employment." The physician indicated that the appellant has not been prescribed medications or treatments that interfere with his ability to perform daily living activities (DLA) and he does not require an aid for his impairment. The physician reported that the appellant can walk 2 to 4 blocks unaided on a flat surface, he can climb 5 or more stairs unaided, he can lift 15 to 35 lbs. and remain seated for less than 1 hour. The physician reported that there are no difficulties with communication.

The physician reported that there are significant deficits with cognitive and emotional function in the areas of emotional disturbance and motivation with the note added "...increasing pain and dependence has caused depressive symptoms." Although the physician has not responded to the question whether the appellant's impairment directly restricts his ability to perform daily living activities (DLA), he indicated that the appellant is restricted periodically in the areas of meal preparation and daily shopping and restricted continuously in the area of basic housework. The physician reported that the appellant is not restricted in personal self care, management of medications, mobility inside the home, mobility outside the home, and with management of finances. For the periodic restrictions, the physician noted that "...some days his restrictions are more severely affected, would then require more assistance." Although there is no assessment made by the physician for social functioning, he has noted that "...due to chronic pain, low mood, unable to maintain social relationships." For the degree of restriction, the additional comments made by the physician are that "...lack of mobility and inability to perform housework, labour-type activities." Additional comments by the physician are that the appellant "...has experienced significant deterioration in function and is unable to obtain/maintain employment due to cognitive/physical impairments."

The social worker who prepared the assessor report as a prescribed professional indicated that he saw the appellant for two one-hour interviews in a two-week period. The social worker indicated that while the appellant has a satisfactory speaking ability, his reading, writing and hearing are all poor. The social worker indicated that the appellant is independent with walking indoors and outdoors ("2 blocks and must stop") and with climbing stairs ("one flight is maximum; he stops at landing and pulls on rails to climb remaining steps") although he takes significantly longer than typical. There is no assessment of a need for assistance with standing or with lifting ("approximately 25 lbs. maximum one time but no repetitions") and carrying and holding ("carrying is even more difficult"). In the explanation, the social worker noted that the appellant "...makes the effort to do all he can, this often results in him doing too much and suffering for days afterwards." The social worker indicated that the appellant is independent with most tasks of personal care including dressing, bathing, toileting, feeding self, and with transfers in/out of bed and transfers on/off chair, while taking significantly longer than typical with all but feeding self and requiring periodic assistance with regulating diet ("shares cooking with daughter").

The social worker reported that the appellant requires continuous assistance with doing laundry and with basic housekeeping ("daughter does his laundry frequently; avoids any repetitive actions- sweeping/vacuuming"). The social worker indicated that the appellant requires continuous assistance with going to and from stores ("always goes with daughter/ anxiety in stores") and with carrying purchases home ("daughter carries groceries to car- car to house") and periodic assistance with reading prices and labels, making appropriate choices, and paying for purchases ("daughter helps in all aspects of shopping"). The social worker provided additional comments that included that the appellant had a fall fairly recently and since then he has his daughter in the apartment when he showers for fear of a fall. The social worker reported that the appellant requires continuous assistance with food preparation ("daughter is doing an increasing amount of cooking, prep work is difficult, pain in hands"), cooking and safe storage of food ("relies on daughter to clean up- cannot stand at sink due to pain in back") and periodic assistance with meal planning. The social worker indicated that the appellant requires continuous assistance with banking ("cashier- no bank account; no computer to do online"), and periodic assistance with budgeting, with no comments provided, and is independent with paying rent and bills.

The social worker reported that the appellant is independent with filling/refilling prescriptions and with safe handling and storage, while requiring periodic assistance from another person with taking medications as directed ("when pain is really intense- bringing tears to his eyes- he will use Ibuprofen; resists meds to an extreme; needs to be encouraged to take pills"). The social worker does not assess the appellant with getting in and out of a vehicle but comments "swings both feet out first then pulls/pushes to stand", and indicated that he requires periodic assistance with using transit schedules and arranging transportation ("could not walk to bus; the sudden stops/starts would be too much- risky"). The social worker added a comment that the appellant "...is frustrated by his reduced ability to perform daily tasks both personal and industrial; depression prevents him from wanting to engage people or self care; pain is constant; depression deepening."

