

PART C – Decision under Appeal

The decision under appeal is the Ministry of Social Development (the ministry) reconsideration decision dated January 28, 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,
- as a result, 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 appellant consented to the attendance of a ministry Observer at the hearing.

The evidence before the ministry at the time of the reconsideration decision included the following:

- 1) Letter dated June 27, 2012 from a medical practitioner specialist in neurology to the appellant's family physician;
- 2) Person With Disabilities (PWD) Application comprised of the applicant information dated September 21, 2012, which did not include a description of how the appellant's disability affects his life and ability to take care of himself, an undated physician report completed by the appellant's family physician of approximately 4 years and an assessor report dated September 21, 2012 and completed by a social worker who met with the appellant once to complete the report;
- 3) Letter dated January 21, 2013 from the appellant's new family physician 'To Whom It May Concern;' and,
- 4) Request for Reconsideration- Reasons, prepared by an advocate on behalf of the appellant.

Diagnoses

The appellant has been diagnosed by his general practitioner with left C5-C6 disc herniation with date of onset December 2009.

Physical Impairment

- In the physician report, the general practitioner indicated in the health history that the appellant has "...severe symptoms of paresthesia left 1-2-3 fingers, weakness of grip, unable to sleep on left side, unable to lift, pull, carry groceries, etc.; CT June 5, 2012: left C5-C6 foraminal stenosis with disc protrusion; neurology: see enclosed consult."
- 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 5 to 15 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 a prosthesis or aid for his impairment.
- Regarding the degree and course of impairment, the general practitioner wrote that he will refer the appellant for a surgical opinion.
- In the assessor report, the social worker wrote that the appellant has herniated disc with neurological damage, loss of use of left arm/hand.
- The appellant is assessed as taking significantly longer than typical with all mobility and physical ability tasks, including with walking indoors and outdoors, climbing stairs, standing and lifting and carrying and holding, and also requires periodic assistance from another person with lifting and carrying and holding ("needs help with greater than 5 to 10 lbs."). The social worker commented that the appellant is "...unable to use left arm for any activity; neck mobility and equilibrium also very impaired."
- The social worker did not indicate any assistive devices used by the appellant.
- In the June 27, 2012 letter from a physician who is a specialist in neurology, the physician wrote that on examination the appellant has "...marked restriction of neck movement particularly lateral rotation and tilting his head to the left side; his muscle strength, however, was normal." The physician also wrote that conduction studies in the left median, ulnar and superficial radial nerves were entirely normal. The physician provided the impression that the appellant has residual sensory symptoms "...but luckily no evidence of muscle wasting or weakness."
- The physician also wrote that the appellant had a CT scan of his cervical spine and this showed multi-level degenerative changes more pronounced at C5-6 with a broad based posterior disc protrusion asymmetric to the left, which extends into the left neural foramen and this may be contributing to the

appellant's neck pain. The physician recommended physiotherapy to address the stiffness and lack of mobility in his cervical spine and heat and massage in the meantime.

- In the January 21, 2013 letter, the appellant's new general practitioner wrote that when the impacts of the appellant's medical conditions are considered, he has a severe physical impairment. The general practitioner wrote that he has chronic neck pain and limited functioning of his left arm. He is impaired in his ability to hold, lift and carry. He has reduced range of motion and diminished manual dexterity and agility.

Mental Impairment

- The general practitioner did not diagnose a mental disorder.
- The general practitioner reported the appellant does not have difficulties with communication and the social worker indicated that the appellant has a satisfactory ability to communicate in all areas.
- The general practitioner reported no significant deficits with cognitive and emotional function.
- In the assessor report, the social worker did not complete the section of the report assessing impacts with cognitive and emotional functioning.
- The general practitioner indicated that there are no restrictions with social functioning and the social worker did not complete the section of the assessor report setting out impacts to social functioning.
- In the January 21, 2013 letter, the appellant's new general practitioner wrote that the appellant's pain affects his mood and he experiences fatigue and disturbed sleep.

