

PART C – Decision under Appeal

The decision under appeal is the Ministry of Social Development (the ministry) reconsideration decision dated January 23, 2013 which found that the appellant did not meet three of the five statutory requirements of Section 2 of the Employment and Assistance for Persons with Disabilities Act for designation as a person with disabilities (PWD). The ministry found that the appellant met the age requirement and that his impairment is likely to continue for at least two years. However, the ministry was not satisfied that the evidence establishes that:

- 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,
- 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.

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 included the following:

- 1) Person With Disabilities (PWD) Application comprised of the applicant information dated October 10, 2012, a physician report and assessor report both completed by the appellant's family physician of approximately 20 years and dated October 10, 2012;
- 2) Letter dated January 3, 2013 from the appellant's physician with handwritten responses to questions including that the physician agreed that the appellant has a severe mental impairment. He experiences recurring depression and anxiety. He has poor motivation, poor impulse control, poor judgment, poor concentration and fatigue. He also has diabetes and Hepatitis C. Overall, these conditions have a major impact upon his daily functioning. The physician also indicated agreement that the appellant takes significantly longer than normal to complete many daily living activities (DLA) as a direct result of his mental and physical limitations, and that his level of activity is significantly reduced. The physician agreed that the appellant's ability to cope with the stresses of daily life, make timely decisions and interact with other people are significantly restricted by his mental impairment. The appellant is significantly restricted in his ability to perform DLA by one or more of his ongoing symptoms on most days. The physician agreed that the appellant's health limitations significantly restrict his ability to perform a range of DLA continuously or periodically for extended periods. He has continuous and significant limitations such as taking longer than normal to do personal care and housework. He needs support for a proper diet and meal preparation and receives supervision of his medication. He needs support with social functioning and decision making. Shopping is limited when he does not leave home (isolates). The physician agreed that the appellant needs significant help from other people to manage DLA. He needs more support than he is currently getting. He needs counseling, and is under the care of health authorities and gets help from family members;
- 3) Fax (4 pages) dated January 22, 2013 from the ministry to the appellant's physician requesting responses to a number of questions prior to the reconsideration; and,
- 4) Request for Reconsideration- Reasons completed by an advocate on behalf of the appellant.

Diagnoses

The appellant has been diagnosed by his general practitioner with substance abuse (substance-related mental disorder), Hepatitis C, diabetes, and chronic mood disorder.

Physical Impairment

- In the physician report, the general practitioner indicated that the appellant's diabetes is "...in remission with medications." His Hepatitis C treatment options have been referred to a specialist. Regarding the degree and course of impairment, the physician explained that the appellant "...may be significantly functionally restricted if starts Hep C treatment."
- Functional skills reported in the physician report indicated that the appellant can walk 4 or more blocks unaided, he can climb 5 or more steps unaided, he can lift 15 to 35 lbs. and has no limitation with remaining seated.
- The general practitioner reported that the appellant has not been prescribed any medications or treatments that interfere with his ability to perform his daily living activities (DLA) and he does not require any aids for his impairment.
- In the assessor report, the general practitioner indicated that the appellant is independent with walking indoors and outdoors, with climbing stairs and standing, and with lifting and carrying and holding.
- In his self-report, the appellant stated that about a year ago he was diagnosed with Hepatitis C as well as "merca" (MRSA). For his diabetes, he has not been able to afford the medication that he has to take.
- The appellant stated that he would like to join the local gym to go for a workout, swim and other physical activities and he is not able to do so because of a lack of funds.