For cognitive and emotional functioning, the social worker indicated that the appellant experiences major impacts to his daily functioning in the areas of bodily functions, attention/concentration, executive (moderate/major), memory, motivation, and motor activity. The social worker indicated that there are moderate impacts in the areas of consciousness, emotion, insight and judgement, language, and other emotional or mental problems, with no explanation or comments provided except to refer to the other sections of the assessor report. For social functioning, the social worker indicated that the appellant requires continuous support/supervision with making appropriate social decisions ("he does not engage people freely; he is becoming more reclusive"), with developing and maintaining relationships ("does not have same number of friends; never has people over"), with dealing appropriately with unexpected demands ("does not like surprises of any sort- positive/ negative"), and with securing assistance from others ("very hard time asking for help"), while being independent with interacting appropriately with others. The social worker assessed the appellant as having very disruptive functioning with both his immediate social network ("does not want people coming to the apartment- he does not entertain, he sees friends less and less" and extended social networks ("groups are stressful"). The social worker indicated that the appellant receives help with DLA from his family and health authority professionals, with the comment that the appellant has been referred by his physician to mental health for counseling.

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.

Evidence:

The ministry argues that the assessor report is problematic as the social worker met with the appellant for the first time to complete the report and used the appellant's self-report and the physician report as sources of information. The ministry argues that there were no psychiatric assessments, neurological, radiological, or addiction services medical reports used to substantiate the information. The ministry argues that the assessor report is intended to be completed by a prescribed professional having a history of contact and recent experience with the appellant and is to be based on knowledge of the applicant, observations, clinical data and experiences. The appellant argues, through his advocate, that the information from the social worker should be given as much or more weight than the physician report as the social worker met with the appellant three times in his home, twice to complete the assessor report, and once prior to completing the Request for Reconsideration. The advocate argues that the social worker completed a much more detailed report (ten pages) and he had the advantage of actually interviewing the appellant at his residence which would make it possible to actually see the physical challenges that are present there.

The social worker who completed the assessor report indicated that he based his assessment on a home assessment as well as the medical report with the application, and there were no additional specialist reports considered or provided. While an assessment gained from observation of the appellant in his home is valuable evidence, the panel finds that many of the social worker's comments in the assessor report and the Request for Reconsideration relate to information provided to him by the appellant rather than from the social worker's personal observation. The panel finds that the social worker who prepared the assessor report has also prepared information for the Request for Reconsideration, making arguments on behalf of the appellant, and thereby becoming an advocate for the appellant rather than solely an independent assessor. The physician who completed the physician report indicated the appellant has been his patient for one year and that he has seen the appellant 2 to 10 times in the past 12 months. For these reasons, the panel places more weight on the evidence of the physician where it conflicts with that of the social worker.

Severity of physical impairment:

The ministry argues that the evidence does not show that the appellant has a severe physical impairment. The ministry argues that the physician indicated that the appellant can walk 2 to 4 blocks and climb 5 or more stairs unaided, that he can lift 15 to 35 lbs. and remain seated for less than one hour. The ministry argues that the social worker concurs with independent function with mobility and physical abilities and reports the ability to walk 2 blocks before stopping, one flight of stairs, and lifting approximately 25 lbs. (one time). The ministry argues that no assistive devices are routinely used to help compensate for impairment, although the assessor notes use of a walking stick to descend stairs due to the lack of a railing. The ministry argues that the functional skill limitations described are more in keeping with a mild to moderate degree of impairment. The ministry points out that physical limitations appear to be related to chronic pain, that the appellant reports an allergy to opioids and reluctant and infrequent use of Ibuprofen for pain relief, and the ministry argues that remedial measures in the form of analgesics are available to ameliorate the pain and allow for better functionality.

