

## PART C – Decision under Appeal

The decision under appeal is the Ministry of Social Development and Social Innovation (the ministry) reconsideration decision dated January 29, 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 dated August 19, 2013, a physician report (PR) and an assessor report (AR) both dated August 25, 2013 and completed by a physician who has known the appellant for 2 years. In describing the approach and information sources used to complete the AR, the physician indicated only an office interview with the appellant and no review of his file or chart information or any other secondary source. The evidence also included the following:

- 1) Print out of visit records from the appellant's physician for the period April 16, 2013 through August 7, 2013;
- 2) Consultation Report dated September 15, 2013 for MRI of the appellant's lumbar spine;
- 3) Medical Certificate dated January 15, 2014; and,
- 4) Request for Reconsideration- Reasons dated January 15, 2014.

### **Diagnoses**

In the PR, the appellant was diagnosed by the medical practitioner with hydronephrosis with nephrolithiasis and date of onset of August 2012, chronic back pain and depression with onset in July 2011.

### **Physical Impairment**

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

- In terms of health history, the appellant's hydronephrosis "has resolved, stone has been taken care of but still persistent back pain. His back pain may or may not have been due to the long-standing kidney stone. He says he is unable to work as ... prolonged standing more than 1 hour causes him pain."
- The appellant requires a shower chair as an aid for his impairment "...as he has pain on bending."
- With respect to degree and course of impairment, the physician wrote that he "...expected his back pain to improve after several of the surgeries for his kidney stone but he has not improved...his back pain may not have been due to the kidney stone."
- 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 2 to 7 kg. (5 to 15 lbs.), and remain seated 1 to 2 hours.
- In the additional comments, the physician wrote: "Initially had back pain; investigation revealed severe hydronephrosis from kidney stone; thought initially pain was due to this; subsequent urologic surgeries failed to resolve pain. Still being worked up."

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

- The appellant is assessed as taking significantly longer than typical with walking indoors and outdoors (note: "needs to rest 10 minutes after 2 blocks") and climbing stairs, with the note: "needs to rest after 10 steps." The appellant is independent with standing (note: "cannot stand more than ½ hour"), lifting, and carrying and holding, with the note: "maximum 10 lbs. of lifting and carrying."

In the appellant's self-report which was prepared with the assistance of an advocate, as part of the PWD application, he wrote:

- With hydronephrosis he experiences back pain, blood in stools, weakness, fatigue, nausea, muscle spasms, restricted mobility, restricted range of motion, unable to stand still longer than ½ hour, unable to sustain lifting more than 10 lbs. for longer than 10 min., unable to sit longer than 1 hour.
- Regarding osteoarthritis of his back and hip, he experiences pain with usage, restricted mobility, restricted range of motion.
- Every day is a bad day.

In the print out of visit records from the appellant's physician for the period April 16, 2013 through August 7, 2013, the physician noted:

- The left hip CT showed mild OA [osteoarthritis], with an assessment of hip osteoarthritis on April 16, 2013.
- The medications help, but the appellant says he cannot stand for more than an hour without pain. "Says he is getting 10/10 pain. Chiro helped a bit." The assessment on August 7, 2013 is chronic back pain.

In the Consultation Report dated September 15, 2013, the MRI of the appellant's lumbar spine showed findings of mild lumbar spondylosis.

In the Medical Certificate dated January 15, 2014, the physician wrote:

- The appellant continues to report being disabled by his low back pain. Surgery for his kidney swelling and stones has not relieved his pain.
- He continues to have pain on standing and doing heavy lifting.

In his Request for Reconsideration, the appellant wrote:

- He is completely unable to work. He has serious back pain, blood in stool, weakness and muscle spasms. He is unable to stand longer than half an hour because it puts a lot of pressure on his back and it gives him a very serious back pain.
- He is unable to sustain lifting more than 10 lbs. for longer than 10 minutes.
- He had an ultra sound and it showed that his spine bone is dislocated.
- He did three surgeries but it did not help at all. His pain is still the same.

### ***Mental Impairment***

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

- The appellant has a score of 16 on a PHQ-9 [Patient Health Questionnaire].
- There are no difficulties with communication other than a lack of fluency in English.
- The appellant has significant deficits in cognitive and emotional functioning in the areas of executive, memory, emotional disturbance, motivation, and attention or sustained concentration, with a note: "depression due to pain."

