APPEAL #

PART C – Decision under Appeal

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

- the appellant has a severe physical or mental impairment;
- the appellant's daily living activities (DLA) are, in the opinion of a prescribed professional, directly and significantly restricted either continuously or periodically for extended periods; and,
- 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

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PART E – Summary of Facts

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 April 2, 2013 which did not include a description of the appellant's disability, a physician report (PR) dated June 18, 2013 completed by a general practitioner who has known the appellant over a year, and an assessor report (AR) dated July 10, 2013, completed by a social worker who has known the appellant for 4 months, as well as the following:
Request for Reconsideration dated August 22, 2013.

Diagnoses

The appellant has been diagnosed by his general practitioner with HIV, with an onset of February 2012 and a substance-related disorder with an onset of January 2012.

Physical Impairment

- In the PR, the general practitioner indicated in the health history: "...HIV positive... has had hard time remembering to take anti-retrovirals."
- The general practitioner reported that the appellant has been prescribed medications (anti-retrovirals) 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 comments regarding the degree and course of impairment, the general practitioner wrote that "although HIV is a chronic disease, unfortunately the anti-retrovirals have side effects that interfere with his memory etc.; he sometimes forgets to take which can make the virus resistant."
- Functional skills reported in the PR indicated that the appellant can walk 4 or more blocks and climb 5 or more steps unaided, and he has no limitations with lifting or with remaining seated.
- In the additional comments to the report, the physician wrote that the appellant was diagnosed with HIV recently "...this has impacted him mentally; as a result, he has not been remembering to take meds regularly."
- In the AR, the social worker assessed the appellant as independent with walking indoors and outdoors, with a comment regarding walking outdoors that the appellant requires more time to complete this task due to fatigue. The appellant is also assessed as independent with climbing stairs although requiring more time to complete due to fatigue. The social worker assessed the appellant as independent with standing and lifting and carrying and holding, with a comment added that the appellant requires more time to complete carrying and holding due to fatigue. The social worker also commented that the appellant "...periodically requires more time to complete tasks due to chronic fatigue; depending of (sic) level of [the appellant's] energy due to chronic fatigue, low mood and energy, [the appellant] requires more time to complete carrying and holding tasks."
- The social worker indicated that the appellant does not use an assistive device to help compensate for his impairment.

Mental Impairment

- In the PR, the general practitioner indicated in the health history: "...substance abuse- as a result suffers from fatigue." The general practitioner also commented under the HIV diagnosis that there has been depression since the diagnosis.
- The general practitioner reported significant deficits with cognitive and emotional function in the areas of memory, emotional disturbance (e.g. depression, anxiety), motivation and impulse control. The general practitioner did not provide further comment.
- The general practitioner indicated that the appellant does not have difficulties with communication.
- In the additional comments, the general practitioner added that "with the depression, he has also been feeling fatigued, not eating well."

