

PART C – Decision under Appeal

The decision under appeal is the Ministry of Social Development (the ministry) reconsideration decision dated March 15, 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 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 December 4, 2012, a physician report and an assessor report both dated January 3, 2013 and completed by the appellant's general practitioner of approximately one year; and,
- 2) Request for Reconsideration- Reasons dated February 26, 2013.

Diagnoses

The appellant has been diagnosed by his general practitioner, in the physician report, with chronic LBP [low back pain] and left shoulder RC [rotator cuff] tear, depression, insomnia, and substance abuse disorder.

Physical Impairment

- In the physician report, the general practitioner indicated in the health history that the appellant was twice in an altercation in 1980 with chronic low back pain and left shoulder pain. He is unable to work.
- The general practitioner reported that the appellant has been prescribed medications that interfere with his ability to perform his daily living activities (DLA), namely narcotic analgesics, and he does not require a prosthesis or aid for his impairment.
- Functional skills reported in the physician report indicated that the appellant can walk 1 to 2 blocks unaided on a flat surface, that he can climb 5 or more stairs unaided, he can lift 2 to 7 kg (5 to 15 lbs.) and can remain seated 2 to 3 hours.
- The appellant is assessed as taking significantly longer than typical with all mobility and physical ability activities. While the appellant is assessed as independent with walking indoors, the general practitioner assessed the appellant as requiring periodic assistance with walking outdoors, climbing stairs, standing ("20 minutes max"), lifting and carrying and holding. There are no other comments provided by the general practitioner.
- The general practitioner indicated that the appellant "occasionally uses cane."
- In his self-report included with the PWD application, the appellant wrote that he was assaulted 30 years ago by 4 or 5 policemen and one of them pounced into his lower back with his knee and the full force of his body weight. The appellant wrote that he was in excruciating pain, that the pain has recurred over the years but he used to do 100 sit-ups and push-ups to maintain his strength and relieve the pain.
- The appellant wrote that time, age and severe arthritis has made it worse. Now he cannot stand or walk more than 15 minutes before both legs are numb, his left leg "goes on fire" and his lower back is in severe pain.
- The appellant wrote that all his joints "lock up," are in pain, and injure easily and take months to heal when he injures them. He used to work in the logging industry climbing and jumping up and down logging truck loads for 12 hours a day and that this "back-breaking" labour is part of the reason his joints and bones and continuously locking up in pain.
- The appellant wrote that he is on a waiting list for physiotherapy treatment to help him get through daily functions with reduced pain.
- In his Request for Reconsideration, the appellant wrote that the PWD decision did not mention his severe gout and arthritis which inhibits his ability to sit for very long (1 hour) or to do everyday things. When he applies himself at daily physical functions, he tends to injure joints which remain injured and painful for a long time (6 to 8 months).
- The appellant stated that he can only walk or stand up to 15 to 20 minutes.

Mental Impairment

- The general practitioner reported in the health history that the appellant's substance abuse has

improved.

- The general practitioner indicated in the physician report that the appellant does not have difficulties with communication but, in the assessor report, indicated that the appellant has a good speaking ability but a poor ability to communicate in reading, writing and hearing.
- The general practitioner reported significant deficits with cognitive and emotional function in the areas of executive, emotional disturbance, and motivation, with no further comments provided.
- In the assessor report, the general practitioner assessed major impacts with cognitive and emotional functioning in the areas of bodily functions, emotion, impulse control, attention/concentration, and motivation. Moderate impacts are identified in consciousness, executive, motor activity, other neuropsychological problems and other emotional or mental problems. The general practitioner assessed minimal or no impact in the remaining 4 areas of functioning. The general practitioner added the comment "depression."
- The general practitioner indicated that the appellant is independent with making appropriate social decisions. He requires periodic support/supervision with developing and maintaining relationships ("short term only"), interacting appropriately with others, dealing appropriately with unexpected demands and securing assistance from others.
- The general practitioner indicated that the appellant has marginal functioning in both his immediate and extended social networks. In response to the request to describe the support/supervision required to help maintain the appellant in the community, the general practitioner wrote "friends, neighbours. Likely will need community help before long."
- In his Request for Reconsideration, the appellant wrote that he has lost his temper dealing with banks, job requests, etc. because it seems that he keeps being shunned by people in position of power and he has given up hope of improvement. He tries to be optimistic and friendly but tends to have outbursts that he finds surprising and he wonders if he is possibly bipolar. He no longer has substance abuse issues.

