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PART C – Decision under Appeal

The decision under appeal is the Ministry of Social Development and Social Innovation (the ministry) reconsideration decision dated April 28, 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

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PART E – Summary of Facts

The evidence before the ministry at the time of the reconsideration decision included the appellant's Person With Disabilities (PWD) Application comprised of the applicant information and self-report dated June 5, 2013, a physician report (PR) dated November 13, 2013 and prepared by the appellant's general practitioner ("the GP") of 21 years and an assessor report (AR) dated November 14, 2013 also prepared by the appellant's GP, as well as the appellant's Request for Reconsideration ("RFR") dated March 27, 2014.

Admissibility of Additional Evidence

Documents

The appellant gave evidence at the hearing that prior to the ministry deadline for filing additional evidence in support of his RFR, he delivered to a ministry office the following evidence (collectively referred to as "the Reconsideration Documents"):

1) A five page document dated March 26, 2014 and entitled "Employment and Assistance Assessor Report – Request for Reconsideration". The author of this report is not identified but at the hearing a witness called by the appellant who is a registered nurse confirmed that she was the author ("the RN"). This document summarizes the appellant's impairment and comments on his ability to communicate, his mobility and physical ability, his cognitive and emotional functioning, his DLA and assistance provided to him. ("the EAA Report");
2) A two page diagnostic imaging report dated January 21, 2014 setting out findings of a CT scan of the appellant's lumbar spine ("the CT Report");
3) A one page diagnostic imaging report dated February 25, 2014 describing a medical procedure undertaken on the appellant's sacroiliac joints("the IR Report"); and
4) A one page letter dated April 25, 2014 prepared by the appellant's GP and addressed to "To Whom It May Concern" adding comments to the AR ("the GP Letter").

The appellant testified further that he could not recall the exact date that he delivered the Reconsideration Documents to the ministry office.

The ministry's evidence in respect of the Reconsideration Documents is that it could not confirm that they were in its possession at the time the reconsideration decision was reached but the ministry referenced the Reconsideration Decision which states in part that "no new information from a prescribed professional was received with your reconsideration request by 1:30 pm on the due date of April 28, 2014." The ministry conceded that it was having difficulties with its computer system at that time but it could not confirm that the Reconsideration Documents had in fact been delivered by the appellant within the timeline.

Given that there was no conclusive evidence that the Reconsideration Documents were delivered to the ministry by the appellant by the required due date, the panel finds that the Reconsideration Documents constitute additional evidence and must therefore meet the test for admissibility as set out in section 22 of the *Employment Assistance Act*.

In addition to the Reconsideration Documents, prior to the hearing the appellant sought to have further documents admitted as evidence. The documents, collectively referred to as "the Appeal Documents," include the following:

1) A copy of the PR and AR revised by the GP and dated May 23, 2014 ("the revised PR" and "the revised AR" respectively);
2) A copy of the original GP Letter;
3) The last page to the EAA Report indicating its author as the RN who is a friend of the appellant and who has treated him 11 times or more in the past 12 months and whom she has known for

approximately 10 years; and

4) A two page addendum to the EAA Report prepared by the RN and dated May 16, 2014 enclosing a two page excerpt from a medical journal setting out the diagnostic criteria for Major Depressive Disorder ("the EAA Addendum").

The ministry did not object to the Reconsideration Documents or the Appeal Documents being admitted as evidence in this appeal. The panel notes that the information contained in the Reconsideration Documents is reflective of the diagnoses in the original PR and does not introduce any new diagnoses or conditions. Similarly, the panel finds that the Appeal Documents serve to clarify and support the original PWD decision. The panel therefore admits the Reconsideration Documents and the Appeal Documents as written testimony in support of the information and records that were before the minister when the decision being appealed was made pursuant to section 22(4)(b) of the *Employment and Assistance Act*.

Oral Evidence

The appellant gave oral evidence at the hearing. In addition, the appellant called one witness to give evidence on his behalf. That witness was the RN who prepared the EAA Report and the EAA Addendum. No objection was raised by the ministry to the evidence of the appellant or the RN. The panel notes that both the appellant and the RN gave evidence of the appellant's impairments, their impact on his DLA and his need for help and that this evidence was consistent with that in the PWD application, the Reconsideration Documents and the Appeal Documents. Therefore, the panel is satisfied that the oral evidence of both the appellant and the RN is admissible as oral testimony in support of the information and records that were before the minister when the decision being appealed was made pursuant to section 22(4)(b) of the *Employment and Assistance Act.*

Diagnoses

In the PR, the GP does not provide a diagnosis but under "Health History" notes that the appellant underwent a right lower lobectomy secondary to lung cancer in 1992, chronic obstructive pulmonary disease, a lumbar fracture due to a motor vehicle accident in 2009 and chronic back pain, left sided sciatica and secondary depression and mild cognitive impairment in 2013.