- In the AR, in describing the appellant's mental impairments, the social worker wrote that these include "...mood disorders, depression and anxiety, history of family trauma. Additional impairments include impacted short term memory and non-compliance with HIV medications. In addition, history of substance use."
- Regarding the appellant's ability to communicate, the social worker assessed his speaking and hearing as good and his reading and writing as satisfactory. For reading, the social worker commented that short-term memory is impacted and he has difficulty maintaining concentration and attention. With writing, the appellant is easily distracted and has difficulty with maintaining concentration due to chronic fatigue.
- The social worker assessed major impacts to cognitive and emotional functioning in the areas of emotion, impulse control, insight and judgment, memory, motivation, psychotic symptoms, and other emotional or mental problems. There is a moderate impact indicated to bodily functions and minimal or no impacts to the remaining 6 areas of functioning.
- The social worker commented that the appellant has disordered eating patterns, he experiences severe nausea and diarrhea, and he will often oscillate from excessive eating or will not eat for 4 days at a time. He also often sleeps excessively due to chronic fatigue and struggles to get out of bed. He has poor hygiene due to depression and will only attend to showers if he is aware of an appointment with a medical practitioner or health professional. Due to disordered sleeping patterns and chronic fatigue, the appellant often feels drowsy and requires prompts to assist in re-focusing and maintaining attention to discussion/ task. The appellant is easily distracted and short-term memory is impacted, demonstrating lapses in short-term memory. He struggles with depression resulting in loss of interest and motivation. He demonstrates lack of initiative which significantly impacts his DLA. He has poor insight and judgment of his health condition. The appellant habitually engages in unsafe behaviour, poor and loss of impulse control thus failing to resist doing an activity that is unsafe and has led to the social worker developing a safety and care plan. The appellant's coping skills are impacted- he is often overwhelmed and becomes easily irritable and hostile towards family and friends.
- The social worker indicated that the appellant requires continuous support/supervision in all areas of social functioning, including making appropriate social decisions (note added: "due to mood disorders" the appellant struggles to demonstrate good social judgment, he consistently engages in social decisions that can cause harm to health and self), developing and maintaining relationships (with a note that the appellant "self-isolates and barricades from friends and family; family and friend relationships greatly fluctuate and are inconsistent.") The social worker also indicated a need for continuous support/supervision with interacting appropriately with others (note added: "significantly struggles to understand and appropriately respond to social cues; acute anxiety impacts ability to interact appropriately with people; easily irritated and often feels overwhelmed by others and circumstance"), dealing appropriately with unexpected demands ("coping skills are impaired; minimal ability to resolve and/or able to appropriately meet unexpected demands"), securing assistance from others ("poor awareness of self and others"), and other ("excessive hostility and anger towards self and others").
- The social worker reported that the appellant has very disrupted functioning in his immediate social networks with the comment that the appellant's "depression is exasperated (sic) by his feelings of isolation; ability to maintain relationships with family and friends has been significantly impacted." The appellant is also assessed with very disrupted functioning in his extended social networks, with the comment by the social worker that "life skills and coping skills are limited" and the appellant often feels that he does not want to reach out to people and/or front-line staff in the community."
- In describing the support-supervision required which would help maintain the appellant in the community, the social worker wrote that the appellant "requires long-term on-going psychiatric counseling for mood disorders and coping skills."

Daily Living Activities (DLA)

- In the PR, the general practitioner indicated that the appellant is restricted on a periodic basis with management of medications and is not restricted in the remaining DLA, including personal self care,

meal preparation, basic housework, daily shopping, mobility inside and outside the home, and use of transportation. The general practitioner also reported that the appellant has no restriction to social functioning and did not provide further comment. Regarding the degree of restriction, the general practitioner commented: "new diagnosis of HIV has affected him mentally; unfortunately these medications also affect him." The general practitioner did not provide an assessment of the DLA management of finances.

- In response to the request to describe the assistance required by the appellant with DLA, the general practitioner indicated that none is needed.
- In the AR, the social worker indicated that all tasks of the DLA basic housekeeping, managing meals and transportation are performed independently with no need for assistance, although tasks of basic housekeeping take 3 times longer than typical to perform due to chronic fatigue and lack of motivation and tasks of meals take 2 times longer than typical to perform due to depression and fatigue.
- The appellant is assessed as independent with most tasks of the DLA personal care and taking 4 times longer with bathing ("dependent on low mood and loss of interest in self-care") and 2 times longer with toileting ("bouts of chronic diarrhea and vomiting"). The social worker indicated that the appellant requires periodic assistance from another person with regulating his diet which also takes 4 times longer than typical, with the explanation that "loss of interest and motivation; poor insight into self-care and regulating diet; will not eat for 4 days."
- For the DLA shopping, the appellant performs most tasks independently and requires periodic assistance with paying for purchases which takes 3 times longer than typical due to poor insight and impulse control. The social worker also noted that the appellant requires assistance to budget for paying for purchases. The appellant also takes 3 times longer than typical with going to and from stores and carrying purchases home, with a note: "loss of energy and motivation." The appellant also requires periodic assistance with making appropriate choices with a note "poor insight and impulse control."
- For paying rent and bills, the social worker indicated that the appellant requires continuous assistance from another person. The social worker noted that "impulse control is significantly impacted; unable to bank and budget for daily living needs." For budgeting, the social worker noted "requires continuous assistance from friends and family with this task."
- With respect to managing medications, the social worker reported that the appellant requires periodic assistance from another person with all tasks which also take the appellant 4 to 5 times longer than typical. For filling/refilling prescriptions and taking as directed, the social worker noted: "aversion to medication; will not adhere to ARV regiment for HIV." For safe handling and storage, the social worker noted: "requires continuous discussion and psychological support with medication."

