

## PART C – Decision under Appeal

The decision under appeal is the reconsideration decision of the Ministry of Social Development and Social Innovation (the ministry) dated February 4, 2014 denying the appellant designation as a person with disabilities (PWD). The ministry determined that the appellant did not meet three of the five criteria required for PWD designation as set out in the *Employment and Assistance for Persons with Disabilities Act* (EAPWDA) section 2. The ministry found that the appellant meets the criteria of age and duration of impairment in that he is 18 years of age or older and in the opinion of a medical practitioner, his impairment is likely to continue for two or more years. However, the ministry determined that, based on the information provided, the following criteria as set out in section 2(2)(b) of the EAPWDA were **not** met:

- The minister is satisfied that the appellant has a severe mental or physical impairment.
- In the opinion of a prescribed professional, the appellant's impairment significantly restricts his ability to perform daily living activities (DLA) either continuously or periodically for extended periods; and
- As a result of the restrictions, the appellant requires the significant help or supervision of another person to perform the DLA restricted by his impairment.

## 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 reconsideration consisted of the following:

1. The appellant's PWD Designation Application, containing the following three parts:
  - The appellant's Self Report (SR) completed June 18, 2013;
  - The Physician Report (PR) completed by the appellant's physician who indicates he has known the appellant for 2 months and had seen him on 3 occasions in the previous year – the PR is not dated but the panel assumes it was completed on the same date as the AR, which is August 15, 2013; and
  - The Assessor Report (AR) dated August 15, 2013 also completed by the appellant's physician.
2. The appellant's request for reconsideration dated January 3, 2014 to which was attached a 2-page submission of the appellant prepared by his advocate and dated January 9, 2013 (the panel notes that the date on these submissions should be January 9, 2014). In the submission, the advocate indicated that the appellant's physician had added additional information to the PWD application by amending his answers on January 7, 2014. The panel has noted in the summary below where there is additional information in the PR and AR amended by the appellant's physician in January 2014.

The appellant completed his notice of appeal on February 12, 2014, and on it he wrote that there is clear evidence that he meets the PWD designation and that the ministry erred in its assessment of the PWD application and his request for reconsideration.

At the hearing, the appellant's advocate provided the panel with a two-page prepared submission, which she read at the hearing. The panel admits the prepared written submission from the appellant's advocate as written testimony in support of information before the ministry at the time the decision under appeal was made pursuant to section 22(4)(b) of the *Employment and Assistance Act*.

The following is a summary of the evidence from the PR and the AR as they relate to the PWD criteria at issue. The panel has also included reference to the appellant's SR in the PWD application, as well as his submissions on reconsideration and at the hearing.

### Severity of impairments (criteria set out in subs. 2(2) EAPWDA)

The appellant's physician diagnosed him in the PR completed in August 2013 as having substance dependence and traumatic arthritis, but did not note a date of onset for either condition, although the physician noted that they will be lifelong problems for the appellant. At the hearing, the appellant told the panel his leg was injured in December 2012. In commenting on the severity of the appellant's conditions, the physician wrote in the PR, "[the appellant] suffers from substance dependence. He suffers from chronic non-cancer pain in his left leg." In the additional comments section of the PR, the physician wrote, "[the appellant] suffers from chronic non-cancer pain." In the PR, the physician indicated that the appellant has not been prescribed any medication that interferes with his ability to perform DLA, and does not need any prostheses or aids for his impairment. In the AR, the physician identified the appellant's impairment as "[the appellant] is recovering from alcohol dependence."

[REDACTED]

In the functional skills assessment in the PR, the appellant's physician indicated that the appellant could walk 1-2 blocks unaided on a flat surface, that he could climb 5+ steps unaided, that he could lift 7-16 kg (15-35 pounds) and had no limitations in the time he could remain seated. In the AR originally completed in August 2013, the appellant's physician indicated that the appellant takes significantly longer than typical with all of the listed areas of mobility and physical ability (walking indoors, walking outdoors, climbing stairs, standing, lifting, carrying and holding), writing the comments, "Due to leg pain, [the appellant] has poor mobility 90% of the time. [The appellant] has poor mobility and pain due to an injury to his left leg." In the January 2014 amended AR, the physician crossed out "90%" and wrote "100%." In the additional information section of the AR, the physician wrote in August 2013, "[the appellant] has chronic severe problems impairing his ability to function normally." In January 2014, the physician added the following comment in this section of the AR: "[The appellant] describes significant pain and fatigue with minimal exertion."