The appellant argues, through his advocate, that he has a severe physical impairment as a result of arthritis and degenerative disc disease. The advocate argues that when asked to indicate the severity of the medical

conditions, the physician stated that the appellant reports "significant pain" and restricted mobility which has caused "significant problems" in performing DLA, that he is unable to complete basic tasks, easily fatigues and is dependent on his daughter to perform significant daily tasks. The advocate points out that the physician indicated that the appellant cannot tolerate oral medications and that his condition appears permanent and continues to deteriorate. The advocate argues that when the physician was asked to provide additional comments, he stated that the appellant has experienced significant deterioration in function and is unable to obtain/maintain employment due to cognitive/physical impairments. The advocate argues that while employability is not a criteria for PWD, being able to get up, get groomed and plan and prepare a meal and access transportation are all things that take significantly longer for the appellant and are a challenge that would prevent him from showing up to work on a regular basis.

The panel finds that the evidence of a medical practitioner confirms a diagnosis of arthritis and degenerative disc disease, with no date of onset indicated by the physician however the appellant stated that he was referred by his physician for an MRI in October 2011 prior to being referred to a specialist. In describing the severity of the medical condition relevant to the appellant's impairment, the physician noted the appellant "...reports significant pain, restricted mobility, which has caused significant problems in performing daily living activities, he is unable to complete basic tasks, easily fatigued, dependent on daughter to perform significant daily tasks. Unable to tolerate oral medications and complains of increasing visual disturbance, patient also reports low mood, consequently he is unable to obtain/maintain employment." The physician indicated that the appellant has not been prescribed medications or treatments that interfere with his ability to perform DLA and he does not require an aid for his impairment. The physician reported that the appellant can walk 2 to 4 blocks unaided on a flat surface, he can climb 5 or more stairs unaided, he can lift 15 to 35 lbs. and remain seated for less than 1 hour. The social worker indicated that the appellant is independent with walking indoors and outdoors ("2 blocks and must stop") and with climbing stairs ("one flight is maximum; he stops at landing and pulls on rails to climb remaining steps") although he takes significantly longer than typical. There is no assessment of a need for assistance with standing or with lifting but the social worker adds comments that "...approximately 25 lbs. maximum one time but no repetitions" and "carrying is even more difficult". Although the appellant advised the social worker that he could not lift 15 to 25 lbs. and he might lift 8 to 10 lbs. one time, the panel finds that this indicates a rapid deterioration from the assessments made by both the physician and the social worker with no supporting evidence of a rapid rate of deterioration in the appellant's arthritis or his degenerative disc disease.

The social worker indicated that, since the initial application, the appellant has fashioned his own walking cane to help him move indoors and outdoors. On an average of once a week, the appellant could not go down stairs and that there is no railing for the stairs in his home so he uses his cane extensively to help him climb up and down. The appellant stated that he has tried 3 or 4 different medications but they either had negative side effects or he found they were not effective. The appellant stated that he is also concerned by the possible side effects described for some of the medications, including possible damage to the kidneys, and he does not want to take medications. The appellant stated that he did not want to go to physiotherapy because any kind of movement irritates the pain and his doctor agreed that physiotherapy would be "too hard" on him. The evidence demonstrates that the appellant experiences pain as a result of his conditions but he is mostly independent with mobility, using a walking stick for negotiating stairs that have no railing, but no other assistive device such as braces are required and that, despite some restrictions, his functional skills remain in the moderate range. There have been professional recommendations made to the appellant for remedial measures, including analgesics, physiotherapy and a referral to a pain clinic, all of which the appellant has chosen not to pursue and the panel finds that the ministry reasonably determined that these are available to him, when he overcomes his reluctance, to ameliorate the pain and allow for better functionality. The panel finds that the ministry reasonably concluded that the evidence does not establish a severe physical impairment.

