

PART C – Decision under Appeal

The decision under appeal is the Ministry of Social Development and Social Innovation (the ministry) reconsideration decision dated February 24, 2014 which found that the appellant did not meet two 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 he has a severe mental impairment that, in the opinion of a medical practitioner, 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 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 appellant stated that the advocate who prepared the February 6, 2014 letter for his doctor would not attend the hearing with him and he is not at all familiar with the process for the hearing. After the panel explained the process for the hearing and for the appeal, the appellant stated that he wished to proceed with the hearing and to represent himself.

The evidence before the ministry at the time of the reconsideration decision included:

- 1) Person With Disabilities (PWD) Application comprised of the applicant information and self-report dated September 6, 2013, a physician report (PR) and an assessor report (AR) both dated September 6, 2013 and completed by the appellant's family physician who has known the appellant for approximately 5 years;
- 2) Letter dated February 6, 2014 prepared by an advocate and signed by the appellant's physician; and,
- 3) Request for Reconsideration dated January 28, 2013.

Diagnoses

In the PR, the appellant was diagnosed by his general practitioner with degenerative disc disease, with onset in 2008, diabetes with onset in 2012 and depression with onset in 2008.

Physical Impairment

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

- In terms of health history, the appellant's "diabetes diagnosed in 2012 and has been well-managed." "Back pain started more than 5 years ago after injury at work. Despite steroid injections, manual therapies and altering work, back pain has severely impacted his ability to keep a job as he can't drive or sit for long. Chronic sciatica prevents him from sitting comfortably at a desk."
- The appellant requires a "walking stick" as an aid for his impairment, which he occasionally uses.
- With respect to degree and course of impairment, the physician wrote that the appellant has "...chronic back pain, not suitable for surgery but has been constant despite physical therapies and medication."
- In terms of functional skills, the physician assessed the appellant as able to walk 2 to 4 blocks unaided on a flat surface, climb 2 to 5 steps unaided, lift under 2 kg. (under 5 lbs.), and remain seated less than 1 hour.
- In the additional comments, the physician wrote that the appellant: "...has resisted going to hospital but he takes regular and high doses of opiates" and "...is often in tears and very frustrated by his pain."

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

- The appellant is assessed as taking significantly longer than typical with walking indoors and outdoors and uses an assistive device for walking outdoors and climbing stairs (note: "occasionally uses stick").
- The appellant takes significantly longer than typical with standing, lifting, and carrying and holding. The physician wrote that "...he has poor muscle tone and so any lifting aggravates back pain and causes sciatica."

In the appellant's self-report he wrote:

- He has severe pain from his neck to his feet. From the moment he wakes up, he is in pain.
- The pain in his back prevents him from any lifting or any kind of sitting or standing for more than an hour.

Daily Living Activities (DLA)

In the PR, the general practitioner indicated that:

- The appellant has not been prescribed medication and/or treatment that would interfere with his daily living activities.
- In terms of his health history, "His mental health has deteriorated due to pain and being out of work. He has lost his social network, lost his independence and having depression has limited his capacity to care for himself or hold down work."
- The appellant has significant deficits with cognitive and emotional function in the areas of memory, emotional disturbance, motivation and attention or sustained concentration and the physician wrote "chronic pain causes attention lack and memory loss. Depression and anxiety have prevented him from settling into any one place."

In the AR, the general practitioner reported that:

- The appellant takes significantly longer than typical with walking indoors and walking outdoors and uses an assistive device for walking outdoors as he "occasionally uses stick." The appellant uses an assistive device for climbing stairs and takes significantly longer than typical with lifting and carrying and holding, and the physician noted that the appellant avoids lifting and carrying and holding as much as he can.
- The appellant is assessed as independent in 4 of 8 tasks of the personal care DLA, including grooming, toileting and feeding self and regulating diet, while taking significantly longer than typical with dressing (note: "difficult to bend to get dressed"), bathing (note: "difficult to transfer-uses grab bars"), transfers in/out of bed (note: "uses stick"), and transfers on/off of chair.
- For basic housekeeping, the appellant is independent while taking significantly longer than typical with doing laundry (note: "bending for dryer takes a long time").
- The appellant is assessed as independent with 4 of 5 tasks of the shopping DLA and as taking significantly longer with carrying purchases home (note: "Has to keep loads light").
- The appellant is assessed as independent with all tasks of the DLA meals, paying rent and bills and medications with no further comments provided by the physician.
- For transportation, the appellant is independent with using transit schedules and arranging transportation and he takes significantly longer than typical with getting in and out of a vehicle (note: "has to rotate slowly being aware of back") and he uses an assistive device for using public transit (note: "Doesn't use bus but would need help").
- For social functioning, the appellant is assessed as independent in 4 of 5 aspects and he requires periodic support/supervision with dealing appropriately with unexpected demands (note: "knows that he gets angry with change and keep himself away"). The appellant has good functioning in both his immediate and extended social networks and the physician wrote that the appellant "gets angry and can walk away."

