



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 21, 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 May 24, 2013;
 - The Physician Report (PR) dated July 14, 2013, completed by the appellant's physician who indicates he has known the appellant for 4 years and had seen him 11 or more times in the previous year; and
 - The Assessor Report (AR) dated July 14, 2013 also completed by the appellant's physician.
2. The appellant's request for reconsideration dated January 1, 2014 to which were attached the following documents:
 - Submission of the appellant dated December 20, 2013 (one page);
 - Consultation request completed by a physician at the clinic of the appellant's physician on November 15, 2013 (one page);
 - Copy of documentation for the appellant from his physician's clinic for November 14, 15, 19 27 and 28, 2013 (four pages);
 - Letter from a general surgeon to the appellant's physician dated November 20, 2013 (2 pages);
 - Lab report for the appellant dated November 19, 2013 (one page);
 - A physician assessment and treatment record for the appellant dated September 12, 2011 from a hospital in the appellant's city (one page);
 - A one page medical report relating to an insurance claim for the appellant dated October 28, 1999;
 - A one-page discharge summary of a physiotherapist for the appellant dated November 13, 1996;
 - A one-page hospital report dated May 23, 1993 regarding the appellant's injuries sustained when he was hit by a truck while riding his bicycle; and
 - A one-page hospital report dated May 16, 1992 regarding the appellant's injuries sustained when he was hit by a car while riding his bicycle.

The appellant completed his notice of appeal on January 30, 2014, and on it he wrote that the ministry's decision is wrong, he has a severe medical impairment that significantly restricts his ability to do daily living activities and he needs the significant help or supervision of another person to perform his daily living activities restricted by his impairment.

At the hearing, the appellant provided the panel with a one-page typed letter written and signed by his sister-in-law dated February 17, 2014. In this letter the appellant's sister-in-law describes how the appellant's health is deteriorating and how it is difficult for him to "do many of the things he used to do" writing that "he finds it hard to go up hills and stairs and has to stop to rest often" and "he feels weak with very little energy for accomplishing the tasks of daily living." The appellant says the information from his sister-in-law supports that his health is deteriorating and his low energy prevents him from performing DLA. The ministry had no objection to the admission of the letter from the appellant's sister-in-law. The panel finds that the information in the letter from the appellant's sister-in-law is written testimony in support of information before the ministry at the time the decision under



appeal was made and admits the additional information in the questionnaire pursuant to section 22(4)(b) of the *Employment and Assistance Act*.

At the hearing, the appellant told the panel that his health is deteriorating and that he lacks energy to perform his usual activities. The appellant has been living in a shelter for the past 3 months (longer than the 30 days maximum stay typically allowed to individuals at the shelter) and before that he had been homeless for several years. The appellant and his advocate told the panel that the appellant only accesses medical care when his symptoms are acute and that his physician who completed the PWD application doesn't know him particularly well because the appellant doesn't see his physician on a regular basis.

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

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

The appellant's physician diagnosed him in the PR completed in July 2013 as having ischemic heart disease, degenerative disc disease, osteoarthritis and Hepatitis C, but did not indicate the date of onset for any of the listed conditions. In commenting on the severity of the appellant's conditions, the physician wrote in the PR, "[the appellant] has severe physical impairments which interfere with his ability to do [DLAs]. He does not attend to personal needs like cooking, cleaning, laundry etc. He rides a bike but has difficulty walking more than 2 blocks." The physician indicated that the appellant has not been prescribed any medication that interferes with his ability to perform DLA, and does not need any prostheses or aids for his impairment. In the AR, the physician identified the appellant's impairments as, "Hepatitis C, chronic back pain, ischemic heart disease, degenerative disc disease."

In the functional skills assessment in the PR, the appellant's physician indicated that the appellant could walk 1-2 blocks unaided on a flat surface, that he could climb 2-5 steps unaided, that he could lift 7-16 kg (15-35 pounds) but with the comment, "up to 10 lbs", and could remain seated for less than 1 hour, with the comment "20 minutes." In the AR, the appellant's physician indicated that the appellant is able to independently perform 3 of the 6 listed aspects of mobility and physical ability (walking indoors, climbing stairs, and standing). The physician indicated that the appellant requires periodic assistance from another person in the areas of walking outdoors, "Cannot walk more than 2 blocks" and lifting and carrying and holding, "unable to lift more than 10 pounds."

