

PART C – Decision under Appeal

The decision under appeal is the Ministry of Social Development and Social Innovation (the ministry) reconsideration decision dated August 1, 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 of these restrictions, 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 did not attend the hearing. After confirming that the appellant was notified, the hearing proceeded under Section 86(b) of the *Employment and Assistance Regulation*.

The evidence before the ministry at the time of the reconsideration decision included the Person With Disabilities (PWD) Application comprised of the applicant information dated March 27, 2013, a physician report (PR) dated March 13, 2013 and an assessor report (AR) dated March 20, 2013, both completed by the appellant's family physician of approximately 1 year, as well as the following:

- 1) Letter dated August 23, 2012 from a physician who is a specialist in rheumatology & connective tissue diseases to the appellant's family physician;
- 2) Letter dated October 16, 2012 from physician who is a specialist in gastroenterology to the appellant's family physician;
- 3) Letter dated December 3, 2012 from the rheumatologist to the appellant's family physician;
- 4) Operative Report dated January 14, 2013 for a colonoscopy performed by the gastroenterologist;
- 5) Letter dated July 16, 2013 prepared by an advocate on behalf of the appellant and completed by the appellant's family physician; and,
- 6) Request for Reconsideration dated July 23, 2013.

Diagnoses

The appellant has been diagnosed by his general practitioner with ankylosing spondylitis (A.S.).

Physical Impairment

- In the PR, the general practitioner indicated in the health history that the appellant "...goes to his family physician with ongoing pain- predominantly back pain. He also complained about pain in the neck, (illegible) and elbows... pain got progressively worse to such a stage the he couldn't do his (former) work."
- Functional skills reported in the physician report indicated that the appellant can walk 2 to 4 blocks unaided on a flat surface, climb 5 or more steps unaided, he can lift 2 to 7 kg (5 to 15 lbs.) and can remain seated less than 1 hour.
- 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.
- In the additional comments to the report, the physician wrote that the appellant's life has been changed since the pain started and "...as he finished school the pain became so bad that he didn't feel that he could sustain a full day's work; did weekend work previously but gave it up due to pain and discomfort."
- In the AR, the general practitioner assessed the appellant as independent with walking indoors and outdoors, climbing stairs (with a note "problem with too many"), and standing (added note that "can't stand for long"). The general practitioner assessed the appellant as requiring continuous assistance from another person with lifting ("not too heavy") and carrying and holding ("not for long"). The general practitioner commented that the appellant "...has problems standing for long and lifting, carrying, and holding objects due to back pain."
- The October 16, 2012 letter from the gastroenterologist to the appellant's family physician assessed the appellant's clinical history as more typical of irritable bowel syndrome than Crohn's disease and to evaluate this further, he booked a colonoscopy. The Operative Report by the gastroenterologist dated January 14, 2013 included in the summary that the colonoscopy showed evidence of diverticular disease, otherwise negative for colitis or Crohn's. Advised the appellant to continue with high fiber diet and daily use of Metamucil.
- In the December 3, 2012 letter from the rheumatologist to the appellant's family physician, summarized findings from an MRI of the lumbar spine and sacroiliac joints that "while not diagnostic, would be in keeping with very early A.S."

- In the July 16, 2013 letter completed by the appellant's family physician, the appellant was also diagnosed with insomnia and IBS [Irritable Bowel Syndrome]. The medical practitioner did not provide an opinion that these medical conditions are likely to continue for more than 2 years.
- In the letter, the family physician agrees with the statements that the appellant is able to walk a maximum of 2 blocks before he has to take a break, he is unable to climb any stairs without the use of a handrail, is only able to lift a maximum of 10 lbs. and carry up to 5 lbs. at a time, to sit for up to an hour, and stand for a couple of minutes before he has to hold on to something for support or sit down.
- In his self-report included in the PWD application, the appellant wrote that because his back and neck are always hurting, he does not leave his house anymore unless he has to. When his condition is at its best, he can sit up for around an hour, walk and stand for about half an hour, and laying down helps with the pain. But when his A.S. starts to flare up, he has to stay in bed for weeks and it keeps him from sleeping and he has trouble sitting up or standing.

