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 January 15, 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 14, 2013;
   - The Physician Report (PR) dated August 8, 2013 completed by the appellant's physician who has known the appellant since March 29 2012 and indicated he had seen him 11 or more times in the previous year; and
   - The Assessor Report (AR) dated August 8, 2013 also completed by the appellant's physician.

2. The appellant's request for reconsideration dated January 9, 2014, attached to which were the following two documents:

- A two-page submission dated January 9, 2014 prepared by an advocate for the appellant; and
- A one-page submission summarizing the decision of *Hudson v. Employment and Assistance Appeal Tribunal*, 2009 BCSC 1461, prepared by the appellant's advocate.

The appellant completed his notice of appeal on January 27, 2014, and on it he wrote that he disagrees with the ministry's reconsideration decision "because my condition has grown [worse] since my original application."

Prior to the hearing, the appellant submitted to the panel a 2-page questionnaire prepared by the appellant's advocate and signed and dated by the appellant's family physician on February 11, 2014 ("Document #1"). Document #1 contains a series of questions with circled answers and some written comments provided by the physician regarding the appellant's impairments and that they affect his ability to perform his DLA (specific answers are addressed in the discussion below).

At the hearing, the appellant submitted to the panel a second 2-page questionnaire prepared by his advocate and signed by a woman identified as a friend and the appellant's former landlord and dated February 17, 2014 ("Document #2"). Document #2 contains a series of questions with comments provided by the appellant's friend regarding the impact of his impairments on his ability to perform his DLA. The friend wrote that the appellant, "needs daily assistance with most everything. He is unable to organize the simplest tasks due to mental health & physical issues." The friend added the comment, "Since quitting drug and alcohol abuse I have seen a steady decline in [the appellant's] health. He is always in pain, he cannot focus or remember what he is doing to the end of a task." The appellant's friend identified her title as

In his submissions at the hearing, the appellant said that he started the application for PWD designation 8-9 months ago and he wanted the panel to consider the additional documents because they support his submissions that his health is deteriorating, his health is worse than when he and his doctor completed the PWD application and he is no longer able to perform his DLA because of his impairments. The appellant stated that in Document #1, his physician has confirmed that his impairments are severe and that they restrict 8 of his DLA and that his physician has confirmed he requires help to perform his DLA. The appellant told the panel that the friend who completed Document #2 used to be his landlord and helped him get into treatment for his drug and alcohol abuse and she continues to offer him support. He told the panel his friend confirms that his health is deteriorating and that he cannot perform DLAs and needs assistance.

The ministry representative had no objection to the admission of the information from the appellant's physician in Document #1, although the ministry said that the physician had not provided any narrative to explain the change from the information in the PWD application showing the appellant could independently perform several of his DLA, to the information in Document #1 that the appellant's performance of 8 of his DLA are continuously restricted. The ministry representative objected to the admission of the information in Document #2 on the basis that the ministry had not had an opportunity to confirm the information provided by the appellant's friend.

The panel finds that the information in both Document #1 and #2 is written testimony in support of information before the ministry at the time the decision under appeal was made and admits the additional information pursuant to section 22(4)(b) of the *Employment and Assistance Act*. The physician who completed the appellant's PWD application (the PR and AR) completed Document #1, adding clarification of information in the PWD application. However, the panel agrees that the appellant's physician did not provide an explanation of the changes in the information set out in the PR and AR to Document #1 and also notes that the information from the appellant's friend in Document #2 cannot be confirmed (she did not attend the hearing as a witness).

At the hearing, the appellant told the panel that his health has deteriorated since he completed the PWD application 8-9 months ago. He says that he lives with chronic pain from an earlier injury in his shoulder and neck. He told the panel that for several years, he self-medicated to deal with his pain by using drugs and alcohol, but that he is now clean and has gone through drug and alcohol treatment. The appellant said that he has mental health issues – that he is very depressed and because of his drug abuse, he can no longer focus, or concentrate, and he suffers from a great deal of anxiety. The appellant told the panel he is on medication to treat his pain and his anxiety, but because he cannot take opiate derivatives for pain medication, he is still in pain.