Need for Help

- In the reports included in the PWD application, the general practitioner and the social worker reported that the appellant does not require an aid for his impairment, or any assistive device.
- In response to the request in the PR to describe the assistance required by the appellant with DLA, the general practitioner indicated none.
- The social worker reported in the AR that the help required for DLA is provided by family and friends. In response to the request to describe assistance that would be necessary if none is available, the social worker commented that the appellant would benefit from nutritional counseling by a clinical dietician, and front-line staff to assist with meal planning and food security. In addition, the appellant would greatly benefit from on-going long-term psychiatric counseling and an HIV peer navigator to help with his mood disorders and assist with coping skills.

In his Notice of Appeal, the appellant expressed his disagreement with the reconsideration decision. The appellant wrote that he has a severe impairment which he has not discussed in depth with his doctor and, therefore, she did not make a fair assessment.

At the hearing, the appellant stated that he had given the Tribunal fax number to both his family physician who

completed the PR and another social worker who has worked with him since they had agreed to provide further information on his behalf. Although no further information had been received, the appellant indicated that he wished to proceed with the hearing.

At the hearing, the appellant stated that:

- The general practitioner who completed the PR is an HIV specialist to whom he was referred by the nurse who told him he was HIV positive. He has continued to go to this doctor for certain issues, such as his addiction problems and the side effects of the medications. He wants to continue going to this doctor because she is a specialist in HIV. The appellant has also seen another doctor a couple of times at the hospital because his virus has the highest level of drug resistance that this doctor has seen in 10 years. The doctors are concerned that the appellant has a "super virus" and they do not want it to "get out," and there is a public health issue.
- He has to take 5 different medications twice per day which is a great challenge. He feels exhausted all the time. He has asked his family doctor if there are other medications that he can take or a lower dose but he has had to face that he needs to take the prescribed medications. He has to deal with the side effects because if he does not take the medications, he will die. He has been given a "pill pack" before and it helped him remember to take his medications, but he cannot afford to continue with that program.
- He is taking his medications as consistently as possible but sometimes he cannot remember if he has taken them and he has over-dosed and taken them twice because he is afraid that he forgot. He knows that if he does not take the medications on schedule, he risks having his virus becoming resistant to all medications.
- He lost his job, which he had really enjoyed, 4 months ago. He has to take his medications 12 hours apart and he sets an alarm on his phone to remind him to take the medications. This was causing problems at work because he had to go home if he forgot his medications or sometimes they dissolved in his pockets, and he was pretty much "a zombie" at work. He sometimes sleeps through the alarms he sets.
- He realizes that the diagnosis of depression and anxiety was not mentioned by the general practitioner.
- He was diagnosed with depression and anxiety by a physician in another province in 2007 and was given some anti-depression medications but the appellant did not want to take them. He had seen his mother given medications for a severe mental health issue and then they "threw away the key."
- The general practitioner is only concerned that his virus is undetectable so that he will not transmit it to others and the virus is contained. He sees the general practitioner on a regular basis but she has never sat down with him and reviewed how he is feeling or how things are going for him.
- He has been clean from his addictions for 22 days with the help of an out-patient program. He had wanted to go into treatment but he has to pay child support for his young daughter so this is not an option. He works with a drug and alcohol counselor 3 days a week and this has been helping him. Even with his addictions currently under control, the appellant is still "dragging his butt" around and is very fatigued. He is not sure what causes the fatigue but it has persisted. He does not want to eat because it "knocks him out" and he will wake up, discovering he had "passed out on the couch."
- The social worker sat down with him for a few meetings and spent a couple of hours with him. The social worker took the time that the general practitioner never does. Sometimes when the appellant goes for appointments with the general practitioner, a student doctor will be there instead.
- With the social worker's organization, there are different services and supports that the appellant has used. There is a food bank once a week that he tries to get to but sometimes he misses it. He goes in for coffee and meets with social workers but they are busy too.