In the revised PR the appellant's GP diagnoses him as suffering from degenerative disc disease with date of onset as January 2013, lumbar fracture with date of onset as January 2014 and depression with cognitive impairment ("major depression") with date of onset as January 2013.

Physical Impairment

In the SR, the appellant wrote that:

- He suffers from shortness of breath, difficulty breathing, right arm and shoulder pain as well as numbness and tingling. The appellant notes that he suffers from back pain as a result of a motor vehicle accident in 2009 and that he also suffers from a broken jaw, lost teeth, a broken back and ribs, a punctured lung, a head injury noted as "loss of consciousness", ongoing memory loss, trouble concentrating, hearing difficulty and lung cancer in 1992 resulting in complete removal of his right lower lobe. The appellant further reports cramps in both legs, muscle spasms in his back and shoulders, migraine headaches and joint pain.
- The appellant continues in the SR noting that he had lung cancer in 1992 and a "complete removal of right lower lobe." He describes suffering from insomnia with associated numbness and loss of strength and feeling in his hands, severe cramps in his arms, legs and feet. He describes weakness in both hands ("carpal tunnel"), muscle spasms in his back and shoulders, migraine headaches and joint pain.

In the PR, the GP reported that:

- The appellant experienced a right lower lobectomy as a result of lung cancer in 1992 resulting in limited exercise capacity. The GP further noted that the appellant was involved in a motor vehicle accident in 2009 and suffered a fracture of his lumbar spine. Lastly, the GP notes that in 2013 the appellant suffered from progression of his lumbar fracture, chronic back pain and left sided sciatica.
- The appellant requires no aids or prostheses for his impairment and his impairment is likely to continue for two years or more.
- Functional skills reported indicate that the appellant can walk 1 to 2 blocks and climb 2 to 5 steps unaided, lift 7 to 16 kg and remain seated for less than one hour.

In the Revised PR, the GP added that the appellant requires a cane as an aid for his impairment but he makes no changes or additions to the appellant's functional skills. The GP adds the comment that the appellant is in "constant pain" with the intensity varying between 5 and 9 out of 10 with more intense periods lasting 6 to 10 hours requiring the appellant to decide whether to take analgesic or suffer with the pain with either option leaving him functionally impaired.

In the AR, the GP reported that the appellant is independent in all aspects of mobility and physical ability including walking indoors and outdoors, climbing stairs, standing, lifting, carrying and holding.

In the Revised AR, the GP did not change, add or otherwise revise his previous findings as set out in the AR concerning the appellant's mobility and physical ability.

In the EAA Report, the RN reports as follows:

- The appellant was diagnosed with lung cancer in 1992 which required a right lower lobectomy and he has also been diagnosed with Chronic Obstructive Pulmonary Disease ("COPD"). In 2009, the appellant was in a motor vehicle accident and hospitalized for 8 days. He is reported to have suffered a fractured disc in his back, broken ribs, a punctured lung, a broken jaw and lost teeth.
- Currently, the appellant experiences right shoulder pain which is painful and limits his mobility as well as chronic back pain which radiates from his back, hip and down the left leg to his foot. The appellant has numbness and tingling in his extremities and he is unable to bear weight at times.
- With respect to mobility and physical ability, the appellant has ineffective airway clearance related to his COPD resulting in difficulty breathing, shortness of breath and fatigue and decreased energy.
- As a result of his back pain, he is unable to move with purpose, his ability to walk is limited, his use of his right arm is limited due to shoulder pain, his strength and control of objects is decreased and he suffers loss of balance.
- In terms of his functional ability the appellant is able to walk indoors but will at times need to hold on to a counter or chair or use a cane to stop and rest. The appellant can walk unaided on a flat surface for 1 to 2 blocks, walking slowly, taking small steps and resting after one block. This reportedly causes the appellant severe pain.
- He is able to climb 2 to 5 stairs unaided but required the handrail as support. He can stand on his own with the support of a cane, chair or counter. He is unable to lift anything off the floor and carrying and holding requires the assistance of someone else. He is able to remain seated for only short periods of time and he has used a pillow for comfort.

In the GP Letter, the GP states that he wished to add comments to the PR. He says that the appellant's mobility walking on the flat and negotiating stairs is "markedly affected and is always associated with moderate to severe pain." He continues to say that he has reviewed the EAA Report and that he finds it "consistent with my observations."