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 that increasing pain and dependence on his daughter has caused depressive symptoms and two deficits are reported to cognitive and emotional functioning, in emotional disturbance and motivation. The ministry argues that the physician reports no difficulty with communication and poor reading and writing are noted by the social worker. The ministry argues that the physician reports no social functioning restriction although chronic pain/low mood cause difficulties maintaining social relationships. The ministry argues that the social worker reports moderate to major impacts in daily functioning, however the narrative/ explanation speaks of mostly physical factors causing these impacts. The ministry argues that this assessment is to be completed where there is an identified mental impairment or brain injury and is not meant to reflect the effects of chronic pain on cognitive and emotional daily functioning. The ministry argues that there is no recent psychiatric assessment to support the social worker's opinion and the social worker is not a mental health professional accredited to assess cognitive function.

The appellant argues, through his advocate, that the appellant has a severe mental impairment as a result of depression. The advocate argues that the appellant attended at the advocate's office and dictated his responses to the questions as he had difficulty understanding what was required and difficulties with writing. The advocate argues that the physician indicated that the appellant reports low mood and that there are significant deficits with cognitive and emotional function as a result of "...increasing pain and dependence has caused depressive symptoms." The physician indicated that social functioning is impacted due to chronic pain/low mood, and he is unable to maintain social relationships. The advocate argues that the physician commented that the appellant has experienced significant deterioration in function and is unable to obtain/maintain employment due to cognitive/physical impairments. The advocate argues that the social worker indicated that the appellant's skills in reading and writing are at a functional level only, with completion of grade 7, that he has a hearing impairment and his visual acuity is reported to be reduced quite dramatically. The advocate argues that the social worker notes that 6 out of 14 cognitive and emotional functions are majorly impacted. The advocate argues that the appellant stated that he has a minimal social life due to limited mobility and depression.

The panel finds that the evidence of a medical practitioner does not confirm a diagnosis of a mental disorder. Although the physician commented that the appellant reports low mood and that, consequently, he is unable to obtain/maintain employment, the physician has not identified a mental disorder that it is likely to continue for two years, as required by the legislation. The physician reported that there are no difficulties with communication and the social worker indicated that while the appellant has a satisfactory speaking ability, his reading, writing and hearing are all poor. The physician reported that there are significant deficits with cognitive and emotional function in the areas of emotional disturbance and motivation with the note added "...increasing pain and dependence has caused depressive symptoms." Although there is no assessment made by the physician for social functioning, he has noted that "...due to chronic pain, low mood, unable to maintain social relationships." For cognitive and emotional functioning, the social worker indicated that the appellant experiences major impacts to his daily functioning in the areas of bodily functions, attention/concentration, executive (moderate/major), memory, motivation, and motor activity, as well as moderate impacts in the areas of consciousness, emotion, insight and judgment, language, and other emotional or mental problems, with no explanation or comments provided except to refer to the other sections of the assessor report.

For social functioning, the social worker indicated that the appellant requires continuous support/supervision with making appropriate social decisions ("he does not engage people freely; he is becoming more reclusive"), with developing and maintaining relationships ("does not have same number of friends; never has people over"), with dealing appropriately with unexpected demands ("does not like surprises of any sort- positive/negative"), and with securing assistance from others ("very hard time asking for help"), while being independent with interacting appropriately with others. The social worker assessed the appellant as having very disruptive functioning with both his immediate social network ("does not want people coming to the apartment- he does not entertain, he sees friends less and less" and extended social networks ("groups are stressful"). In the Request for Reconsideration, the social worker commented that a deeper depression is