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 ministry relied on its reconsideration decision.

PART F – Reasons for Panel Decision

The issue on the appeal is whether the ministry's reconsideration decision, which 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

The ministry pointed out in the reconsideration decision that some of the information provided by the general practitioner in the PR provides a very different assessment than that of the social worker in the AR and that, therefore, it is difficult for the ministry to gain an accurate picture of the appellant's situation. The appellant acknowledged that the assessments are inconsistent in some areas and wrote in his Notice of Appeal that he has not discussed the severity of his impairment in depth with his doctor and, therefore, she did not make a fair assessment. The appellant argued at the hearing that the general practitioner focused mostly on his HIV diagnosis and his addictions and did not take the time to find out about the impacts of his other conditions, whereas the social worker spent the time with him.

Panel decision

The panel finds that the information in the PR and the AR varies substantially with respect to assessments of impacts to daily cognitive and emotional functioning and regarding restrictions on the appellant's DLA. Whereas the general practitioner assessed the appellant in the PR as having no restrictions to social functioning, for example, the social worker assessed very disrupted functioning in both immediate and extended social networks and a need for continuous support/supervision in all areas of social functioning. The PR was prepared by the appellant's family physician of over 1 year who the appellant sees regularly for short appointments and the AR was prepared by a social worker who has only known the appellant for a period of 4 months but who met with the appellant for several hours over the course of a couple of meetings. Although the AR was prepared in July 2013, after the PR which was signed in June 2013, the panel notes that the social worker did not reference the PR as an information source for completing the AR. The social worker indicated that the assessment in the AR is based solely on an office interview(s) with the appellant and that no other in-home observations, clinical data, or collateral sources were consulted or relied upon. The panel finds that with respect to an assessment of impacts to daily cognitive and emotional functioning and restrictions on the appellant's DLA, the ministry was reasonable in placing more weight on the information in the PR as being based on the general practitioner's knowledge of the diagnosed conditions and her assessment of the impacts on the appellant over the course of more than a year, rather than solely on information provided by the appellant in an office interview, as was done in the AR.

Severe Physical Impairment

The appellant's position is that a severe physical impairment is established by the evidence of his loss of memory and chronic fatigue due to his HIV diagnosis and the side effects of the medications he is required to take.

The ministry's position is that the ministry does not have enough information from the general practitioner and social worker to confirm that the appellant has a severe physical impairment. The ministry argued that, in terms of physical functioning, the general practitioner indicated that the appellant can walk 4 or more blocks and climb 5 or more steps unaided, and that he has no limitations when it comes to lifting or remaining seated. The ministry argued that the general practitioner indicated that the appellant does not require any prostheses or aids for his impairments. The ministry argued that the social worker indicated that although it takes the

appellant longer to complete some of the tasks, the appellant can independently manage all of his mobility and physical functions.

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 more than a year, diagnosed the appellant with HIV, with an onset of February 2012. In the comments regarding the degree and course of impairment, the general practitioner wrote that "although HIV is a chronic disease, unfortunately the anti-retrovirals have side effects that interfere with his memory etc.; he sometimes forgets to take which can make the virus resistant." The functional skills reported in the PR indicated that the appellant has no limitations and he can walk 4 or more blocks unaided on a flat surface, climb 5 or more steps unaided, and he has no limitations with lifting a particular weight or with remaining seated for a specified period of time. The general practitioner also reported in the PR that the appellant has no restrictions with mobility inside the home or with mobility outside the home. The general practitioner and the social worker both assessed the appellant as not requiring an aid or an assistive device to help compensate for an impairment.