Mental Impairment

- With respect to health history, the general practitioner listed chronic anxiety and depression and commented that the appellant is not currently employable and he is stable on methadone.
- The general practitioner reported the appellant has no difficulties with communication.
- The general practitioner reported significant deficits with cognitive and emotional function in the areas of emotional disturbance, motivation, impulse control, and attention or sustained concentration.
- In the assessor report, the general practitioner indicated major impacts with cognitive and emotional functioning in the areas of emotion, impulse control and motivation, as well as moderate impacts in insight and judgment and attention/concentration. The general practitioner did not provide further comment to detail these impacts.
- The general practitioner reported that the appellant requires continuous support/supervision in all areas of social functioning, including making appropriate social decisions, developing and maintaining relationships, interacting appropriately with others, dealing appropriately with unexpected demands, and securing assistance from others. The general practitioner wrote that the appellant requires daily methadone, substance abuse counseling.
- The general practitioner assessed the appellant with very disrupted functioning in both his immediate social networks (illustrations provided in the PWD form are aggression or abuse, major withdrawn, often rejected by others) and extended social networks (illustration in the PWD form are overly disruptive behaviour, major social isolation). The support/supervision which would help to maintain the appellant in the community is described by the general practitioner as drug counseling and support.
- For additional information, the general practitioner indicated that the appellant needs counseling services, psychotherapist and a fitness centre.
- In his self-report, the appellant stated that for the last 20 years or so he has been struggling with an addiction to heroin and has been on the methadone program for the past 3 months.

Daily Living Activities (DLA)

- In the assessor report, the general practitioner reported that it is the appellant's substance abuse and chronic anxiety/depression that impact his ability to manage his DLA.
- The general practitioner indicated that all listed tasks of the DLA personal care, basic housekeeping, shopping, meals, paying rent and bills, medications and transportation are performed independently, with no further comment provided by the general practitioner.
- For social functioning, the appellant is assessed as requiring continuous support/ supervision in all five aspects of functioning.

Need for Help

- The general practitioner reported that the appellant does not require any aids for his impairment, and no assistive devices are indicated in the assessor report.
- The general practitioner indicated in the assessor report that help required for DLA is provided by the appellant's family and that help required that is not available is "transit."

In his Notice of Appeal, the appellant expressed his disagreement with the reconsideration decision.

Prior to the hearing, the appellant provided a copy of the fax dated January 22, 2013 from the ministry to the appellant's physician, completed by the general practitioner and dated February 1, 2013. The fax included the following:

- The commentary submitted with the Request for Reconsideration was not written in the same handwriting as that of the appellant's physician in the initial PWD application and the general

practitioner wrote that this was done "...only to save time. I agreed with it and wanted to expedite the process."

- In the original PWD application, the appellant's physician indicated that the appellant was independent in all aspects of DLA except social functioning. On January 3, 2013 it was indicated that on most days the appellant takes significantly longer than normal to complete many DLA. As this represents a significant change from the original application, the general practitioner was requested to clarify which of the appellant's conditions have changed and how. The general practitioner wrote "...on further review with patient, even though he functions independently, he has severe lack of motivation to do personal care and housework. Due to lack of motivation he eats less and may not shop at all. Continues to make poor decisions. Benefits from family help, i.e. brother and sister."
- Further clarification was requested for the named aspects of DLA, and the general practitioner wrote that the appellant is not motivated to shower daily, he skips 2 to 3 times a week or can take 20 to 30 minutes to bathe. He postpones housework to once or twice a week, which takes 2 to 3 hours with difficulty.
- The general practitioner stated that the appellant would benefit from help with shopping once a week and there is no food shopping close by. He could use day help as he does not cook much and uses cold foods, e.g. cereal/milk.
- The general practitioner wrote that the appellant is "OK to take pills" and the general practitioner supervises his prescriptions mostly. The appellant's brother takes him to shop weekly.
- In response to a request to clarify the nature and frequency of the appellant's restrictions coping with stresses and making timely decisions, the general practitioner wrote that the appellant has poor judgment and lacks insight. The appellant has reduced social interaction and cannot easily get help from others. He has restrictions with thinking, emotion, motivation, and focus.
- In the additional comments, the general practitioner wrote: "Newly revealed history of childhood sexual abuse by trusted family member from age 8 to 10. Likely cause of anxiety, depression, and addiction."