indicated as the appellant's pain increases. In view of this comment and the physician's assessment that the appellant's low mood is tied to his chronic pain, the panel finds that the ministry reasonably concluded that physical factors are causing these impacts, rather than an identified mental condition. 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 DLA are, in the opinion of a prescribed professional, directly and significantly restricted either continuously or periodically for extended periods. The ministry argues that the physician reports periodic restriction to meal preparation and daily shopping, with restriction described as "some days his restrictions are more severely affected, would then require more assistance" and no further information is provided as to the frequency or duration of these exacerbations. The ministry argues that continuous restriction is noted to basic housework but the degree of restriction is described as "lack of mobility and inability to perform housework labour-type activities." The ministry argues that the social worker reports that periodic and continuous help is required with numerous DLA, however the explanation provided does not establish this degree of assistance from another person. For example, periodic help is reported to regulate diet with the explanation "shares cooking with daughter" but this category is meant to relate to eating disorders characterized by major disturbance in eating behaviour. The ministry argues that although housework reportedly requires continuous help from another person, this is explained as "avoids any repetitive actions- sweeping/vacuuming" and there are many other tasks involved in housework that a person with the ability to lift up to 25 lbs. and to walk 2 blocks could perform independently. The ministry argues that although continuous help is reported with banking explained as "cashier-no bank account- no computer to do online", this is not a direct restriction related to a mental or physical impairment.

The appellant argues, through his advocate, that the evidence of the physician establishes that he is directly and significantly restricted in his ability to perform his DLA either continuously or periodically for extended periods. The advocate argues that basic housework, meal preparation, and daily shopping are all restricted. The advocate argues that in August 2012 the social worker made a second home visit to the appellant's residence and he observed an increase in the restrictions to the appellant's mobility, specifically with limitations in going down stairs and not able to do it at all for one to three days per week due to lower back pain. The advocate argues that with no railing on the stairs, the appellant had to make a cane to give him support to negotiate the stairs. The advocate provided excerpts from the court decision in *Hudson v. EAAT*, 2009 BCSC 1461 and argues that there must be evidence from a prescribed professional indicating a direct and significant restriction on at least two DLA, but there is no statutory requirement that more than two DLA be restricted.

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, in the physician report, the physician indicated that the appellant is restricted on a periodic basis, described as "...some days his restrictions are more severely affected, would then require more assistance." The appellant's daughter stated that she helps him with cooking "most" of the meals. In the assessor report, the social worker indicated that the appellant requires periodic assistance with meal planning and continuous assistance with the remaining tasks of food preparation, cooking and safe storage of food. The social worker commented that "...daughter is doing an increasing amount of cooking, prep work is difficult, pain in hands" and that the appellant "relies on daughter to clean up- cannot stand at sink due to pain in back." The panel finds that the assessment of the physician and the social worker are not consistent for the DLA of managing meals and that, therefore, more weight is placed on the assessment made by the physician. For managing personal finances, the physician reported that the appellant is not restricted and, in the assessor report, the social worker indicated that the appellant requires continuous assistance with banking ("cashier- no bank account; no computer to do online"), and requires periodic assistance with budgeting, with no comments provided, and is independent with paying rent and bills. The panel finds that the ministry reasonably determined that the restriction identified to banking explained as "cashier-no bank account- no computer to do online" does not indicate a direct restriction related

to a mental or physical impairment.

In terms of shopping for his personal needs, the physician indicated that the appellant is periodically restricted ("some days") and the social worker indicated, in the assessor report, that the appellant requires continuous assistance with going to and from stores ("always goes with daughter/ anxiety in stores") and with carrying purchases home ("daughter carries groceries to car- car to house") and periodic assistance with reading prices and labels, making appropriate choices, and paying for purchases ("daughter helps in all aspects of shopping"). The panel finds that the assessments of the physician and the social worker are not consistent for the DLA of shopping and that, therefore, more weight is placed on the assessment made by the physician.