In the AR, the physician indicated that:

- The appellant has a satisfactory ability to communicate in all areas, including speaking, reading, writing and hearing, with a note: "English is a second language."
- There are moderate impacts to the appellant's cognitive and emotional functioning in the areas

of emotion and memory, as well as minimal impacts to consciousness, attention/concentration and motivation. There are no impacts in the remaining 9 areas of functioning.

- The appellant is independent in making appropriate social decisions and requires periodic support/ supervision in 4 of 5 aspects of social functioning, including developing and maintaining relationships (note: "states socially withdrawn, has only one friend"), interacting appropriately with others (note: "easily frustrated"), dealing appropriately with unexpected demands (note: "poor concentration") and securing assistance from others (note: "socially withdrawn").
- The appellant has marginal functioning in both his immediate and extended social networks.
- Asked to describe the support/supervision required by the appellant, which would help to maintain him in the community, the physician wrote: "none." Additional comments, including identification of any safety issues, were also "none."
- In the additional information, the physician wrote that the appellant scored 16 on a PHQ-9, "although score possibly higher as his English is poor and son may have mistranslated. Depression leads to poorer social interaction."

In the appellant's self-report as part of the PWD application, he wrote:

- As a result of depression, he experiences feelings of helplessness/ hopelessness/ worthlessness, lack of motivation, sleep disturbances, poor concentration, poor memory, and low stress tolerance.
- For social/emotional functioning, he feels upset by his declining health. He is easily frustrated now. He just wants to sit alone and not talk to anyone. He no longer enjoys watching TV and has no concentration to read anything. He only has one friend who he may call every 1 to 2 months.
- He depends on his family to remind him to do tasks or he will forget.

In his Request for Reconsideration, the appellant did not refer to 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.
- The appellant's wife helps him with housework.

In the AR, the physician reported that:

- The appellant takes significantly longer than typical with moving about indoors and outdoors.
- The appellant takes significantly longer than typical with 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, with a note: "takes longer than usual."
- The appellant requires continuous assistance from another person with laundry (note: "too heavy; needs daughter to do laundry") and with basic housekeeping (note: "daughter cleans house").
- The appellant is independent in performing 3 of 5 tasks of the DLA shopping, while requiring continuous assistance with going to and from stores (note: "son or daughter shops") and carrying purchases home (note: "son or daughter shops").
- The appellant is independent with 1 of 4 tasks of the DLA meals and requires periodic

assistance from another person with meal planning, food preparation, and cooking. The physician noted: "wife helps with cooking; poor memory- states forgot to turn off burner 1 to 2 times per week."

- The appellant is independent with 2 of 3 tasks of the DLA paying rent and bills, including banking and budgeting, and requires continuous assistance from another person with paying rent and bills (note: "needs reminder from family").
- 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 1 of 3 tasks of managing transportation, namely using transit schedules and arranging transportation, and takes significantly longer than typical with using public transit (note: "needs to sit due to increased pain and increased fatigue"). The physician indicated that the task of getting in and out of a vehicle is not applicable and noted that the appellant does not have a license.
- In the additional information, the physician wrote that "none of the ADL's listed are medically contraindicated but he may have pain doing them and may take an inordinate amount of time to do them."

In the appellant's self-report as part of the PWD application, he wrote:

- Every day is a bad day for him. Because of his medical conditions (hydronephrosis, osteoarthritis, and depression), he has ongoing, marked restrictions with a number of DLA.
- For personal self care, he is unable to take baths due to increased pain when getting up/down and he prefers to take showers. He has fallen in the shower so he needs to be very slow and careful. He needs a shower chair, bathtub safety bar and grab bar. Due to fatigue, he needs to rest before and after dressing and needs to sit down to put on pants, socks, shoes.
- For meal preparation/cooking, he depends on his wife due to his inability to stand up longer than a half hour. He forgets to turn the burner/oven [off] 1 to 2 times per week and will burn the food.
- Due to painful bending, he depends on his wife and daughter to assist with vacuuming and cleaning toilets.
- Due to his inability to carry more than 10 lbs., he depends on his family to assist with carrying groceries.
- For mobility inside and outside and use of transportation, he is 2 times slower than a healthy peer, and it will take him up to 15 minutes to painfully walk 2 blocks and he will need to rest for 10 minutes afterwards.
- He depends on his family and landlord to remind him to pay the bills/rent as he will forget.

