

## PART C – Decision under Appeal

The decision under appeal is the Ministry of Social Development and Social Innovation (the ministry) reconsideration decision dated September 12, 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 February 26, 2013, a physician report (PR) dated April 18, 2013 and an assessor report (AR) dated April 18, 2013, the latter both completed by the appellant's family physician of more than two years, as well as the following:

- 1) Undated Daily Living Activities Checklist;
- 2) Letter dated January 11, 2011 from a physician who is a specialist in orthopedic surgery to the appellant's family physician;
- 3) Medical Imaging Report dated February 9, 2011 regarding the appellant's left radius and ulna and left wrist;
- 4) Medical Report- Employability dated September 13, 2011 signed by the appellant's family physician;
- 5) Consultation Report dated December 16, 2012;
- 6) Hospital admission record dated December 17, 2012;
- 7) Report dated December 17, 2012 for an X-Ray of the appellant's lumbar spine;
- 8) Report dated December 17, 2012 for a CT Scan of the appellant's lumbar spine;
- 9) Report dated December 17, 2012 for an X-Ray of the appellant's chest;
- 10) Report dated December 18, 2012 for an MRI of the appellant's spine;
- 11) Discharge Summary dated December 22, 2012 with Addendum;
- 12) Patient Report dated August 10, 2013 by a certified pedorthist;
- 13) Letter dated August 20, 2013 prepared by an advocate on behalf of the appellant and completed by a physician who did not complete the reports for the PWD application; and,
- 14) Request for Reconsideration- Reasons dated August 19, 2013.

### *Diagnoses*

The appellant has been diagnosed by his general practitioner with PTSD [Post Traumatic Stress Disorder] and depression with onset in 2003, and right foot drop foot and hammertoe (left) with onset in 2012.

### *Physical Impairment*

- 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.
- Functional skills reported in the physician report indicated that the appellant can walk 1 to 2 blocks unaided on a flat surface, climb no steps unaided (note added that "most times uses handrail"), he can lift 7 to 16 kg (15 to 35 lbs.) and can remain seated 1 to 2 hours.
- In the AR, the general practitioner assessed the appellant as independent with walking indoors and requiring continuous assistance from another person for walking outdoors, with the note added that the appellant is "unable for greater than 2 blocks". The appellant is assessed as using an assistive device for climbing stairs (with a note "use handrail most times"), and requiring periodic assistance from another person with standing. The general practitioner assessed the appellant as independent with lifting and carrying and holding and did not provide further comments.
- In his self-report included with the PWD application, the appellant wrote that he was assaulted 3 years ago and sustained a severe injury to his left arm which required surgery and he has lost most of his strength in that arm. He was diagnosed years ago with Hep. C and arthritis.
- The appellant wrote that he is only able to walk up to 2 blocks before he has to stop and take a break. He has to use a handrail at all times when climbing stairs. He can only lift a maximum of 35 lbs. and to sit a maximum of 2 hours before he has to get up and stretch or lay down. He is only able to stand for a maximum of 10 minutes at a time.
- In the letter dated January 11, 2011, the orthopedic surgeon stated in part that the appellant had not done any damage in a fall which occurred recently, that an X-Ray showed "...a very solid healing of the non union and this plate is intact."

- The Consultation Report dated December 16, 2012 provided an impression in part that the appellant has "evidence of right L4-L5 radiculopathy that "...may explain a painless foot drop; however, the relationship of this finding to the current radiographic findings is not clear."
- The MRI of the appellant's spine dated December 18, 2012 provided an impression in part of moderate cervical spondylotic changes with mild lumbosacral spondylosis and "...no specific cause for foot drop is identified."
- The Discharge Summary and Addendum dated December 22, 2012 stated in part that the appellant was found on MRI to have fairly significant cervical stenosis and "...at this point he is largely asymptomatic with no sensory or motor changes into the upper extremities." The appellant was given a foot drop brace.
- In the letter dated August 20, 2013, in response to the question whether, when the impact of the appellant's medical conditions on his daily life are considered, does he have a severe physical impairment, the physician wrote both "Yes" and "No," one over the top of the other, and it is difficult to determine which is the dominant, with a note to "please see all info. included."
- In his Request for Reconsideration, the appellant wrote that he has drop foot and hammertoes which are always curling toes when he walks. He is hobbling, both feet do not work properly and the drop foot will never be normal.
- The appellant wrote regarding his left arm that he tried about 2 years ago to go back to work and after an hour and a half, his arm "gave out." He also has arthritis pain throughout his body, in his back, hips, knee caps.