The appellant's diagnostic reports note the following:

- In the CT Report, the impression is of "(1) moderate-sized left paracentral disc protrusion at L4-5 effaces the lateral recess and likely impinges the traversing left L5 nerve root, possibly accounting for the clinical symptoms; (2) severe right and moderate left foraminal narrowing at L5 SI, possibly impinging the exiting L5 nerve roots at this level; (3) Mild left foraminal narrowing at L2-3; (4) L1 compression fracture with 60% height loss and mild retropulsion is unchanged."
- In the IR Report, the appellant is noted as having received "technically successful bilateral sacroiliac joint steroid injections."

At the hearing, the appellant gave evidence that as a result of his motor vehicle accident in 2009, he suffered a broken back, ribs and jaw and that while these healed, he had a subsequent fall which caused him to suffer pain in both legs which greatly reduced his mobility. He stated he can only climb stairs one at a time and then has to rest at the top. He further stated that he has been taking pain medication and a muscle relaxant daily since November 2013

At the hearing, the RN gave evidence that the appellant has trouble breathing due to his COPD and is in visible pain and uses significant mediation to get through each day.

Mental Impairment

In the SR, the appellant notes that he has ongoing memory loss, trouble concentrating and that he suffers from "depression/grief/loss."

In the PR, the GP indicates that:

- The appellant has no reported difficulties with communication and significant deficits with cognitive and emotional function in the areas of emotional disturbance, motivation and attention or sustained concentration.
- The GP does not report any restrictions to the appellant's social functioning.

In the revised PR, the GP does not make any changes or revisions to his observations with respect to the appellant's mental impairment as set out in the PR.

In the AR, the GP notes that:

- The appellant's speaking, reading, writing and hearing are good.
- With respect to cognitive and emotional functioning, the appellant experiences no major impact to daily functioning in any area, moderate impact in the area of emotion and motivation, minimal impact on attention/concentration and no impact on daily functioning in the areas of bodily functions, consciousness, impulse control, insight and judgment, executive, memory, motor activity, language, psychotic symptoms, other neuropsychological problems and other emotional or mental problems.

In the Revised AR, the GP makes the following changes to his original findings of how the appellant's mental impairment restricts or impacts his daily functioning as set out in the AR:

- He changes the impact on attention/concentration from minimal impact to major impact;
- He changes the impact on memory from no impact to moderate impact; and
- He changes the impact on motor activity from no impact to major impact.

The only additional comments made by the GP in the Revised AR concerning the appellant's mental impairment are "depressed mood."

In the EAA Report, the RN makes the following comments with respect to the appellant's mental impairment:

- He has ineffective individual coping related to chronic pain and evidenced by low energy level, decreased mental and physical performance, lack of sleep, daytime fatigue/loss of productivity, depression/anxiety, anger, confused thinking, memory problems, physical deconditioning and social isolation.
- The appellant has been experiencing symptoms of depression including feeling sad, inactivity, difficulty with thinking and concentration, change in appetite and sleep, feelings of dejection and hopelessness and sometimes suicidal tendencies. He has further experienced feelings of low self-esteem.

In the EAA Addendum, the RN states that the appellant's mental health is deteriorating and that he requires ongoing and continuous support. She comments further with respect to his mental health that he reports as follows:

- Depressed mood, diminished interest or pleasure in activities, decreased appetite and weight loss, insomnia, fatigue/loss of energy, feelings of worthlessness, diminished ability to think or concentrate and thoughts of suicide.

In the GP Letter, the GP states that he has had "further evidence of [the appellant's] emotional and cognitive dysfunction" but does not list any further observations.

At the hearing, the appellant stated that he is depressed and frustrated. He stated further that he experiences feelings of worthlessness and has suicidal thoughts which the GP has told him are due to the pain he experiences. He further stated that he has been taking daily medication for his depression since April 2013.

At the hearing, the RN stated that the appellant's mood and depression were getting bad.

Daily Living Activities (DLA)

In the PR, the GP reports that:

- The appellant has not been prescribed medications or treatments that interfere with his ability to perform his DLA.
- The appellant is periodically restricted in meal preparation and basic housework, and restricted in mobility outside the home (although it is not noted whether continuously or periodically). The appellant is noted as not being restricted with personal care, management of medications, daily shopping, mobility inside the home, use of transportation, management of finances or social functioning.
- The GP adds the comment that the appellant's fatigue and pain fluctuate and that he has a "good" day 1 or 2 times per week

In the Revised PR, in response to the question of whether the appellant's impairment directly restricts his ability to perform DLA, the GP checks the "unknown" box. He further revises the original PR by noting that the restrictions to meal preparation, basic housework and mobility outside the home are all continuous in nature.