In the PR, the physician indicated that the appellant does not have any difficulties with communication and in the AR, indicated that the appellant's ability to communicate in all areas was good. In the PR, the physician check marked "unknown" in answer to the question whether the appellant has any significant deficits with cognitive and emotional function. The appellant's physician did not complete the section of the AR regarding the impact of the appellant's mental impairment on his cognitive and emotional functioning.

In his SR, the appellant wrote that his left leg was broken and as a result, he has titanium rods, clamps and screws inserted inside his leg which are screwed from the outside of his leg bone through to the inside. The appellant repeated this to the panel at the hearing, saying that he has bolts through his knee and ankle which he can feel under his skin and which he finds creepy. The appellant told the panel that his chiropractor showed him an x-ray that showed that the bones in his leg have not fused properly – the appellant described it as a "gap." The appellant told the panel he is in pain 24/7 and cannot walk very far or stand for very long because it puts too much pressure on the gap and causes him pain. The appellant told the panel he is relying more and more on the use of his cane to support himself and help with walking.

He wrote in his SR that his leg injury prevents him from walking more than 5 blocks at a time without resting and that he can't sleep through the night without waking up every few hours because of the pain. At the hearing, the appellant told the panel that he cannot tolerate pain medication that is opiate based – it upsets his stomach and although he took it for the first few months after the surgery, he does not take pain medication other than aspirin or Tylenol because he is concerned about becoming addicted to it and does not like having an upset stomach. The appellant told the panel that his leg will start trembling and he will fall down unless he has his cane for support. The appellant told the panel that he cannot walk for more than one block without resting for 5 minutes and he has difficulty climbing stairs. In his SR, he wrote that he can't stand up for more than 10 minutes and because he can't exercise, he has gained weight and is depressed. In the SR the appellant wrote that he has been an alcoholic since he was a teenager and has gone through recovery programs and wrote that he has also become depressed as a result of his alcoholism. At the hearing, the appellant told the panel that he has been taking anti-psychotic medication every few days to help him sleep and that this is helping with his chronic fatigue, which he said was because he wasn't sleeping. He said that he has been seeing a psychiatrist through the local mental health services once per week for the past month or so.

Ability to perform DLA (criteria set out in subs. 2(2)(b) EAPWDA)

As instructed by the PWD application, the physician did not complete the DLA section of the PR. In the AR, the physician indicated that the appellant is independent in performing all aspects of the DLAs of personal care, paying rent and bills, and medications. The physician indicated that the appellant takes significantly longer than typical to perform the 2 tasks of the DLA of basic housekeeping (laundry and basic housekeeping), but did not provide any commentary. The physician indicated that the appellant is able to independently perform 1 of the 5 listed tasks of the DLA of shopping (paying for purchases), but that the appellant takes significantly longer than typical to perform the other 4 tasks, writing the comment in the August 2013 AR, "due to chronic pain he has poor mobility." In the August 2013 AR, the physician also wrote the comment, "[the appellant] does not have enough money to use public transport." In the amendments to the AR of January 2014, the physician added the comment regarding the appellant's restrictions for the DLA of shopping, "he has left leg pain 100% of the time" and added the following to his additional comments on this page of the AR: "He is unable to do housework normally. He is unable to carry more than 20 lbs. [The appellant] suffers from chronic fatigue." For the DLA of meals, the physician indicated that the appellant could independently perform 2 of the 4 listed tasks (meal planning and safe storage of food) but that he takes significantly longer than typical to perform the tasks of food preparation and cooking, writing the comment in the original AR, "he takes longer to do these activities due to pain." The physician indicated in the AR that the appellant takes significantly longer than typical with all 3 tasks of the DLA of transportation, commenting, "[the appellant] can not afford public transport" and writing the additional comment, "[the appellant] relies on the good will of others for transportation. He does not have a driver's licence and can not drive. His neighbour gives him rides from time to time."