In his self-report, the appellant wrote that:

- From the moment he wakes up he is in pain and he cannot get a comfortable sleep due to pain. Average sleep time is maybe 2 to 4 hours a night.
- He left his job because he could not properly do his work duties which included lots of lifting, bending, sitting for long periods of time.

- Diabetes has really affected his feet.

In the letter dated February 6, 2014 prepared by an advocate, the appellant's physician agreed to statements that:

- The appellant states that he has only been able to walk up to 2 blocks at a time and that he has to use a handrail at all times when climbing stairs.
- The appellant states that when communicating (speaking) he has difficulty putting thoughts into words or getting thoughts clearly out to others and that he has difficulty concentrating to read.
- The appellant states that several areas of cognitive and emotional functioning have a major impact on his daily functioning, including bodily functions (sleep disturbance), consciousness (confusion), emotion (depression), attention/concentration (distracted, poor short term memory), executive (planning/organizing), lack of motivation, motor activity (agitation, extreme tension), and wrote "a combination of depression and medication."
- The appellant states that he requires continuous assistance or he is unable to go to and from stores (he takes someone with him due to dizzy spells), to carry his purchases home, and with social functioning (isolates self, feels others don't understand him in social settings, doesn't [do] well with things out of routine and gets agitated easily).
- The physician wrote that the appellant "struggles with ADL's."

In the letter dated February 6, 2014, the physician disagreed with the statement that:

- The appellant states that he uses his walking stick to mobilize at least 50% of the time and wrote that the appellant "...self mobilizes in the clinic but does have a stick- maybe uses 25-30% time."
- The appellant states that he requires continuous assistance with dressing, basic housekeeping, making appropriate choices, budgeting and paying rent and bills.
- The physician added a note that the appellant "finds dressing difficult due to pain."

Need for Help

In the AR, in terms of the help required for DLA, the physician marked "nil." In the section of the report indicating assistance provided through the use of assistive devices, both a cane and a scooter are identified and the physician wrote that the appellant "has his own cane" and "when in shopping malls will use available scooter."

In his Notice of Appeal dated March 10, 2014, the appellant expressed his disagreement with the ministry's reconsideration decision and wrote to refer to the X-Rays and MRI's.

At the hearing, the appellant provided the following additional documents:

- 1) X-Ray Report dated May 3, 2006 indicating that:
 - There is soft tissue calcifications and minor degenerative arthritis present in the appellant's shoulders.
 - There is loss of normal lordotic curve and evidence of degenerative disc disease at the C2-3, C5-6 and C6-7 levels of the appellant's cervical spine. The neural foramina are of normal caliber;
- 2) Tomography Report dated November 5, 2008 for the appellant's L-Spine indicating that:
 - L2/3 and L3/4 are normal. At L4/5 there is a diffuse disc bulge without significant mass effect.
 - At L5/S1, a small broad-based right posterolateral disc protrusion is present, slightly

displacing the right S1 nerve root sleeve posteriorly.

- Mild bilateral facet OA [osteoarthritis] is present.

3) Tomography Report dated March 18, 2013 for the appellant's L-Spine indicating that:

- The lumbar spine demonstrates normal alignment and the vertebral body heights are well maintained.
- The L2/3 disc demonstrates a right lateral protrusion which contacts the exiting right L2 nerve root; however, there is no evidence of a herniation or central/foraminal stenosis.
- The L3/4 disc demonstrates no evidence of a bulge/herniation or central/foraminal stenosis.
- The L4/5 disc demonstrates no significant bulge and no evidence of a herniation or central/foraminal stenosis.
- The L5/S1 disc demonstrates a mild right posterolateral bulge that contacts but does not displace the traversing right S1 nerve root. There is no evidence of a herniation or central/foraminal stenosis.
- There is no evidence of spondylolysis. There is mild facet osteoarthritis. No other abnormality is seen.