In the AR, the GP reports with respect to the appellant's DLA that:

- The appellant is independent with all tasks of personal care but requires periodic assistance from another person with laundry and basic housekeeping.
- The appellant is independent with all aspects of shopping other than carrying purchases home for which he requires periodic assistance from another person.

- The appellant is independent planning meals and safely storing food but requires periodic assistance from another person preparing food and cooking.
- The appellant is independent paying rent and bills and managing his medications.
- The appellant is assessed as requiring periodic assistance using public transit but is independent getting in and out of a vehicle and using transit schedules and arranging transportation.
- With respect to social functioning, the appellant is assessed as independent in all aspects and is further described by the GP as having good functioning with his immediate and extended social networks.
- In the additional comments to the AR, the GP wrote that the appellant's poor retention of conversations sometimes leads to conflict.

In the Revised AR, the GP has not made any changes to the observations of the appellant's DLA but adds the comment "depressed mood and constant pain interfere with his ability to complete [DLA] tasks consistently and in timely fashion."

In the EAA Report, the RN writes as follows in respect of the appellant's DLA:

- He requires assistance with dressing as he has difficulty putting on and tying shoes or boots.
- He requires assistance to get into the shower as he cannot step into a bathtub and he requires support bars.
- He requires a raised toilet seat.
- Transferring in and out of bed takes a great deal of time.
- He requires assistance completing laundry and general housekeeping. He cannot chop wood and doing dishes takes a long time as he cannot stand for long periods.
- He cannot carry groceries and requires assistance getting items out of a cart and carrying them into his home.
- He has difficulty with food preparation and getting in and out of a vehicle can be strenuous.
- He has impaired social interaction due to decreased self-esteem and self-image and he has insufficient energy to initiate or continue social relationships.

In the GP Letter, the GP comments that the appellant "takes an inordinate amount of time to complete tasks such as meal preparation, shopping and housework."

Need for Help

- In the PR, the GP did not indicate that the appellant requires an assistive device but he revised that in the Revised PR to indicate that the appellant uses a cane. The GP also notes in the PR that the appellant's son assists with cooking and cleaning.
- In the AR, the GP indicates that assistance is provided to the appellant by family and friends and that the appellant uses a cane. In the Revised AR, the GP adds that the appellant requires assistance with heavy household chores, cleaning, lifting and anything requiring manual labour.
- The RN reported in the EAA Report that the assistance provided by other people for DLA includes various friends and the appellant's son who he lives with. The RN recommended that the appellant use a cane as well as toileting and bathing aids

In the RFR the appellant states that he had an appointment scheduled with his GP that same day and as such he could not provide information from the GP prior to April 1, 2014.

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 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 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.

In his Notice of Appeal dated May 10, 2014, the appellant states that he did not think that the reconsideration officer fully reviewed the additional information that was prepared by the GP or the RN. The appellant further stated that the reconsideration forms did not provide enough space for additional information. Lastly, the appellant noted that he was scheduled to see his GP on May 21, 2014 to provide more information.

Severity of impairment

Section 2(2)(a) of the *EAPWDA* provides that when addressing the issue of a severe physical or mental impairment in the context of a person applying for a PWD designation, that person must be found to have a severe physical or mental impairment that, in the opinion of a medical practitioner, is likely to continue for at least 2 years.

Severity of mental impairment

The appellant's position is that he is suffering from depression, diagnosed by his GP, which is severe in nature and which is being treated with medication.

The ministry's position is that the appellant suffers from secondary depression with minimal deficits to his cognitive and emotional function. The ministry argues that the appellant's mental impairment has no impact on his daily functioning in 11 of the 14 categories as set out in the AR. Overall, the ministry argues that evidence does not support a finding that the appellant suffers from a severe mental impairment.

Panel Decision

The appellant has described himself as suffering from depression. In the PR, the GP describes that condition as "secondary depression; mild cognitive impairment." This is reflected in his description of the appellant as suffering from significant deficits in only 3 of 11 areas of cognitive and emotional function. The appellant's mental impairment is not noted in the PR as having any impact on his social functioning.

Similarly in the AR, the GP notes that the appellant's mental impairment has no major impacts on his emotional or cognitive functioning, moderate impacts on emotion and motivation and minimal impact on attention/concentration and no impacts on any other area. Again, the appellant is noted as being independent in all aspects of his social functioning and as having good functioning with immediate and extended social networks.