In the AR section regarding the appellant's social functioning, the appellant's physician indicated that the appellant required periodic support for 4 of the 5 listed aspects (appropriate social decisions, developing and maintaining relationships, interacting appropriately with others and able to secure assistance from others) and required continuous support for the aspect of dealing appropriately with unexpected demands. The physician wrote the comment, "[the appellant] has a long standing history of substance dependence. He has been able to secure help in becoming sober." The physician indicated that the appellant has very disrupted functioning with both his immediate and extended social networks, writing the comments, "[the appellant] has poor social skills" and "[the appellant] has limited social networks."

At the hearing, the appellant told the panel that at the time of the PWD application, his next-door neighbour would help with his chores (for example, performing his house-cleaning for him) and his downstairs neighbour would drive him to his appointments because the bus route was too far away for him to easily walk to. The appellant said he had to move out of this housing as he could not climb the stairs anymore and his next-door neighbour died and could no longer help him. The appellant told the panel he is now renting a motel room that is on a bus route and has a fridge, stove top and microwave so he can cook for himself. He said that the motel staff clean the room. He said that he makes himself soup or other food from tins and told the panel that he has his groceries delivered. The appellant also told the panel that when he was living in transition housing (he said from May 2013 through February 2014), he would help with chores such as picking up garbage, weeding with a shovel, raking leaves and some maintenance work, but he couldn't get down on his knees to perform this work as he can't bend his left leg. The appellant told the panel that he was receiving support from the counselors at the transition housing where he'd been living, but that he now only had the

support of the psychiatrist at the mental health services.

Assistance required/provided (criteria set out in subs. 2(2)(b)(ii) EAPWDA)

In the section of the AR describing the assistance provided for the appellant, the physician indicated that the appellant received help from volunteers, but did not provide any commentary. In the PR, the physician indicated that the appellant does not require any aids for his impairment, but in the amended AR completed in January 2014, indicated that the appellant uses a cane to help compensate for his impairment. As set out above, the appellant told the panel that he was receiving assistance from his neighbours/friends at his previous housing and that he has a cane, which he is using more and more for walking and standing.

The panel finds that the testimony provided by the appellant at the hearing is in support of the information before the ministry at the time of the reconsideration. The testimony of the appellant reiterates the information in his SR and describes his impairments and the effect his impairments have on his DLA. The panel therefore admits the appellant's testimony pursuant to section 22(4)(b) of the *Employment and Assistance Act*.

## PART F – Reasons for Panel Decision

The issue in this appeal is whether the ministry reasonably determined that the appellant is ineligible for PWD designation because he did not meet all the requirements in section 2 of the EAPWDA. Specifically, the ministry determined that the information provided did not establish that the appellant has a severe physical or mental impairment or demonstrate that his impairments in the opinion of a prescribed professional directly and significantly restricts his ability to perform daily living activities either continuously or periodically for extended periods, and, as a result of those restrictions he requires help to perform those activities.

The following section of the *EAPWDA* applies to this appeal:

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.

The following section of the *EAPWDR* applies to this appeal:

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.

Severity of impairment

The appellant and his advocate told the panel that his impairments are severe. The appellant and his advocate pointed to the physician's evidence in the PWD application where he indicated that it takes the appellant significantly longer than typical to perform several of the tasks of his DLA and his comment that the appellant has "left leg pain 100% of the time" to support their assertion that the appellant's leg injury is a severe impairment. The appellant told the panel that he felt his doctor did not complete the PWD application form accurately and the information in the PWD application does not reflect the extent of his impairments – the appellant told the panel his doctor is not paying attention to him because he is an alcoholic. The appellant's advocate took issue with the ministry's statement in the reconsideration decision that the physician who completed the PWD application had limited contact with the appellant, criticizing this as being judgmental on the part of the ministry as it means that persons applying for PWD designation must "wait" until a physician knows them well. The appellant's advocate also submitted that the ministry in the reconsideration failed to give weight to the amending information provided by the physician in January 2014. The advocate criticized the ministry's reference to limited information of the physician in the PWD application form, asserting that the ministry's form must be considered flawed because trained professionals (physicians) cannot complete the PWD application form accurately (or to the ministry's satisfaction).

