



PART C – Decision under Appeal

The decision under appeal is the Ministry of Social Development and Social Innovation (the ministry) reconsideration decision dated January 7, 2014 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

With the consent of both parties, the hearing was conducted as a written hearing, pursuant to section 22(3)(b) of the *Employment and Assistance Act*.

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 July 2, 2013, a physician report (PR) and an assessor report (AR) both dated June 13, 2013 and completed by the appellant's family physician who has known the appellant for approximately 3 years. The evidence also included the following:

- 1) Information Form ("the Form") completed and signed by the appellant's family physician December 2, 2013; and,
- 2) Request for Reconsideration dated November 18, 2013.

Diagnoses

In the PR, the appellant was diagnosed by his physician with Type I Diabetes, GERD [gastroesophageal reflux disease] and asthma, with no date of onset noted by the physician. In the Form, the physician also diagnosed arthritis and "vision problems" and confirmed that these conditions will likely continue for at least 2 years. There was no diagnosis indicated for a mental disorder.

Physical Impairment

In the PR, the appellant's physician reported that:

- In terms of health history, the appellant has "very poorly controlled diabetes and has been in hospital several times with ketoacidosis. Severe GERD Sx [symptoms] requiring medication and makes it difficult to eat at times. Asthma controlled with inhaler. Eating problems makes it difficult for him to control blood sugars."
- The appellant does not require any prosthesis or aid for his impairment.
- In terms of functional skills, the appellant can walk 4 or more blocks and climb 5 or more steps unaided and has no limitations with lifting and remaining seated.
- In the additional comments, the physician wrote: "Several hospitalizations for ketoacidosis. Blood sugars are erratic and potential for hypoglycemic episodes."

In the AR, the appellant's physician indicated that:

- The appellant is assessed as independent with all mobility, including walking indoors and outdoors, climbing stairs, and standing, while requiring periodic assistance with lifting and carrying and holding. The physician noted: "has difficulty when sugars poorly controlled."
- The section of the AR relating to assistance provided through the use of assistive devices is not completed.

In the appellant's self-report, he wrote that:

- He has diabetes and his eye sight "is so bad that I have a problem seeing 2 feet in front of me."
- His feet "tingle" so much that he cannot sleep at night.
- He believes he has arthritis in his hands. They cramp into "claw-like position" and hurt. This is caused from writing for too long or holding something in his hands.
- With the pills he is taking for his acid reflux, if he picks up "anything 50 pounds or more" it makes him vomit and he is sick for the rest of the day. Certain foods will also set it off.
- His lower back hurts a majority of the time.

In the Form, the physician indicated with a check mark that he agreed that the appellant is:

- Significantly restricted from walking more than 1 block due to chronic pain in knees and feet, as well as shortness of breath. He receives continuous assistance from his mother.
- Directly restricted from climbing stairs due to chronic pain in the knees and feet, as well as shortness of breath. He gets continuous assistance from railing on stairs or an elevator.
- Directly restricted from standing longer than 2 to 3 minutes due to chronic pain in knees and feet.
- Significantly restricted from sitting longer than 5 to 10 minutes due to chronic pain in the knees and feet. He gets continuous assistance from pushing himself into a standing position using the side of the chair.
- Significantly restricted with lifting, carrying or holding more than 5 to 10 (sic) due to chronic pain in the knees and feet as well as in the joints of both hands. He receives continuous assistance from his son with lifting, carrying or holding more than 5 to 10 lbs.
- In need of assistance from shower bars but not a cane or a scooter, which have been crossed out.

Mental Impairment

In the PR, the appellant's physician reported that:

- There are no difficulties with communication and no significant deficits with cognitive and emotional functioning.

In the AR, the physician indicated that:

- The appellant has a good ability to communicate in all areas, including speaking, reading, writing and hearing.
- The sections of the report describing impacts to cognitive and emotional functioning and social functioning are not applicable to the appellant.

In the appellant's self-report, he did not describe a mental health condition. In the Form, there were no statements describing impacts from a mental health condition.

Daily Living Activities (DLA)

In the PR, the physician indicated that the appellant has not been prescribed any medication and/or treatment that interfere with his daily living activities.