In the PR, the physician checked that the appellant does not have any significant deficits with cognitive and emotional function and in the AR, the physician wrote the comment, "not applicable" and checked no impact for all listed aspects for cognitive and emotional functioning. In the AR, the physician indicated that the appellant had satisfactory ability to communicate in all areas, but did not provide any commentary.

In the September 12, 2011 hospital report, there is a note that the appellant has "Hep. A/B/C chronic fatigue." In the letter of November 20, 2013 written by the general surgeon to the appellant's physician, the general surgeon indicated that the appellant had been in the emergency room of the hospital on November 15, 2013 and in the clinic documentation for the appellant, it is indicated he was in ER for a gastro-intestinal bleed. The general surgeon noted the appellant had an extremely

low hemoglobin count and was prescribed iron supplements, that the appellant has an enlarged liver and that he "likely had an upper GI bleed either from an ulcer or diffuse alcoholic gastritis." The general surgeon noted that the appellant was now living in a shelter, but "generally lives in a shack in the bush" and also wrote that the appellant "obviously doesn't frequent the doctor's office."

In his SR, the appellant wrote that he has Hepatitis A, B and C, chronic back pain, neck and shoulder pain, has had 3 heart attacks and diabetes. He wrote in the SR that he has neck, shoulder and back pain all the time and he told the hearing panel that he is in a lot of pain. In his SR, the appellant wrote that he has no energy to do anything and he repeated this to the hearing panel. The appellant told the panel that he can ride his bike, which he uses instead of walking because he doesn't have the energy to walk, but that he can no longer ride his bicycle up hills or further than a couple of blocks before he has to stop. In his SR, the appellant wrote that he can't lift anything heavy – more than 15 pounds – and wouldn't have the energy to lift it if he could. The appellant told the panel that he is taking iron pills to regain energy, as his blood levels were low. In her letter, the appellant's sister-in-law wrote that the appellant's health "has become precarious" and she writes that he is easily short of breath and finds it hard to go up hills and stairs and has to stop to rest often. She also wrote that the appellant feels weak with very little energy "for accomplishing the tasks of daily living."

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

The physician did not complete the DLA section of the PR. In the AR, the physician indicated that the appellant is independent in performing all aspects of the DLAs of personal care, paying rent and bills, medications and transportation. The physician indicated that the appellant requires periodic assistance in performing the 2 tasks of the DLA of basic housekeeping (laundry and basic housekeeping), writing "unable to do about 60% of time." The physician indicated that the appellant is able to independently perform 3 of the 5 listed tasks of the DLA of shopping (reading prices and labels, making appropriate choices, and paying for purchases), but that the appellant requires periodic assistance to perform the tasks of going to and from stores ("unable to do 60% of time") and carrying purchases home ("can't lift more than 10 pounds"). The appellant's physician wrote the comment, "low energy and pain prevents [him] from going to store and carrying groceries." The physician indicated the appellant required periodic assistance for 3 of the 4 tasks of the DLA of meals (meal planning, food preparation and cooking), commenting, "doesn't do these 60% of time due to pain and lack of energy." The physician indicated the appellant could independently perform the task of safe storage of food under the DLA of meals.

In the AR section regarding the appellant's social functioning, the appellant's physician indicated that the appellant was independent in all of the 5 aspects and indicated that the appellant had good functioning with his immediate and extended social networks, but did not provide any commentary.

At the hearing, the appellant described a typical good day (before living in the shelter) would be one in which he got up, rode his bike downtown where he would have a noon meal at a social service agency and take a shower there, collect recyclables on his bike, have a sandwich or dinner at a social service agency and then return to where he was sleeping. On a typical good day in the shelter, the appellant said he will get up and have breakfast, then take the bus downtown. At the shelter, the appellant's meals are prepared and provided for him. He told the panel he is able to bathe independently and take his iron pills (he doesn't need help from the shelter staff to remember to take his iron pills). The appellant said that he can do his own laundry, but that he can't shop or do things

like peel potatoes – he just doesn't have the energy and it hurts too much. In her letter, the appellant's sister-in-law wrote that the appellant feels weak and has very little energy and that "this includes his usual routine of recycling to afford the basic necessities of life."

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 friends, but did not provide any commentary. In the PR, the physician indicated that the appellant does not require any aids for his impairment, but in the AR indicated that the appellant routinely uses a cane to help compensate for his impairment. At the hearing, the appellant's advocate said that the physician misunderstood the question in the AR and meant that the appellant would benefit from the use of a cane to help him walk. The physician indicated that the appellant could use the assistance of a cane, but did not provide any commentary in the AR.