In the reconsideration decision, the ministry noted that the appellant's contact with his physician who completed the PWD application in August 2013 "has been very limited, with little opportunity for [his] physician to develop an opinion based on a history of contact, experience, observations and knowledge" of the appellant. The ministry noted in its reconsideration decision that "no additional information was submitted by previous physician(s) regarding a severe mental or physical impairment to be considered in [the appellant's] request for reconsideration."

The ministry based its determination that the appellant did not have a severe impairment on the information provided by the appellant's physician in the PR and AR. The ministry noted that in the original August 2013 application, the physician diagnosed the appellant with substance dependence and traumatic arthritis and that the physician also indicated that the appellant suffers from chronic non-cancer pain. The ministry referred to the information provided by the appellant's physician in the PR regarding his functional skills – that the appellant is able to walk 1-2 blocks and climb 5+ steps unaided, lift between 15-35 lbs and he has no limitations in remaining seated. The ministry noted that in assessing the appellant's mobility and physical ability, the physician indicated that the appellant takes significantly longer than typical in all aspects "due to poor mobility 90% of the time." The ministry noted that the physician amended this to "100% of the time" in the January 2014 AR (and also indicated that the appellant suffers from chronic fatigue and is unable to carry more than 20 pounds). The ministry noted that "no information is provided [by the physician] on how much longer" it takes the appellant to perform the aspects of mobility and physical ability and determined that the impacts described by the physician "are more in keeping [with] a moderate degree of impairment." The ministry determined that based on the information provided by the physician in both the original application and with the request for reconsideration, the minister is not satisfied that the information provided is evidence of a severe physical impairment. At the hearing, the ministry representative said that the information provided by the appellant about the gap between the bones of his left leg, as well

as his treatment by a psychiatrist, was not before the ministry at the time it made its decision on reconsideration.

In the reconsideration decision, the ministry noted that in assessing a mental impairment in the PR, the physician indicated that it was unknown if the appellant has any deficits with cognitive and emotional functions. The ministry also noted that in the AR, the physician indicated that the appellant had very disruptive functioning with his immediate and social networks, but had indicated that the appellant has no difficulties with communication and was able to make decisions about personal activities, care and finances. The ministry found that based on the information provided by the physician in the original PWD application and with the request for reconsideration, there was not enough evidence to establish a severe mental impairment.

### *Analysis and decision*

The legislation provides that the minister may designate a person as a PWD if the minister is satisfied that the person has a severe mental or physical impairment that in the opinion of a medical practitioner is likely to continue for at least 2 years (subs. 2(2)(a) of the EAPWDA). The appellant's physician confirmed in the PR that the appellant has the following medical conditions: traumatic arthritis as well as chronic pain in his left leg and substance dependence.

In the PWD application form, the ministry has provided a definition of "impairment" which, although it is not set out in the applicable legislation, offers guidance in considering the existence and severity of an applicant's impairment. The ministry states, "impairment" is a "loss or abnormality of psychological, anatomical or physiological structure or functioning causing a restriction in the ability to function independently, effectively, appropriately or for a reasonable duration." To determine the severity of an impairment, there is both a cause – the impairment itself – and an effect – the degree to which it restricts the ability to function independently, effectively, appropriately or for a reasonable duration. The panel notes that the legislation provides that the determination of the impairment's severity is at the discretion of the minister, taking into account all of the evidence, including that of the appellant. However, the starting point must be the medical evidence - the information set out in the PWD application completed in August 2013 as updated/amended by the appellant's physician in January 2014.