Daily Living Activities (DLA)

- In the assessor report, the general practitioner indicated that 3 out of 8 tasks of the DLA personal care are performed independently, namely regulating diet, transfers in/out of bed and transfers on/off a chair, and 3 tasks are performed independently and also take significantly longer than typical, namely dressing, bathing, and toileting. The general practitioner reported that 2 tasks require periodic assistance from another person and also take significantly longer than typical, being grooming and feeding self, with no further explanation provided.
- The appellant is assessed as requiring periodic assistance from another person and taking significantly longer than typical with laundry and basic housekeeping, with no further explanation or description provided.
- For shopping, the appellant is independent with reading prices and labels, making appropriate choices and paying for purchases, while requiring periodic assistance from another person with going to and from stores and carrying purchases home which also takes significantly longer than typical. The general practitioner did not provide further comments to describe the type and amount of assistance required.
- The general practitioner assessed the appellant as being independent with 2 out of 4 tasks of the DLA meals, including meal planning and safe storage of food while requiring periodic assistance from another person and taking significantly longer than typical with food preparation and cooking ("standing painful").
- The general practitioner assessed the appellant as independent with all tasks of paying rent and bills and managing medications.
- The general practitioner assessed the appellant as requiring periodic assistance and taking significantly longer than typical with getting in and out of a vehicle and using public transit, while being independent with using transit schedules and arranging transportation. There are no additional comments provided.

by the general practitioner.

- In his self-report included with the PWD application, the appellant wrote that he has to sit or lie down after just half an hour to 45 minutes to relieve the severe pain in his legs and lower back after doing housework (i.e. dishes, vacuuming, etc.).
- In his Request for Reconsideration, the appellant wrote that his gout and arthritis inhibits his ability to do everyday things like laundry, dishes, vacuuming. He has a friend who comes by to help sometimes.
- The appellant wrote that he tends to injure joints just from some of the simplest activities such as washing his back in the shower, twisting a tight lid on a jar, or pulling a boot off his foot.
- The appellant wrote that all his joints lock up and hurt continuously. Lifting a pan off the stove with his left hand is almost impossible because of the pain. His finger on his left hand is blue, swollen and in pain.

Need for Help

- The general practitioner reported that the appellant occasionally uses a cane.
- The general practitioner indicated that help required for DLA is provided by the appellant's friends and community service agencies.

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

Prior to the hearing, the following additional documents were submitted on behalf of the appellant:

- 1) Letter dated July 29, 2013 from the general practitioner who prepared the PWD application reports to the attention of the Tribunal, and which includes the following:
 - A Consultation Report is enclosed from a rheumatologist who the general practitioner states is of the opinion that the appellant is able to walk for only 12 to 13 minutes on a flat surface.
 - The appellant advises that he is able to remain seated for 45 minutes but no longer.
 - The appellant needs help with housework, as alluded to in the Report from the rheumatologist.
 - The appellant is intellectually challenged and, therefore, he has not fully described his disabilities.
 - The appellant lives alone and, therefore, unless he is to starve or live in a mess, he has to look after his own activities of daily living and, as such, he has to be independent though his chronic pain makes these activities very difficult for him.
 - The appellant is insecure and has poor social skills, hence the indication on the form that he has marginal functioning; and,
- 2) Consultation Report dated June 27, 2013 from a rheumatologist to the appellant's general practitioner which includes the following:
 - The appellant is unable to work, complaining of different areas of pain. He has been unable to do much firewood splitting of late. He lives alone and is able to do housework, albeit a bit at a time, due to the pain.
 - His major pain is that of the right plantar fascia, right calcaneal region. The pain sometimes separate to involve the longitudinal arch and the top of the mid foot. It has been present for 1 year and is constant, is aggravated by standing, walking and with movement, being in position too long, and possibly with eating different spices.
 - He is only able to walk about 12 to 13 minutes, complaining of foot pain, back and leg symptoms on the left.
 - His second area of discomfort is that of a burning sensation, numb sensation of the left thigh. The numbness is constant. When he stands for more than 12 to 13 minutes, there is an associated burning sensation, radiating up into the lower back area, in the lumbar spine, right and left flank.
 - He has had lower back pain for around 30 years and is aggravated by standing, bending forward.
 - He complains of pain all over, around the hips, knees, shoulders, elbows, wrist, upper back, but not in the muscles in the arms or forearms. This pain has been present for about 2 years and it is intermittent, aggravated by being in one position and also with movement.