Daily Living Activities (DLA)

- In the physician report, the general practitioner indicated that the appellant is restricted on a continuous basis with personal self care, basic housework, and daily shopping and restricted on a periodic basis with meal preparation and use of transportation. The appellant is not restricted with management of medications, mobility inside the home, mobility outside the home, management of finances and social functioning.
- In the assessor report, the social worker indicated that all tasks of the DLA personal care are performed independently while 5 out of 8 tasks take significantly longer than typical, with no further explanation provided.
- The appellant is assessed as requiring continuous assistance with laundry and basic housekeeping, with the note added that these tasks are often not done and he needs help.
- For shopping, the appellant is independent with reading prices and labels, making appropriate choices and paying for purchases, while requiring continuous assistance with going to and from stores ("often not done- needs help") and carrying purchases home ("needs help over 5 to 10 lbs."). The social worker wrote that "mobility and ability to complete ADL's very impaired due to loss of use of left arm/hand and restricted range of motion in neck and severe chronic pain."
- The social worker assessed the appellant as requiring periodic assistance from another person and taking significantly longer than typical with food preparation and cooking, taking significantly longer with safe storage of food and being independent with meal planning.
- The appellant is assessed as requiring periodic assistance and taking significantly longer with banking and being independent with budgeting and paying rent and bills.
- For medications, the appellant is independent with taking as directed and safe handling and storage and requires periodic assistance and takes significantly longer with filling/refilling prescriptions ("needs help").
- The social worker assessed the appellant as taking significantly longer than typical with getting in and out of a vehicle and using public transit, for which he uses an assistive device, and independent with using transit schedules and arranging transportation. The social worker added comments that the appellant has "...very restricted mobility and inability to use left arm."
- In the January 21, 2013 letter, the appellant's new general practitioner wrote that the appellant's

impairment significantly restricts his ability to perform DLA continuously. Examples of these restrictions include taking much longer than normal to complete personal care such as getting up, bathed and dressed; preparing meals, doing housework and daily shopping and using public transportation.

- The general practitioner wrote that the appellant requires ongoing help from other people as a result of his health restrictions and, when help is not available, he typically takes significantly longer than normal to complete routine daily tasks.

Need for Help

- The general practitioner reported that the appellant does not require any assistive devices.
- The general practitioner indicated in the physician report that the appellant's "...girlfriend helps with cooking, housekeeping, and groceries, etc."
- The social worker indicated in the assessor report that help required for DLA is provided by the appellant's friends, that "...roommate and friends help with his DLA."

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

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

- The appellant stated that he had to find a new general practitioner, who wrote the January 21, 2013 letter, because the appellant had a break in his relationship with the previous general practitioner.
- The appellant stated that he currently has pain and stiffness all the way down his arm on his left side. His neck is stiff and his left hand is always cold. In the last few months he has experienced constant pain in his spine. The injury occurred December 2009 when he fell asleep with his head resting on his upper arm, and it has "ruined him." He cannot sleep properly.
- The appellant stated that he is ambidextrous but now he has to use his right hand. He has to lift with his right side or get help or he cannot do it. His mobility is affected because his equilibrium is off and his stride is not the same anymore because his left shoulder moves forward.
- The appellant stated that he is a musician, he can play any instrument, and after his injury he could no longer provide for his family and has been "in limbo" all this time. He has become increasingly frustrated with having to borrow money from friends and being separated from his son. The appellant stated that none of this can bring his family back and he wants the problem fixed so he can get back to work. He wants at least pieces of his life back. He feels he is being systematically oppressed.
- The appellant stated that his original general practitioner prescribed an anti-depressant medication but the appellant will not take it because he feels he has a physical injury and he is "not crazy."
- The appellant stated that he is restricted with his DLA because it is a constant mental battle about whether he can trust his body to accomplish a task and he does not want to fail. Although the pain is always there, sometimes his neck is "OK" and, other times, it "freezes."
- The appellant stated that he does not eat properly now and has lost a lot of weight because he does not cook. With banking, the appellant stated that it is not a problem because everything is done online. For use of public transit, he has fallen because he could not hold on properly with his arms. In response to a question, the appellant stated that he did not know which assistive device the social worker was referring to for using public transit, and he could only think of a period of time when his arm was in a sling. He stated that he has not used an assistive device.
- The appellant stated that he would like to comply with the recommendation that he use physiotherapy to treat his injury, but he does not have the money to afford the sessions. In response to a question, the appellant stated he did not know how much of the cost of a session is covered and how much the user fee is but he would find out when he gets there. He has gone to 2 or 3 sessions of physiotherapy but it did not help.
- The appellant stated that his general practitioner referred him to another neurologist to have a cortisone injection in his neck/shoulder but he does not want the injection since it will not fix the "dagger" in his back, but just serve as a "band-aid" to cover the pain for a while. The appellant stated that the general