For use of public or personal transportation facilities, the physician did not indicate an assessment and the social worker does not assess the appellant with getting in and out of a vehicle but comments "swings both feet out first then pulls/pushes to stand", and indicated that he requires periodic assistance with using transit schedules and arranging transportation ("could not walk to bus; the sudden stops/starts would be too much"). The appellant stated that he relies on his vehicle for transportation because of limited mobility and public transportation would be painful because of the sudden stops and jerky motions. The panel finds that the appellant's mobility is limited to walking 2 to 4 blocks unaided on a flat surface. With respect to performing housework to maintain the appellant's place of residence in an acceptable sanitary condition, the physician indicated that the appellant requires continuous assistance and the social worker reported that he requires continuous assistance with both laundry and basic housekeeping. For the degree of restriction, the additional comments made by the physician are that "...lack of mobility and inability to perform housework, labour-type activities." In her letter, the appellant's daughter stated that she helps with cleaning the house (dishes, vacuum, laundry). In the Request for Reconsideration, the social worker reported that the appellant stated his daughter is taking more responsibility for the housework and the social worker found that his apartment was substantially more cluttered than during the previous visit. The appellant stated that any repetitive motion is causing increased pain in the lumbar region. The panel finds that the ministry reasonably determined that there are many tasks of housework, besides "labour-type" activities, that can be performed with the appellant's functional capabilities, particularly with the use of recommended medications and treatments.

For moving about indoors and outdoors, the physician indicated that the appellant is not restricted with mobility inside the home or mobility outside the home, and the social worker reported that the appellant is independent with walking indoors and outdoors ("2 blocks and must stop") and with climbing stairs ("one flight is maximum; he stops at landing and pulls on rails to climb remaining steps") although he takes significantly longer than typical. In the Request for Reconsideration, the social worker reported that, since the initial application, the appellant has fashioned his own walking cane to help him move indoors and outdoors, particularly to help him climb up and down stairs since there is no railing on the stairs in his home. The panel finds that the appellant is mostly independent with mobility, using a walking stick for negotiating stairs that have no railing, but no other assistive devices, such as braces, are required.

Regarding performing personal hygiene and self care, the physician indicated that the appellant is not restricted and the social worker indicated that the appellant is independent with most tasks of personal care including dressing, bathing, toileting, feeding self, and with transfers in/out of bed and transfers on/off chair, while taking significantly longer than typical with all but feeding self and requiring periodic assistance with regulating diet ("shares cooking with daughter"). The panel finds that the ministry reasonably determined that while periodic help is reported to regulate diet, this task is meant to relate to eating disorders characterized by major disturbance in eating behaviour and not to abilities in the area of cooking. With respect to managing his personal medications, the physician reported that the appellant is not restricted with this DLA and the social worker indicated that the appellant is independent with filling/refilling prescriptions and with safe handling and storage, while requiring periodic assistance from another person with taking medications as directed ("when pain is really intense- bringing tears to his eyes- he will use Ibuprofen; resists meds to an extreme; needs to be encouraged to take pills"). The panel finds that the appellant's resistance to taking medications does not indicate a restriction as a result of a physician or mental impairment but, rather, the appellant's evaluation that

the risks associated with taking medications currently outweigh the benefit to be obtained through pain relief and a resulting increase in physical functioning.

The evidence demonstrates that the appellant is continuously restricted with many heavier tasks of housekeeping, and periodically restricted with most tasks of managing meals and shopping, for periods referred to by the physician as "some days" that the appellant's restrictions are more severely affected. In his self-report, the appellant stated that once or twice a month his back gets twisted in the night and he will stay in bed the next day. The panel finds that the ministry reasonably determined that the evidence does not establish that these DLA are periodically restricted for extended periods of time, as required by the legislation. The advocate argues that there is no statutory requirement that more than 2 DLA be restricted, however the panel finds that the ministry reasonably determined that the evidence does not establish a direct and significant restriction on a minimum of two DLA on either a continuous basis or periodically for extended periods of time. 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:

The ministry's position is that since it has not been established that DLA are significantly restricted, it cannot be determined that significant help is required from other persons. The ministry points out that the physician did not prescribe an assistive device, however a walking stick is being utilized on stairs as there is no railing. The advocate argues that all sections of the application confirm that chronic pain and restricted motion necessitates the daily assistance of the appellant's daughter, and that he made a cane to give him support on stairs in his home with no railing.

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 with his daughter and receives assistance for DLA primarily from her. 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.