In the AR, the social worker assessed the appellant as independent with walking indoors and outdoors, climbing stairs, standing, lifting, and carrying and holding, with comments added that the appellant "...periodically requires more time to complete tasks due to chronic fatigue; depending of (sic) level of [the appellant's] energy due to chronic fatigue, low mood and energy, [the appellant] requires more time to complete carrying and holding tasks." Although the general practitioner also identified fatigue as one of the appellant's symptoms, she attributed the symptom to his substance-related mental disorder and not to his HIV diagnosis. At the hearing, the appellant stated that he has to take 5 different medications twice per day which is a great challenge and he feels exhausted all the time. The appellant stated that he is resigned to dealing with the side effects because if he does not take the medications, he is aware that his virus will become resistant to all the medications and he will die. He is not sure about the cause for his fatigue but even though his addictions have been under control for the past 22 days, the fatigue has persisted. The panel finds that the ministry reasonably determined that the appellant's current level of independent physical functioning, despite the described symptoms of memory loss and fatigue, 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 substance-related mental disorder 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 four significant deficits to cognitive and emotional functioning in the areas of memory, emotional disturbance, motivation and impulse control but no comments were included to explain the impacts these deficits have on the appellant's mental functioning. The ministry pointed out that the general practitioner indicated that the appellant can independently manage almost all of his DLA including social functioning while the social worker indicated that the appellant requires continuous assistance with some DLA and continuous support/supervision with all of the aspects of social functioning, with very disrupted functioning with both his immediate and extended social networks. The ministry argued that it is difficult to obtain a concise and accurate picture of the appellant's present situation as the general practitioner and the social worker have very different assessments of the appellant's mental functioning.

Panel Decision
The general practitioner diagnosed a substance-related mental disorder in the PR and in the health history identified: "...substance abuse- as a result suffers from fatigue." The general practitioner also commented that there has been depression since the appellant's HIV diagnosis. In the additional comments, the general practitioner added that "...with the depression, he has also been feeling fatigued, not eating well." Although the appellant stated at the hearing that he was diagnosed with depression and anxiety in 2007, the general practitioner has identified the appellant's depression as being recently triggered by the HIV diagnosis. The general practitioner reported significant deficits with cognitive and emotional function in the areas of memory, emotional disturbance (e.g. depression, anxiety), motivation and impulse control and did not provide further comment. With respect to an assessment of impacts to the appellant's daily cognitive and emotional functioning, the social worker reported major impacts to the areas of functioning identified by the general practitioner, namely emotion, impulse control, memory and motivation. The social worker further commented with respect to these impacts that the appellant is easily distracted, he struggles with depression resulting in loss of interest and motivation, he demonstrates lack of initiative which significantly impacts his DLA, and he habitually engages in unsafe behaviour, poor/ loss of impulse control thus failing to resist doing an activity that is unsafe and has led to the social worker developing a safety and care plan. However, the social worker also identified major impacts in the areas of insight and judgment, psychotic symptoms, and other emotional problems and a moderate impact in bodily functions that were not identified by the general practitioner as being areas of significant deficit, and the panel placed more weight on the evidence in the PR, as previously discussed.

The general practitioner reported in the PR that the appellant does not have difficulties with communication and the social worker indicated in the AR that the appellant has a good or satisfactory ability to communicate in all areas. For social functioning, the general practitioner indicated that there are no restrictions. The social worker , on the other hand, indicated that the appellant requires continuous support/supervision in all areas of social functioning and that he has very disrupted functioning in both his immediate and extended social networks. In response to the request in the PR to describe the assistance required by the appellant with DLA, the general practitioner indicated that none is required, which does not correspond with the social worker's assessment of the need for continuous support/supervision in all areas of social functioning. The panel finds that the ministry reasonably concluded that is difficult to obtain a concise and accurate picture of the appellant's present situation as the general practitioner and the social worker have very different assessments of the appellant's mental functioning, and that the ministry reasonably placed more weight on the evidence of the general practitioner. There was no further information provided from the general practitioner or the social worker. 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.

The ministry's position is that the appellant is able to manage the majority of his DLA independently or with

periodic assistance, apart from the requirement for continuous assistance with paying rent and bills. The ministry argued that the general practitioner indicated that the appellant is not restricted in his social functioning while the social worker reported that the appellant requires continuous support/supervision with all his social functioning and, considering the totally divergent opinions, it is difficult for the ministry to gain an accurate picture of the appellant's situation. The ministry argued that there is not enough collaborative information to determine if the appellant's impairments directly and significantly restrict DLA continuously or periodically for extended periods.

