

PART C – Decision under Appeal

The decision under appeal is the Ministry of Social Development and Social Innovation (the ministry) reconsideration decision dated September 13, 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 Person With Disabilities (PWD) Application comprised of the applicant information dated April 15, 2013, a physician report (PR) and an assessor report (AR) both dated February 14, 2013 and completed by the appellant's family physician of approximately 6 months, as well as the following:

- 1) Letter dated February 18, 1999 from a pediatrician to the appellant's family physician;
- 2) Letter dated November 24, 2006 from a consulting pediatrician to the appellant's family physician;
- 3) Radiology Report dated December 19, 2006 for an echocardiogram;
- 4) Letter dated June 27, 2007 from an orthopedic surgeon to the appellant's family physician;
- 5) Radiology Report dated January 17, 2008 for the appellant's thoracic and lumbar spine;
- 6) Letter dated January 18, 2008 from an orthopedic surgeon to the appellant's family physician;
- 7) Outpatient Report dated February 28, 2008;
- 8) Radiological Consultation dated May 6, 2008 for a CT scan of the appellant's spine;
- 9) Medical Imaging Report dated June 15, 2012 for an X-Ray of the appellant's spine;
- 10) Letter dated August 12, 2012 from the appellant's family physician; and,
- 11) Request for Reconsideration dated August 14, 2013.

Diagnoses

The appellant has been diagnosed by his general practitioner with scoliosis/ kyphoscoliosis with an onset in 2007 and developmental learning disabilities NYD [not yet diagnosed] with an onset in 1996.

Physical Impairment

- In the PR, the general practitioner indicated in the health history that the appellant has "...severe kyphoscoliosis with constant back pain markedly restricting all activities including sitting, standing, walking, lifting, bending, twisting, carrying. Imaging attached. Part of the reason he did not complete post-secondary education- too painful to sit in classroom, also pectus excavatum."
- 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, with a note added: "not currently."
- Functional skills reported in the PR indicated that the appellant can walk 4 or more blocks unaided on a flat surface, climb 5 or more steps unaided, he can lift 7 to 16 kg (15 to 35 lbs.) and can remain seated less than 1 hour.
- In the additional comments to the PR, the general practitioner wrote that the appellant "...has attempted to work in the past but found walking, bending, lifting, sitting too painful to endure. He has the worst case of scoliosis in [her] practice. Pain from sitting, along with learning disabilities, prevented his completion from high school and further training, thus further restricting work options for him."
- In the AR, the general practitioner assessed the appellant as independent with walking indoors and outdoors, climbing stairs and standing. The general practitioner assessed the appellant as requiring continuous assistance from another person with lifting and with carrying and holding, with no other comments provided.
- In his self-report included in the PWD application, the appellant wrote that he goes through his day with back pain and his night can be restless. He has trouble sitting for longer than an hour at any given time. He cannot walk for a long time nor can he carry or lift anything too heavy and, if he tries, he will spend the next few days in a great deal of pain. The appellant wrote that he is a young man with no or very little quality of life.
- The June 27, 2007 letter from an orthopedic surgeon to the appellant's family physician provided an impression of moderately severe thoracolumbar scoliosis. The appellant was asymptomatic and not keen on a major surgical procedure to attempt to correct the deformity. The appellant was encouraged to continue with normal activities.

- In the January 18, 2008 letter from the orthopedic surgeon to the appellant's family physician, the appellant was seen and reported no change in his back symptoms and has not perceived any worsening of his scoliosis. The appellant was in no discomfort and his gait was normal. Examination revealed a severe right thoracolumbar scoliosis and moderately severe pectus excavatum. The appellant had a good range of movement of the thoracolumbar spine and there was no neurological deficit in the upper or lower limbs. On review of the radiographs, there has been significant progression of the appellant's scoliosis in the last 8 months and he may require surgical correction and stabilization of his spine.
- In the August 12, 2012 letter, the appellant's family physician stated in part that on the visit of June 4, 2012 the appellant complained of low back pain which was better with sitting but worsened with prolonged sitting. He stated activities such as carrying or sweeping would worsen it. He denied any pain on the day of the visit. He reported that he did not get the recommended MRI scan as he was not interested in any surgery. X-Rays showed further worsening of the appellant's scoliosis with the Cobb's angle in the upper thoracic spine now measured 75 degrees and the Cobb's angle in the thoracolumbar junction measured at 88 degrees. The appellant is not on any medications as a result of his main medical condition.
- In his Request for Reconsideration dated August 14, 2013, the appellant stated that he has an appointment for a CT Scan and respiratory testing, and with a specialist at the Spine Centre and at the hospital. Since February 2013, he has had two MRI and two back X-Rays showing that his spine continues to rotate and has gone from 60 degrees to 100 degree rotation.