- In the last 6 to 8 months he has had left second trigger finger and will be having surgery release June 28, 2013.
- He is currently taking Tylenol #3, averaging 4 per week.
- On examination, his low back pain was mostly on extension, with flexion causing calf pain. He probably does have osteoarthritis affecting the spine, causing spine pain, and possibly referring numbness affecting the left lower limb. There is slight osteoarthritis with some mechanical soft tissue pain and regular exercises, weight reduction would be useful but he should not over-exert himself.
- He does have plantar fasciitis in the right heel area and proper shoe and orthotics may help.
- In regard to the specific question as to whether he might have an inflammatory arthritis such as rheumatoid, connective tissue disease, based on clinical ground and that his rheumatoid factor and ANA are negative, he does not appear to have that.

The ministry did not raise an objection to the admissibility of these documents. The panel admitted the letters as providing further detail of the appellant's medical conditions previously identified 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.

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

- In terms of the severity of his impairment, he has had chronic pain in his lower back every since he was beaten up by the police. He used to do many push-ups to maintain his physical condition but now he has arthritis and all his joints tend to injure very easily and it is like he is 80 years old. He used to be an appliance repair technician and just from putting torque on a tool he could injure his joints and it will take months to heal.
- He must often use two hands to pick up a pan and move it to the stove. He always has to be careful not to put too much load on a joint and he will use two hands to do things.
- His back pain is caused by an actual injury as one of the discs is bulging out 1/2 cm. past the other discs in his back. He suspects that this was caused by his previous work in the logging industry. When he went for an X-Ray of his back, he was told that his body is "older than it is supposed to be." He was advised that there is nothing that can be done, that surgery was not recommended.
- The appellant stated that he can only stand for 10 to 15 minutes at most. His left leg will first go numb and then it "feels like it is on fire" and he has to sit or lie down to get relief.
- The appellant stated that it is a 10-minute walk downtown from his residence and he found that walking aggravated the pain in his right heel. He got a bicycle and rides downtown since it is easier than walking. He can only sit on the bicycle for 20 to 30 minutes and then his prostate starts to bother him. He uses a basket on the bicycle to carry groceries when he does his shopping. His back does not bother him when he rides his bicycle and only bothers him when he is walking or standing.
- He wants to contribute to society but he cannot work like he would be required to. He cannot do heavy lifting and has problems with walking and standing for prolonged periods.
- The appellant stated that he was recently given the Person with Persistent Multiple Barriers to employment (PPMB) status but this will be reviewed every 2 years and this does not make sense for his conditions which are deteriorating over time, are permanent and will not heal.
- The appellant stated that he can only sit for a maximum of an hour and not 1 to 2 hours as recorded in the doctor's report. He can walk indoors but only for short periods of time.
- The appellant stated that some days are much worse than others. About 4 to 5 days per week his joints will all lock up. If he is sitting too long or not moving he has to stretch out because his joints become "like cement."
- Activities take him much longer because he can move for about 10 to 15 minutes and then has to take a break and either sit or lie down for 15 minutes until he is better. He also does recommended physiotherapy exercises.
- The appellant took issue with the doctor's assessment of poor ability to communicate with reading, writing and hearing, as he believes he has no problems.