At the hearing, the appellant's advocate provided the following clarification regarding the evidence:

- The letter dated January 3, 2013 from the appellant's physician with handwritten responses to questions had been forwarded to the appellant's physician with the words "Sample Response" written across the top to illustrate to the general practitioner how to complete the form. The advocate produced the copy of the January 3, 2013 document with the words "Sample Response" affixed. The advocate provided the responses based on a summary of some of the information provided in the PWD application as well as from an extensive interview with the appellant. The advocate stated that he was surprised that the general practitioner returned the form with the words "Sample Response" removed and his stamp and signature affixed. The advocate stated that the decision was made, in consultation with the appellant, to submit the document because of the time restrictions for filing documents on the reconsideration and the view that it would be apparent that this was not the general practitioner's handwriting but that he had signed, and thereby endorsed, the information. The advocate admitted that, in hindsight, it would have been preferable to provide an explanation of the circumstance of the creation of the document at the time that it was submitted.
- The advocate stated that the fax forwarded by the ministry to the appellant's physician seeking clarification prior to the reconsideration was given to the general practitioner to complete in order to provide a confirmation that the general practitioner agreed with the information submitted in the January 3, 2013 document, and to supply the detail that the ministry had sought and did not have at reconsideration.

At the hearing, the appellant provided the following oral evidence:

- The appellant stated that a referral has been made by his physician and, in a few days, he will be starting a 'Concurrent Disorders' group which addresses mental health and substance abuse issues. The appellant stated that things have been "terrible" lately. He takes methadone every day. There were a few days when he could not get out of bed and did not go for the methadone and got very sick. He was admonished by the program worker for not attending daily, as required.

- The appellant stated that he is supposed to be careful with his diet because of his diabetes. He does not like to cook, does not see the point and likes to have cereal because it is "easy." He was told that he needs to take insulin but he does not want to take it. The appellant stated that sometimes his legs swell up, that this can last for 12 hours, and his doctor says he should not be walking but he likes to walk and walks a lot downtown and all these problems are "too much" for him. The appellant stated that stress can also aggravate his diabetes and he experiences both restlessness and fatigue.
- The appellant stated that he has not started treatment for his Hepatitis C. He was supposed to go for some tests a while ago and he completely forgot about the appointment. He is supposed to go back but nothing is currently scheduled.
- In response to a question, the appellant clarified that he has been diagnosed with MRSA, which is a "blood disease" that results in rashes and cold sores and is highly contagious. The appellant stated that stress can trigger a flare-up and he has to keep it clean and bandaged at those times.
- The appellant stated that approximately 8 months ago he was hospitalized because he wanted to end his life. He met a doctor there who helped him and referred him to a psychiatrist who he has been seeing regularly, sometimes once a week or every other week and sometimes twice a week. The appellant stated that he has only recently been able to talk about the abuse which occurred in his childhood. The appellant stated that the psychiatrist has said he should be on anti-depressant medication but it can be difficult because of his addiction issues.
- The appellant stated that he goes to see his family doctor once every week or two since the physician monitors his prescriptions and the appointments are usually pretty quick.
- The appellant stated that his mother lives in another country but is his "rock" in providing support. The appellant stated that he does not have an easy time with the rest of his family but his brother takes him shopping once a week and his sister comes in to do some housework every couple of weeks. In response to a question, the appellant stated that his disrupted social functioning does not consist of aggression towards others but that he, rather, "beats himself up" by abusing his body. The appellant stated that he does not trust people, he does not like to be with people or get involved with people. He likes to be quiet and spend time alone.
- The appellant stated that there are times when he does not want to go out of his residence.

The ministry did not object to the admissibility of the completed fax and the panel admitted the document and the appellant's oral evidence, pursuant to Section 22(4) of the Employment and Assistance Act, as providing further detail of the appellant's medical conditions and being in support of information that was before the ministry on reconsideration. The appellant's advocate also provided a written submission which was accepted by the panel as argument, containing no new evidence.

At the hearing, the ministry relied on its reconsideration decision.