Mental Impairment

- In the PR, the general practitioner reported a significant deficit with cognitive and emotional function in the area of motivation and attention or sustained concentration, with the added comment that the appellant has problems and stress, "early depression."
- The general practitioner indicated that the appellant does not have difficulties with communication and, in the assessor report, that he has a good ability to communicate in all areas.
- In the AR, the general practitioner assessed a major impact with cognitive and emotional functioning in the area of motivation and minimal impacts in emotion and attention/concentration, with no impacts in the remaining 11 areas of functioning. There are no comments added by the general practitioner.
- The general practitioner indicated that there are no restrictions with social functioning and the appellant functions independently in all areas, with good functioning in both his immediate and extended social networks. In the PR, the general practitioner commented that "...social life impaired due to chronic pain and impact of disease on mobility."
- In his self-report, the appellant stated that he does not have a social life anymore because he is always in pain and this bothers him because he is still young. The appellant wrote that everything gets on his nerves because he is unhappy about the poor quality of his life.
- In the July 16, 2013 letter, the general practitioner agreed that the appellant has been diagnosed with depression and anxiety. The medical practitioner did not provide an opinion that these medical conditions are likely to continue for more than 2 years.
- The general practitioner agreed that the appellant states that when reading he has difficulty concentrating and gets distracted easily due to his pain levels.
- The general practitioner also agreed that the appellant states that the following cognitive and emotional functioning has a major impact on his daily functioning due to his medical conditions: bodily functions, consciousness (with the added note: "meds make him drowsy"), emotion, attention/concentration, memory, and motor activity.
- In the letter, the general practitioner agreed that the appellant states that he is in need of continuous assistance or is unable to function socially, that he isolates due to health conditions.

Daily Living Activities (DLA)

- In the PR, the general practitioner indicated that the appellant is restricted on a continuous basis with mobility outside the home and is not restricted in the remaining DLA, including personal self care, meal preparation, management of medications, basic housework, daily shopping, mobility inside the home, use of transportation, management of finances and social functioning. Regarding the degree of restriction, the general practitioner commented that the appellant "is mostly housebound due to pain."
- In the additional comments to the PR, the general practitioner commented that the appellant's life has been changed since the pain started and he did weekend work previously but gave it up due to pain

and discomfort.

- In the AR, the general practitioner indicated that all tasks of the DLA personal care, basic housekeeping, and management of meals, finances, medications, and transportation are performed independently with no need for assistance.
- The appellant is assessed as requiring periodic assistance from another person with one of 5 tasks of shopping, namely carrying purchases home. No further comment or description is provided by the general practitioner.
- In his self-report included with the PWD application, the appellant wrote that he has difficulty doing most things but he tries to do as much for himself as he can "even though it really hurts."
- In the July 16, 2013 letter, the general practitioner agreed that the appellant states he is in need of continuous assistance or he is unable to do the following (tasks of) DLA due to his limitations from his health conditions: regulate his diet (no appetite, will eat nothing all day and then binge eat), basic housekeeping (unable to clean bathtub, getting things off shelves he has to reach for, and no dusting high places), shopping (unable to physically do a grocery shop on his own, mom does for him), carrying purchases home, food preparation, and cooking (relies on easy prepared, microwaveable foods due to limitations).
- The general practitioner also agreed that the appellant states that the following (tasks of) DLA take him significantly longer than typical, or 2 to 3 times longer than typical: dressing, grooming, bathing, transfers on/off chair, and getting in and out of a vehicle.

Need for Help

- In the reports included in the PWD application, the general practitioner reported that the appellant does not require an aid for his impairment, or any assistive device.
- The general practitioner indicated in the AR that the help required for DLA is provided by family and that "...Mom assists where necessary."
- In his self report, the appellant wrote that his mother and other family members are around to help him with things he cannot do.
- In the July 16, 2013 letter, the general practitioner agreed that the appellant states that when taking a bath or shower he uses a bath bar in his bathroom.