The following is a summary of the evidence from the PR and the AR, as well as Documents #1 and 2, 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 as having chronic pain syndrome with an onset of 2011, alcoholism and drug addiction, both onset 1995, and major depressive disorder with anxiety onset 2011. The physician wrote that all four of the appellant's conditions are severe, with the comments: "pain → inability to do physical work, due to continuous neck pain → shoulders. Causes insomnia. Substance abuse → inability to seek or maintain employment. Depression/anxiety – multiple symptoms, result in inability to leave home at times. Also – pain – chronic back and knees." The physician indicated that the appellant has been prescribed medication that interferes with his ability to perform DLA, writing that the medications "cause drowsiness."

In the functional skills assessment in the PR, the appellant's physician indicated that the appellant could walk 2-4 blocks unaided on a flat surface, that he could climb 5+ steps unaided, that he could lift 2-7 kg (5-15 pounds), and has no limitations remaining seated. In the AR, the appellant's physician indicated that the appellant was independent in 2 aspects of mobility and physical ability (walking indoors and walking outdoors). The physician indicated that the appellant takes significantly

longer than typical with climbing stairs and standing, writing the comment, "because of neck, back and knee difficulties, due to pains." The physician indicated that the appellant required continuous assistance with the tasks of lifting and carrying and holding, writing the comment, "great difficulty with lifting + carrying of heavy objects."

In the PR, the physician indicated that the appellant had difficulties with communication as a result of sensory causes, writing the comment, "anxiety + stress → difficulty communicating." The physician checked that the appellant has significant deficits with cognitive and emotional function in the areas of consciousness, executive, memory, emotional disturbance, motivation, impulse control, motor activity and attention or sustained concentration. The physician wrote, "poor concentration, easily confused, difficulty planning, poor memory, depressed mood + associated poor motivation, poor impulse control, gets fidgety and "twitchy", poor concentration." In the AR, the physician indicated that the appellant had good ability to speak, but poor ability for reading, writing and hearing, commenting, "impaired due to poor concentration due to noise exposure."

In the AR, in the assessment of the appellant's mental impairment on his cognitive and emotional functioning, the physician indicated that his mental impairment had a major impact in the areas of emotion, memory, motivation and motor activity, that it had a moderate impact in the areas of bodily functions, consciousness, impulse control, attention/concentration and executive, and that it had a minimal impact in the areas of insight and judgment and language. The physician wrote, "significantly impaired, as above, due to depression, chronic pain + substance abuse."

In Document #1 completed by the appellant's physician on February 11, 2014, the physician indicated by circling "yes" that the appellant has a severe mental or physical impairment that directly and significantly restricts his ability to perform DLAs. The physician also wrote, "physical aspects of ADLs are restricted continuously, due to chronic pain. Mental health issues restrict the other ADLs."

The appellant told the panel that he is in constant pain and he takes 3 types of pain medications. The appellant said that his chronic pain is so bad that it is very difficult for him to get up in the morning and it will take him a couple of hours to get up. The appellant said that because of his prior drug use, he cannot take opiate drugs to treat his pain and although he is on medication for his pain, he is still in a great deal of pain on a daily basis. The appellant said that he cannot walk very far, that he cannot lift anything because of the pain in his shoulder and neck, and that although he tries to help with chores (such as sweeping and mopping), it is very difficult for him. The appellant said that he also suffers from anxiety and depression, for which he takes medication, and he takes medication to help him sleep. The appellant said that he can't concentrate for very long, that he has no memory, and that he is very depressed. The appellant is living in transition housing where he has support and the workers there are encouraging him to do 1 or 2 things per day, such as attend his treatment sessions and assist with chores at the transition housing, but he finds this difficult. In Document #2, the appellant's friend said that the appellant is always in pain and he cannot focus or remember what he is doing to the end of a task.

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

In the AR, the physician indicated that the appellant is independent in performing all aspects of the DLAs of meals, paying rent and bills, and medications. The physician indicated that the appellant is independent in performing 4 of the 5 listed tasks of the DLA of shopping, indicating that the appellant

requires periodic assistance carrying purchases home, commenting "usually gets a ride." The appellant's physician indicated the appellant required periodic assistance for both tasks of the DLA of basic housekeeping, commenting "helped by a friend." The physician indicated the appellant takes significantly longer than typical in performing 6 of the 8 tasks of the DLA of personal care (dressing, grooming, bathing, toileting, transfers in/out of bed, and transfers on/off of chair) commenting, "due to back + knee pain also due to ↓ motivation difficulty reaching his feet." The physician indicated that the appellant was independent in the 2 tasks of feeding self and regulating diet under the DLA of personal care.