practitioner has referred him to a specialist to consider the surgery option but the appellant has not been able to find time to schedule an appointment.

- The appellant stated that he has undertaken his own treatments, including lifting a 2-lb. weight and doing push-ups and other exercises, which has improved his range of motion and his mobility.
- The appellant stated that his situation is worse now because he is living with his mother and sleeping on her couch. She is helping him with his daily tasks.
- The appellant stated that previously his girlfriend was helping him and she had to quit her full-time job to help him and to take care of their son.

At the hearing, the appellant's mother provided the following oral evidence:

- The appellant has been staying with her since November 2012 and she has noticed, since she only has one washroom, that it takes him a lot longer to get ready, to take a shower. In response to a question, the appellant's mother stated that it takes him longer than normal. The appellant's mother stated that she has to help him to brush his hair and sometimes to get dressed.
- The appellant's mother stated that she can see that he is in pain, that he gets quiet and irritable because of the pain almost every day, and he is not able to help her like he used to.
- The appellant's mother stated that he used to help her with cooking, for example, but now she has to cook for him since he does not cook anymore. He used to help with the gardening but he can no longer do it.
- The appellant's mother stated that she does the lifting for him because his hand goes numb when he tries. He has not played basketball or other sports like he used to. He has to be careful when with his son that he does not bump or pull the appellant's arm.
- The appellant's mother stated that if the appellant did not have her help, she is not sure how he would manage. Someone would have to come in to brush his hair and cook and clean for him since these are hard for him to do.
- The appellant's mother stated that her son's girlfriend used to help him and that she worked different shifts outside the home.

The panel admitted the oral evidence on behalf of the appellant, pursuant to Section 22(4) of the Employment and Assistance Act, as providing further information about the appellant's current condition and his need for help and being in support of information that was before the ministry on reconsideration.

At the hearing, the advocate provided a written argument on behalf of the appellant.

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 considered 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 ministry argued that the PWD application is problematic because the assessor report was completed by a registered social worker who met with the appellant for the first time to complete the report. The ministry argued that this section 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. The ministry argued that more weight should be placed on the physician's assessments of the appellant's impairments and deficits. The advocate argued, on the other hand, that social workers are specially trained to make these functional assessments. The advocate argued that it is not appropriate to put more emphasis on the physicians' reports and to not fully consider the evidence from the social worker and that the evidence should be considered in its entirety. The advocate also argued that it is not appropriate to make assumptions because it may seem unlikely that such a serious injury was sustained by a simple event because the reality is that the injury has not healed, that it has "gone from bad to worse", and that it has had a real impact on the appellant's life because of the required adjustments to his medical condition.

The panel finds that there are some inconsistencies between the assessments made in the PWD application by the social worker and by the appellant's general practitioner, such as whether there are restrictions to the appellant's mobility. Although social workers may have special training in making a functional assessment, in this case the social worker based her opinion on an office interview with the appellant and the physician report, and did not conduct a home assessment or interviews with other potential support persons. The appellant's general practitioner has treated the appellant since approximately the time of his injury and has seen the appellant from 2 to 10 times in the last year, while the social worker met with the appellant once for the purposes of completing the report, and the panel finds that the ministry reasonably placed more weight on the evidence of the general practitioner where it is inconsistent with that set out in the assessor report.