In his Notice of Appeal, the appellant expressed his disagreement with the reconsideration decision. The appellant wrote that:

- When his family physician completed the reports for the PWD application, he was only interested in his physical problems and not in the mental ones. The appellant wrote he has a psychiatrist that deals with those.
- The advocate asked him questions and did a more thorough job and wrote it up, the appellant met with his family physician again and he agreed and signed the letter.
- He is in bed all day due to the pain from his disease. In order to function at the most basic levels, he has to take strong pain medications. The appellant asks: "is this not a question of whether or not I can maintain a job and work to support myself?"
- He explained to his family physician that he did not do any DLA because he was in bed most of the time due to pain and the physician said that he needed to answer how well he thought he could do those things if he had to do them which in no way indicated his ability to do them.
- He needs his mom to cook and clean for him, she does the shopping, takes him to doctor's appointments and helps him pay his bills and fill out forms.
- He requires something to hold onto when he moves around such as handles and bars. The appellant reviewed the physical requirements of his previous jobs.
- He has been approved for expensive injections for pain medication which demonstrates the seriousness of his condition. His condition and the side effects of the medications has had a substantial impact on his psychological/emotional well-being and have caused him to become

extremely depressed, withdrawn, and anxious around people.

- Since he first submitted his PWD application, his situation has become worse, and he would like to provide more information from his specialists.

The ministry did not object to the admissibility of the additional evidence. The panel admitted the appellant's evidence as further detail of his condition and being in support of the information and records before the ministry on reconsideration, pursuant to section 22(4) of the *Employment and Assistance Act*.

The appellant did not attend the hearing to provide oral evidence and no further information was provided from the appellant's specialists.

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 found 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.

Evidentiary Considerations

At the hearing, the ministry acknowledged that the reconsideration decision made only one reference to the July 16, 2013 letter prepared by the advocate and concluded that the contents reiterate much of the information found in the original application, and that it appeared little weight was placed on the additional information from the family physician. The appellant wrote in his Notice of Appeal that for the reports submitted with the PWD application, he explained to his family physician that he did not do any DLA because he was in bed most of the time due to pain and the physician said that he needed to answer how well he thought he could do those things if he had to do them which, the appellant wrote, in no way indicated his ability to do them. The appellant wrote that in preparing the letter the advocate asked him questions and did a more thorough job and wrote it up, that he met with his family physician again and the physician agreed and signed the letter. The appellant wrote that since he first submitted his PWD application, his situation has become worse and he stays in bed all day due to the pain from his disease.

Panel decision

The panel finds that the July 16, 2013 letter signed by the general practitioner is consistent with, while providing more detail to, the assessment made in the PWD reports, except with reference to the impacts to cognitive and emotional functioning and the restrictions to the appellant's DLA which both show substantial changes. There is no explanation provided by the general practitioner that he may have misunderstood the appellant's ability to perform his DLA or that the appellant's condition has deteriorated in the 4 months since the original application was prepared. Additionally, the panel finds that in the July 16, 2013 letter, the general practitioner has agreed with the appellant's assessment of impacts to his cognitive and emotional functioning and it is not clear whether this is also the general practitioner's independent assessment, and there is no information available from the psychiatrist regarding these impacts. The panel finds that, in the absence of an explanation by the medical professional that the appellant's condition has deteriorated or that the questions have been misinterpreted, the ministry was reasonable in placing more weight on the original evidence in the PWD application over that in the prepared statement, but only when the information in the two reports is inconsistent.

Severe Physical Impairment

The appellant's position is that a severe physical impairment is established by the evidence of his pain primarily in his back and neck. The appellant wrote that when his condition is at its best, he can sit up for around an hour, walk and stand for about half an hour, and laying down helps with the pain, but when his A.S. starts to flare up, he has to stay in bed for weeks and he has trouble sitting up or standing.

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 not significantly restricted aside from lifting over 15 lbs. and 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 2 to 4 blocks and to climb 5 or more steps unaided, to lift 5 to 15 lbs. and to sit for less an hour. The ministry argued that the general practitioner assessed most aspects of the

appellant's mobility and physical abilities as independent, with continuous help required to lift/carry/hold, with the comments: not too heavy or for too long. The ministry argued that no assistive devices are routinely used to help compensate for impairment and remedial measures, including analgesics and muscle relaxants, are in place.