In his Request for Reconsideration, the appellant wrote:

- He is unable to take a bath due to increased pain when getting up/down from the bathtub. He depends on his family to help him get up or help him to have a shower.
- Since he is unable to work anymore, it is very difficult for him to pay bills and pay the rent.

### ***Need for Help***

The physician reported in the AR that the help required for DLA is provided by the appellant's family. In the section of the AR relating to assistance provided through the use of assistive devices, the physician has added a note: "does not use any equipment" and "may benefit from shower chair or grab bars due to painful bending."

[REDACTED]

In his Notice of Appeal dated February 4, 2014, the appellant wrote that he disagrees with the ministry reconsideration decision because he is completely unable to work. He can barely stand for more than 20 minutes because it puts a lot of pressure on his back. He did 3 surgeries and instead of making him feel better, it made him feel worse. He needs his wife to help him get up, to help him in the shower, and this is not easy for him.

The appellant provided a written submission dated February 17, 2014 in which he wrote that:

- He is completely unable to work or even take care of himself.
- He has serious back pain for more than one year. He also has blood in stool, weakness and muscle spasms.
- He can barely stand for more than 20 minutes because it puts a lot of pressure on his back and it gives him serious pain on his lower back.
- He is unable to sustain lifting more than 10 lbs. for longer than 10 minutes.
- He did an ultrasound and it showed that his spine bone is dislocated. Therefore, he is unable to take a bath due to increased pain when getting up/down from the bath tub. He fell in the shower a couple of times because it is hard for him to stand for more than 10 minutes.
- His wife always has to be there for him to help him shower, make his bed, help him get out of bed and to hold his hand when he walks.
- He cannot cook for himself because it is hard for him to stand and he always has to lie down.
- He feels depressed, helpless, and hopeless because he cannot do anything on his own.

The ministry relied on its reconsideration decision.

The ministry did not raise an objection to the admissibility of the information in the appellant's Notice of Appeal and written submission. The panel reviewed the documents and admitted the information regarding his back pain and depression, as relating to the appellant's previously diagnosed medical conditions and being in support of information before the ministry on reconsideration, pursuant to Section 22(4) of the *Employment and Assistance Act*.

## PART F – Reasons for Panel Decision

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

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

### Persons with disabilities

2 (1) In this section:

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

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

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

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

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

(b) in the opinion of a prescribed professional

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

(A) continuously, or

(B) periodically for extended periods, and

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

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

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

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

(i) an assistive device,

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

(iii) the services of an assistance animal.

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

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

### Definitions for Act

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

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

(i) prepare own meals;

(ii) manage personal finances;

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

### **Severe Physical Impairment**

The appellant's position is that a severe physical impairment is established by the evidence of his serious back pain, weakness, fatigue, nausea and muscle spasms due to hydronephrosis with nephrolithiasis and chronic back pain. The appellant wrote that he has undergone three surgeries but it did not help at all, that his pain is still the same and he is completely unable to work.

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 stated that the general practitioner indicated that the appellant's hydronephrosis and kidney stones have been resolved by surgeries but the appellant has persistent back pain which may or may not have been due to long-standing kidney stones. The ministry stated 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 5 to 15 lbs. and remain seated 1 to 2 hours. The ministry stated that the general practitioner indicated that the appellant takes significantly longer with walking indoors and outdoors and climbing stairs but no information is provided on how much longer it takes the appellant. The ministry stated that the general practitioner wrote that the appellant states he is unable to work and pointed out that the PWD application is not intended to assess employability as it 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 2 years, diagnosed the appellant with hydronephrosis with nephrolithiasis and chronic back pain. The physician also noted in the health history that the appellant's hydronephrosis has resolved but he still has persistent back pain, which may or may not have been due to the long-standing kidney stone. In the additional comments to the PR, the physician wrote that he initially thought the appellant's back pain was due to his kidney stones but subsequent urologic surgeries failed to resolve pain and it is "still being worked up." In the print out of visit records, the appellant's physician noted that the left hip CT showed mild OA [osteoarthritis], with an assessment of hip osteoarthritis on April 16, 2013. In the Consultation Report dated September 15, 2013, the MRI of the appellant's lumbar spine showed findings of mild lumbar spondylosis. In the Medical Certificate dated January 15, 2014, the appellant's physician wrote that the appellant continues to report being disabled by his low back pain, that he continues to have pain on standing and doing heavy lifting.