Mental Impairment

- In the PR, the general practitioner indicated in the health history that the appellant's "...learning disabilities affected school performance since kindergarten; weak reading, spelling, math, never formally diagnosed, suspect dyslexia; major reason he has not completed grade 12; psychological assessment attached, performed at 8 years of age."
- The general practitioner reported no significant deficits with cognitive and emotional function.
- The general practitioner indicated that the appellant does not have difficulties with communication and, in the AR, that he has a good ability to communicate in speaking and hearing and satisfactory ability in reading and writing.
- In the AR, the general practitioner assessed no impacts to cognitive and emotional functioning in all areas of functioning, including other neuropsychological problems (e.g. learning disabilities). The general practitioner commented "difficult to sleep due to pain."
- The general practitioner indicated in the PR that there are no restrictions to social functioning and, in the AR, that the appellant functions independently in all areas, including making appropriate social decisions, developing and maintaining relationships, interacting appropriately with others, dealing appropriately with unexpected demands and securing assistance from others.
- The general practitioner noted that the appellant "...does not admit to this, but it appears that embarrassment over skeletal deformities has significantly reduced his peer/friend interactions."
- In the letter dated February 18, 1999 from a pediatrician to the appellant's family physician, the conclusion included from a psychological assessment stated in part that neuro-developmental measures generally suggest age-appropriate development with suggestions of neurological delays that could be the cause of his learning delays. The appellant has at least average learning potential.

Daily Living Activities (DLA)

- In the PR, the general practitioner indicated that the appellant is restricted on a continuous basis with basic housework and mobility outside the home and is not restricted in the remaining DLA, including personal self care, meal preparation, management of medications, daily shopping, mobility inside the home, management of finances and social functioning. Regarding the degree of restriction, the general practitioner commented: "marked restriction in movement due to pain and deformity." The general

practitioner did not provide an assessment regarding the appellant's use of transportation.

- In the AR, the general practitioner indicated that all tasks of the DLA personal care and management of meals, finances, medications, and transportation are performed independently with no need for assistance.
- The appellant is assessed as requiring periodic to continuous assistance from another person with laundry and basic housekeeping, with no further comments provided by the general practitioner.
- The general practitioner reported that the appellant is independent with performing 3 of 5 tasks of shopping and requires periodic assistance from another person with going to and from stores and continuous assistance with carrying purchases home. No further explanation or description is provided.
- In his self-report included with the PWD application, the appellant wrote that bending over to pick things up off the floor or bending over to tie up his shoes is next to impossible.

Need for Help

- In the PR, in relation to assistance needed with DLA, the general practitioner wrote "lots of help from his family on a daily basis."
- In the reports included in the PWD application, the general practitioner reported that the appellant does not require an aid for his impairment, but noted in the section relating to assistive devices: "extra padding on mattress and all chairs."
- The general practitioner indicated in the AR that the help required for DLA is provided by family and that he has "very supportive caregivers."

In his Notice of Appeal, the appellant expressed his disagreement with the reconsideration decision. The appellant wrote that medical records of testing from January to September 2013 are missing from his file and he has an appointment on October 8, 2013 with a surgeon at a spinal centre at the hospital.

Prior to the hearing, the appellant provided the following additional documents:

- 1) Scoliosis Series X-Ray Report dated April 5, 2013 which included findings of severe scoliosis of the thoracolumbar junction; the scoliosis in the upper thoracic spine measures 78 degrees and the thoracolumbar scoliosis measures about 88 degrees. When compared to the previous studies from 2007, measurements obtained in the same plane show significant worsening of the scoliosis (previous measurements were 40 and 53 degrees);
- 2) Hip and Pelvis X-Ray Report dated April 5, 2013 which included findings that the hip joint spaces are normally maintained without evidence of osteoarthritis;
- 3) Thoracic Spine MRI Report dated April 9, 2013 with a conclusion of severe thoracolumbar scoliosis with no evidence of a tethered cord, syringomyelia or segmentation abnormality;
- 4) Pelvis MRI Report dated June 5, 2013 with an impression of no significant abnormalities;
- 5) Radiological Consultation dated June 20, 2013 describing scoliosis views;
- 6) Outpatient Consultation Note dated June 20, 2013 with an assessment including a restrictive pulmonary Deficit, at least, and the large deformity of his spinal curvatures will likely require combined anterior and posterior stabilization and decompression;
- 7) Letter dated September 10, 2013 from the lung centre to the orthopedic surgeon describing an assessment for the appellant's upcoming surgery for correction of thoracic scoliosis and pectus excavatum. The appellant has had no asthma problems since the age of 10. The breath sounds were diminished on the right side, but were normal in character. He is not taking any regular medications;
- 8) Medical Certificate dated October 3, 2013 from the office of the appellant's family physician stating in part that, in the physician's opinion, the appellant has severe scoliosis as well as pectus excavatum that causes daily pain and limited range of motion and mobility problems.

At the hearing, the appellant and his representative (his grandmother) provided the following oral evidence:

- The appellant's grandmother pointed out that none of the updated reports, including recent testing, was available to the ministry when the reconsideration decision was made and the decision was based on

information available up to February 2013. The advocate stated that the X-Rays and information from the back surgeon and one look at the appellant's back will explain the appellant's difficulties and what he is faced with. His back has gotten much worse.

- The appellant's grandmother stated that the appellant's back is rotating and it is not going to stop. In the last 6 months, the angles have increased from 60 degrees to 100 degree rotation.
- The appellant's condition restricts what he can do and his working ability, which is "not going to happen." It has already affected his schooling. The appellant's grandmother stated that it is very difficult for the appellant to get comfortable. The appellant stated that sitting on stiff, plastic chairs at school was a "no go."
- The appellant's grandmother stated that the appellant will have to go through two 12-hour surgeries in March 2014 in which the surgeon will first go in through the back and then, in the second stage, go in through the appellant's side. They need to remove some vertebrae because his spine does not bend properly. The orthopedic surgeon told her that he has never seen a case like the appellant's. The appellant has a "long road ahead of him," but the problem has to be corrected. She will need to attend a course to find out about the equipment that the appellant will need to get around after the surgery. His walking will be very limited. The appellant's grandmother stated that an assessment of the appellant's abilities will "all be different" after the surgery.
- The appellant's grandmother stated that the appellant lives with her and her husband, that the appellant lives in a small basement suite in their home. This allows her to take him to his doctor appointments. She is his only advocate and if something were to happen to her, she does not know what the appellant would do.
- The appellant's grandmother stated that she does the vacuuming and cleaning tubs and toilets since the appellant is limited in what he can do. The appellant's grandmother stated that the appellant used to be very active. He used to enjoy skateboarding and snowboarding and hiking but he cannot do any of these activities anymore. The appellant used to swim but he has not even tried, partially because of the visual appearance of his back.
- The appellant's grandmother stated that the appellant lives with a severe deformity. The appellant showed the panel that his spine curves significantly to the right to displace the typical area for the shoulder blade and his shoulder blade on the right is 2 inches higher than on the left. The appellant stated that he has gone through a painful process with his spine shifting over time.
- The appellant's grandmother stated that the appellant uses a memory foam pad on his bed and he has cushions on all the chairs at home so he can get comfortable. He usually has a pillow behind his back.
- The appellant's grandmother stated that the appellant "smokes pot" to relieve his pain.
- The appellant described his typical day as laying in bed, going upstairs to his grandmother's to get something to eat, then going back into bed, playing his guitar a bit and maybe watching television for a while. He will fix himself something to eat but it is usually something simple.
- The appellant stated that he gets himself ready, dresses himself and takes a shower. He does not socialize much but his friends drive him when they go out. He cannot carry much, only small things, so his grandmother does the grocery shopping and shops for his clothes.
- The appellant stated that he cannot sit for long and he can only stand for about 15 to 20 minutes before he has to sit down. He can climb a few stairs and it is helpful if there is a handrail, but he cannot climb "too many stairs." The appellant stated that he does not currently use a cane or any other device, such as a brace, to assist him. He does not go around much. The appellant stated that he can lift around 7 to 10 lbs. and if he tries to lift more it is painful.

