

PART C – Decision under Appeal

The decision under appeal is the Ministry of Social Development and Social Innovation (the ministry) reconsideration decision dated October 21, 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 and self-report dated March 5, 2013, and a physician report (PR) and an assessor report (AR) both dated March 27, 2013 and completed by a general practitioner who has known the appellant for 12 ½ years.

Also included were the following:

- 1) Letter dated October 1, 2013 from the general practitioner who completed the reports for the PWD application to the appellant's advocate; and,
- 2) Request for Reconsideration- Reasons dated October 3, 2013.

Diagnoses

The appellant has been diagnosed by his general practitioner with asthma, hand arthritis, stomach ulcer, hearing loss and diabetes.

Physical Impairment

- In the PR, the general practitioner indicated in the health history that the appellant has "...chronic gastritis and chronic hiatus hernia and non-ulcerogenic dyspepsia." He also has "significant hearing loss."
- The general practitioner reported that the appellant does not require a prosthesis or aid for his impairment.
- Functional skills reported in the PR indicated that the appellant can walk 1 to 2 blocks and climb 5 or more steps unaided, and he can lift 2 to 7 kg (5 to 15 lbs.) and remain seated for less than 1 hour.
- In the AR, the general practitioner assessed the appellant as independent with walking indoors and outdoors, with standing and with lifting and carrying and holding, with a comment added for lifting "not more than 10 lbs." The appellant requires periodic assistance with climbing stairs, with a comment "need handrails, too dizzy, tired." The general practitioner also added a comment: "walking short distance of 2 blocks or less- feeling dizzy and tired."
- The general practitioner indicated that the appellant does not use an assistive device to help compensate for his impairment.
- In the additional comments to the AR, the general practitioner wrote that with the appellant's hearing loss, it is "difficult hearing the children and where they are in the house, and other family members." Ulcers "prevent eating proper meals as it upsets his stomach." Arthritis "makes it difficult to get dressed- takes much longer."
- In his self-report, the appellant wrote that he suffers from chronic stomach pain with daily flare-ups, making it difficult to do most things as he has to lie down when they happen. With pain in his low back and legs, he is unable to walk or sit for long periods of time (any longer than 20 minutes), he must shift position or move to a standing position or lie down until the pain lessens. With his hearing problems, he must be close to someone to hear, or have the TV or radio louder to hear what is being said. The appellant wrote that he cannot lift anything over 10 lbs.
- The appellant wrote that the medication he needs to take makes him feel sick most days and he has to lie or sit quiet until the sick feeling passes.
- In the letter from the general practitioner dated October 1, 2013, he wrote that the appellant

has multiple medical problems which include chronic dyspepsia and chronic esophagitis. He has been suffering from this for many years and is not improving despite seeing a number of specialists and taking medications. He experiences abdominal burning pain despite being on medications. He also has bilateral moderate to severe hearing loss and, because of the cost, has not purchased any hearing aids. He has chronic knee and hand pain and has difficulty walking due to pain. He also has hemorrhoids that require treatment. Because of his multitude of medical problems, it is unlikely that the appellant would be able to work in any gainful employment.

Mental Impairment

- In the PR, the general practitioner indicated in the health history: "...he also has chronic fatigue and dysthymia, which make him (sic) difficult to do work."
- In the comments regarding the degree and course of impairment, the general practitioner wrote that "is on medication presently for ulcers- nothing available for ongoing condition of depression and anxiety; background of leaving a war-torn country, several months in a refugee camp."
- The general practitioner reported significant deficits with cognitive and emotional function in the areas of memory, emotional disturbance (e.g. depression, anxiety), motivation and attention or sustained concentration. The general practitioner provided further comment that the appellant is from a "war-torn" country.
- The general practitioner indicated that the appellant does not have difficulties with communication.
- Regarding the appellant's ability to communicate, the general practitioner assessed his speaking, reading and writing as good while his hearing is poor, and the comment that "severe hearing loss confirmed by specialist."
- The general practitioner assessed no major impacts to cognitive and emotional functioning, with moderate impacts in the areas of bodily functions (sleep disturbance- "nightmares"), and emotion. There are minimal impacts indicated to attention/concentration, executive, memory and motivation, and no impacts to the remaining 8 areas of functioning.
- The general practitioner commented that the appellant has been in Canada for the last 10 years and "still suffers from extreme nightmares; reliving the effects of war in the country they left. Nervousness/depression after witnessing the results of war living in a refugee camp. Worried about the safety of his wife and ...small children. Arriving in a country not knowing the language, concerned over the well-being of his family."
- The general practitioner indicated that the appellant is independent in all areas of social functioning, including making appropriate social decisions, developing and maintaining relationships, interacting appropriately with others, dealing appropriately with unexpected demands, and securing assistance from others. The appellant is assessed with good functioning in both his immediate and extended social networks, with no further comment provided by the general practitioner.
- In the additional comments to the AR, the general practitioner wrote that the appellant has "post traumatic stress, leaving a country destroyed by war. Worried about the safety of his family."
- In his self-report, the appellant wrote that he feels depressed because it now takes longer to do anything and he can no longer work at a job that he enjoyed. The appellant wrote that living with daily pain is depressing and he avoids most things he enjoys like gardening,