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 5 to 15 lbs., and remain seated 1 to 2 hours. In the AR, the appellant is assessed by the physician as taking significantly longer than typical with walking indoors and outdoors (note: "needs to rest 10 minutes after 2 blocks") and with climbing stairs. The physician added a note that the appellant "needs to rest after 10 steps", which indicates that the appellant is able to climb more than 5 steps unaided, and the panel finds that this is not consistent with the functional skill limitation of climbing 2 to 5 steps. The physician reported that the appellant "...may benefit from shower chair or grab bars due to painful bending," but no assistive device is identified to aid with the appellant's mobility. In the AR, the appellant is assessed as independent with lifting, and carrying and holding, with the note: "maximum 10 lbs. of lifting and carrying." The appellant is also assessed as independent with standing with a note added that he "...cannot stand more than 1/2 hour"; however, there is a discrepancy in the PR as the physician wrote that the appellant "...says he is unable to work as ... prolonged standing more than 1 hour causes him pain." In his written submission dated February 17, 2014, the appellant wrote that he can barely stand for more than 20 minutes because it puts a lot of pressure on his back and it gives him serious pain on his lower back. In his Request for Reconsideration, his Notice of Appeal, and his written submission, the appellant wrote that he is completely unable to work.

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 impairment. The panel finds that it is difficult to obtain an accurate picture of the appellant's present physical limitations due to the indeterminate cause of the appellant's back pain as well as the inconsistencies and lack of detail in the evidence. In the absence of further detail, 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.

### **Severe Mental Impairment**

The appellant's position is that a severe mental impairment is established by the evidence of his feelings of helplessness/ hopelessness/ worthlessness, lack of motivation, sleep disturbances, poor concentration, poor memory, and low stress tolerance due to depression. In his written submission dated February 17, 2014, the appellant wrote that he feels depressed, helpless, and hopeless because he cannot do anything on his own.

The ministry's position is that there is insufficient evidence to establish that the appellant has a severe mental impairment. The ministry stated that the physician indicated that the appellant has deficits with cognitive and emotional functioning in the areas of executive, memory, emotional disturbance, motivation, and attention or sustained concentration with the explanation "depression due to pain." The ministry stated that when assessing the impacts on daily functioning, the physician indicated that the appellant has moderate impacts to emotion and memory, minimal impacts to consciousness, attention/concentration and motivation, and no impacts to the remainder of his cognitive and emotional functioning. The ministry stated that the physician also indicated that the appellant has no difficulties with communication and that he is satisfactory with speaking, reading, writing and hearing.

### ***Panel Decision***

The physician diagnosed depression with onset in July 2011 and reported in the PR that the appellant has a score of 16 on a PHQ-9 [Patient Health Questionnaire]. In the additional information to the AR, the physician wrote that the appellant scored 16 on a PHQ-9, "although score possibly higher as his English is poor and son may have mistranslated. Depression leads to poorer social interaction;" however, there are no other details provided to explain the significance of the appellant's score. The appellant is assessed by his physician as having significant deficits in cognitive and emotional functioning in the areas of executive, memory, emotional disturbance, motivation, and attention or sustained concentration, with a note: "depression due to pain." The impacts to the appellant's daily functioning, however, are assessed as moderate in the areas of emotion and memory, and minimal or no impacts in the remaining 12 areas of functioning. The appellant has no difficulties with communication other than a lack of fluency in English.

In terms of social functioning, the appellant is assessed by the physician as independent in making appropriate social decisions and requiring periodic support/ supervision in 4 of 5 aspects of social functioning, including developing and maintaining relationships (note: "states socially withdrawn, has only one friend"), interacting appropriately with others (note: "easily frustrated"), dealing appropriately with unexpected demands (note: "poor concentration") and securing assistance from others (note: "socially withdrawn"). The physician assessed the appellant with marginal functioning in both his immediate and extended social networks, but when asked to describe the support/supervision required by the appellant, which would help to maintain him in the community, the physician wrote: "none." Additional comments, including identification of any safety issues, were also described by the physician as "none."