#### *Mental Impairment*

- In the PR, the general practitioner wrote in the health history that the appellant has moderate-severe depression and reported significant deficits with cognitive and emotional function in the areas of consciousness, executive, memory and motor activity (agitation). No other comments were provided by the general practitioner.
- The general practitioner indicated that the appellant does not have any difficulties with communication and, in the AR, that he has a good ability to communicate in all areas.
- In the AR, the general practitioner assessed a major impact with cognitive and emotional functioning in the area of other neuropsychological problems (e.g. visual/spatial problems, psychomotor problems, learning disabilities, etc.) and moderate impacts in memory and motor activity. The remaining 11 areas are assessed as having minimal or no impact on daily functioning, including the area of emotion. The general practitioner noted "PTSD, confused easily, difficulty planning, poor memory, learning disabilities."
- For social functioning, the general practitioner indicated that the appellant functions independently in making appropriate social decisions and developing and maintaining relationships. He requires periodic support/supervision of another person with interacting appropriately with others and securing assistance from others, with no other comments provided. The appellant requires continuous support/supervision from another person with dealing appropriately with unexpected demands, with the note: "overwhelmed."
- The general practitioner assessed the appellant with marginal functioning in his immediate social networks and very disrupted functioning in his extended social networks. The support or supervision required to help maintain the appellant in the community is described by the general practitioner as "...support workers, F.P. [family physician], [support group]."
- In his self-report included with the PWD application, the appellant wrote that he was diagnosed with PTSD a year and a half ago. He gets confused easily at times. He has difficulty planning and organizing. The appellant wrote that he gets agitated and frustrated easily and has difficulty remembering things. The appellant wrote that he was a slow learner when he was growing up.
- The appellant wrote that the ministry pays all his bills and rent directly and that he gets overwhelmed by unexpected demands.

- In the letter dated August 20, 2013, in response to the question whether, when the impact of the appellant's medical conditions on his daily life are considered, does he have a severe mental impairment, the physician wrote both "Yes" and "No," one over the top of the other, and it is difficult to determine which is the dominant, with a note to "please see all info. included."
- In his Request for Reconsideration, the appellant wrote: "As for the PTSD, depression, sleepless, anger, bad memories, sad."

#### *Daily Living Activities (DLA)*

- In the AR, the general practitioner indicated that 3 tasks of the DLA personal care are completed by the appellant independently, with no assessment provided for the remaining 5 tasks and no comments added by the general practitioner.
- The general practitioner did not provide an assessment for the assistance required with the tasks of basic housekeeping.
- For shopping, the appellant is independent with the tasks of reading prices and labels, paying for purchases and carrying purchases home, and requires continuous assistance from another person with going to and from stores (note added that "need someone with him") and for making appropriate choices.
- The general practitioner assessed the appellant as independent with meal planning and requiring continuous assistance from another person with food preparation, cooking and safe storage of food. The general practitioner wrote that the appellant has done "no cooking [for] years, relies soup kitchens and churches."
- The appellant is assessed as independent with doing his banking and budgeting and requiring continuous assistance of another person with paying rent and bills, with the notes that these are all paid directly.
- The applicable tasks of managing medications and transportation are performed independently by the appellant, including filling/refilling prescriptions, taking as directed, safe handling and storage and getting in and out of a vehicle.
- In his self-report included with the PWD application, the appellant wrote that he would need someone to go shopping with him because he would be unable to get his purchases home on his own. He has not done grocery shopping for himself in years and any time he goes into a store, he always leave with junk food only.
- The appellant wrote that he has not done any food preparation or cooking in years and he relies on the soup kitchens and churches for his meals. The ministry pays all his bills and rent directly.
- In the August 20, 2013 letter, the physician responded to the question whether the appellant's impairment significantly limits his ability to perform a range of DLA on an ongoing basis with a note that the appellant has "problems with mobility."
- The physician agrees that it takes the appellant significantly longer than normal to perform DLA as a direct result of his physical and mental limitations and asked to estimate how much longer it takes him to do routine tasks, the physician wrote "50% longer." The physician agrees that the appellant's arm injury, arthritis, PTSD and limited cognitive functioning significantly reduce the appellant's level of activity.
- In response to the question how often the appellant is significantly restricted by one or more of his physical or mental conditions, the physician wrote "all the time."
- In his Request for Reconsideration, the appellant wrote that he has arthritis pain throughout his body, in his back, hips, knee caps, which makes it very painful to get things done, if done at all.