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

PART F – Reasons for Panel Decision

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

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

2 (1) In this section:

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

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

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

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

- (a) in the opinion of a medical practitioner is likely to continue for at least 2 years, and
- (b) in the opinion of a prescribed professional
 - (i) directly and significantly restricts the person's ability to perform daily living activities either
 - (A) continuously, or
 - (B) periodically for extended periods, and
 - (ii) as a result of those restrictions, the person requires help to perform those activities.

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

- (a) a person who has a severe mental impairment includes a person with a mental disorder, and
- (b) a person requires help in relation to a daily living activity if, in order to perform it, the person requires
 - (i) an assistive device,
 - (ii) the significant help or supervision of another person, or
 - (iii) the services of an assistance animal.

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

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

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

- (i) prepare own meals;
- (ii) manage personal finances;
- (iii) shop for personal needs;
- (iv) use public or personal transportation facilities;
- (v) perform housework to maintain the person's place of residence in acceptable sanitary condition;
- (vi) move about indoors and outdoors;
- (vii) perform personal hygiene and self care;
- (viii) manage personal medication, and

(b) in relation to a person who has a severe mental impairment, includes the following activities:

- (i) make decisions about personal activities, care or finances;
- (ii) relate to, communicate or interact with others effectively.

Severity of impairment

The appellant and his advocate told the panel that he suffers from severe low energy which is made worse by his identified heart disease and osteoarthritis. The appellant's advocate told the panel that the appellant will only seek medical attention when his conditions are acute and she pointed to the hospital records from the appellant's bike accidents in 1992 and 1993 to illustrate that he doesn't see the doctor often, as well as the comment in the letter of November 20, 2013 from the general surgeon that the appellant "obviously doesn't frequent the doctor's office." For this reason, the appellant and his advocate argue that the information provided by the appellant's physician is necessarily limited because the physician doesn't know the appellant well. The appellant's advocate says that where the appellant's physician has indicated that the appellant cannot perform certain DLAs "60% of the time" that this shows the severity of the appellant's impairments in that it is more than half of the time. The advocate argued that the appellant's ability to ride his bicycle – which is limited and decreasing – is to compensate for his low energy which restricts his ability to walk any distance. The advocate asserted that this illustrates that the appellant's impairment – his low energy coupled with heart disease and osteoarthritis – is severe. In the submissions on reconsideration, the appellant's advocate wrote that the appellant "is reluctant to acknowledge any mental health impairment and he doesn't attend a [doctor's] office enough for them to truly know his functional skill level." The appellant and his advocate did not argue at the hearing that he has a severe mental impairment, although sister-in-law wrote in her letter that the appellant took special classes and didn't get the same education as his siblings and has lived outside "with no real desire to follow the normal rules of society." The appellant has lived his adult life outside "in a shack in the bush" until he moved to the shelter 3 months ago.

In the reconsideration decision, the ministry based its determination that the appellant did not have a severe impairment on the information provided by the appellant's physician in the PR and AR, as well as the other medical information (letter from general surgeon and related hospital reports). The ministry noted that the appellant had been diagnosed with ischemic heart disease, degenerative disc disease, osteoarthritis, Hepatitis C and a recent gastrointestinal bleed. The ministry referred to the information provided by the appellant's physician in the PR regarding his functional skills – that the appellant is able to walk 1-2 blocks and climb 2-5 steps unaided, lift up to 10 lbs and sit for less than 1 hour. The ministry determined that "this level of impairment is more in keeping with a moderate degree of impairment rather than severe." The ministry noted that the appellant's physician "makes note of low energy and pain" but does not explain which of the appellant's medical conditions the doctor is referring to when describing the symptoms "making it difficult to determine which one condition (or a combination of conditions)" cause the appellant's symptoms. For this reason, the ministry found it was difficult to assess the severity of each of the appellant's conditions. The ministry also noted that the appellant rides a bike "as a tool to get from place to place to compensate" for the appellant's walking limitations. However, according to the ministry, "the ability to continue to ride [his] bike as a mode of transportation is not indicative of a severe physical impairment." The ministry acknowledged that the appellant has certain limitations as a result of his medical conditions, but found that the information provided does not establish evidence of a severe physical impairment. The ministry noted that "no mental health conditions have been identified" by his physician in the appellant's PWD application, his physician did not identify significant deficits with his cognitive and emotional functioning in the PR and AR and wrote "not applicable" and for this reason, the minister



was not satisfied that the information provided established a severe mental impairment.