At the hearing, the appellant stated that:

- Every morning, before he gets up, he has to take medication just to be able to get up.
- If he had to, he could not go to work. He wishes he could work but it takes him about 2 hours just to get moving in the morning. It takes him a lot longer than normal to get out of bed. Sometimes he just gives up and stays in bed.
- He used to be an excellent swimmer but when he tried to go swimming for exercise, it hurt the small of his back and he was unable to continue.
- He is currently in a lot of pain just sitting in the hearing. The pain is also starting to affect his arms, which worries him.
- He cannot sit or stand for very long. He hurts everywhere.
- When he drives, it hurts sometimes to hold his arms up on the steering wheel.
- He would like to have a personal trainer to assist with physiotherapy to help his condition, but he cannot afford this.
- He has difficulty bending so he uses slip-on shoes. Due to back pain, it takes him much longer to get out of bed or out of a chair.
- The medications he takes for the pain make him drowsy. He had been prescribed some "heavy duty" medications but he found they made him "loopy" and more depressed and he stopped taking them. He is still taking some pain medications, but they do not make him feel as drained.
- His emotions are affected and, when his back pain is especially bad, his impulse control is also impacted.
- Being by himself has also caused him to go "downhill." He does not know what happened in his relationship with his children as he feels distanced from them after raising them from a young age.
- He has not been motivated at all and he feels that he has been "kicked to the curb."
- He used to be a good speaker but now he just freezes when he tries to speak in public.
- He manages to do his own housework and laundry, although it takes him longer and sometimes he has to kick the laundry basket down the hall.
- It would be nice to have some help preparing meals and doing housework, but he cannot afford this service.

- He met with an advocate who prepared the letter dated February 6, 2014 while they discussed his situation. The advocate gave him a copy of the prepared letter and he met with his doctor to have it filled out and signed. His doctor did not want to spend much time, about 10 to 15 minutes, and simply asked a few questions, looked at his file, and handed him the completed letter.
- Since September 2013 when the reports were completed, his condition has gotten worse. About a year ago, he started getting spasms in his back, for which he was given the heavy pain medication, and they started again about 3 months ago.
- Both his physical and mental impairment impact his daily activities, but his physical condition is about 70% of the problem and the mental impairment is about 30%.
- The pain affects his thinking and he cannot function properly.
- The appellant confirmed that the X-Rays and MRI's referred to in his Notice of Appeal are the additional documents he provided at the hearing.

The ministry did not object to the admissibility of the additional documents. The panel admitted the Reports as further descriptions of the extent of his previously diagnosed medical conditions and, therefore, being in support of the information and records before the ministry on reconsideration, pursuant to section 22(4)(b) 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 decision, which found that the appellant is not eligible for designation as a person with disabilities (PWD) as he does not meet all the criteria in Section 2 of the EAPWDA, 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 has a severe mental impairment but not a severe 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.
- (2) For the purposes of the Act, "prescribed professional" means a person who is authorized under an enactment to practice the profession of
- (a) medical practitioner,
 - (b) registered psychologist,
 - (c) registered nurse or registered psychiatric nurse,
 - (d) occupational therapist,
 - (e) physical therapist,
 - (f) social worker,
 - (g) chiropractor, or
 - (h) nurse practitioner.

At reconsideration, the ministry was satisfied that the information provided is evidence of a severe mental impairment, but was not satisfied that the information provided is evidence of a severe physical impairment.

Severe Physical Impairment

The appellant's position is that a severe physical impairment is established by the evidence of his back pain due to degenerative disc disease. The appellant argued that both his physical and mental impairment impact his daily activities, but his physical condition is about 70% of the problem.

The ministry's position is that the impacts described by the general practitioner are more in keeping with a moderate degree of impairment and there is not sufficient information to confirm that the appellant has a severe physical impairment. The ministry argued that, in assessing the appellant's physical ability, the general practitioner indicated that the appellant is able to walk 2 to 4 blocks and climb 2 to 5 stairs unaided, lift under 5 lbs. and remain seated less than 1 hour. The ministry argued that the general practitioner indicated that the appellant takes significantly longer with walking indoors and outdoors, standing, lifting and carrying and holding, but provided no information on how much longer it takes the appellant. The ministry argued that the general practitioner wrote in the letter dated February 6, 2014 that she disagrees that the appellant needs his walking stick at least 50% of the time and wrote that he might need it 25 to 30% of the time. In the reconsideration decision, the ministry argued that although the general practitioner reported that the appellant's back pain has severely impacted his ability to keep a job, the PWD application is not intended to assess

employability since employability is not an eligible criterion for designation as a PWD.