In his self report, the appellant wrote that with respect to social/emotional functioning, he feels upset by his declining health, that he is easily frustrated and he just wants to sit alone and not talk to

anyone. In his written statement dated February 17, 2014, the appellant wrote that he feels depressed, helpless, and hopeless because he cannot do anything on his own, which is consistent with the physician's note that the appellant's depression is a reaction to his situational experience of pain. The panel finds that the ministry reasonably concluded that, overall, the impacts assessed to social and cognitive/emotional functioning remain in a moderate range and there is not sufficient evidence to establish a severe mental impairment, pursuant to section 2(2) of the EAPWDA.

### **Restrictions in the ability to perform DLA**

The appellant's position is that his physical and mental impairments directly and significantly restrict his ability to perform DLA on an ongoing basis to the point that he requires the significant assistance of another person, as well as assistive devices such as a shower chair or grab bars.

The ministry's position is that the appellant can independently manage the majority of his DLA independently and, for those tasks that take him longer or where periodic assistance is required, the physician has not explained how much longer it takes the appellant or the extent of the periodic assistance required to indicate restrictions for extended periods of time.

### ***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 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 either continuously or periodically for extended periods.

In the appellant's circumstances, his physician reported in the AR, that the appellant is independent with the DLA of managing his medications and with 3 of 5 tasks of shopping, 1 of 4 tasks of the DLA of managing meals, 2 of 3 tasks of the DLA paying rent and bills and 1 of 2 assessed tasks of the transportation DLA. The appellant is assessed as taking significantly longer than typical with moving about indoors and outdoors with the comment added by the physician that the appellant needs to rest for 10 minutes after 2 blocks. While all tasks of the DLA personal care were initially assessed as being independent, the physician changed his response to taking significantly longer than typical with all 8 tasks, described as "takes longer than usual." For using public transit, the appellant is assessed as taking significantly longer than typical, which is described by the physician as "needs to sit due to increased pain and increased fatigue."

The physician also assessed the appellant as requiring periodic assistance from another person with 3 of 4 tasks of the meals DLA with the comment "wife helps with cooking, poor memory, states forgot to turn off burner 1 to 2 times per week." The panel finds that the ministry reasonably determined that the comments provided by the physician for those tasks that take the appellant longer or where periodic assistance is required, do not define how much longer it takes him or the extent of the periodic assistance required to indicate restrictions for extended periods of time. In the AR, the physician also assessed the appellant as requiring continuous assistance from another person with the DLA basic housekeeping, 2 of 5 tasks of shopping (the physical tasks of going to and from stores and carrying purchases home) and with the task of paying rent and bills since he needs reminders from his family.

For those DLA which relate to a mental impairment, the appellant is assessed as independent with making decision about personal activities, care or finances, and requiring periodic support or supervision with interacting with others effectively, described by the physician as "easily frustrated." The appellant has no difficulties with communication other than a lack of fluency in English. The evidence of the physician demonstrates that the appellant is independent with the "mental" tasks of managing his banking and budgeting, 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. The appellant requires continuous assistance from his family with reminders to pay his rent and bills.

In the appellant's self-report as part of the PWD application, he wrote that every day for him is a "bad day" and because of his medical conditions of hydronephrosis, osteoarthritis, and depression, he has ongoing, marked restrictions with a number of DLA. However, the physician reported in the PR that the appellant's hydronephrosis has resolved and the kidney stone has been taken care of, and there is limited information provided regarding osteoarthritis other than the physician's visit record noting that the left hip CT showed mild osteoarthritis. The appellant described the impacts to DLA from his depression as forgetting to turn the burner/oven [off] 1 to 2 times per week and depending on his family and landlord to remind him to pay the bills/rent. In his Request for Reconsideration, the appellant wrote that since he is unable to work anymore, it is very difficult for him to pay bills and pay the rent, which suggests a restriction related to finances rather than to a mental impairment. In the additional information provided in the AR, the physician wrote that "...none of the ADL's listed are medically contraindicated but he may have pain doing them and may take an inordinate amount of time to do them."

In the absence of narrative or notes by the physician, as the prescribed professional, to describe how much longer it takes the appellant with the tasks of DLA that take him longer or to resolve the inconsistency between the restrictions identified and the physician's comment that none of the DLA are medically contraindicated, 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 stated that the physician indicated that the appellant does not use any equipment at this time and that he may benefit from a shower chair or grab bars.

### ***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 the appellant's family. The physician reported that the appellant requires no aids for his impairment but that he may benefit from a shower chair or grab bars due to painful bending. 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.