Panel Decision

The evidence of the appellant's general practitioner is that the appellant is not restricted in 7 out of 8 assessed DLA, including personal self care, meal preparation, basic housework, daily shopping, mobility inside and outside the home, use of transportation, and social functioning. In the AR, the social worker's assessment also indicated that all tasks of the DLA basic housekeeping, managing meals and transportation are performed independently with no need for assistance. Some tasks of these DLA were identified to also take significantly longer than typical due to depression and fatigue. The social worker assessed the appellant as independent with most tasks of the DLA personal care while taking significantly longer than typical with bathing and with toileting. The social worker reported that the appellant requires periodic assistance from another person with regulating his diet which also takes 4 times longer than typical. For the DLA shopping, the social worker also indicated that the appellant performs most tasks independently and requires periodic assistance with paying for purchases and with making appropriate choices due to "poor insight and impulse control." In the AR, the social worker assessed the appellant as independent with walking indoors and outdoors, and the functional skills reported in the PR indicated that the appellant can walk 4 or more blocks unaided.

The general practitioner assessed the appellant with periodic restrictions with management of medications, with the note that, with the HIV medications, "...has hard time remembering things and to take medication." In response to the request to describe the assistance required by the appellant with DLA, the general practitioner indicated that none is needed. At the hearing, the appellant stated that he has had to deal with the side effects of the medications because he realizes that if he does not take the medications, the virus will become resistant to all medications and he will die. The appellant stated he is taking his medications as consistently as possible but sometimes he cannot remember if he has taken them and he, on some occasions, taken them twice because he is afraid that he forgot. The appellant stated that he has been given a "pill pack" before and it helped him remember to take his medications, but he cannot afford to continue with that program. The social worker reported in the AR, however, that the appellant requires periodic assistance from another person with all tasks of managing medications, which also take the appellant 4 to 5 times longer than typical. For filling/refilling prescriptions and taking as directed, the social worker noted: "aversion to medication; will not adhere to ARV regiment for HIV." For safe handling and storage, the social worker noted: "requires continuous discussion and psychological support with medication." The panel finds that the assessment by the general practitioner indicated that the appellant is forgetful with taking his medications as directed, as stated by the appellant, but there is no need for assistance with the other tasks of managing his medications.

The general practitioner did not provide an assessment regarding the DLA management of finances. In the AR, the social worker indicated that the appellant requires continuous assistance from another person for all tasks which take the appellant 4 to 5 times longer than typical. The social worker noted that "impulse control is significantly impacted; unable to bank and budget for daily living needs." For budgeting, the social worker noted "requires continuous assistance from friends and family with this task."

For those DLA which relate to a mental impairment, the appellant is assessed by the general practitioner as not restricted with social functioning and as having no difficulty with communication. In the AR, the social worker also assessed the appellant as having a good or satisfactory ability to communicate in all areas, but provided a very different assessment for the appellant's social functioning. The social worker indicated that the appellant requires continuous support/supervision in all areas of social functioning, including making appropriate social decisions, developing and maintaining relationships, and interacting appropriately with

others. As previously discussed, the panel found that the ministry was reasonable in placing more weight on the information in the PR as being based on the general practitioner's knowledge of the diagnosed conditions and her assessment of the impacts on the appellant over the course of more than a year. At the hearing, the appellant stated that he recently lost his job, which he had "really enjoyed", because of problems managing his medications, but he did not indicate there were issues that would point to very disrupted functioning in both his immediate and extended social networks. The evidence demonstrates that there is a need for periodic assistance with a task of managing medications and one task of personal care, the "mental" tasks of the DLA shopping, as well as continuous assistance with the tasks of managing finances, and that the remaining DLA are performed independently by the appellant. The panel finds that the ministry reasonably concluded that there is not enough evidence from the prescribed professionals 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.

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 or assistance animals 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 general practitioner, as a prescribed professional, is that the appellant does not require assistance with DLA. In the AR, the social worker indicated that the help required with DLA is provided by family and friends. 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.