In the AR section regarding the appellant's social functioning, the appellant's physician indicated that he required periodic support/supervision for appropriate social decisions ("uses drugs/alcohol [illegible]", able to develop and maintain relationships ("difficulty with this") and able to deal appropriately with unexpected demands ("needs help from friends"). The physician indicated the appellant was independent in interacting appropriately with others and was able to secure assistance from others. The physician indicated that the appellant had marginal functioning with his immediate social network commenting, "intermittent discord with family related to drug use" and had marginal functioning with his extended social networks.

In Document #1 completed February 11, 2014, the appellant's physician indicated that the appellant's impairments continuously restrict his ability to perform the DLAs of meal preparation, management of medications, basic housework, mobility inside the home, mobility outside the home, use of transportation, management of finances, and social functioning. The explanation/comments provided by the physician regarding the restrictions is that the physical aspects of the appellant's DLAs are restricted by chronic pain, and the appellant's mental health issues "restrict the other" DLAs.

In Document #2, the appellant's friend indicated that the appellant had difficulty performing the DLAs of meal preparation, management of medications, basic housework, daily shopping, mobility inside the home, mobility outside the home, use of transportation, management of finances and social functioning. She wrote that the appellant is unable to organize the simplest tasks due to his mental health and physical issues.

At the hearing, the appellant told the panel he is living in transition housing. The appellant said that he cannot prepare his own meals as it hurts too much to stand for any period of time and he will forget that he is cooking, so the staff at the transition housing prepare his meals for him. The appellant said that he does not often eat breakfast (his chronic pain is too bad in the morning for him to get up and come down for breakfast), he will eat lunch, and will often eat dinner or someone will bring his dinner up to his room. The appellant said the staff will help him get to the bathroom, but he can clean himself. He said that the staff or a friend drive him to his medical appointments and to stores if he has to do personal shopping. The appellant said that he tries to help with chores at the transition housing, such as sweeping, but mopping hurts his shoulder and causes too much pain. He said that he is not very sociable because of his anxiety and depression – he told the panel that he was very stressed attending the hearing, but had not taken his full dose of medication because he wanted to be lucid at the hearing.

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 family and friends, but did not need assistive devices or an assistance animal and did not provide any commentary.

In Document #1, the appellant's physician circled "yes" in answer to the question whether in his opinion, the appellant requires help to perform those activities as a result of his restrictions. In Document #2, the appellant's friend wrote that the appellant "needs daily assistance with most everything." The appellant told the panel at the hearing that the transition housing staff assist him getting to the bathroom, although he can clean himself, and that they (or a friend) drive him to his appointments and shopping. The appellant said that although he can cook meals at the transition housing, it hurts too much to stand for long, so the staff prepare meals for him.

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 the extent of the help provided in managing his DLAs. 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 mental and/or physical 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 physical and mental impairment

The appellant told the panel that he is in constant pain and that this is confirmed by his friend in Document #2. He said that he has chronic pain for which he must take 3 types of medication daily. He said his pain is so severe that he has trouble getting out of bed in the morning and naps every afternoon. He also told the panel that he suffers from disabling anxiety and depression, for which he takes medications. He said that his condition is deteriorating and he feels that he is in worse shape than when he was taking drugs (which he says he took to ease his pain). The appellant pointed to the information provided by his physician in the AR – that of the 14 listed areas of cognitive and emotional functioning, his physician indicated that his mental impairment had a major impact on 4 of the areas, that it had a moderate impact on 5 of the areas, and a minimal impact on 2 of the areas, illustrating that the majority of the areas of cognitive and emotional functioning were affected by his mental impairment. The appellant also pointed to the information in Document #1 in which his physician stated that his impairments are severe and as a result he requires continuous assistance with several of his DLAs, as circled on the questionnaire by his physician.

In the reconsideration decision, the ministry based its determination that the appellant's chronic neck and shoulder pain was not a severe physical impairment on the information provided by the appellant's physician in the PR and AR. The ministry noted the following responses of the physician in the functional skills section of the PR: that the appellant is able to walk 2-4 blocks and climb 5+ stairs unaided, lift 5 to 15 lbs and has no limitations remaining seated. The ministry also noted that in the AR, the appellant's physician indicated he takes significantly longer to climb stairs and stand due to neck and back pain, and requires continuous assistance with lifting, carrying and holding, and he has difficulty lifting and carrying heavy objects. The ministry determined that it appears from the appellant's ability to manage his DLA independently or with periodic assistance "that a severe physical impairment is not evidenced." The ministry found that the appellant's physician had not provided enough evidence to confirm that the appellant has a severe physical impairment. At the hearing the ministry representative said that although the appellant's physician in Document #1 indicates that the appellant's impairment is severe, he does not provide an explanation of the reason for the change in the appellant's condition or narrative about the severity of the impairments.