- For the mental health issues, he wonders if he might be bipolar. Some days he is very up and optimistic and other days he is very down. He is a musician and with the surgery to his finger in June 2013 he is unable to play his guitar which he misses. He has had difficulties dealing with employees at different offices who he feels treat him in a patronizing manner.
- The appellant stated that he cannot afford to get any help. A girl used to come over once in a while to help with housework but she has not been coming lately and he has not vacuumed his place in a long time. He cannot do the laundry and the dishes at the same time and he needs to take a break.
- The appellant stated that he cannot get help with something like bathing but he has to use a scrubber with a long handle because he cannot reach like he used to.
- He does not have any family members who can help him. His mother passed away last year and he had been cooking for her and caring for her as she had dementia.
- The appellant stated that he has a neighbour who will help out once in a while. He does not use a cane although he had used a stick for a while. He is not on his feet long enough to use a cane.

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 detail of the appellant's medical condition, and being in support of information that was before the ministry on reconsideration.

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.

Severe Physical Impairment

The appellant's position is that a severe physical impairment is established by the evidence of his pain in his lower back, legs, hips, knees, right heel, left shoulder, elbows, wrist and finger. The appellant argued that now he cannot stand or walk more than 15 minutes before both legs are numb, the left leg "goes on fire" and the lower back is in severe pain. The appellant argued that his severe gout and arthritis inhibits his ability to sit for very long (1 hour) or to do everyday things. The appellant argued that all his joints "lock up" and are in pain about 4 to 5 days out of a week and they injure easily and take 6 to 8 months to heal.

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 physical impairment and are not representative of a major physical dysfunction. The ministry pointed out that the appellant's general practitioner reported that the appellant is able to walk 1 to 2 blocks and climb 5 or more steps unaided, to lift 5 to 15 lbs. and to sit for 2 to 3 hours.

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 approximately one year, diagnosed the appellant with chronic low back pain and left shoulder RC tear. In the Consultation Report dated June 27, 2013, a rheumatologist provides an opinion that the appellant has slight osteoarthritis affecting the spine, causing spine pain, and possibly referring numbness affecting the left lower limb for which regular exercises and weight reduction would be useful without over-exertion. The rheumatologist identified plantar fasciitis in the appellant's right heel area and recommended orthotics. The rheumatologist also wrote that in the last 6 to 8 months the appellant has had left second trigger finger and will be having surgery on June 28, 2013. 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 physician report, the general practitioner indicated in the health history that the appellant was twice in an altercation in 1980 with chronic low back pain and left shoulder pain and he is unable to work. The functional skills reported in the physician report indicated that the appellant can walk 1 to 2 blocks and climb 5 or more stairs unaided, he can lift 2 to 7 kg (5 to 15 lbs.) and can remain seated 2 to 3 hours. In his letter dated July 29, 2013, the general practitioner clarified that the appellant advises that he is able to remain seated for 45 minutes but no longer. The rheumatologist reported that the appellant is only able to walk about 12 to 13 minutes, complaining of foot pain, back and leg symptoms on the left. The appellant stated at the hearing that he can walk downtown from his residence, which takes about 10 minutes, but it is easier to ride a bicycle which does not bother his back and allows him to carry items in a basket.

The general practitioner indicated that the appellant does not require aids for his impairment, but that he occasionally uses a cane. At the hearing, the appellant stated he used a walking stick for a while but does not use a cane because he is not on his feet long enough and has acquired a bicycle. In the assessor report, the general practitioner assessed the appellant as taking significantly longer than typical and requiring periodic assistance with all mobility and physical ability tasks with the exception of walking indoors, for which he is independent and takes significantly longer than typical. At the hearing, the appellant stated that activities take him much longer because he can move for about 10 to 15 minutes and then has to take a break and either sit or lie down for 15 minutes or stretch and do some physiotherapy exercises until he is better and can resume the activity. Other than the note that the appellant can stand for a maximum of 20 minutes, there are no other comments provided by the general practitioner regarding the nature or duration of assistance required or how much longer than typical the activities take. The panel finds that the ministry reasonably determined that the evidence provided of 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 a severe mental impairment is established by the general practitioner's diagnosis of depression and insomnia and the evidence that these conditions are affecting his day-to-day functioning significantly.