#### *Need for Help*

- The general practitioner indicated in the AR that the appellant routinely uses a right foot brace to help compensate for his impairment, and the help required for DLA is provided by health authority

professionals and community service agencies.

- In the August 20, 2013 letter, asked if he can confirm that the appellant requires significant help with DLA by taking much longer than typical to complete routine tasks, by needing other people for ongoing help, or by needing an assistive device, the physician responded "No."

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

At the hearing, the appellant stated that the doctor in his community did not properly prepare the reports for the PWD application. The appellant stated that his Hep. C drags him down, he does not have energy and he feels tired all the time. There are some days he cannot do anything. It makes him "sluggish." The appellant stated that with the PTSD, the trauma occurred when he was in "government care" and he was sexually abused as a teenager. The appellant stated that when he went into treatment 2 years ago, he started talking about what had happened and he "shut down." The appellant stated that he will be taking medications like Tylenol 3 for the rest of his life for the arthritis since it is throughout his whole body. There are days when he wants to go to one of the community agencies for lunch and he cannot walk the 3 blocks to get there. The doctor said that there is help for the problems with his feet but it has been "going on for 3 years now." When his foot first dropped, he was flown from his small community to a hospital in a major center since they first thought there was a problem with his spine. It was discovered that he has a curve in his back that throws his whole body out of balance. With the drop foot, testing was also done to determine if some of the muscles in his calf were not working properly. He was given a brace that goes around his ankle with two elastics that tied to the front of his foot to hold it up. The appellant stated that the brace he was given at the hospital broke about 6 months ago and he has not been able to get another one. The appellant stated that he has trouble getting around. He can ride his bike, but then the problem with his arm makes that difficult since he has no strength. The appellant showed the panel the scar on his arm which extended from his elbow to his wrist.

In response to questions, the appellant stated that the ministry pays the rent directly to the landlord because that is the way the landlord wanted it, and he does not have any other bills. The appellant stated that he stays home most of the time and if he has food in the house he makes it last. It is 3 blocks from where he lives to the soup kitchen. The appellant stated that he felt his family doctor who prepared the reports for the PWD application was not helping him so he went to the other doctor who completed the letter dated August 20, 2013. This doctor is in the same office as his family doctor and he would have access to the appellant's records. The appellant stated that he has seen the new doctor twice and the appellant gave him the letter and he filled it out. The appellant stated that he was seeing someone in mental health to talk about the abuse that occurred but he starts to "shut down" and go back to his "old ways" that landed him in treatment. The appellant stated his family doctor prescribed medication for his depression but he found he was getting mood changes and he would "fly off the handle." He also heard that one could die from these medications and even the doctor said to be careful with them. The appellant stated that he lives in a rooming house with 12 other people and a shared kitchen. The appellant stated that he does not rely on anyone at the rooming house to help him. The appellant stated that when he goes grocery shopping, he only gets junk food because that is what he is used to. He is a bachelor and does not cook. There is no specific reason why he does not cook. It is easier to go to the soup kitchens.