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, a physician who has known the appellant for a period of 5 years, diagnosed the appellant with degenerative disc disease and diabetes. The physician noted in the health history that the appellant's diabetes is well-managed. With respect to the degenerative disc disease, the physician wrote, in the additional comments to the PR, that the appellant: "...has resisted going to hospital but he takes regular and high doses of opiates" and "...is often in tears and very frustrated by his pain." The most recent Tomography Report dated March 18, 2013 for the appellant's L-Spine indicated that there are disc protrusions or bulges but no evidence of a herniation or central/foraminal stenosis, no evidence of spondylolysis, and that there is evidence of mild facet osteoarthritis. The appellant stated at the hearing that since September 2013 when the PWD application was completed, his condition has gotten worse. At the hearing, the appellant stated that the pain is also starting to affect his arms, which worries him; however, there was no further medical information provided to indicate the cause or the seriousness of this symptom. The appellant also stated that about a year ago, he started getting spasms in his back, for which he was prescribed heavy pain medication and he quit taking these medications because they made him feel "loopy." The appellant stated that the spasms started again about 3 months ago, and he did not indicate the frequency of the spasms or how long they last. The appellant indicated that he is continuing with only the less potent pain medication at this time, which the panel considered as an assessment by him that the detrimental side effects of the medication currently outweigh the impact from the muscle spasms.

In terms of functional skills, the physician assessed the appellant as able to walk 2 to 4 blocks unaided on a flat surface, climb 2 to 5 steps unaided, lift under 5 lbs., and remain seated less than 1 hour. In the letter dated February 6, 2014, the appellant's physician agreed to the statement that the appellant states that he has only been able to walk up to 2 blocks at a time and that he has to use a handrail at all times when climbing stairs. In the AR, the appellant is assessed by the physician as taking significantly longer than typical with walking indoors and outdoors and using a stick as an assistive device for walking outdoors and an assistive device for climbing stairs that has not been identified by the physician. In the PR, the physician indicated that the appellant requires a "walking stick" as an aid for his impairment, which he "occasionally" uses. In the letter dated February 6, 2014, the physician disagreed with the statement that the appellant states that he uses his walking stick to mobilize at least 50% of the time and wrote that the appellant "...self mobilizes in the clinic but

does have a stick- maybe uses 25-30% time.” The appellant is assessed as taking significantly longer than typical with standing, lifting, and carrying and holding and the physician wrote that “...he has poor muscle tone and so any lifting aggravates back pain and causes sciatica.”

The physician also noted in the health history in the PR that, with respect to the appellant’s degenerative disc disease, “...despite steroid injections, manual therapies and altering work, back pain has severely impacted his ability to keep a job as he can’t drive or sit for long. Chronic sciatica prevents him from sitting comfortably at a desk.” In his self-report included with the PWD application, the appellant wrote that he left his job because he could not properly do his work duties which included lots of lifting, bending, and sitting for long periods of time. The appellant stated at the hearing that even if he had to, he could not go to work, that he wishes he could work but it takes him about 2 hours just to get moving in the morning. 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 the ministry reasonably concluded that there is not sufficient information to confirm that the appellant has more than a moderate degree of physical impairment. The panel finds that the ministry acknowledged that the appellant has a physical impairment and reasonably determined that, while the appellant takes significantly longer, he is largely independent with his mobility and physical abilities, only occasionally requiring the use of a walking stick as an assistive device. The panel finds that the ministry reasonably determined that there is not sufficient evidence to establish that the appellant has a severe physical impairment under section 2(2) of the EAPWDA.

Restrictions in the ability to perform DLA

The appellant’s position is that his severe mental and physical impairment directly and significantly restricts his ability to perform DLA and he requires the significant assistance of another person or the use of a cane as an assistive device to perform many DLA.

The ministry’s position is that the evidence of the prescribed professionals does not establish that the appellant’s impairment significantly restricts DLA either continuously or periodically for extended periods of time. The ministry argued that while the physician indicated in the AR that the appellant takes significantly longer with dressing, bathing, transferring in/out of bed and on/off chairs, laundry, carrying purchases home and getting in/out of a vehicle, there is no information provided on how much longer it takes the appellant. The ministry argued that while the physician wrote in the letter of February 6, 2014 that the appellant struggles with ADL’s, she disagrees that the appellant requires continuous assistance with various tasks. The ministry argued that although the physician agrees that the appellant requires continuous assistance with social functioning, going to/from stores and carrying purchases home, the majority of the appellant’s DLA are considered independent.

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 any of these forms has the opportunity to directly indicate which, if any, DLA are significantly restricted by the appellant's impairments, continuously or periodically for extended periods.