working, playing with his grandchildren and visiting friends.

Daily Living Activities (DLA)

- The general practitioner reported that the appellant has been prescribed medications (for ulcers) that interfere with his ability to perform his daily living activities (DLA)
- In the PR, the general practitioner indicated that it is unknown whether the appellant's impairment directly restricts his ability to perform DLA.
- The general practitioner reported that the appellant is restricted on a periodic basis with meal preparation and basic housework. The general practitioner noted for meal preparation "unable to handle heat" and, for housework, "too tired." Regarding the degree of restriction, the general practitioner wrote: "arthritis in hands makes it difficult to dress and personal care take considerably longer."
- The general practitioner assessed the appellant as not restricted with personal self care, management of medications, daily shopping, mobility inside and outside the home, use of transportation, management of finances, and social functioning.
- In the AR, the general practitioner indicated that all tasks of the DLA personal care, shopping, paying rent and bills, medications and transportation are performed independently with no need for assistance. For personal care, the general practitioner wrote: "required at times when his hands are swollen." The general practitioner further commented: "arthritis in both hands. When the symptoms are bad, help is needed to get dressed. Diet must be watched because of the ulcers."
- For the DLA basic housework, the appellant is independent with doing his laundry and requires periodic assistance with basic housekeeping, with the note "too tired." The general practitioner also commented: "Work around the house limited to 20 min. at a time- too tired."
- Regarding meals, the general practitioner did not assess the appellant's ability with meal planning and food preparation and noted "wife does cooking and planning." The appellant is independent with safe storage of food and requires periodic assistance with cooking, with no further description or explanation provided.
- In his self-report, the appellant wrote that the pain in his stomach, back and legs is a daily problem and it takes him longer to get dressed in the morning and move around the house.

Need for Help

- In the reports included in the PWD application, the general practitioner reported that the appellant does not require an aid for his impairment, or any assistive device.
- The general practitioner reported in the AR that the help required for DLA is provided by family, that "sons/wives are there to help feelings of depression can't do for himself."
- In response to the request to describe the assistance required by the appellant with DLA, the general practitioner indicated "wife to do meal preparation."

In his Notice of Appeal, the appellant expressed his disagreement with the reconsideration decision. The appellant wrote that his hearing loss requires that he wear hearing aids. He has disability designation from the federal government and is receiving CPP disability but the amount he receives is not enough to support him and his wife. The advocate added that the appellant also suffers from constant stomach pain and the medication does not take the pain away. Approximately twice a week, the appellant is unable to get out of bed because of the pain. On these days, he finds that he is

unable to do more than move from the couch to his bed. The appellant also suffers from anxiety and depression and has constant nightmares concerning his family's safety during the time spent in a refugee camp.

At the hearing, the appellant and his advocate stated that:

- When the appellant first came to Canada he was tested and was told at the hospital that he could not work. However, the general practitioner who completed the reports for the PWD application said that he could still work and the appellant did not want to ask for help. The appellant chose to work to help support his family. The appellant is always one to push himself because he wants to contribute and he wants to work.
- The first day the appellant started the PWD application, he felt so emotional because he does not like to ask for help. He has a hard time talking to people because he lost his house and job and everything before he came to Canada. The appointments with the general practitioner are very fast and the doctor only wants to deal with one thing at a time.
- Over the years, it has become harder and harder for the appellant to work as he spends so much time in the washroom because of his hemorrhoids and ulcer. The appellant was laid off from his employment due to health issues. He thought if he took some time off and rested up he might be able to return to work. However, his problems have only gotten worse and now the appellant is not able to work due to his hearing loss, diabetes, and his ulcer.
- The appellant did not sleep the previous night, passed blood, and spent the night in pain. Approximately 2 or 3 days per week, he is unable to carry on with his DLA.
- The appellant has experienced trauma from living in a refugee camp for 2 years. Although this trauma "does not show on the outside," if it is considered with all the other conditions, he is a person with disabilities.
- The appellant experiences side effects from the medications he takes for his ulcer. It makes him dizzy and he feels nauseous. He takes the medication two times per day, in the morning and at night. The pain stops for a couple of hours and then it returns. He has been taking medications for his ulcer for over 35 years.
- The appellant has blood tests for his diabetes but does not take any medication for it. He has puffers for his asthma, which he uses 2 times per day, depending on how he is breathing.
- The appellant has not asked his doctor for any medication for his depression.
- With the arthritis in his hands, he cannot tie his shoes very well and his grown children help him. His hands "freeze" or "get locked" and feel numb. It takes a while, but he can button his shirt. The appellant stated that his hands feel numb all the time and "lock up" often.
- The appellant's daughters-in-law take care of washing the dishes because the appellant is too tired and, with the numbness in his hands, he often drops things. His wife has some medical conditions so she cannot help him anymore.
- The appellant cannot cook for himself because when he smells food cooking he feels like throwing up. Also, he cannot handle the weight of the objects he picks up, and he drops things. The appellant stated that his wife has always done the cooking.
- When the appellant tries to walk a couple of blocks, his legs start to shake, he cannot breathe and his stomach gets bigger after about 5 to 6 minutes of walking.
- The appellant does not go shopping. His daughters-in-law bring food to him. Maybe if he was relaxed and took a pill, he could do it quickly. He can drive but not for a long time. His daughters-in-law usually drive him.
- He can lift up to 10 lbs. but something like a carton of milk might get dropped because he felt dizzy. He can grab and lift something but he needs to be close because his fingers lock up.

- Sometimes when the appellant lies down he has to get up and walk and not sit in one spot because of his hemorrhoids. He usually stays on the couch and just gets up for water.

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 that the appellant is not eligible for designation as a person with disabilities (PWD), was reasonably supported by the evidence or was a reasonable application of the applicable enactment in the circumstances of the appellant. The ministry found that the appellant does not have a severe mental or physical impairment and that his daily living activities (DLA) are not, in the opinion of a prescribed professional, directly and significantly restricted either continuously or periodically for extended periods and that, as a result of those restrictions, it could not be determined that the appellant requires the significant help or supervision of another person, the use of an assistive device, or the services of an assistance animal to perform DLA.

The criteria for being designated as a person with disabilities (PWD) are set out in Section 2 of the EAPWDA as follows:

Persons with disabilities

2 (1) In this section:

"**assistive device**" means a device designed to enable a person to perform a daily living activity that, because of a severe mental or physical impairment, the person is unable to perform;

"**daily living activity**" has the prescribed meaning;

"**prescribed professional**" has the prescribed meaning.

(2) The minister may designate a person who has reached 18 years of age as a person with disabilities for the purposes of this Act if the minister is satisfied that the person has a severe mental or physical impairment that

(a) in the opinion of a medical practitioner is likely to continue for at least 2 years, and

(b) in the opinion of a prescribed professional

(i) directly and significantly restricts the person's ability to perform daily living activities either

(A) continuously, or

(B) periodically for extended periods, and

(ii) as a result of those restrictions, the person requires help to perform those activities.

(3) For the purposes of subsection (2),

(a) a person who has a severe mental impairment includes a person with a mental disorder, and

(b) a person requires help in relation to a daily living activity if, in order to perform it, the person requires

(i) an assistive device,

(ii) the significant help or supervision of another person, or

(iii) the services of an assistance animal.

(4) The minister may rescind a designation under subsection (2).

Section 2(1)(a) of the EAPWDR defines DLA for a person who has a severe physical or mental impairment as follows:

Definitions for Act

2 (1) For the purposes of the Act and this regulation, "**daily living activities**",

(a) in relation to a person who has a severe physical impairment or a severe mental impairment, means the following activities:

(i) prepare own meals;

(ii) manage personal finances;

- (iii) shop for personal needs;
 - (iv) use public or personal transportation facilities;
 - (v) perform housework to maintain the person's place of residence in acceptable sanitary condition;
 - (vi) move about indoors and outdoors;
 - (vii) perform personal hygiene and self care;
 - (viii) manage personal medication, and
- (b) in relation to a person who has a severe mental impairment, includes the following activities:
- (i) make decisions about personal activities, care or finances;
 - (ii) relate to, communicate or interact with others effectively.