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 about one year, diagnosed the appellant with A.S. Although the general practitioner also agreed in the July 16, 2013 letter that the appellant has been diagnosed with IBS and insomnia, he did not provide an opinion that these conditions are likely to continue for at least 2 years. The panel finds that only the conditions confirmed by the medical practitioner as likely to continue for 2 or more years can be considered as meeting the legislative criteria of sufficient duration. In the PR, the general practitioner indicated that the appellant "... goes to his family physician with ongoing pain-predominantly back pain." In the PR, the general practitioner reported that the appellant can walk 2 to 4 block unaided on a flat surface, climb 5 or more steps unaided, lift 2 to 7 kg (5 to 15 lbs.) and remain seated less than 1 hour. In the July 16, 2013 letter, the family physician provided more detail and agreed with the statements that the appellant is able to walk a maximum of 2 blocks before he has to take a break, he is unable to climb any stairs without the use of a handrail, is only able to lift a maximum of 10 lbs. and carry up to 5 lbs. at a time, to sit for up to an hour, and stand for a couple of minutes before he has to hold on to something for support or sit down. In the PR, the general practitioner reported that the appellant does not require a prosthesis or aid for his impairment, and the panel finds that a handrail does not meet the definition for an assistive device as set out in the legislation, namely a device designed to enable a person to perform a DLA that, because of a severe mental or physical impairment, the person is unable to perform.

In the AR, the general practitioner assessed the appellant as independent with walking indoors and outdoors, climbing stairs (with a note "problem with too many"), and standing (added note that "can't stand for long"). The general practitioner assessed the appellant as requiring continuous assistance from another person with lifting ("not too heavy") and carrying and holding ("not for long"). The general practitioner commented that the appellant "... has problems standing for long and lifting, carrying, and holding objects due to back pain." In his self-report, the appellant wrote that when his condition is at its best, he can sit up for around an hour, walk and stand for about half an hour, and laying down helps with the pain, but when his A.S. starts to flare up, he has to stay in bed for weeks and he has trouble sitting up or standing. In his Notice of Appeal, the appellant wrote that his condition has worsened and that he is in bed all day due to the pain from his disease. The appellant wrote that in order to function at the most basic levels, he has to take strong pain medications and suggested that he cannot maintain a job and work to support himself. The panel finds that the general practitioner did not indicate in the July 16, 2013 letter that the appellant remains in bed all day due to pain and it is not clear from the available evidence how often the exacerbations of the appellant's pain occur. Therefore, the panel finds that the ministry reasonably determined that the appellant's level of 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 a severe mental impairment is established by the general practitioner's diagnosis of anxiety and depression and the evidence that these conditions are affecting the appellant's day-to-day functioning significantly.

The ministry's position is that the general practitioner did not provide a mental health diagnosis and a severe mental impairment has not been established. The ministry relies on the evidence that the general practitioner reported two deficits to cognitive and emotional functioning in the areas of motivation (moderate impact) and attention/concentration (minimal impact). The ministry argued that the appellant's communication is good with no difficulty and there are no restrictions reported to social functioning. The general practitioner commented that the appellant's social life is impaired due to chronic pain and impact of disease on mobility and this is not supportive of a severe mental health condition that significantly limits the appellant's ability to function.

Panel Decision

The general practitioner did not diagnose a mental disorder in the PR, but reported a significant deficit with cognitive and emotional function in the area of motivation and attention or sustained concentration, with the added comment that the appellant has problems and stress, and "early depression." While the general practitioner agreed in the July 16, 2013 letter that the appellant has been diagnosed with depression and anxiety, he did not provide an opinion that these conditions are likely to continue for at least 2 years. In the PR, the general practitioner specifically referred to the A.S. diagnosis for confirmation of duration. The panel finds that only the conditions confirmed by the medical practitioner as likely to continue for 2 or more years can be considered as meeting the legislative criteria of sufficient duration.

The general practitioner reported in the PWD application that the appellant does not have difficulties with communication and he has a good ability to communicate in all areas. While the general practitioner agreed, in the July 16, 2013 letter, that the appellant states that when reading he has difficulty concentrating and gets distracted easily due to his pain levels, the panel finds that this difficulty has not been associated with a mental health condition but rather pain due to a physical condition. With respect to an assessment of impacts to the appellant's daily cognitive and emotional functioning, the general practitioner originally reported a moderate impact in the area of motivation and minimal impacts in emotion and attention/concentration, and no impacts in all the remaining 11 areas of functioning. In the July 16, 2013 letter, the general practitioner agreed that the appellant states that he experiences a major impact on his daily functioning due to his medical conditions in the areas of bodily functions, consciousness (with the added note: "meds make him drowsy"), emotion, attention/concentration, memory, and motor activity. The panel finds that the assessment in the July 16, 2013 is from the appellant's perspective and may relate to impacts from his physical medical condition rather than a mental health condition as there are several unexplained conflicts with the original assessment made by the general practitioner.