PART F – Reasons for Panel Decision

The issue on the appeal is whether the ministry's reconsideration decision, that the appellant is not eligible for designation as a person with disabilities (PWD), was reasonably supported by the evidence or was a reasonable application of the applicable enactment in the circumstances of the appellant. The ministry found that the appellant 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.

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.

Evidentiary Considerations

The panel finds that the evidence of the appellant's physician in the copy of the fax from the ministry confirmed his agreement to the responses written by the advocate in the January 3, 2013 Questionnaire. While the ministry referred to the January 3, 2013 document at reconsideration, a question was raised about the source of the handwriting and, consequently, little weight was assigned to the information provided in the January 3, 2013 document. The ministry further addressed the point, in the fax directed to the appellant's physician, that the information provided in the January 3, 2013 Questionnaire represented a significant change from the information in the original application regarding the impact to DLA, and the general practitioner stated that on his further review with the appellant it was clarified that "...even though he functions independently, he has severe lack of motivation to do personal care and housework." The panel notes that the response is from the appellant's family physician of 20 years, that he is familiar with the appellant's medical history and the progress of his conditions, and it consists of narrative in the general practitioner's own words in response to questions posed by the ministry. Given that the general practitioner has endorsed the information in the January 3, 2013 Questionnaire and explained the reason for the change in assessment from the original PWD application, the panel finds that more weight should be placed on the updated evidence of the general practitioner where it conflicts with that in the original reports submitted with the PWD application.

Severe Physical Impairment

The appellant's position is that a severe physical impairment is established by the evidence of his fatigue and leg swelling due to his diabetes, and the serious nature of his Hepatitis C diagnosis which requires treatment.

The ministry pointed out that the appellant's general practitioner reported that the appellant is able to walk 4 or more blocks and to climb 5 or more steps unaided, to lift 15 to 35 lbs., and that he has no limitations to sitting. The ministry argued that the general practitioner indicated that the appellant is independent in all aspects of mobility and physical activity. The ministry argued that the general practitioner reported that the appellant's diabetes is in remission with medications and that his Hepatitis C options have been referred to a specialist. The ministry argued that the appellant's physical functional skill limitations are more in keeping with a moderate degree of impairment.

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 medical practitioner, the appellant's general practitioner, diagnosed the appellant with diabetes and

Hepatitis C and has described his diabetes as "...in remission with medications." His Hepatitis C treatment options have been referred to a specialist. Although the general practitioner explained that the appellant "...may be significantly functionally restricted if starts Hep C treatment," the appellant stated that these treatments have not started as he missed an appointment for some initial tests to be conducted. The appellant is assessed by the medical practitioner as able to walk 4 or more blocks and to climb 5 or more steps, and that he does not require an aid for his impairment. He is also able to lift 15 to 35 lbs. and has no limitations with remaining seated. The appellant is assessed by his physician as independent with all aspects of mobility and physical ability. While the appellant stated that his legs swell due to his diabetes, he also acknowledged that his doctor has counseled against walking long distances and the appellant likes to go for long walks which, along with stress, triggers the swelling. The appellant also stated that he has been counseled to take insulin to control his diabetes but he does not want to. The appellant stated that he would like to join the local gym to go for a workout, swim and other physical activities and he is not able to do so because of a lack of funds. The panel concludes that 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.

Severe Mental Impairment

The appellant argued that he has a severe mental impairment as a result of his substance-related mental disorder and chronic mood disorder (anxiety/depression). The advocate pointed out that the appellant's physician has assessed the appellant as having very disrupted social functioning and the updated information from the general practitioner sets out restrictions in other aspects of his daily life. The advocate argued that the appellant has poor decision-making, a lack of motivation and planning, and difficulty focusing.

The ministry's position is that while the general practitioner indicated major impacts to the appellant's cognitive and emotional functioning in the areas of emotion, impulse control and motivation, as well as moderate impacts in terms of insight and judgment and attention/concentration, he also indicated no impact in the remaining 10 areas of functioning. The ministry argued that the appellant's limitations are more in keeping with a moderate degree of impairment.