In the AR, the physician reported that:

- The impairments that impact the appellant's ability to manage DLA are: "Type I Diabetes/ GERD/ asthma."
- The appellant is independent with moving about indoors and outdoors.
- The appellant is independent in all 8 tasks of the DLA personal care, including dressing, grooming, bathing, toileting, feeding self, regulating diet, transfers in/out of bed and transfers on/off chair.
- The appellant is independent in performing all 4 tasks of the DLA meals, including meal planning, food preparation, cooking and safe storage of food.
- The appellant is independent with all 3 tasks of the DLA paying rent and bills, including banking, budgeting, and paying rent and bills.
- The appellant is independent in performing all 3 tasks of managing his medications, including filling/refilling prescriptions, taking as directed and safe handling and storage.

- The appellant is independent with all 3 tasks of managing transportation, including getting in and out of a vehicle, using public transit and using transit schedules and arranging transportation.
- For basic housekeeping, the appellant requires periodic assistance, with a note added: "difficult when sugars not controlled, gets fatigue."
- For shopping, the appellant is independent with 4 of 5 tasks, namely going to and from stores, reading prices and labels, making appropriate choices and paying for purchases. The appellant requires periodic assistance with carrying purchases home, with a note added: "fatigue from uncontrolled BG [blood glucose]."

In the Form, the physician indicated with a check mark that he agreed that the appellant has:

- Significant restrictions with dressing, in particular bending to put on his shoes, socks and pants due to chronic pain in both feet and hands. He receives continuous assistance from his son once per week with putting on pants and shoes.
- Direct restrictions with grooming, in particular with brushing his teeth due to issues with grasping objects in hands "due to osteoarthritis" and it takes him 2 times as long.
- Significant restrictions with bathing, in particular with standing in shower longer than 5 minutes due to chronic pain in knees and feet and has to sit down in tub. He gets continuous assistance from railings and counters with getting in and out of the shower.
- Direct restrictions with toileting, in particular with transferring on and off the toilet due to chronic pain in knees and feet. He gets continuous assistance from counters when transferring on and off the toilet.
- Significant restrictions with feeding self, in particular with grasping utensils in his hands "due to osteoarthritis symptoms"; it takes him 2 times as long.
- Significant restrictions with transfers on/off bed or chair due to chronic pain in knees and feet. He receives continuous assistance from his son with transferring out of bed and by pushing himself into a standing position.
- Significant restrictions with laundry/ basic housekeeping, particularly with bending or lifting more than 5 to 10 lbs. due to chronic pain in the knees and feet as well as shortness of breath due to asthma, vision problems- "has to wear glasses at all times." He receives continuous assistance from his son "once per week when he is available to help, otherwise assistance from mother."
- Significant restrictions with going to and from the store due to chronic pain in knees, hands and feet as well as shortness of breath. He gets continuous assistance from leaning onto a shopping cart while shopping and from son when he is available to help.
- Direct restrictions with reading labels and prices due to "poor vision caused by glaucoma." He receives continuous assistance from son.
- Significant restrictions with making appropriate choices due to vision problems and pain. "Experiences overwhelmed and frustrated."
- Direct restrictions with paying for purchases, in particular with standing longer than 2 to 3 minutes in a line-up due to chronic pain in knees, feet and hands; it takes him 2 times as long to get money out due to hand issues. He gets continuous assistance by leaning on a shopping cart when standing in line-ups longer than 2 to 3 minutes.
- Direct restrictions with carrying purchases home, in particular with lifting, carrying or holding more than 5 to 10 lbs. due to chronic pain in knees, hands, feet and shortness of breath. He gets continuous assistance from a shopping cart with carrying more than 5 lbs. of purchases.
- Significant restrictions with food preparation and cooking; in particular with standing longer

than 2 to 3 minutes due to chronic pain in knees, feet and with using hands to chop, cut and peel foods due to issues with grasping as well as shortness of breath. He receives continuous assistance from his son when he is available; he takes frequent breaks to sit down after standing longer than 5 minutes.

- Direct restrictions with banking, in particular with standing in line-ups longer than 2 to 3 minutes due to chronic pain in knees, feet as well as shortness of breath. He sits down after 2 to 3 minutes of standing.
- Significant restrictions with getting in/out of vehicle due to chronic pain in knees and feet; it takes him 2 times as long. He gets continuous assistance by pulling himself using the car door.
- Significant restrictions with using public transit, in particular with walking more than 1 block to the bus stop, stepping up onto the bus and with standing on bus due to chronic pain in knees, feet, shortness of breath as well as "extreme vision problems."

Need for Help

The physician reported in the AR that the help required for DLA is provided by the appellant's family and friends. The section of the report indicating assistance provided through the use of assistive devices is not completed.

In the Form, the physician indicated with a check mark that he agreed that the appellant is in need of assistance from shower bars but not a cane or a scooter, which have been crossed out.