For social functioning, the general practitioner originally indicated that there are no restrictions and commented that "...social life impaired due to chronic pain and impact of disease on mobility." In his self-report, the appellant stated that he does not have a social life anymore because he is always in pain and this bothers him because he is still young. The appellant wrote that everything gets on his nerves because he is unhappy about the poor quality of his life. In the July 16, 2013 letter, the general practitioner agreed that the appellant states that he is in need of continuous assistance or is unable to function socially, that he isolates due to health conditions. The panel finds that the ministry reasonably concluded that the impacts to social functioning relate more to the appellant's physical health conditions and are not supportive of a severe mental health condition that significantly impacts the appellant's ability to function. The general practitioner indicated in the AR that the appellant independently manages all listed "mental" tasks of daily living, including managing his medications, making appropriate choices and paying for purchases when shopping, banking, budgeting, and paying rent and bills. 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 and mental impairments directly and significantly restrict his ability to perform DLA on an ongoing basis to the point that he requires the significant assistance of another person or the use of an assistive device, being handrails and a bath bar.

The ministry's position is that the majority of DLA are performed independently with periodic help needed from another person to carry purchases home, and the information from the prescribed professionals does not establish that an impairment significantly restricts DLA either continuously or periodically for extended periods. The ministry argued that the contents of the July 13, 2013 letter reiterates much of the information found in the original application and while several tasks take longer to perform (2 to 3 times longer), this in itself does not substantiate a significant restriction in the appellant's ability to independently perform DLA.

Panel Decision

The evidence of the appellant's general practitioner is that the appellant is not restricted in 9 DLA, including personal self care, meal preparation, management of medications, basic housework, daily shopping, mobility inside the home, use of transportation, management of finances and social functioning. Regarding the degree of restriction, the general practitioner commented that the appellant "is mostly housebound due to pain." In the July 16, 2013 letter, the general practitioner agreed with the statement that the appellant is able to walk a maximum of 2 blocks unaided before he has to take a break, and the appellant does not use an aid, or assistive device, to compensate for his impairment. The panel finds that handrails do not meet the definition of assistive device as set out in the legislation, as previously discussed. In the AR, the general practitioner also indicated that all tasks of the DLA personal care, basic housekeeping, and management of meals, finances, medications, and transportation are performed independently with no need for assistance for any task except periodic assistance with carrying purchases home when shopping. In the July 16, 2013 letter, the general practitioner agreed that the appellant is only able to lift a maximum of 10 lbs. and carry up to 5 lbs. at a time. In his self-report included with the PWD application, the appellant wrote that he has difficulty doing most things but he tries to do as much for himself as he can "even though it really hurts."

In the July 16, 2013 letter, the general practitioner agreed that the appellant states he is in need of continuous assistance or he is unable to do several tasks of DLA, namely regulate his diet, basic housekeeping, shopping, carrying purchases home, food preparation, and cooking. The general practitioner also agreed that the appellant states that several tasks of DLA take him significantly longer than typical, or 2 to 3 times longer than typical, in particular, dressing, grooming, bathing, transfers on/off chair, and getting in and out of a vehicle. The general practitioner agreed that the appellant states that when taking a bath or shower he uses a bath bar in his bathroom.

Given that the assessment of the appellant's ability to perform DLA has changed regarding several tasks of DLA, with no explanation given by the prescribed professional, the panel placed more weight on the original assessment of March 2013. In the additional comments to the PR, the general practitioner commented that the appellant's life has been changed since the pain started, that he did weekend work previously but gave it up due to pain and discomfort. While the appellant wrote that his situation has become worse and he stays in bed all day due to the pain from his disease, this has not been reflected in the evidence from the prescribed professional in either the original or the additional reports provided, and there is insufficient evidence of the frequency of any exacerbations of the appellant's pain. The appellant's functional skills reported in the physician report and updated in the July 16, 2013 letter also do not support the degree of restriction to tasks of DLA as set out in the July 16, 2013 letter since the appellant is able to walk 2 blocks unaided on a flat surface, climb 5 or more steps unaided, lift 10 lbs. and remain seated for up to an hour. 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 another person to perform DLA, and that he uses a handrail and a bath bar as assistive devices.

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 no assistive devices are routinely used to assist ambulation.

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 assistance from his mother with his DLA "where necessary" and he uses a bath bar. The panel 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.