In the reconsideration decision, the ministry noted that the appellant's physician had indicated that as a result of mental impairments, the appellant has significant deficits in several areas of his cognitive and emotional functioning (emotional disturbance, motivation, impulse control, motor activity, attention, memory, executive and consciousness). The ministry also noted that the physician also indicated in the AR that the appellant's mental impairment had a major impact in the areas of emotional disturbance, motivation, motor activity, and memory. The ministry stated that the physician "indicates that [the appellant's] impairments have no impact, minimal or moderate impact on the majority of [the appellant's] cognitive and emotional functioning." However, the ministry found that it was difficult to determine whether the appellant's mental impairments are severe as his physician had indicated he was independent or required periodic assistance with managing his social functioning. The ministry also found that the limitations resulting from the appellant's mental impairments "do not appear to have translated into significant restrictions" in his ability to manage his DLA. The ministry determined that there was not enough evidence provided by the appellant's physician to confirm a

severe mental impairment. As stated above, at the hearing, the ministry representative said that although the appellant's physician indicated a severe mental impairment is severe in Document #1, the physician did not provide any narrative about the severity or the effect of the impairment on the appellant's ability to perform DLA.

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 chronic pain syndrome, alcoholism, drug addiction and major depressive disorder with anxiety and wrote in the PR, "all 4 conditions are severe."

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 severity of the impairment 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 July 2013, together with the additional information in Document #1 signed by the appellant's physician on February 11, 2014.

With respect to the severity of the appellant's physical impairment, the appellant's physician has confirmed he has chronic pain syndrome specifically in his neck and shoulder (although the physician indicates it is also in his knee in some of his comments). The physician wrote in the PR that the pain results in inability to do physical work due to continuous neck pain to his shoulders. In the PR, the appellant's physician indicated the appellant could walk 2-4 blocks unaided on a flat surface, climb 5+ steps, lift 5-15 pounds, and has no limitations remaining seated. In the AR, the appellant's physician indicated that the appellant could independently walk indoors and outdoors, required continuous assistance lifting and carrying and holding, writing "great difficulty with lifting and carrying of heavy objects," and indicated that he took significantly longer than typical climbing stairs and standing with the comment, "because of neck, back and knee pains, difficult due to pain."

In Document #1, the appellant's physician circled "yes" that the appellant has a severe physical impairment, and wrote the comment, "physical aspects of ADLs are restricted continuously due to chronic pain." However, the panel notes that the physician did not provide any additional commentary indicating that the appellant's condition had deteriorated or offering any other explanation for inconsistencies between the PWD application and Document #1. Specifically, it is unclear why the DLA of personal care, which in the PWD application is noted as taking significantly longer with many tasks, which would reasonably be viewed as a continuous or ongoing restriction (though not necessarily significant) is now identified as not being continuously restricted. Additionally, it is unclear why the appellant, who was reported in the PWD application as

independently managing the DLA of meals without any noted restriction, is no longer able to do so. Furthermore, while the physician's information respecting DLA in the AR provides details respecting listed aspects or tasks within each DLA in the form of both check marks and accompanying narrative for each aspect within a DLA noted to have some restriction, the information provided in Document #1 does not explain how the physical aspects of the appellant's DLA are restricted by his chronic pain. The panel also notes that the physician did not alter the answers to the functional skills assessment.

Accordingly, the panel has placed greater reliance on the detailed information respecting the appellant's physical functional skills and physical ability together with the assessment respecting the impact of the appellant's physical impairment on DLA provided by the appellant's physician in the PR and AR. The panel finds that the ministry's determination that the information provided that the appellant independently mobilizes, though climbing stairs takes longer and assistance is required for heavier lifting, and manages DLA with periodic assistance for some tasks, does not establish a severe physical impairment from chronic pain is reasonable.