In his Notice of Appeal, the appellant wrote that he believes he meets all the criteria for PWD designation.

Prior to the hearing, the appellant provided a written submission by his advocate which contained no new evidence. The panel considered the submission as argument on behalf of the appellant.

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.

Evidentiary Considerations

The ministry pointed out in the reconsideration decision that there is a discrepancy in the information provided by the appellant's family physician in the PWD application and that provided in the Form dated December 2, 2013. The ministry argued that there was no medical evidence provided by the physician to explain the additional diagnoses and functional limitations as set out in the Form, and the physician has not confirmed that the appellant had a major exacerbation of his diagnosed conditions. The ministry argued that it is unclear what has happened since June 2013, e.g. whether the appellant's condition has rapidly deteriorated over 5 months or treatments are no longer effective, or there was a misapprehension in the initial assessment. The ministry argued that more weight be placed on the original reports by the physician in the PWD application.

The advocate pointed out that the Form dated December 2, 2013 was signed by the same physician who initially completed the PWD application and, therefore, the information should have been considered as additional medical evidence and not a "functional assessment" by the advocate. The advocate argued that the physician was able to clarify several of the issues that the ministry decided were not sufficiently clear. The advocate argued that many times doctors are very busy and accidentally omit information and, in this case, the physician omitted the fact that the appellant has arthritis and vision problems. The advocate argued that the additional medical information provided in the Form be given equal weight to the information in the PR and AR included in the PWD application.

Panel decision

While the advocate argued that the ministry did not consider the information in the Form as additional medical information, the panel finds that the ministry noted the absence of an explanation by the physician for the change in assessment and impliedly accepted the Form as evidence from the physician. In the normal course, the additional medical information would be provided equal weight with the original reports; however, the panel finds that the information from the family physician set out in the Form dated December 2, 2013 varies substantially not only from PR and the AR included with the PWD application but also with the information from the appellant in his self-report. The appellant wrote, for example, that he believes he has arthritis in his hands and that his lower back hurts a majority of the time, but he does not refer at all to chronic pain in his knees and feet, which is a primary focus of the restrictions outlined in the Form.

In the PR and AR, the physician reported completely independent mobility, whereas in the Form, the physician agreed to the statement that the appellant is significantly restricted from walking more than 1 block due to chronic pain in knees and feet as well as shortness of breath. The physician had

diagnosed asthma in the PR and yet shortness of breath was not reported to restrict the appellant's mobility in the original application and the physician indicated instead that the appellant's asthma is controlled with an inhaler. Within the Form there are also some inconsistencies as the physician specifically crossed out the statement that the appellant would benefit from a cane despite the many references to restrictions to the appellant's mobility and, elsewhere in the Form, attributing the cause of the appellant's poor vision to glaucoma when this has not been diagnosed by the physician. In the absence of an explanation by the physician for the significant changes to his assessment from the time of the PWD application to the time of completing the Form about 5 months later, and given the inconsistencies in the Form, the panel finds that the ministry reasonably placed more weight on the original reports by the physician, where the information in the Form is inconsistent.

Severe Physical Impairment

The appellant's position is that a severe physical impairment is established by the evidence of his episodes of ketoacidosis as a result of his Type I Diabetes and GERD, shortness of breath due to asthma, pain as a result of arthritis, and "vision problems." The advocate argued that the ministry incorrectly identified the diagnosis in the Form as "osteoarthritis" rather than simply arthritis and, therefore, did not properly assess the additional information provided by the appellant's physician.

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 unaided the appellant can walk 4 or more blocks and climb 5 or more steps and he has no limitations when it comes to lifting or remaining seated. The ministry argued that the general practitioner indicated that the appellant is independently able to walk indoors and outdoors, climb stairs and stand and, while the appellant requires periodic assistance with lifting and carrying and holding "when sugars poorly controlled", it is not clear how often the appellant's sugars are poorly controlled. The ministry argued that the physician has not explained the additional medical diagnoses and functional limitations set out in the Form and has not confirmed that the appellant had a major exacerbation in the diagnosed conditions and it is difficult for the ministry to obtain a concise and accurate picture of the appellant's present physical limitations.

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 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 family physician of 3 years, diagnosed the appellant with Type I Diabetes, GERD, asthma, arthritis and "vision problems." Although neither glaucoma nor osteoarthritis have been diagnosed by the physician, these conditions are both referred to in the statements set out by the advocate in the Form, and the panel finds that the ministry's reference in the reconsideration decision to osteoarthritis rather than arthritis is not significant in terms of the impact from the condition.