Panel Decision

The medical practitioner, the appellant's general practitioner of approximately 20 years, has diagnosed the appellant with substance abuse (substance-related mental disorder) and chronic mood disorder, namely chronic anxiety and depression, with a comment that the appellant is not currently employable and he is stable on methadone. The appellant stated that there have been days when he did not attend for his daily methadone and became very ill and was admonished by the program for not attending on a regular basis. In the updated information, the general practitioner agreed that the appellant has a severe mental impairment, that he experiences recurring depression and anxiety. The general practitioner stated that the appellant has poor motivation, poor impulse control, poor judgment, poor concentration and fatigue. In the February 1, 2013 document, the general practitioner indicated that the appellant continues to make poor decisions. The appellant stated that he has been counseled to take insulin for his diabetes but he does not want to, that he has been counseled not to walk long distances which results in swelling in his legs but he enjoys walking, and that he is aware of the importance of a diabetic diet but he cannot be bothered to cook and prefers to eat cereal because it is easy. The appellant missed an appointment for testing to determine the appropriate treatment for his Hepatitis C.

In the PWD application, the general practitioner reported significant deficits with cognitive and emotional function in the areas of emotional disturbance, motivation, impulse control, and attention or sustained concentration. In the assessor report, major impacts were identified with cognitive and emotional functioning in the areas of emotion, impulse control and motivation, as well as moderate impacts in insight and judgment and attention/concentration. The general practitioner did not provide further comment to supply detail of these

impacts. However, the general practitioner reported that the appellant requires continuous support/supervision in all areas of social functioning, including making appropriate social decisions, developing and maintaining relationships, interacting appropriately with others, dealing appropriately with unexpected demands, and securing assistance from others. The general practitioner assessed the appellant with very disrupted functioning in his immediate social network which the appellant clarified is that he is major withdrawn rather than aggressive towards others. The appellant stated that he has a good relationship with his mother who lives in another country and that his brother helps him weekly and his sister every couple of weeks, but he does not have a good relationship with his siblings. The general practitioner also assessed the appellant with very disrupted functioning in his extended social networks, which the appellant clarified as major social isolation rather than hostility towards others. The appellant stated that he does not trust people and would rather be alone. The support/supervision which would help to maintain the appellant in the community is described by the general practitioner as drug counseling and support. In the updated information dated February 1, 2013, the general practitioner indicated in response to a request to clarify the nature and frequency of the appellant's restrictions coping with stresses and making timely decisions, that the appellant has poor judgment and lacks insight, he has reduced social interaction and cannot easily get help from others. He has restrictions with thinking, emotion, motivation, and focus.

In the updated information from the general practitioner, he also wrote that a newly revealed history of childhood sexual abuse by trusted family member is the likely cause of anxiety, depression, and addiction. The appellant stated that he was hospitalized approximately 8 months ago due to a suicide attempt and he has been treated by a psychiatrist since then, with regular weekly or bi-weekly appointments. The appellant also meets with his family physician regularly and has been referred to a 'Concurrent Disorders' group for therapy dealing with both his mental health and substance abuse issues. The panel finds that the evidence of the appellant and his long-time physician demonstrates that the appellant's mental health conditions restrict his ability to function independently, effectively and appropriately and that his poor judgment and decision-making regarding his health pose potential risks to the appellant's physical well-being. Therefore, the panel finds that the ministry's conclusion that the evidence did not establish a severe mental impairment under section 2(2) of the EAPWDA was not reasonable.

Restrictions in the ability to perform DLA

The appellant's position is that his severe mental impairment directly and significantly restricts his ability to perform DLA to the point that he requires the continuous assistance of another person in tasks of all of his DLA. The advocate argued that the impact from a mental health condition is different from that for a physical disability and that, while physically capable of performing tasks, the appellant's mental processes get in the way of actually accomplishing the tasks. The advocate argued that the general practitioner reported that the appellant has poor decision-making, a lack of motivation and a lack of planning that results in tasks being put off or performed at a minimal level.