The ministry's position is that a severe mental impairment has not been established. The ministry argued that the narrative is not supportive of a severe mental health condition but rather an emotional reaction to chronic pain. The ministry pointed out that as narcotic analgesics are prescribed to ameliorate the pain, and as there is no information on remedial measures taken to address depression or insomnia, the information does not establish that the appellant has a severe mental health condition that significantly limits his ability to function either continuously or periodically for extended periods. The ministry relied on the evidence that the general practitioner reported three deficits to cognitive and emotional functioning in the area of executive, emotional disturbance and motivation. The ministry argued that the impacts on daily functioning are mostly minimal to moderate impacts.

Panel Decision

The general practitioner diagnosed the appellant with depression, insomnia and substance abuse disorder and indicated, in the health history, that the appellant's substance abuse has improved. The appellant wrote in his Request for Reconsideration that he no longer has substance abuse issues. The general practitioner reported the appellant does not have difficulties with communication but, in the assessor report, indicated that the appellant has a good speaking ability but a poor ability to communicate in reading, writing and hearing. At the hearing, the appellant took issue with this assessment as he believes he has a good ability to communicate in all areas. The general practitioner indicated in the physician report that the appellant has significant deficits with cognitive and emotional function in the areas of executive, emotional disturbance, and motivation, with no further comments provided. In the assessor report, the general practitioner assessed major impacts with

cognitive and emotional functioning in the areas of bodily functions, emotion, impulse control, attention/concentration, and motivation. Moderate impacts are identified in consciousness, executive, motor activity, other neuropsychological problems and other emotional or mental problems. The general practitioner does not further define the other neuropsychological, emotional or mental problems and only noted that the appellant has depression. Although the general practitioner indicated in his July 29, 2013 letter that the appellant is "intellectually challenged," there was no further evidence provided of the nature of this impairment.

The general practitioner indicated in the assessor report that the appellant is independent with making appropriate social decisions but he requires periodic support/supervision with developing and maintaining relationships ("short term only"), interacting appropriately with others, dealing appropriately with unexpected demands and securing assistance from others. In response to the request to describe the support/supervision required to help maintain the appellant in the community, the general practitioner wrote "...friends, neighbours. Likely will need community help before long." The general practitioner indicated that the appellant has marginal functioning in both his immediate and extended social networks. In his letter dated July 29, 2013, the general practitioner wrote that the appellant is insecure and has poor social skills, hence the indication on the form that he has marginal functioning. The appellant stated that he has experienced difficulties dealing with employees at different offices who he feels treat him in a patronizing manner, that he tries to be optimistic and friendly but tends to have outbursts. The panel finds that the information respecting the appellant's ability to function in terms of specific daily tasks does not support a severe impairment of mental functioning. The general practitioner indicated in the assessor report that the appellant independently manages all listed "mental" tasks of daily living, including managing his medication, 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 a bicycle and orthotics, with many of his DLA. The appellant argued that he relies on the information that the general practitioner provided in the PWD application as well as the additional letters to show the restrictions to his ability to perform DLA.

The ministry's position is that as many DLA are performed independently and others require little help, the information from the prescribed professional does not establish that the impairment significantly restricts DLA either continuously or periodically for extended periods. The ministry argued that while the general practitioner reported that a number of activities require periodic help, there is no indication of the frequency or duration of periodic assistance to allow the ministry to determine the significance. The ministry argued that some tasks take the appellant longer than typical for his age group; however, how much longer is not described. The ministry argued that in terms of social functioning most aspects require periodic support/supervision; however, there is no explanation or description of the degree and duration of the assistance required.

Panel Decision

The evidence of a prescribed professional, the appellant's general practitioner, is that the appellant is assessed as independent with 2 of 4 tasks of managing meals, and requires periodic assistance from another person and takes significantly longer than typical with food preparation and cooking ("standing painful"). At the hearing, the appellant stated that he can only stand for 10 to 15 minutes at most. First his left leg will go numb and then it "feels like it is on fire" and he has to sit or lie down to get relief. The appellant also stated that he must often use two hands to pick up a pan and move it to the stove. He always has to be careful not to put too much load on a joint and he will use two hands to lift things.