The family physician noted in the PR that the appellant has "very poorly controlled diabetes and has been in hospital several times with ketoacidosis. Severe GERD symptoms requiring medication and makes it difficult to eat at times. Asthma controlled with inhaler. Eating problems makes it difficult for him to control blood sugars." In the additional comments, the physician wrote that "... blood sugars are erratic and potential for hypoglycemic episodes." The functional skills reported in the PR indicated that the appellant can walk 4 or more blocks and climb 5 or more steps unaided and has no limitations with lifting and remaining seated. In his self-report, the appellant did not refer to pain in his knees or feet and he did not describe any restrictions to his mobility. The only reference by the appellant to his feet is that they "tingle" so much that he cannot sleep at night. In the AR, the appellant is assessed as independent with all mobility, including walking indoors and outdoors, climbing stairs, and standing, while requiring periodic assistance with lifting and carrying and holding as he "has difficulty when sugars poorly controlled."

In the Form dated December 2, 2013, on the other hand, the physician agreed with statements that the appellant is significantly restricted from walking more than 1 block due to chronic pain in knees and feet, as well as shortness of breath, and he receives continuous assistance from his mother. However, the physician indicated that the appellant will not benefit from a cane or a scooter, which statements have been crossed out, and the appellant's asthma is reported in the PR as being controlled with an inhaler. In the Form, restrictions to climbing stairs, standing longer than 2 to 3 minutes, and sitting longer than 5 to 10 minutes are indicated due to chronic pain in the appellant's knees and feet, which condition was not referred to by either the physician or the appellant in the original reports.

In the Form, the physician checked the statement that the appellant is significantly restricted with lifting, carrying or holding more than 5 to 10 [lbs.] due to chronic pain in the knees and feet as well as in the joints of both hands and he receives continuous assistance from his son with more than 5 to 10 lbs. In his self-report, the appellant wrote that he believes he has arthritis in his hands because they cramp into "claw-like position" and hurt if he writes for too long or holds something in his hands and he also wrote that if he picks up "anything 50 pounds or more" it makes him vomit and he is sick for the rest of the day. The appellant's evidence indicates a lifting capability up to 50 lbs, far in excess of 5 to 10 lbs. The appellant also wrote that his eye sight "is so bad that I have a problem seeing 2 feet in front of me" and it is not clear if this is with or without eye glasses since, in the Form, reference is made to the appellant having to wear glasses at all times. In the AR, the physician assessed the appellant with a good ability to read and write with no comments regarding uncorrected deficiencies with the appellant's vision.

The panel finds that the ministry reasonably concluded that it is difficult to obtain a concise and accurate picture of the appellant's present physical limitations due to the inconsistencies in the evidence. Placing more weight on the original reports, the panel finds that the ministry reasonably determined that while periodic restrictions are indicated with lifting and carrying and holding, these have not been consistently defined in terms of degree and frequency. It is not clear whether the

appellant can lift up to 5 to 10 lbs. or 50 lbs., nor how often he requires assistance since the appellant's GERD symptoms make it difficult for him to eat "at times," which then makes it difficult for the appellant to control his blood sugars which are "erratic." The panel finds that the ministry reasonably determined that the consistent evidence from the appellant and his physician demonstrates a level of independent physical functioning that does not establish that the appellant has a severe physical impairment under section 2(2) of the EAPWDA.

Severe Mental Impairment

The appellant did not maintain a position that he has a severe mental impairment.

The ministry's position is that there is insufficient evidence to establish that the appellant has a severe mental impairment, particularly since the appellant's physician did not diagnose a mental impairment. The ministry argued that the physician did not indicate that the appellant has any significant deficits with his cognitive and emotional functioning nor do his impairments have an impact on his cognitive and emotional functioning. The ministry argued that the physician did not assess how the appellant's impairments impact his ability to manage his relationships with his immediate and extended social networks.

Panel Decision

The general practitioner did not diagnose a mental disorder in the PR or the Form. No significant deficits were reported with cognitive and emotional functioning and impacts to areas of daily functioning were marked by the physician as not applicable to the appellant. In the PR, the physician reported 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. In the AR, the section of the report describing impacts to social functioning was noted as not applicable to the appellant. Given the absence of a mental disorder diagnosis and no impacts reported to mental or social functioning, 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 impairment directly and significantly restricts his ability to perform DLA on an ongoing basis to the point that he requires the significant assistance of another person, namely his mother and son, as well as assistive devices such as stair rails. The advocate argued that the ministry was not reasonable in concluding that it is not clear how often the appellant's blood sugars are poorly controlled since the physician indicated that the appellant has been hospitalized several times. The advocate argued that one can assume that the appellant and the doctor have been unable to control the appellant's sugar levels as they are unpredictable and the doctor cannot give any time indication of how often the appellant's sugars are poorly controlled.