Analysis and decision

The legislation provides that the minister may designate a person as a PWD if the minister is satisfied that the person has a severe mental or physical impairment that in the opinion of a medical practitioner is likely to continue for at least 2 years (subs. 2(2)(a) of the EAPWDA). The appellant's physician confirmed in the PR that the appellant has ischemic heart disease, degenerative disc disease, osteoarthritis and Hepatitis C and wrote in the PR, "[the appellant] has severe impairments which interfere with his ability to do [DLAs]." The appellant also had a gastrointestinal bleed in November 2013.

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

In the PR, the physician wrote that the appellant "has severe physical impairments which interfere with his ability to do [DLAs]" and he wrote that the appellant "does not attend to personal needs like cooking, cleaning, laundry etc. He rides a bike but has difficulty walking more than 2 blocks." In assessing the appellant's functional skills in the PR, the physician indicated he could walk 1-2 blocks unaided on a flat surface, climb 2-5 steps, could lift 7-16kg although with the qualifying comment "up to 10 lbs" which is less than 7-16 kg, and could remain seated less than one hour with the comment "20 minutes." In the AR, the physician indicated the appellant could independently walk indoors, climb stairs and stand. The physician indicated the appellant required periodic assistance walking outdoors – "cannot walk more than 2 blocks", and periodic assistance lifting and carrying and holding – "unable to lift more than 10 pounds." In the other medical reports, there is very little information provided about the effect of the appellant's impairments on his functional skills. In the letter of November 20, 2013, the general surgeon notes that the appellant "had all sorts of layers of clothing on and he didn't seem very swift at undoing buttons, etc." with the further remark, "he seems to be managing fairly well." The panel acknowledges that although the appellant may not have a regular relationship with his physician, his physician has had more contact with him than the doctors at the hospital or specialists who have only seen him once, and for this reason, the panel places more weight on the information provided by the physician in the PR and AR. In describing his typical day to the panel, the appellant said that he gets up, eats a meal, and takes the bus downtown before returning to the shelter later in the day. The appellant told the panel he is able to dress and bathe himself and take his iron pills without being reminded.

In the PR, the physician indicated that the appellant had no significant deficits with cognitive and

emotional functioning and in the AR, the physician wrote "not applicable" in the section regarding the impact of the appellant's impairments on his cognitive and emotional functioning. There is no reference to mental impairment in any of the other medical reports, although it is indicated that the appellant is an alcoholic ("known to binge drink" in consultation request of November 15, 2013, "admits to significant binge drinking" in notes of November 14, 2013). The panel notes that during the hearing, the appellant was able to answer questions and was alert and following the proceedings. The appellant did not assert that he has a severe mental impairment, although it was alluded to in his submissions on reconsideration.

The information set out by the physician in the PR and AR directly addresses the appellant's functional skills and indicates that he has functionality although it is limited. Although the appellant may not see his physician regularly, the appellant's testimony at the hearing supported the information provided by his physician that he has functionality, although it is limited (he can ride his bike a few blocks, climb stairs, lift some things that weigh less than 10 pounds, and stand for some periods). Accordingly, given the information provided by the appellant's physician, the panel finds that the ministry's determination that the information provided does not establish a severe physical impairment is reasonable. Based on the information provided by the appellant's physician and by the appellant, the panel also finds reasonable the ministry's determination that it is not satisfied the information provided establishes a severe mental impairment.

Direct and significant restrictions in the ability to perform DLA.

The appellant's advocate stressed to the panel that because the appellant has been homeless for most of his adult life, a number of the tasks of DLA do not apply to him. The appellant told the panel that on a typical day, he will get his meals at a social service agency (or at the shelter where he is currently living) and that he doesn't prepare meals for himself. The appellant told the panel that he used to collect recycling on his bike, but that he doesn't shop for himself. The appellant said he could take showers at the social service agency (and at the shelter) and could do his own laundry. The appellant uses his bike for mobility, but told the panel it has been harder for him to ride any distance more than a few blocks without stopping because he has such low energy. The appellant told the panel he takes his iron pills.