The ministry's position is that the evidence of the prescribed professional in the original PWD application is that the appellant is independent in all aspects of DLA not related to social functioning. The ministry pointed out that the information from the general practitioner in the Request for Reconsideration demonstrated a distinctive change in assessment of the appellant's ability to perform aspects of DLA and it should be assigned little weight because it was not in the general practitioner's handwriting and there was no explanation provided for the change in the general practitioner's assessment. The ministry acknowledged that the appellant has certain limitations as a result of his medical conditions but the information does not consistently support an impairment which directly and significantly restricts his DLA continuously or periodically for extended periods.

Panel Decision

The evidence of the appellant's physician in the updated information dated February 1, 2013 is that even though the appellant functions independently, he has a severe lack of motivation to do personal care and housework, he eats less and may not shop at all, and he continues to make poor decisions. The general

practitioner wrote that the appellant is not motivated to shower daily, that he skips 2 to 3 times a week or can take 20 to 30 minutes to bathe. The appellant postpones housework to once or twice a week, which takes 2 to 3 hours with difficulty. The general practitioner stated that the appellant would benefit from help with shopping once a week and that the appellant's brother takes him to shop weekly since there is no food shopping close by. The general practitioner indicated the appellant could use "day help" as he does not cook much and uses cold foods, e.g. cereal/milk. The general practitioner wrote that the appellant is "OK to take pills" and the physician supervises his prescriptions mostly. In the January 3, 2013 document, the general practitioner agreed that the appellant is significantly restricted in his ability to perform DLA by one or more of his ongoing symptoms on most days- "ongoing". The general practitioner agreed that the appellant has continuous and significant limitations, taking longer than normal to do personal care and housework, needing support regarding a proper diet and meal preparation as well as shopping which is limited when he isolates, and receiving supervision of his medication and support with social functioning. The physician agreed in the January 3, 2013 note that the appellant's ability to cope with the stresses of daily life, make timely decisions and interact with other people is significantly restricted by his mental impairment.

For those DLA relating to a person with a severe mental impairment, the general practitioner reported in the PWD application that the appellant requires continuous support/supervision with making appropriate social decisions and, in the updated information, in response to a request to clarify the nature and frequency of the appellant's restrictions coping with stresses and making timely decisions, the general practitioner wrote that the appellant has poor judgment, continues to make poor decisions and lacks insight. The general practitioner reported in the PWD application that the appellant requires continuous support/supervision with interacting appropriately with others and that he has very disrupted functioning with both his immediate and extended social networks. In the updated information, the general practitioner indicated that the appellant has reduced social interaction and cannot easily get help from others. He has restrictions with thinking, emotion, motivation, and focus. Placing more weight on the updated evidence from the appellant's physician, the panel finds that the ministry's conclusion that the evidence does not support a direct and significant restriction of the appellant's ability to perform DLA, in the opinion of a prescribed professional, and does not satisfy the legislative criterion of s. 2(2)(b)(i) of the EAPWDA was not reasonable.

Help to perform DLA

The appellant's position is that he requires the significant assistance of his family and health authorities to perform many DLA.

The ministry's position is that because it has not been established that DLA are significantly restricted, it cannot be determined that significant help is required, and no assistive devices 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. Help is defined in subsection (3) as the requirement for an assistive device, the significant help or supervision of another person, or the services of an assistance animal in order to perform DLA.

The panel finds that the evidence of the appellant's physician, as the prescribed professional, establishes that the appellant requires continuous support and supervision from his family and various health authorities for several aspects of DLA, including those relating to a mental impairment and personal care, housework, shopping, meals and medications. Based on the foregoing evidence, the panel finds that the ministry's determination that the evidence does not show that the appellant requires the significant help of another person to perform DLA was not reasonable.

Conclusion

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