Severe Physical Impairment

The appellant's position is that a severe physical impairment is established by the evidence of his pain and stiffness in his neck and left arm and hand which impacts his daily functioning and is due to left C5-C6 disc herniation.

The ministry's position is that it acknowledges that the appellant has some functional limitations as a result of his physical conditions but these are more in keeping with a moderate degree of impairment. The ministry argued that the appellant's general practitioner reported that the appellant is able to walk 4 or more blocks unaided and to climb 5 or more step unaided, to lift 5 to 15 lbs., and that he has no limitations to sitting. The ministry argued that the symptoms of severe paresthesia and weakness is described for the appellant's left side and, therefore, the restrictions with lifting, carrying and pulling apply to his left arm. The ministry argued

that the letter from the neurologist indicated that the appellant has a broad based posterior disc protrusion asymmetric to the left at C5-6 and this contributes to a marked restriction of neck movement; however, muscle strength was normal, reflexes were present and symmetrical, conduction studies were normal and there was no evidence of muscle wasting or weakness and the recommended treatment is physiotherapy, heat and massage.

Panel Decision

The diagnosis of a medical condition is not itself determinative of a severe impairment. To assess the severity of an impairment one must consider the nature of the impairment and its impact on the appellant's ability to manage his DLA as evidenced by functional skill limitations, the restrictions to DLA, and the degree of independence in performing DLA. The ministry describes this approach well when it defines the word "impairment" in the physician report as being "a loss or abnormality of psychological, anatomical or physiological structure or function causing a restriction in the ability to function independently, effectively, appropriately or for a reasonable duration." This definition is not set out in legislation and is not binding on the panel, but in the panel's view it quite appropriately describes the legislative intent.

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 of 4 years, diagnosed the appellant with left C5-C6 disc herniation with a date of onset of December 2009. The general practitioner reported that the appellant has severe symptoms of paresthesia in his left fingers, weakness of grip, and that he is unable to lift, pull, or carry groceries. In the June 27, 2012 letter, the neurologist wrote that the appellant has multi-level degenerative changes more pronounced at C5-6 with a broad based posterior disc protrusion asymmetric to the left and this may be contributing to the appellant's neck pain. While the appellant has marked restriction of neck movement particularly lateral rotation and tilting his head to the left side, the neurologist noted that the appellant's muscle strength was normal, that conduction studies in the left median, ulnar and superficial radial nerves were entirely normal, and that there is no evidence of muscle wasting or weakness. The general practitioner reported that the appellant does not require a prosthesis or aid for his impairment and, although the social worker indicated the use of an assistive device for using public transit, there was no further information provided by the social worker or the appellant defining this assistive device. The general practitioner assessed the appellant as able to walk 4 or more blocks unaided, to climb 5 or more steps unaided, to lift 5 to 15 lbs., and as having no limitation with remaining seated. Although the social worker assessed the appellant as taking significantly longer than typical with all mobility and physical ability tasks, the panel finds that the social worker has not specified how much longer than typical it takes the appellant with these activities.

The panel finds that the consistent information from the assessments in both reports is that the appellant is able to lift 5 to 10 lbs. and requires periodic assistance from another person for lifting and carrying and holding, likely with heavier loads that require the use of two hands/arms. In the January 21, 2013 letter, the appellant's new general practitioner wrote that the appellant has chronic neck pain and limited functioning of his left arm and that he is impaired in his ability to hold, lift and carry. The appellant stated at the hearing that he has to lift with his right side or get help or he cannot do it. He stated that the pain is always there but sometimes his neck is "OK" and, other times, it "freezes." The appellant stated that the general practitioner has referred him to a specialist to receive a cortisone injection and to consider the possibility of surgery but these options have not been pursued. The appellant does not want to use a "band-aid" for the pain, and has not been able to find time to schedule an appointment to consider surgery. Rather, the appellant has undertaken his own treatments, including lifting a 2-lb. weight with his left arm and doing push-ups and other exercises, which he stated has improved his range of motion in his shoulder as well as his mobility.