The evidence of the appellant's physician is set out in the PR and AR as well as the additional letter dated February 6, 2014, at which time the physician either agreed or disagreed with statements prepared by an advocate on behalf of the appellant and also provided handwritten comments. In the PR, the physician reported that the appellant has not been prescribed medication and/or treatment that interfere with his DLA. In the AR, the physician reported that the appellant takes significantly longer than typical with walking indoors and walking outdoors and "occasionally uses stick" as an assistive device for walking outdoors. The appellant is assessed as independent in 4 of 8 tasks of the personal care DLA, including grooming, toileting and feeding self and regulating diet, while taking significantly longer than typical with dressing, bathing, transfers in/out of bed, and transfers on/off of chair due to his back pain and resulting difficulty bending. At the hearing, the appellant stated that he uses slip-on shoes to minimize the amount of bending required and that it takes him much longer to get out of bed or a chair. For basic housekeeping, the appellant is independent while taking significantly longer than typical with doing laundry as a result of his difficulties bending, and the appellant stated that he can get his laundry done but it takes him longer since he sometimes has to "kick the laundry basket down the hall."

In the AR, the physician assessed the appellant as independent with 4 of 5 tasks of the shopping DLA and as taking significantly longer with carrying purchases home. In the letter dated February 6, 2014, the physician agreed to the statement that the appellant states that he requires continuous assistance or he is unable to go to and from stores (he takes someone with him due to dizzy spells) and to carry his purchases home. For transportation, the appellant is independent with using transit schedules and arranging transportation and he takes significantly longer than typical with getting in and out of a vehicle (note: "has to rotate slowly being aware of back") and he uses an assistive device for using public transit (note: "doesn't use bus but would need help"). In the AR, the physician assessed the appellant as independent with all tasks of the DLA meals, paying rent and bills and medications with no further comments provided. In the letter dated February 6, 2014, the physician disagreed with the statement that the appellant states that he requires continuous assistance with dressing, basic housekeeping, making appropriate choices, budgeting and paying rent and bills, and added a note that the appellant "finds dressing difficult due to pain."

For the DLA which relates to a severe mental impairment being found by the ministry, the appellant is assessed in the AR as independent with making appropriate social decisions. The evidence of the physician demonstrates that the appellant is independent with the "mental" tasks of managing his finances (banking, budgeting and paying rent and bills), filling/refilling prescriptions, taking medications as directed, with safe handling and storage of medications as well as with reading prices and labels and making appropriate choices when shopping and with safe storage of food and meal planning. In the letter dated February 6, 2014, the physician agreed to statements that the appellant states that several areas of cognitive and emotional functioning have a major impact on his daily functioning, including consciousness (confusion), attention/concentration (distracted, poor short term

memory), and executive (planning/organizing); however, the panel finds that the ministry reasonably concluded that these impacts are not exhibited in the appellant's ability to make decisions about his personal activities, care or finances.

For the other DLA which relates to a severe mental impairment being found by the ministry, the appellant is assessed in the AR as independent with his ability to relate to, communicate or interact with others effectively. In the AR, the appellant is assessed for social functioning as independent in 4 of 5 aspects and he requires periodic support/supervision with dealing appropriately with unexpected demands (note: "knows that he gets angry with change and keep himself away"). The physician also reported that the appellant has no difficulties with communication, and that his ability to communicate is good in all areas, including speaking, reading, writing and hearing. In the letter dated February 6, 2014, however, the physician agreed to statements that the appellant states that when communicating (speaking) he has difficulty putting thoughts into words or getting thoughts clearly out to others and that he has difficulty concentrating to read. The physician agreed that the appellant states that he requires continuous assistance with social functioning (isolates self, feels others don't understand him in social settings, doesn't [do] well with things out of routine and gets agitated easily). In the AR, the physician assessed the appellant as having good functioning in both his immediate and extended social networks and the physician wrote that the appellant "gets angry and can walk away."

The physician wrote in the letter dated February 6, 2014 that the appellant "struggles with ADL's" and the evidence demonstrates that the appellant takes significantly longer than typical with several tasks of DLA and requires continuous assistance with 2 of 5 tasks of the shopping DLA due to his physical impairment. In the absence of further detail or narrative from the physician to describe how much longer it takes the appellant with the tasks of DLA that take him longer due to his physical impairment or evidence of restrictions to the appellant's DLA from his severe mental impairment, 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 the use of a walking stick or grab bars as assistive devices, 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 from other persons.

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 or the significant help or supervision of another person or the services of an assistance animal in order to perform a DLA.

The physician indicated in the AR that help required for DLA is provided by "nil" and the appellant uses grab bars when bathing and his own cane and a scooter, when available, at shopping malls. In the letter dated February 6, 2014, the physician confirmed that the appellant uses a stick to help with walking approximately 25-30% time. While the panel finds that the evidence of the prescribed

professional establishes that the appellant requires some assistance with use of grab bars when bathing and a cane for moving about outdoors, the panel also 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.

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.