In the reconsideration decision, the ministry determined that although it acknowledged that the appellant has certain limitations as a result of his medical conditions, the ministry found that the information provided did not establish that an impairment significantly restricts his DLA either continuously or periodically for extended periods. The ministry acknowledged the argument of the appellant's advocate that, because the appellant was homeless, some of the DLAs on the PWD application form are irrelevant. However, the ministry referred to the fact that the appellant's physician indicated in the PR and AR that he was independent in all aspects of the DLAs of personal care, paying rent and bills, medication and transportation and reported that he was independent in walking indoors, climbing stairs, standing, reading prices and labels, making appropriate choices in shopping and paying for purchases. The ministry also referred to the fact that the appellant's physician had reported that he does not require continuous support or supervision in any of his DLAs and that the report that he required periodic assistance walking outdoors, lifting, carrying and holding is "more in keeping with a moderate restrictions, rather than a significant restriction" in the appellant's ability to perform his DLAs. The ministry also noted that the appellant's physician did not explain the reasons that the appellant was unable to perform aspects of the DLAs of basic housework and meal

preparation without periodic support "60% of the time."

Analysis and decision

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

The appellant argues that because he has been homeless for most of his adult life and because he does not have a regular relationship with his physician, the information about the appellant's ability to perform DLAs set out in the AR and PR is not accurate because as a homeless person, several of the DLA are inapplicable (such as manage personal finances, shop for personal needs and perform housework). However, the legislation requires that a prescribed professional – in other words, the appellant's physician who completed the portions of the PWD application – provide an opinion that the appellant's impairment directly and significantly restricts his ability to perform DLA either continuously or periodically for extended periods.

The appellant's physician wrote in the PR that the appellant's physical impairments "interfere with his ability to do" his DLAs, adding, "he does not attend to personal needs like cooking, cleaning, laundry etc." The physician did not specify whether the appellant does not attend to cooking, cleaning and laundry because of his impairment or because he is homeless and does not have access to a kitchen or his own laundry facilities, or live in housing he needs to clean himself. In the AR, the physician indicated that the appellant was able to independently perform all aspects of the DLAs of personal care, paying rent and bills, medications, and transportation. The appellant's physician indicated that he required periodic assistance to perform both tasks of the DLA of basic housekeeping, writing "unable to do 60% of the time," but the panel notes that the physician does not tie the appellant's inability to perform the tasks to his impairment. The physician indicates that the appellant requires periodic assistance for the task of going to and from stores with the comment, "unable to do 60% of time" but again – does not tie this restriction to the appellant's impairments. The physician indicates that the appellant requires periodic assistance carrying purchases home as he "can't lift more than 10 pounds" adding the comment, "low energy and pain prevents [him] from going to store and carrying groceries." The physician also indicated that the appellant required periodic assistance in 3 of the 4 tasks of meals, commenting, "doesn't do these 60% of time due to pain and lack of energy."

The panel finds reasonable the ministry's assessment that the information provided does not demonstrate that the appellant's impairments directly and significantly restrict his ability to perform DLA. Without such information from the appellant's physician(s) showing how the appellant's impairment directly and significantly restrict his ability to perform DLA, and based on the evidence provided by the appellant's physician and the appellant at the hearing, the panel finds that the ministry's determination that - although the appellant has certain limitations as a result of his medical conditions - the information provided does not establish that an impairment significantly restricts his DLA continuously or periodically for extended periods is reasonable.

Help with DLA

The appellant told the panel that at the shelter, he is provided with his meals and that he has no energy to prepare his own meals so would need help. He also told the panel that it is becoming increasingly difficult for him to ride his bike and he has used his bicycle as it is easier for him than walking.

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." The ministry noted that the appellant's physician had indicated he would benefit from the use of a cane.

The legislation requires in subs. 2(b)(iii) that in the opinion of a prescribed professional, as a result of the appellant's restrictions, the appellant requires help to perform DLA. The panel notes the evidence before the ministry at the reconsideration as set out by the appellant's physician in the AR was that the appellant needs periodic assistance with walking outdoors, lifting, carrying and holding – more specifically, basic housekeeping, going to and from stores, carrying purchases home, meal planning, food preparation and cooking. The physician has also check marked in the AR that the appellant received help for DLA from his friends, but without any commentary. However, in only two areas of the AR has the physician indicated that the appellant's need for periodic assistance is as a direct result of his pain and low energy (carrying purchases home, and the three tasks of meal preparation). 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.