For management of finances, the general practitioner reported that the appellant is independent with all tasks, including banking, budgeting, and paying rent and bills.

For daily shopping, the general practitioner reported that the appellant is independent with 3 out of 5 tasks (reading prices and labels, making appropriate choices and paying for purchases) while requiring periodic assistance from another person with going to and from stores and carrying purchases home which also takes him significantly longer than typical. The appellant stated at the hearing that he is able to go to and from stores and carry his purchases home with the use of bicycle which he recently acquired.

The general practitioner reported that the appellant requires periodic assistance and takes significantly longer than typical with getting in and out of a vehicle and using public transit while being independent with using transit schedules and arranging transportation. There are no comments from the general practitioner to indicate the degree and duration of the assistance required.

The appellant is assessed as requiring periodic assistance from another person and taking significantly longer than typical with laundry and basic housekeeping, with no further explanation or description provided. In his self-report included with the PWD application, the appellant wrote that he has to sit or lie down after just half an hour to 45 minutes to relieve the severe pain in his legs and lower back after doing housework (i.e. dishes, vacuuming, etc.).

The evidence of the appellant's general practitioner is that the appellant is independent but takes significantly longer than typical with walking indoors and requires periodic assistance from another person with walking outdoors. The general practitioner indicated in the physician report indicated that the appellant can walk 1 to 2 blocks unaided. In the Consultation Report dated June 27, 2013, the rheumatologist indicated that the appellant is only able to walk about 12 to 13 minutes, complaining of foot pain, back and leg symptoms on the left. The appellant stated that he has not been using a cane although he previously used a walking stick.

In the assessor report, the general practitioner indicated that 3 out of 8 tasks of the DLA personal care are performed independently, namely regulating diet, transfers in/out of bed and transfers on/off a chair, and 3 tasks are performed independently and also take significantly longer than typical, namely dressing, bathing, and toileting. The general practitioner reported that 2 tasks require periodic assistance from another person and also take significantly longer than typical, being grooming and feeding self, with no further explanation provided. The appellant stated that he cannot get help with something like bathing but he has to use a scrubber with a long handle because he cannot reach like he used to.

In the physician report, the general practitioner indicated that the appellant is independent with all tasks of managing medications.

For those DLA relating to a person with a severe mental impairment, the general practitioner reported in the PWD application that the appellant is independent with making appropriate social decisions but requires periodic support/supervision for interacting appropriately with others. The general practitioner indicated that the appellant has marginal functioning with both his immediate and extended social networks as he is insecure and has poor social skills. The general practitioner reported that the appellant has no difficulties with communication and assessed his ability to communicate as able but poor in 3 out of 4 areas.

In his letter dated July 29, 2013, the general practitioner indicated that the appellant lives alone and, therefore, unless he is to starve or live in a mess, he has to look after his own activities of daily living and, as such, he has to be independent though his chronic pain makes these activities very difficult for him. The panel finds that the evidence demonstrates that the appellant is able to accomplish his DLA in segments, taking a break to rest or stretch after 10 to 15 minutes for tasks that require standing or walking and after 30 to 45 minutes after performing housekeeping chores. The panel finds that while the evidence from the prescribed professional

indicated that the appellant requires periodic assistance with the DLA of basic housekeeping, and with some tasks of personal care, meal preparation, using transportation and daily shopping, the ministry reasonably determined that there is insufficient evidence to establish that the need for assistance is 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 another person to perform DLA even if he does not currently receive it, and that he uses a bicycle and requires orthotics 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 acknowledged that an assistive device is used, namely a cane, and help is provided by friends and neighbours.

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 with his DLA from his friends and community service agencies. The panel finds that neither a bicycle nor orthotics meet the definition of an assistive device as set out in the legislation, namely a device designed to enable a person to perform a DLA that the person is unable to perform. The general practitioner reported that no aids are required although the appellant occasionally uses a cane; however, the appellant stated that he does not use a cane. 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.