The ministry did not object to the admissibility of the additional documents or the oral evidence on behalf of the appellant. The panel admitted the documents as well as the appellant's oral evidence as part of the investigation and update to the appellant's diagnosed medical 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.

Severe Physical Impairment

The appellant's position is that a severe physical impairment is established by the evidence of his constant pain, limited range of motion and mobility problems due to scoliosis/ kyphoscoliosis. The appellant argued that he has trouble sitting for longer than an hour at any given time, he cannot walk for a long time nor can he carry or lift anything too heavy and, if he tries, he will spend the next few days in a great deal of pain. The appellant argued that his family physician and the orthopedic surgeon have both stated that his is the most significant case of scoliosis they have seen, that he is a young man with no or very little quality of life.

The ministry's position is that despite the general practitioner's statement that the appellant's pain causes marked restrictions, the functional skills limitations she reports are not significantly restricted aside from lifting over 35 lbs. The ministry argued that the appellant's general practitioner reported that the appellant is able to walk 4 or more blocks and to climb 5 or more steps unaided, to lift 15 to 35 lbs. and to sit for less an hour. The ministry argued that the appellant is independently able to do most aspects of mobility and physical abilities, with continuous help required to lift/carry/hold. The ministry argued that no assistive devices are routinely used to help compensate for impairment and remedial measures in the form of analgesics are available to ameliorate the pain and allow for better functionality.

Panel Decision

The diagnosis of a medical condition is not itself determinative of a severe impairment. To assess the severity of an impairment for the purposes of determining whether an applicant meets the criteria under the legislation, 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 6 months, diagnosed the appellant with scoliosis/ kyphoscoliosis. Although the letter dated September 10, 2013 from the lung centre to the orthopedic surgeon referred to a background history of asthma, a medical practitioner did not provide an opinion that this condition is 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 has "...severe kyphoscoliosis with constant back pain markedly restricting all activities" and that he has the worst case of scoliosis she has seen in her practice. However, the general practitioner also reported in the PR that the

appellant can walk 4 or more blocks unaided on a flat surface, climb 5 or more steps unaided, lift 7 to 16 kg (15 to 35 lbs.) and remain seated less than 1 hour. At the hearing, the appellant stated that he can now only lift around 7 to 10 lbs. and if he tries to lift more, he experiences pain. In the AR, the general practitioner assessed the appellant as independent with walking indoors and outdoors, climbing stairs and standing and as requiring continuous assistance from another person with lifting and with carrying and holding.

In the PR, the general practitioner reported that the appellant does not "currently" require a prosthesis or aid for his impairment, and the appellant stated at the hearing that he does not use a cane or any other device to assist with his impairment. He uses cushions on his mattress and chairs to make sitting and sleeping more comfortable. The appellant does not currently take medications but smokes marijuana to alleviate his pain. In his self-report, the appellant wrote that he goes through his day with back pain and he has trouble sitting for longer than an hour at any given time. He cannot walk for a long time nor can he carry or lift anything too heavy. The appellant wrote that he is a young man with no or very little quality of life.

The X-Ray Report dated April 5, 2013 indicated that the scoliosis in the upper thoracic spine measures 78 degrees and the thoracolumbar scoliosis measures about 88 degrees which, when compared to the previous studies from 2007, shows significant worsening of the scoliosis (previous measurements were 40 and 53 degrees). However, in the medical certificate dated October 3, 2013, while it is the physician's opinion that the appellant has severe scoliosis as well as pectus excavatum, the impact from these conditions is stated to be daily pain, limited range of motion and mobility problems, with no further detail provided. At the hearing, the appellant's grandmother stated that in March 2014 the appellant will have to go through two 12-hour surgeries to stabilize his condition, that the appellant has a "long road ahead of him," his walking will be very limited and he will need various types of equipment to assist him, and an assessment of the appellant's abilities will "all be different" after the surgery. In the absence of further information to modify the general practitioner's previous assessment of the appellant's functional skills as set out in the PR and the AR, 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 developmental learning disabilities NYD and the evidence that these conditions are affecting the appellant's functioning significantly.

The ministry's position is that there is not sufficient evidence provided to establish a severe mental impairment. The ministry argued that the general practitioner reported no significant deficits to cognitive and emotional functioning. The ministry argued that there are no difficulties with communication, with good speaking and hearing and satisfactory reading and writing. The ministry argued that there are no impacts on daily functioning related to a mental impairment or brain injury, with a comment that sleep is affected by pain. The ministry argued that there is no need for support or supervision with social functioning.