### *Severe physical impairment*

The appellant described the injuries to his left leg as a failure of the bones to knit together after surgery causing a gap in the bones, and severe constant pain in his left leg. The appellant told the panel that his chiropractor showed him an x-ray that showed that his bones in his left leg weren't properly set, but this x-ray and information from the chiropractor was not before the ministry or submitted to the panel at the hearing. The legislation requires that a medical practitioner confirm that the appellant's medical condition is likely to continue for at least 2 years and in this case, a medical practitioner has not confirmed in the PWD application or in any evidence before the ministry or the panel that after the surgery, the appellant's left leg bones have failed to knit together leaving a gap (only that he suffers from traumatic arthritis and chronic pain in his left leg).

In the AR, the physician wrote that the appellant has "chronic severe problems impairing his ability to function normally" and that the appellant "describes significant pain and fatigue with minimal



exertion.” In terms of the appellant’s physical impairment, in assessing the appellant’s functional skills in the August 2013 PR, the physician indicated he could walk 1-2 blocks unaided on a flat surface, 5+ steps, could lift 7-16kg, and had no limitations in the time he could remain seated. In the AR, the physician indicated the appellant took significantly longer than typical for all aspects of mobility and physical ability, amending his comment in January 2014 to read, “due to leg pain [the appellant] has poor mobility 100% of the time.” The appellant told the panel that he was able to walk 1 block, but then had to rest, and that he had difficulty climbing steps and he is relying on his cane more and more. The appellant told the panel that he was able to stand for short periods, longer with his cane, and he is able to get in and out of bed, and on and off a chair, and in and out of a car so long as it is not low to the ground.

The information set out by the physician in the PR and AR directly addresses the appellant’s functional skills and indicates that, although it is limited, he has functionality. The appellant told the panel that he feels his physician did not accurately complete the PWD application; however, the appellant’s testimony at the hearing supported the information provided by his physician in the PWD application that he has functionality, although it is limited (for example, he told the panel he can walk a block with his cane, lift some things that weigh less than 20 pounds, do some chores such as raking and weeding with a shovel, and stand for some periods particularly if he uses his cane). Further, although the appellant’s physician stated in the amended AR that he has pain in his leg 100% of the time that affects his mobility, the appellant does not dispute he has some functionality although it is limited. Accordingly, given the information provided by the appellant’s physician in both the original PWD application of August 2013 as amended in January 2014, the panel finds that the ministry’s determination that the information provided does not establish a severe physical impairment is reasonable.

#### *Severe mental impairment*

The appellant told the panel that he is depressed and is receiving weekly counseling from a psychiatrist and is taking prescribed anti-psychotic medication to help him sleep. However, a medical practitioner has not confirmed that the appellant suffers from depression or has a mental impairment in the PWD application or in any evidence before the ministry or submitted to the panel at the hearing.

In the PR, the physician indicated that it was “unknown” whether the appellant had significant deficits with cognitive and emotional functioning. The physician did not complete the section in the AR “for an applicant with an identified mental impairment or brain injury” regarding the impact of the appellant’s impairments on his cognitive and emotional functioning – it was left blank. The appellant’s physician completed the section of the AR regarding the impact of the appellant’s impairment on his social functioning (discussed in the DLA section below), which has the accompanying direction, “only complete this if the applicant has an identified mental impairment, including brain injury.” However, the physician did not express anywhere in the PR or AR that the appellant had a mental impairment or brain injury - the diagnosis of “substance dependence” was not indicated to be a mental impairment or to have caused a brain injury.

Based on the lack of information from a medical practitioner that the appellant suffers from a mental impairment or brain injury, the panel also finds reasonable the ministry’s determination that it is not satisfied the information provided establishes a severe mental impairment.

[Redacted]

Direct and significant restrictions in the ability to perform DLA.