Severe Physical Impairment

The appellant's position is that a severe physical impairment is established by the evidence of the pain due to his ulcer and arthritis diagnosis, and fatigue, dizziness and nausea due to the side effects of the medications he is required to take. The advocate argued that the letter from the general practitioner providing more information about the appellant's multiple medical conditions had not been properly considered, if at all, by the ministry.

The ministry's position is that the ministry does not have enough information from the general practitioner 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 1 to 2 blocks and climb 5 or more steps unaided, he can lift 5 to 15 lbs. and remain seated for "1 to 2 hours" (sic). The ministry argued that the general practitioner indicated that the appellant's mobility and physical abilities are independent except for the requirement for periodic assistance with climbing stairs as he needs to use the handrail due to being dizzy and tired. The ministry argued that the impacts described by the general practitioner are more in keeping with a moderate degree of impairment. At reconsideration, the ministry pointed out that although the general practitioner referred to the impact on the appellant's ability to work as a result of his conditions, employability is not an eligible criterion for PWD designation.

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 12 ½ years, diagnosed the appellant with asthma, hand arthritis, stomach ulcer, hearing loss and diabetes. In his comments regarding the appellant's health history, the general practitioner wrote that the appellant has "...chronic gastritis and chronic hiatus hernia and non-ulcerogenic dyspepsia." He also has "significant hearing loss." The functional skills reported in the PR indicated that the appellant can walk 1 to 2 blocks unaided on a flat surface, climb 5 or more steps unaided, and lift between 5 to 15 lbs. and remain seated for less than an hour. In the AR, the general practitioner assessed the appellant as independent with walking indoors and outdoors, with standing and lifting and carrying and holding. For lifting, the general practitioner clarified that the appellant can lift "not more than 10 lbs." At the hearing, the appellant stated that he can lift up to 10 lbs. but something like a carton of milk might get dropped because he becomes dizzy and his fingers "lock up" due to the arthritis in his hands. The general practitioner reported that the appellant requires periodic assistance with climbing stairs, with a comment: "need handrails, too dizzy, tired." The general practitioner did not provide further information regarding how often the periods of dizziness and fatigue occur.

In his self-report, the appellant wrote that with pain in his low back and legs, he is unable to walk or sit for long periods of time (any longer than 20 minutes). The appellant stated at the hearing that when he tries to walk a couple of blocks, his legs start to shake, he cannot breathe and his stomach gets bigger after about 5 to 6 minutes of walking. In the AR, the general practitioner commented: "walking short distance of 2 blocks or less- feeling dizzy and tired." In the letter dated October 1, 2013, the general practitioner wrote that the appellant has chronic knee pain and has difficulty walking due to pain, but he does not refer to dizziness and fatigue or provide further information regarding these periods or the diagnosis for the appellant's knee pain. The general practitioner reported in the PR that the appellant does not use an aid or any assistive device to compensate for his impairment and that he is not restricted with mobility inside or outside the home.

In his self-report, the appellant wrote that he suffers from chronic stomach pain with daily flare-ups, making it difficult to do most things as he has to lie down when they happen. At the hearing, the appellant stated that approximately 2 or 3 days per week he is unable to carry out his DLA. In the Notice of Appeal, the advocate added that the appellant suffers from constant stomach pain, the medication does not take the pain away. Approximately twice a week the appellant is unable to get out of bed because of the pain and he is unable to do more than move from the couch to his bed. At the hearing, the appellant stated that he will get up to get some water and sometimes when he lies down he has to get up and walk and not sit in one spot because of his hemorrhoids. In his self-report, the appellant wrote that the medication he needs to take makes him feel sick most days and he has to lie or sit quiet until the sick feeling passes. At the hearing, the appellant stated that it had become harder and harder for him to work as he spends so much time in the washroom because of his hemorrhoids and ulcer. The appellant stated that he does not currently take medication for his diabetes and he administers puffers as needed for his asthma, and the panel finds that there was no specific evidence of shortness of breath or other impacts from these conditions in particular.