The evidence demonstrates that while the symptoms of the appellant's injury persist, the impact to his functioning is primarily with respect to lifting requiring the use of two hands and the appellant is, nevertheless, able to function independently and effectively for a reasonable duration. Therefore, the panel finds 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 did not advance an argument with respect to a severe mental impairment.

The ministry's position is that there was no diagnosis of a mental disorder and no evidence of a severe mental impairment.

Panel Decision

The general practitioner did not diagnose a mental disorder in the physician report as part of the PWD application. In the January 21, 2013 letter, the appellant's new general practitioner wrote that the appellant's pain affects his mood and he experiences fatigue and disturbed sleep. The appellant stated that he has become increasingly frustrated with having to borrow money from friends and being separated from his son, that he has been "in limbo" since his injury and that his previous general practitioner had prescribed an anti-depressant medication that the appellant stated he will not take. The general practitioner reported no significant deficits with cognitive and emotional function and there are no restrictions identified with social functioning. Therefore, the panel finds that the ministry reasonably determined that a severe mental impairment was not established under section 2(2) of the EAPWDA.

Restrictions in the ability to perform DLA

The appellant's position is that his physical impairment directly and significantly restricts his ability to perform DLA on an ongoing basis to the point that he requires the significant assistance of another person with tasks of many of his DLA. The advocate argued that in the physician report the general practitioner has identified restrictions with 5 out of 10 listed DLA, namely periodic restrictions with meal preparation and use of transportation and continuous restrictions with personal self care, basic housework and daily shopping. The advocate pointed out that both hands are used for many tasks of DLA and the appellant requires significant assistance with all of these.

The ministry's position is that while acknowledging that the appellant has certain limitations as a result of his medical condition, the information provided does not consistently support that an impairment directly and significantly restricts DLA continuously or periodically for extended periods. The ministry argued that considering the general practitioner's assessment of restrictions to DLA with that for the functional skills which shows no deficits with the functioning of the appellant's right arm, the assistance required for personal self care, basic housework, and daily shopping is for tasks that require two hands or lifting/ carrying/ holding weights greater than 5 to 15 lbs. The ministry argued that for those tasks of DLA which the social worker indicated take significantly longer than typical, the social worker has not indicated how much longer these tasks take. The ministry argued that the social worker reported that the appellant uses an assistive device for using public transit but neither the general practitioner nor the social worker have specified that an assistive device is required. The ministry argued that the new general practitioner wrote in his letter that the appellant takes much longer than normal with getting up, bathing, dressing, preparing meals and doing housework and daily shopping; however, there is no indication of how much longer these tasks take.

Panel Decision

The evidence of the appellant's general practitioner of 4 years is that the appellant is not restricted with walking distances of more than 4 blocks outdoors without the use of an assistive device or with walking indoors. Although the social worker assessed the appellant as taking significantly longer than typical with walking indoors and walking outdoors, the panel finds that the social worker has not specified how much longer than typical it takes the appellant with his mobility. At the hearing, the appellant stated that his injury has changed his stride but he agreed that no assistive devices are required.

The general practitioner indicated that the appellant is continuously restricted with personal self care and the social worker assessed the appellant as taking significantly longer than typical with some tasks, namely dressing, grooming, bathing and transfer in/out of bed and on/off of chair, but not as requiring assistance from another person. At the hearing, the appellant's mother stated that the appellant has been staying with her since November 2012 and she has noticed that it takes him a lot longer to get ready, to take a shower for example, and that it takes him "longer than normal." The appellant's mother stated that she has to help him to brush his hair and sometimes to get dressed.