With respect to the severity of the appellant's mental impairment, the physician confirmed in the PR that the appellant has alcoholism, drug addiction and major depressive disorder with anxiety, writing that the conditions are severe. The physician commented that the appellant's substance abuse results in inability to seek or maintain employment and that his depression/anxiety cause multiple symptoms that result in inability to leave home at times. The appellant's physician indicated in the PR that the appellant had difficulty communicating because of anxiety and stress. He also indicated that there are significant deficits with cognitive and emotional functioning in several areas (consciousness, executive, memory, emotional disturbance, motivation, impulse control, motor activity and attention or sustained concentration). In the PR, the physician wrote, "poor concentration, easily confused, difficulty planning, poor memory, depressed mood and associated poor motivation, poor impulse control, gets fidgety and "twitchy"."

In the AR, the physician indicated the appellant's ability to communicate through reading and writing was poor, writing, "impaired due to poor concentration" and his hearing was poor, "due to noise exposure." The physician indicated that the appellant's mental impairment had a major impact in 4 areas of cognitive and emotional functioning, a moderate impact in 5 areas, and a minimal impact in 2 areas. The physician wrote, "significantly impaired, as above, due to depression, chronic pain and substance abuse." However, in the section of the AR describing the restrictions on DLA, the appellant's physician indicated he was independent in all of the tasks of the DLA of paying rent and bills and medications – areas where one would expect to see a restriction as a result of a mental impairment. Additionally, in the AR the appellant's ability to manage the listed aspects of social functioning are reported as either independent or requiring periodic – not continuous – support. In Document #1, the appellant's physician has circled "yes" the appellant has a severe mental impairment and has written, "mental health issues restrict the other DLAs." However, the physician has not provided any narrative about how the appellant's mental health issues restrict his ability to perform DLA and how this has changed since the original PWD application.

Accordingly, given the information provided by the appellant's physician in the PR and AR as well as a lack of additional detail in Document #1, the panel finds that the ministry's determination that the information provided does not establish a severe mental impairment is reasonable

Direct and significant restrictions in the ability to perform DLA.

The appellant told the panel that because of his impairments, he is incapable of performing any of his DLA and he also points to the information provided by his physician in Document #1 and his friend in Document #2 (both of whom write that the appellant requires assistance described as daily in Document #2 with several of his DLA – his physician circled all of the listed DLA except daily shopping and personal self care, the friend circled all of the listed DLA except personal self care). The appellant described how he receives assistance from the staff of the transition housing with preparing meals, getting to the bathroom, going to and from stores and appointments. He told the panel that he cannot concentrate and his memory is poor and that he suffers from anxiety and depression to the point where he does not like to socialize, spends a lot of time in his room, and found it very difficult to attend the hearing.

In the reconsideration decision, the ministry determined that based on the information provided by the appellant and his physician, there was not enough evidence to establish that the appellant's impairment directly and significantly restricts his DLA either continuously or periodically for extended periods. The ministry referred to the fact that the physician in the AR indicated that the appellant could independently or with periodic assistance manage 28 out of the 28 assessed areas of his DLA. The ministry wrote that the appellant's physician indicated that he takes significantly longer to complete some of the tasks of personal care (dressing, grooming, bathing, toileting, transfers in/out of bed and on/off a chair) due to back and knee pain and low motivation, but that the physician did not report how much longer it took the appellant to complete these tasks. The ministry noted that although the physician had written that he is "significantly disabled by the disabilities mentioned above" the physician's assessment of the appellant's ability to manage his DLA "does not establish that [his] impairments significantly restrict [DLA] continuously or periodically for extended periods.

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 that requires the ability to perform DLA to be directly and significantly restricted by the impairments. The DLA to be considered for a person with a mental impairment are, as set out in subs. 2(1) 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;
- Manage personal medication;
- Make decisions about personal activities, care or finances; and
- Relate to, communicate or interact with others effectively.

The appellant at the hearing set out a picture of a typical day and the degree to which his mental health issues and chronic pain impacts his ability to perform his DLA. However, the legislation requires that a prescribed professional – in other words, the appellant's physician – provide an opinion that the appellant's impairments directly and significantly restricts his ability to perform DLA either continuously or periodically for extended periods. That is not to say, however, that the ministry must simply accept a prescribed professional's statement that DLA are directly and significantly restricted, as to do so would fetter the ministry's discretion as a decision-maker. All evidence, including that of a prescribed professional, should be weighed and assessed by the ministry when exercising its decision-making authority.