In the letter dated October 1, 2013, the general practitioner wrote that the appellant experiences abdominal burning pain despite being on medications and seeing a number of specialists. The appellant also has bilateral moderate to severe hearing loss and has not purchased any hearing aids, and has hemorrhoids that require treatment. The general practitioner wrote that, because of his multitude of medical problems, it is unlikely that the appellant would be able to work in any gainful employment. For an impairment to be a "severe impairment," section 2 of the EAPWDA requires that the ministry must be satisfied that the evidence demonstrates restrictions to a specified degree in

certain specified areas of daily functioning. The legislation reads that for PWD designation, the minister must be satisfied that "the person has a severe mental or physical impairment that . . . directly and significantly restricts the person's ability to perform [prescribed] daily living activities and as a result of those restrictions, the person requires help [an assistive device, the significant help or supervision of another person, or the services of an assistance animal to perform those activities.]" As ability to search for, accept or continue in employment is not listed as one of prescribed DLA, the panel finds that the ministry reasonably held that employability is not a factor in assessing eligibility for PWD designation.

The panel finds that while there are some impacts on daily functioning from the appellant's medical conditions and the side effects of his medications, his long-time general practitioner assessed independent mobility and physical ability with unspecified periods of dizziness and fatigue for which the appellant requires assistance climbing stairs. The panel finds that it is difficult to get an accurate picture of the impact from the appellant's stomach ulcer as the appellant referred to daily flare-ups and feeling sick from the medications which passes after a period lying down, the advocate stated this occurs about twice a week, and the general practitioner did not discuss the nature of flare-ups to the appellant's condition. The panel finds that, based on the available evidence, the ministry reasonably determined that the appellant's current level of independent physical functioning, despite the described symptoms, 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 evidence of the appellant's nightmares and anxiety as a result of the trauma experienced in his country of origin. The advocate argued that these conditions are affecting the appellant's day-to-day functioning significantly.

The ministry's position is that there is insufficient evidence to establish that the appellant has a severe mental impairment. The ministry argued that the general practitioner reported significant deficits to cognitive and emotional functioning in the areas of memory, emotional disturbance, motivation and attention or sustained concentration, while assessing moderate daily impacts only in the areas of bodily functions and emotion. At reconsideration, the ministry pointed out that although the general practitioner referred to the impact on the appellant's ability to work as a result of his conditions, employability is not an eligible criterion for PWD designation.

Panel Decision

The general practitioner did not specifically diagnose a mental disorder, but wrote in the health history that the appellant "...also has chronic fatigue and dysthymia, which make him (sic) difficult to do work." As discussed above, the panel finds that the ministry reasonably held that employability is not a factor in assessing eligibility for PWD designation. In the comments regarding the degree and course of impairment, the general practitioner wrote that the appellant "is on medication presently for ulcers- nothing available for ongoing condition of depression and anxiety; background of leaving a war-torn country, several months in a refugee camp." The general practitioner reported significant deficits with cognitive and emotional function in the areas of memory, emotional disturbance (e.g. depression, anxiety), motivation and attention or sustained concentration, and further commented that the appellant is from a "war-torn" country. The general practitioner assessed no major impacts to cognitive and emotional functioning, with moderate impacts in the areas of bodily functions (sleep

disturbance- "nightmares"), and emotion. There are minimal and no impacts to the remaining 12 areas of functioning. The general practitioner commented that the appellant has been in Canada for the last 10 years and "...still suffers from extreme nightmares; reliving the effects of war in the country they left. Nervousness/depression after witnessing the results of war living in a refugee camp.... Arriving in a country not knowing the language, concerned over the well-being of his family." At the hearing, the advocate stated that the appellant has experienced trauma from living in a refugee camp for 2 years and, although this trauma "does not show on the outside," if it is considered with all the other conditions, the appellant is a person with disabilities. The appellant stated he has a hard time talking to people because he lost his house and job and everything before he came to Canada and he has not asked his doctor for medication for his depression.

The general practitioner reported in the PR that the appellant does not have difficulties with communication and, in the AR, that the appellant has a good ability to communicate in all areas except for hearing which is poor due to his physical condition of hearing loss. In his self-report, the appellant wrote that he feels depressed because it now takes longer to do anything and he can no longer work at a job that he enjoyed. Living with daily pain is depressing and he avoids most things he enjoys including visiting friends. However, for social functioning, the general practitioner indicated that the appellant has no restrictions. In the AR, the appellant is assessed as independent in all areas of social functioning and with good functioning in both his immediate and extended social networks. In the additional comments to the AR, the general practitioner wrote that the appellant has "post traumatic stress, leaving a country destroyed by war. Worried about the safety of his family." However, the general practitioner has not indicated current impacts to social functioning as a result of the appellant's past experiences and only moderate to minimal impacts to cognitive and emotional functioning. Given the degree of the reported impacts, 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 his family.