The appellant's advocate stressed to the panel that the appellant has pain 100% of the time in his left leg and that he has poor mobility which restricts his ability to perform his DLA. The appellant and his advocate pointed to the information in the PWD application from the physician that indicated the appellant takes significantly longer to perform several or all of the tasks listed under the DLA of basic housekeeping, shopping, transportation and meals. The appellant told the panel that he does not know why his physician indicated he takes significantly longer than typical for the task of reading prices and labels unless he's not wearing his glasses. The appellant told the panel that he takes transit, but that he has to time it properly as it takes him longer to reach the bus stop and will stop for a rest and the bus will pass him. He said that he is able to get in and out of certain vehicles (a pick up truck) but not other vehicles which are lower to the ground (and gave the example of a BMW). The appellant told the panel he does not have trouble reading transit schedules and had taken a taxi to the hearing as transit would have taken much longer.

In the reconsideration decision, the ministry determined that based on the information provided by the appellant's physician, the ministry did not have enough evidence to confirm that the appellant's impairment significantly restricts his ability to perform his DLA either continuously or periodically for extended periods. The ministry noted that the physician indicated that the appellant took significantly longer with laundry, basic housekeeping, going to/from stores, reading prices and labels, making appropriate choices, carrying purchases home, food preparation and cooking due to chronic pain and poor mobility. The ministry determined that "no information is provided on how much longer" it takes the appellant to perform these DLA and tasks of other DLA. The ministry also noted that the physician indicated that the appellant requires continuous assistance to deal appropriately with unexpected demands and requires periodic assistance with all other social functions due to longstanding history of substance abuse, but that the physician did not provide information on how often or the duration the appellant requires assistance. The ministry also noted the conflicting evidence of the physician – that the appellant has very disrupted functioning with his immediate and extended social networks, but had good communication skills and is independent with personal care and finances – stating that it is unclear of the degree of restriction for the appellant in these categories. The ministry also noted that no additional information was provided in the physician's amendments of January 2014 regarding the physician's statement that the appellant is unable to do housework normally – there was no indication if this was periodically, continuously or how much longer. The ministry also noted that there was no information provided by the physician on how often the appellant requires assistance with transportation due to poor mobility. The ministry noted that as no additional information was provided by the appellant's previous physicians, it based its decision on the information provided in the PWD application.

*Analysis and decision*

Subsection 2(2)(b) of the EAPWDA requires that a prescribed professional confirm that the appellant's impairments directly and significantly restrict his ability to perform his DLA continuously or periodically for extended periods. The panel notes that although a prescribed professional may indicate that, because of a restriction, an individual requires assistance either continuously or periodically for extended periods, this does not necessarily meet the legislative test of being a "direct and significant restriction." The same can be said of a prescribed professional's assessment that an

individual takes significantly longer than typical to perform certain tasks of DLA - it does not necessarily meet the legislative test of being a "direct and significant restriction." The DLA to be considered for a person with a physical impairment are set out in subs. 2(1)(a) of the EAPWDR as follows:

- Prepare own meals;
- Manage personal finances;
- Shop for personal needs;
- Use public or personal transportation facilities;
- Perform housework;
- Move about indoors and outdoors;
- Perform personal hygiene and self care; and
- Manage personal medication.

The DLA to be considered for a person with a mental impairment, in addition to those DLA listed above, are the following DLA set out in subs. 2(1)(b) of the EAPWDR:

- Make decisions about personal activities, care or finances; and
- Relate to, communicate or interact with others effectively.

The legislation requires that a prescribed professional – in other words, the appellant's physician who completed the portions of the PWD application – provide an opinion that the appellant's impairment directly and significantly restricts his ability to perform DLA either continuously or periodically for extended periods.