The panel notes that, in the AR, the appellant's physician provided comments beside each task of each DLA where he indicated that the appellant could not perform the task independently – of the 28 listed tasks, the appellant's physician in the AR indicated that the appellant could perform 18 of them independently (all of the tasks listed for the DLAs of meals, paying rent and bills, and medications, 2 of the 8 tasks listed under the DLA of personal care, 4 of the 5 tasks under the DLA of shopping, and 2 of the 3 listed tasks under the DLA of transportation). In the AR, the physician wrote that the appellant took significantly longer than typical to perform 6 of the 8 tasks of personal care – specifically, dressing, grooming, bathing and toileting (commenting "due to back and knee pain also due to [low] motivation difficulty reaching his feet") and transfers in/out of bed and transfers on/off chair (commenting "due to back and knee pain"). The physician indicated the appellant required periodic assistance with the task of carrying purchases home under the DLA of shopping, writing, "usually gets a ride." For the task of getting in and out of a vehicle under the DLA of transportation, the appellant's physician indicated that the appellant takes significantly longer than typical "due to knee pains." The panel notes that the information provided by the appellant's physician in the AR either references the appellant's knee and back pain, or indicates he receives a ride.

For the DLA specifically related to persons with a mental impairment, there is no information provided by the physician in the AR to indicate that the appellant's mental impairment has a direct and significant impact on his performance of the DLA of making decisions about personal activities, care or finances (the physician indicated he was independent in all tasks of managing his personal finances – paying rent and bills - and medications). In addition, for the tasks related to the DLA of personal care, the physician's comments relate primarily to the appellant's back and knee pain, with the one comment "due to low motivation". For the DLA of relating to, communicating or interacting with others effectively, the appellant's physician indicated in the AR that he required periodic support or supervision in the areas of appropriate social decisions ("uses drugs/alcohol repeatedly"), develop and maintain relationships ("difficulty with this") and ability to deal appropriately with unexpected demands ("needs help from friends). The physician indicated the appellant was independent in the aspects of interacting appropriately with others and able to secure assistance from others. The physician indicated the appellant had marginal functioning with his immediate and extended social networks, writing the comment, "intermittent discord with family related to drug use." The physician did not provide any further commentary in the AR.

In Document #1, the appellant's physician's most recent assessment prepared on February 11, 2014, the physician does not provide any additional narrative or commentary to support that the appellant's impairments continuously restrict his ability to perform the circled DLAs. The appellant described to the panel his typical day in the transition housing where he receives assistance, but this is not

reflected in the information provided by the appellant's prescribed professional, that is, the physician does not describe the appellant's restrictions in the course of a typical day.

The panel finds reasonable the ministry's assessment that the information provided by the appellant's physician – the prescribed professional – does not demonstrate that the appellant's impairments directly and significantly restrict his ability to perform DLA. Without such information, and based on the evidence provided by the appellant's physician in the PR and AR and the lack of detail provided by the physician in Document #1, the panel finds that the ministry's determination that the information provided does not establish that his impairment significantly restricts his DLA continuously or periodically for extended periods is reasonable.

Help with DLA

The appellant told the panel that he receives help from the staff of the transition housing to perform some of the tasks of the DLAs of personal care (for example, getting to the bathroom), meal preparation, and transportation (for example, the staff or a friend drive him to stores). The appellant's physician and friend in Documents #1 and #2 also state that the appellant requires assistance to perform his DLA.

In its reconsideration, the ministry noted that as it "had not been established that [DLA] are significantly restricted ... it cannot be determined that significant help is required from other persons. No other assistive devices are required."

The EAPWDA 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 needs continuous assistance with lifting, carrying and holding, but in the more specific section of the AR, he indicated the appellant required periodic assistance carrying purchases home ("usually gets a ride") and laundry and basic housekeeping ("helped by a friend"). The physician has also check marked in the AR that the appellant received help for DLA from his family and friends, but does not provide any commentary.

Although the appellant's physician has circled that the appellant's ability to perform the DLAs of meal preparation, management of medications, basic housework, mobility inside the home, mobility outside the home, use of transportation, management of finances and social functioning is continuously restricted by his impairment, the narrative provided does not elaborate on the assistance, only commenting that, "physical aspects of ADL's are restricted continuously, due to chronic pain. Mental health issues restrict the other ADL's." No assistive devices are used. 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.