The ministry did not raise an objection to the admissibility of the appellant's oral 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. At the hearing, the ministry pointed out that restrictions to the ability to work is not a consideration for PWD designation as it is with the Persons with Persistent Multiple Barriers to employment (PPMB) status, which may be another option for the appellant to consider. The ministry acknowledged that sometimes the medical professionals completing either the PR or the AR do not have much time to review the relevant information and that an advocate can often assist with this process.

## 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 arthritic pain throughout his body and loss of mobility due to his drop foot and hammertoe, as well as the loss of strength in his left arm and his fatigue due to Hep. C. The appellant wrote in his self-report that he is only able to walk up to 2 blocks before he has to stop and take a break, he has to use a handrail at all times when climbing stairs, he can only lift a maximum of 35 lbs. and to sit a maximum of 2 hours before he has to get up and stretch or lay down.

The ministry's position is that it acknowledges that the appellant has some functional limitations as a result of his physical conditions but these are not significantly restricted and are more in keeping with a moderate degree of physical limitation. The ministry argued that the appellant's general practitioner reported that the appellant is able to walk 1 to 2 blocks and to use a handrail to climb 5 or more steps, to lift 15 to 35 lbs. and to sit for 1 to 2 hours. The ministry argued that the appellant is assessed as independently able to walk indoors and to lift/carry/stand with periodic help to stand and continuous help to walk more than 2 blocks.

### *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 2 years, diagnosed the appellant with drop foot in the right foot, and hammertoe (left). Although the appellant also referred to a diagnosis of Hep. C and arthritis, as well as a left arm injury, the general practitioners have not provided an opinion that these conditions are likely to continue for at least 2 years. The panel finds that only the conditions confirmed by the medical practitioner as likely to continue for 2 or more years can be considered as meeting the legislative criteria of sufficient duration. In the PR, the general practitioner reported that the appellant can walk 1 to 2 blocks unaided on a flat surface, climb no steps unaided (note added that "most times uses handrail"), he can lift 7 to 16 kg (15 to 35 lbs.) and can remain seated for 1 to 2 hours. The appellant clarified in his self-report that he is able to walk up to 2 blocks before he has to stop and take a break. In the AR, the general practitioner assessed the appellant as independent with walking indoors and that the appellant requires continuous assistance from another person for walking outdoors for distances greater than 2 blocks. The

appellant is assessed as using an assistive device, being handrails, most of the time for climbing stairs and as being independent with lifting and carrying and holding. In the PR, the general practitioner reported that the appellant does not require an aid for his impairment, and the panel finds that a handrail does not meet the definition for an assistive device as set out in the legislation, namely a device designed to enable a person to perform a DLA that, because of a severe mental or physical impairment, the person is unable to perform.

In his Request for Reconsideration, the appellant wrote that he has drop foot and hammertoes which are toes that always curl when he walks or "hobbles", both feet do not work properly and the drop foot will never be normal. At the hearing, the appellant stated that he has been told there is help for the problems with his feet, including possible surgery, but that it has been going on for a long time and nothing has happened. The appellant stated that he has trouble getting around, that sometimes he cannot walk the 3 blocks from his residence to the soup kitchen, but he can ride his bike. The general practitioner indicated in the AR that the appellant routinely uses a right foot brace to help compensate for his impairment and, at the hearing, the appellant stated that the brace he was given broke 6 months ago and he is currently walking without an aid. In the letter dated August 20, 2013, the other physician's response as to whether the appellant has a severe physical impairment is ambiguous and reference is made to "all info. included," without specifying the information to be considered. The panel notes that the general practitioner did not mention the appellant's Hepatitis C and consequent symptoms such as fatigue, or the appellant's arthritis and spinal issues and how these might affect his mobility and daily functioning. Considering the evidence presented by the general practitioner and without a diagnosis and further information concerning the impact of the appellant's other conditions, 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 PTSD and depression, and the evidence that these conditions are affecting the appellant's day-to-day functioning significantly.