Panel Decision

The general practitioner diagnosed the appellant with developmental learning disabilities NYD and indicated in the PR that the appellant's "...learning disabilities affected school performance since kindergarten; weak reading, spelling, math, never formally diagnosed, suspect dyslexia; major reason he has not completed grade 12; psychological assessment attached, performed at 8 years of age." In the letter dated February 18, 1999 from a pediatrician to the appellant's family physician, the enclosed psychological assessment concluded in part that there were "suggestions of neurological delays that could well be the cause of his learning delays," and also that the appellant has at least average learning potential. The general practitioner indicated that the appellant's learning disabilities are 'not yet diagnosed,' and no further psychological assessment was provided. In the AR with the PWD application, the general practitioner indicated that the appellant has a good ability to communicate in speaking and hearing and satisfactory ability in reading and writing.

The general practitioner reported no significant deficits with the appellant's cognitive and emotional function. In the AR, the general practitioner assessed no impacts to cognitive and emotional functioning in all areas of functioning, including other neuropsychological problems (e.g. learning disabilities), with a comment added: "difficult to sleep due to pain." The panel finds that the ministry reasonably concluded that there are no impacts on daily functioning related to a mental impairment or brain injury as distinct from an impact from the appellant's experience of pain from his physical condition.

For social functioning, the general practitioner indicated in the PR that there are no restrictions but noted that the appellant "...does not admit to this, but it appears that embarrassment over skeletal deformities has significantly reduced his peer/friend interactions." At the hearing, the appellant stated that he does not socialize much but his friends drive him when they go out. In the AR, however, the general practitioner reported that the appellant functions independently in all areas, including making appropriate social decisions, developing and maintaining relationships, interacting appropriately with others, dealing appropriately with unexpected demands and securing assistance from others. The general practitioner also 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.

The ministry's position is that the majority of DLA are performed independently or require little help from others, the information from the prescribed professional does not establish that an impairment significantly restricts DLA either continuously or periodically for extended periods. The ministry argued that the general practitioner reported that 24 out of 28 (tasks of) DLA are performed independently and all aspects of social functioning are also performed independently. The ministry argued that assistance is required from other people to do laundry, basic housekeeping, to go to/from stores and to carry purchases home but as the appellant is able to walk 4 or more blocks and to carry 15 to 35 lbs., the assistance from others would only be required for longer distances and heavier items.

Panel Decision

The evidence of the appellant's general practitioner is that the appellant is not restricted in several areas, including personal self care, meal preparation, management of medications, daily shopping, mobility inside the home, management of finances and social functioning. The general practitioner indicated that the appellant is restricted on a continuous basis with basic housework and mobility outside the home and, regarding the degree of restriction, commented that there is "...marked restriction in movement due to pain and deformity." However, the general practitioner also reported that the appellant is independent with walking indoors and with walking outdoors and that he can walk 4 or more blocks unaided on a flat surface. In the AR, the general practitioner also indicated that all tasks of the DLA personal care and management of meals, finances, medications, and transportation are performed independently with no need for assistance for any tasks except periodic to continuous assistance with doing basic housekeeping and laundry, as well as going to and from stores and carrying purchases home when shopping. At the hearing, the appellant stated that he can manage his personal care, preparing small meals, as well as small amounts of laundry or shopping for a few items, but his grandmother helps him with heavier chores (vacuuming and cleaning tubs and toilets) and laundry as well as with grocery shopping. In his self-report, the appellant wrote that bending over to pick things up off the floor or bending over to tie up his shoes is next to impossible.

For those DLA which relate to a mental impairment, the appellant is assessed as independent with making appropriate social decisions as well as with communicating with others and interacting appropriately with and

securing assistance from others. There is no indication of a need for support or supervision in these areas. 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.

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 necessary to promote or support 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 help required for DLA is provided by family and that he has "very supportive caregivers." In the reports included in the PWD application, the general practitioner indicated that the appellant does not currently require an aid for his impairment, but noted in the section relating to assistive devices that the appellant uses extra padding on his mattress and on all chairs, which the appellant's grandmother explained as providing comfort for sitting and sleeping. 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.