In the AR, the physician indicated that the appellant was able to independently perform all aspects of the DLAs of personal care, paying rent and bills, and medications. The physician indicated that the appellant takes significantly longer than typical to perform both tasks of the DLA of basic housekeeping (laundry and basic housekeeping), as well as 4 of the 5 tasks of the DLA of shopping (going to and from stores, reading prices and labels, making appropriate choices and carrying purchases home). However, the appellant told the panel he could read prices and labels independently unless he wasn't wearing his glasses. The physician provided the following commentary to explain and describe how and why the appellant takes significantly longer to perform these tasks: "due to chronic pain, he has poor mobility. He has left leg pain 100% of the time. ... He is unable to do house work normally. He is unable to carry more than 20 lbs. [The appellant] suffers from chronic fatigue." The physician indicated that the appellant takes significantly longer to perform 2 of the 4 tasks of the DLA of meals (food preparation and cooking) writing the comment, "he takes longer to do these activities due to pain." The physician also indicated that the appellant takes significantly longer than typical to perform all 3 tasks of the DLA of transportation, with the following commentary: "[The appellant] cannot afford public transport. [The appellant] relies on the good will of others for transportation. He does not have a driver's licence and cannot drive. His neighbour gives him rides from time to time." The appellant's physician does not indicate in the PWD application or its amendments of January 2014 that the appellant's leg injury directly and significantly restricts his ability to perform his DLA either continuously or periodically for extended periods – only that it takes him significantly longer to perform some of the tasks as a result of limited mobility and chronic pain.

[Redacted]

For the DLAs specific to an individual with a mental impairment, the physician indicated in the AR that the appellant could independently perform all tasks associated with the DLAs of personal care, medications and paying rent and bills (those DLA which reflect the appellant's ability to make decisions about personal activities, care or finances as set out in subs. 2(1)(b) of the EAPWDR). The appellant's physician indicated that he required periodic support or assistance in 4 of the 5 areas of social functioning, and required continuous support in the area of social functioning being able to deal appropriately with unexpected demands. As commentary to explain/describe the appellant's restrictions in these areas, including a description of the degree and duration of support/supervision required, the physician wrote, "[the appellant] has a long standing history of substance dependence. He has been able to secure help in becoming sober." The physician indicated that the appellant has poor social skills and limited social networks as an explanation for the physician's indication that the appellant has very disrupted functioning with his immediate and extended social networks. However, the information provided by the physician does not indicate that the appellant's mental impairment significantly and directly restricts his ability to perform these aspects of the DLA – the only information provided is that the appellant has a long-standing history of substance dependence.

The panel finds reasonable the ministry's assessment that the information provided does not demonstrate that the appellant's leg injury or some form of mental impairment (substance dependence) directly and significantly restrict his ability to perform DLA. Without such information from the appellant's physician showing how the appellant's impairment(s) directly and significantly restricts his ability to perform DLA, and based on the evidence provided by the appellant's physician and the appellant at the hearing, the panel finds that the ministry's determination that the information provided does not establish that an impairment significantly restricts his DLA continuously or periodically for extended periods is reasonable.

#### Help with DLA

The appellant told the panel that he is relying more and more on his cane when he walks and when he is standing. He also told the panel that he doesn't have anyone to take him shopping, so he will get his groceries delivered. The appellant said that the motel staff perform his housecleaning, although he will have to find help when he moves to other housing as he cannot bend his knee.

In its reconsideration, the ministry noted that as it "has not been established that [DLA] are significantly restricted ... it cannot be determined that significant help is required from other persons." The ministry noted that the physician indicated that he needs a cane for mobility, but that the use of an assistive device such as a cane "does not in itself establish a severe impairment."

The legislation requires in subs. 2(b)(iii) that in the opinion of a prescribed professional, as a result of the appellant's restrictions, the appellant requires help to perform DLA. The panel notes the evidence before the ministry at the reconsideration as set out by the appellant's physician in the AR was that the appellant "relies on the good will of others for transportation" and his neighbour "gives him rides from time to time." The panel finds that the ministry's determination that because it has not been established that DLA are directly and significantly restricted, it cannot be determined that help is required as provided under section 2(2)(b)(ii) of the EAPWDA, is reasonable.

Conclusion

Having reviewed and considered all of the evidence and the relevant legislation, the panel finds that the ministry's decision that the appellant was not eligible for PWD designation is reasonably supported by the evidence. The panel therefore confirms the ministry's decision.