The ministry's position is that a severe mental impairment has not been established by the information provided. The ministry relies on the evidence that the general practitioner reported one major impact to cognitive and emotional functioning in the area of other neuropsychological problems and moderate impacts in two areas, being memory and motor activity, with 9 aspects of functioning, including emotion, having no impact on daily living. The ministry argued that the appellant's communication is good with no difficulty. The ministry argued that the narrative by the general practitioner is not supportive of a severe mental health condition that significantly limits the appellant's ability to function either continuously or periodically for extended periods.

### *Panel Decision*

The general practitioner diagnosed the appellant with PTSD and depression and reported in the PR that the appellant has "moderate-severe depression." Significant deficits with cognitive and emotional functioning were reported by the general practitioner in the areas of consciousness, executive, memory and motor activity (agitation), and not in the area of emotional disturbance (e.g. depression, anxiety). In the AR, the general practitioner assessed a major impact with cognitive and emotional functioning in the area of other neuropsychological problems and moderate impacts in memory and motor activity, and the remaining 11 areas are assessed as having minimal or no impact on daily functioning, with no impact in the area of emotion. The general practitioner noted "...PTSD, confused easily, difficulty planning, poor memory, learning disabilities." In his self-report, the appellant wrote that he gets confused easily at times, has difficulty planning and organizing, and was a slow learner when he was growing up. The general practitioner also indicated that the appellant does not have difficulties with communication and he has a good ability to communicate in all areas.

For social functioning, the general practitioner indicated that the appellant functions independently in making

appropriate social decisions and developing and maintaining relationships but requires periodic support/supervision with interacting appropriately with others and securing assistance from others, with no comments provided. The appellant requires continuous support/supervision from another person with dealing appropriately with unexpected demands, with the note "overwhelmed." In his self-report, the appellant wrote that he gets agitated and frustrated easily and has difficulty remembering things. At the hearing, the appellant stated that he went to mental health service a couple of times but found he "shut down" and got back into "his old ways" when he talked about the trauma he experienced as a teenager and he stopped attending. His family doctor had prescribed medications for depression but the appellant stopped taking them because he was concerned about adverse side effects.

The general practitioner indicated in the AR that the appellant independently manages most listed "mental" tasks of daily living, including making appropriate social decisions, managing his medications, paying for purchases when shopping, and conducting his banking and budgeting. The appellant requires continuous assistance from another person with making appropriate choices when shopping and for paying rent and bills since these are paid directly by the ministry. The appellant explained that he buys all junk food because that is what he is used to, and the landlord decided that the rent should be paid directly and he does not have any other bills. In the letter dated August 20, 2013 the physician does not provide additional information regarding the specific impacts to functioning as a result of the diagnoses of PTSD and depression.

The panel notes some incompleteness and inconsistencies between the PR and the AR, and between the general practitioner's assessment and the appellant's Request for Reconsideration. For instance, the general practitioner diagnoses the appellant with moderate-severe depression but notes in the PR no significant cognitive and emotional deficit in the area of emotional disturbance, or in the AR no impact on daily functioning in the area of emotion. Similarly, the appellant indicates in his Request for Reconsideration his sleeplessness, but the general practitioner does not report any impact on bodily functions (e.g. sleep disturbance). Without a more complete picture as to how the appellant's depression impacts his daily functioning, the panel finds that the ministry reasonably determined that the information provided did not establish a severe mental impairment 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 foot brace.

The ministry's position is that since the majority of DLA are performed independently or require little help from others, the information from the prescribed professionals does not establish that an impairment significantly restricts DLA either continuously or periodically for extended periods. The ministry argued that the continuous help required to manage meals, described as "no cooking x years, relies on soup kitchens and churches," may not be related to the diagnoses of right foot drop or depression, but rather to circumstances such as living quarters and lack of finances.