The general practitioner reported that the appellant is periodically restricted with meal preparation and the social worker indicated that the appellant requires periodic assistance with food preparation and cooking while being independent with meal planning and taking significantly longer than typical with safe storage of food. At the hearing, the appellant's mother stated that the appellant used to help her with cooking but now she has to cook for him since he does not cook anymore, that it is "hard for him." Neither the general practitioner nor the social worker provided further information regarding the frequency or duration of the assistance required.

In the physician report, the general practitioner indicated that the appellant is not restricted with management of medications. The social worker also indicated that the appellant is independent with taking medications as directed and safe handling and storage, but reported that he requires periodic assistance with filling/refilling prescriptions. There is no further information provided to explain this need for assistance, or how long or often he requires this assistance.

The general practitioner reported that the appellant is continuously restricted with basic housework and the social worker also indicated a need for continuous assistance from another person with laundry and basic housekeeping ("often not done- needs help"). For daily shopping, the general practitioner reported that the appellant is continuously restricted and the social worker indicated that the appellant is independent with 3 out of 5 tasks and requires continuous assistance with 2 tasks, namely with going to and from stores and carrying purchases home. With respect to the appellant's mobility, the general practitioner did not report any restrictions.

The general practitioner reported periodic restrictions with use of transportation and the social worker indicated that the appellant is independent with using transit schedules and arranging transportation while taking significantly longer than typical with getting in and out of a vehicle and using public transit. Although an assistive device is indicated for using public transit, there was no other information provided to identify the device. The social worker also did not provide information regarding how much longer it takes the appellant to perform these tasks.

For management of finances, the general practitioner reported no restrictions with this DLA and the social worker indicated that the appellant is independent with budgeting and paying rent and bills, while requiring periodic assistance with banking ("needs help"). At the hearing, the appellant stated that banking is not a problem because everything is done online. The panel finds that there is no further information provided by the social worker to define the nature of the assistance required with banking or its frequency or duration. For social functioning, the general practitioner reported no restrictions and the social worker has not completed the section of the assessor report for support or supervision needed.

In the January 21, 2013 letter, the appellant's new general practitioner wrote that the appellant's impairment significantly restricts his ability to perform DLA continuously and an example of these restrictions includes taking much longer than normal to complete personal care such as getting up, bathed and dressed; preparing meals, doing housework and daily shopping; and using public transportation. The general practitioner wrote that the appellant requires ongoing help from other people and, when that help is not available, he typically takes longer than normal to complete routine daily tasks. The general practitioner did not specify how much longer than typical it takes the appellant to complete these tasks.

The panel finds that the evidence from the prescribed professionals indicated that the appellant is continuously restricted with the DLA of basic housekeeping and with one of the tasks of daily shopping (carrying purchases home), with a requirement for assistance for heavier loads outside the appellant's functional skill limitation of lifting 5 to 10 lbs. While tasks of personal self care and managing transportation take the appellant significantly longer than typical and some tasks of meal preparation and managing medications also require periodic assistance, the panel finds that there is insufficient information to establish that assistance is required in these areas for extended periods of time. The panel finds that the ministry reasonably concluded that there is not enough evidence from the prescribed professional to establish that the appellant's impairment significantly restricts his ability to manage his DLA either continuously or periodically for extended periods, thereby not satisfying the legislative criterion of section 2(2)(b)(i) of the EAPWDA.

Help to perform DLA

The appellant's position is that he requires the significant assistance of his friends and family to perform DLA. Whereas the appellant's girlfriend and roommate used to provide this assistance, currently the appellant's mother helps him with many tasks of 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. The ministry argued that the 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 a DLA.

The evidence of the prescribed professional establishes that the appellant receives help from his mother with some tasks of his DLA, and the panel also finds that the ministry reasonably determined that as direct and significant restrictions in the appellant's ability to perform DLA have not been established, it cannot be determined that the appellant requires help to perform DLA as a result of those restrictions, as defined by section 2(3)(b) of the EAPWDA.

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 reasonably supported by the evidence, and therefore confirms the decision.