The ministry's position is that there is not enough evidence from the general practitioner to confirm the appellant's impairments directly and significantly restrict his DLA continuously or periodically for extended periods. The ministry argued that the appellant is able to manage the majority of his DLA independently or with periodic assistance, and that there is no further description provided of how often the appellant requires assistance.

Panel Decision

The evidence of the appellant's general practitioner in the PR is that the appellant is not restricted in 7 out of 9 DLA, including personal self care, management of medications, daily shopping, mobility inside and outside the home, use of transportation, management of finances and social functioning. The general practitioner reported that the appellant has been prescribed medications (for ulcers) that interfere with his ability to perform his DLA. The appellant is assessed as periodically restricted with meal preparation ("unable to handle heat") and housework ("too tired"). In the AR, the general practitioner indicated that all tasks of the DLA personal care, shopping, paying rent and bills, medications and transportation are performed independently with no need for assistance. For personal care, although all 8 tasks are assessed as being performed independently by the appellant,

the general practitioner wrote: "...required at times when his hands are swollen" and "arthritis in both hands; when the symptoms are bad, help is needed to get dressed; diet must be watched because of the ulcers." While the comments appear to indicate that help is required for the appellant to get dressed, the general practitioner did not indicate how often the appellant's hands get swollen. At the hearing the appellant stated that his hands feel numb all the time and "lock up" often. With the arthritis in his hands, he cannot tie his shoes very well and his grown children help him. It takes a while, but he can button his shirt. In his self-report, the appellant wrote that the pain in his stomach, back and legs is a daily problem and it takes him longer to get dressed in the morning and to move around the house.

Regarding meals, the general practitioner did not assess the appellant's ability with meal planning and food preparation and noted "wife does cooking and planning." The appellant is independent with safe storage of food and requires periodic assistance with cooking, with no further description or explanation provided; however, in the PR the general practitioner wrote that the appellant is "unable to handle the heat." At the hearing, the appellant stated that he cannot cook for himself because when he smells food cooking he feels like throwing up and he cannot handle the weight, and he drops things. For the DLA basic housework, the general practitioner indicated that the appellant is independent with doing his laundry and requires periodic assistance with basic housekeeping ("too tired.") The general practitioner also commented: "Work around the house limited to 20 min. at a time- too tired." The appellant stated at the hearing that his daughters -in-law take care of washing the dishes because he is too tired and, with the numbness in his hands, he often drops things. The general practitioner appears to indicate that the appellant is able to perform housework for up to 20 minutes and then becomes fatigued and that he, perhaps, can resume after he has rested, although this is not clear.

For those DLA which relate to a mental impairment, there is no evidence to suggest that the appellant is restricted in making decision about personal activities, care or finances, or relating to, communicating or interacting with others effectively. The appellant is assessed by the general practitioner as not restricted with social functioning and as having no difficulty with communication other than his physical condition of hearing loss. In the AR, the general practitioner also assessed the appellant as independent in all areas of social functioning, including making appropriate social decisions, developing and maintaining relationships, and interacting appropriately with others. The evidence of the general practitioner also demonstrates that the appellant is independent with the "mental" tasks of managing his finances and medication as well as reading prices and labels and making appropriate choices when shopping.

While the additional comments by the general practitioner indicate that the appellant also takes longer than typical with some tasks due to his hand arthritis, the general practitioner has not provided detail to determine that periodic assistance required for 2 of a total 28 tasks of DLA is needed for extended periods of time. In the updated letter of October 1, 2013, the general practitioner has not provided further detail regarding the appellant's ability to perform DLA, instead providing an opinion that it is unlikely that the appellant would be able to work in any gainful employment. However, as set out above, the panel finds that the ministry reasonably held that employability is not a factor in assessing eligibility for PWD designation. 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 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 assistance required with DLA is provided by the appellant's family. In response to the request to describe the assistance required by the appellant with DLA, the general practitioner indicated "wife to do meal preparation", although the appellant stated at the hearing that his wife has always done the cooking but she has not been able to assist for a while due to her own medical issues and his daughters-in-law have been providing assistance. 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.