The ministry's position is that the appellant can independently manage the majority of the [tasks of] his DLA independently, or 25 out of a total 28 tasks. The ministry argued that for those tasks where periodic assistance is required, the physician has not confirmed the frequency and duration of the periodic assistance.

Panel Decision

Section 2(2)(b) of the EAPWDA requires that a prescribed professional provide an opinion that an

applicant's severe impairment directly and significantly restricts his DLA, continuously or periodically for extended periods. In this case, the appellant's family physician is the prescribed professional. DLA are defined in section 2(1) of the EAPWDR and are also listed in the PR and, with additional details, in the AR. Therefore, a prescribed professional completing these forms has the opportunity to indicate which, if any, DLA are significantly restricted by the appellant's impairments continuously or periodically for extended periods.

In the appellant's circumstances, his physician initially reported that the appellant is independent in all tasks of several DLA, including moving about indoors and outdoors, personal care, meals, paying rent and bills, and managing his medications and transportation. For the DLA basic housekeeping, the physician reported in the AR that the appellant requires periodic assistance, with the note: "difficult when sugars not controlled, gets fatigue." In the Form, significant restrictions are identified with laundry/ basic housekeeping, particularly with bending or lifting more than 5 to 10 lbs. due to chronic pain in the knees and feet as well as shortness of breath due to asthma, vision problems- "has to wear glasses at all times." With shopping, the appellant was initially assessed as independent with 4 of 5 tasks, namely going to and from stores, reading prices and labels, making appropriate choices and paying for purchases and requires periodic assistance with carrying purchases home, with the note: "fatigue from uncontrolled blood glucose." In the Form, significant restrictions were indicated with going to and from the store due to chronic pain in knees, hands and feet as well as shortness of breath, with reading labels and prices due to poor vision caused by glaucoma, with making appropriate choices due to vision problems and pain, with paying for purchases, in particular with standing longer than 2 to 3 minutes in a line-up due to chronic pain in knees, feet and hands, with carrying purchases home, in particular with lifting, carrying or holding more than 5 to 10 lbs. due to chronic pain in knees, hands, feet and shortness of breath.

As previously discussed, the evidence is not clear regarding the appellant's lifting capability and whether his asthma and vision problems have been addressed with the use of an inhaler and eye glasses, respectively. In the additional comments to the PR, the physician wrote: "Several hospitalizations for ketoacidosis; blood sugars are erratic and potential for hypoglycemic episodes"; however, there is no further description of the rate of episodes over a period of time as the physician related them to the appellant's difficulty with eating which occurs "at times." The panel finds that the ministry reasonably determined that there is insufficient information provided by the physician to conclude that the periodic assistance with the tasks of housekeeping and shopping are for extended periods of time.

Although a number of additional tasks of DLA are listed in the Form as being restricted, the majority are stated to be restricted due to chronic pain in the appellant's knees and feet, which was not mentioned by the appellant in his self-report or by the physician in the original reports. Restrictions due to arthritis in the appellant's hands, which was mentioned by the appellant in his self-report, impact dressing, grooming, feeding self, paying for purchases when shopping, and meal preparation. Assistance is provided by his son either "once per week" with dressing, for example, or "when he is available" for meal preparation, and it takes the appellant 2 times longer with some of these tasks. There is no information provided regarding how often the appellant's son is available to help him and the panel finds that the ministry reasonably determined that there is insufficient detail to show that the periodic assistance is required for extended periods of time, as required by section 2(2)(b) of the EAPWDA. Overall, 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 or an assistive device 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 the appellant's physician indicated in the PWD application that he does not require any assistive devices and, in the Form, he would benefit from shower bars; the appellant does not require the services of an assistance animal.

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 physician, as a prescribed professional, is that the help required with DLA is provided by family, specifically the appellant's son or mother, and friends. In the Form, the physician indicated with a check mark that he agreed that the appellant is in need of assistance from shower bars but not a cane or a scooter, which have been crossed out. The panel finds that the other items listed in the Form as providing assistance, namely eye glasses, stair railings, an elevator, counters, a shopping cart and a car door, do not fall within the definition of assistive device as set out in section 2(1) of the EAPWDA, being 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. 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.