### ***Panel Decision***

The evidence of the appellant's general practitioner is that the appellant can walk 1 to 2 blocks unaided and the appellant wrote in his self-report that he is only able to walk up to 2 blocks before he has to stop and take a break. At the hearing, the appellant stated that he sometimes walks to a soup kitchen about 3 blocks from his residence, and sometimes he cannot walk that far. The appellant stated that he rides his bike to get around, though this is difficult because of his arm. He was given a brace for his drop foot but it broke 6 months ago and he has not been able to get another one. In the August 20, 2013 letter, the physician responded to the question whether the appellant's impairment significantly limits his ability to perform a range of DLA on an ongoing basis with a note that the appellant has "problems with mobility." The physician agrees that it takes the appellant significantly longer than normal to perform DLA as a direct result of his physical and mental

limitations and asked to estimate how much longer it takes him to do routine tasks, the physician wrote "50% longer." The physician agrees that the appellant's arm injury, arthritis, PTSD and limited cognitive functioning significantly reduce the appellant's level of activity.

In the AR, the general practitioner indicated that all assessed tasks of the DLA personal care and management of medications and transportation are performed independently by the appellant with no need for assistance. The general practitioner did not provide an assessment for the DLA of basic housekeeping. The appellant is independent with 3 of 5 tasks of shopping, requiring continuous assistance with going to and from stores ("need someone with him") and making appropriate choices. In his self-report, the appellant wrote that he would need someone to go shopping with him because he would be unable to get his purchases home on his own; however, the general practitioner assessed the appellant as being independent with lifting and carrying and holding, and able to lift up to 35 lbs. At the hearing, the appellant stated that he does not often go shopping but, when he does, he only buys junk food. The appellant is assessed as requiring continuous assistance with paying rent and bills as his rent is paid directly to the landlord by the ministry. The general practitioner also assessed the appellant as requiring continuous assistance from another person with food preparation, cooking and safe storage of food with the explanation that the appellant has done no cooking for years and relies on soup kitchens and churches. The appellant stated at the hearing that he is a bachelor and he does not cook but there is no particular reason why he does not cook except that the soup kitchens are easier. The panel finds that the ministry reasonably concluded that the restrictions noted to managing meals may be related to other circumstances and not to the diagnoses of drop foot/ hammertoes or depression/ PTSD.

For those DLA which relate to a mental impairment, the appellant is assessed as independent with making appropriate social decisions and with communicating with others while requiring periodic supervision with interacting appropriately and securing assistance from others. The general practitioner did not comment to indicate the particulars of how often the support/supervision is required and for how long. Although the appellant is assessed with marginal functioning in his immediate social network and very disrupted functioning in his extended social networks, the other evidence of the appellant accessing services in the community, such as soup kitchens, did not support these conclusions. When asked to describe the support/supervision required to help maintain the appellant in the community, the general practitioner wrote "...support workers, family physician, [support group]." The panel finds that the ministry reasonably concluded that there is not enough evidence from the prescribed professional to establish that the appellant's impairment significantly restricts his ability to manage his DLA either continuously or periodically for extended periods, thereby not satisfying the legislative criterion of section 2(2)(b)(i) of the EAPWDA.

### **Help to perform DLA**

The appellant's position is that he requires the significant assistance of another person to perform DLA, and that he uses a handrail and a foot brace 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 a right foot brace is worn as an assistive device for drop foot.

### ***Panel Decision***

Section 2(2)(b)(ii) of the EAPWDA requires that, as a result of direct and significant restrictions in the ability to perform DLA, a person requires help to perform those activities. Help is defined in subsection (3) as the requirement for an assistive device, the significant help or supervision of another person, or the services of an assistance animal in order to perform a DLA.

The evidence of the prescribed professional establishes that the appellant receives assistance from health authority professionals and community service agencies and he requires a foot brace to assist with mobility. In

the August 20, 2013 letter, asked if he can confirm that the appellant requires significant help with DLA by taking much longer than typical to complete routine tasks, by needing other people for ongoing help, or by needing an assistive device, the physician responded "No." 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.