The panel notes that in the Revised AR, the GP has changed the impact on attention/concentration from minimal to major, has changed the impact on memory from no impact to moderate and has changed the impact on motor activity from no impact to major impact. However, there is no narrative or further comments provided by the GP to clarify these changes.

In the EAA Report, the RN notes that the appellant struggles with depression and grief and loss issues which "have a negative impact on his quality of life." In the EAA Addendum, prepared less than two months later, the

RN comments that the appellant's emotional and mental health was deteriorating and she described several factors in that respect after referencing the Diagnostic and Statistical Manual of Mental Disorders. Those factors include depressed mood, diminished interest or pleasure in activities, decreased appetite/weight loss, insomnia, fatigue and loss of energy, feelings of worthlessness, diminished ability to think or concentrate and thoughts of suicide.

The panel finds that the evidence as a whole does suggest that the appellant suffers from depression which is a mental impairment. However, the inconsistent nature of the evidence is problematic in that the observations of the GP differ from those of the RN. The Revised PR and AR were prepared by the GP one week following the EAA Addendum yet those documents differ in terms of how they describe the appellant's mental impairment. For example, the Revised PR and AR describe secondary depression with mild cognitive impairment and few deficits in areas of cognitive and emotional function. For those deficits that have been changed, no explanation has been provided to clarify them. Contrastingly, the RN suggests that based on his symptoms, the appellant fits many of the criteria for a major depressive disorder.

Given the inconsistent nature of the evidence and the lack of narrative from the GP in respect of the Revised AR, the panel concludes that the ministry was reasonable in determining that the evidence did not establish that the appellant has a severe mental impairment under section 2(2) of the *EAPWDA.*

Severity of physical impairment

The appellant takes the position that a severe physical impairment is established by the evidence of his COPD and the injuries suffered in and following his 2009 motor vehicle accident including a broken jaw and teeth, broken back, ribs and punctured lung and ongoing right shoulder and chronic lumbar pain.

The ministry takes the position that the appellant's functional skill limitations do not support a finding that the he suffers from a severe physical impairment.

Panel Decision

A diagnosis of a serious medical condition does not in itself determine PWD eligibility or establish a severe impairment. An "impairment" is a medical condition that results in restrictions to a person's ability to function independently or effectively and the panel's role is to determine whether the ministry was reasonable in determining that the evidence did not support a finding that the appellant suffered from a severe physical impairment.

To assess the severity of an impairment one must consider the nature of the impairment and the extent of its impact on daily functioning as evidenced by functional skill limitations and the degree to which performing DLA is restricted. In making its determination, the ministry must consider all the relevant evidence, including that of the appellant. However, the legislation is clear that the fundamental basis for the analysis is the evidence from a prescribed professional – in this case, the GP and the RN.

On November 13, 2013, the appellant's GP completed the PR. He has treated the appellant for 21 years and between 2 and 10 times in the 12 months prior to completing the PR. He described the appellant's health history in the PR as including a right lower lobectomy, lung cancer, COPD, a 2009 motor vehicle accident resulting in a lumbar fracture, chronic back pain and left sided sciatica. He describes the appellant as able to walk 1 to 2 blocks unaided on a flat surface, climb 2 to 5 steps unaided, lift 7 to 16 kg and sit for less than 1 hour.

The AR was completed by the GP on November 14, 2013. In it, the GP comments that the appellant is independent in all categories of mobility and physical ability and for those DLA which are of a physical nature, the appellant is independent in most. For example, the appellant is noted as being independent dressing,

grooming, bathing, toileting and feeding himself, regulating his diet and transferring in and out of bed and on and off of chairs. He does require periodic assistance with laundry and housekeeping as well as food preparation and cooking.

The March 26, 2014 EAA Report documents the appellant's impairments and includes COPD and "back pain/injury" and shoulder pain. Functional limitations are noted to include decreased activity and ambulation, inability to move with purpose due to pain, limited ability to walk related to pain, numbness and tingling, decreased use of right arm, limitation of range of motion, decrease in power and control of objects and loss of balance related to pain.

In the April 25, 2014 GP Letter, the GP acknowledges reviewing the EAA Report and states that he finds it "consistent with my observations." However, the panel notes that the Revised PR and Revised AR, prepared by the GP and dated May 23, 2014, have made no changes to the appellant's functional skills in the PR and no changes to the categories of mobility and physical ability or DLA in the AR.

While the panel acknowledges the evidence of the GP and the RN as well as that of the appellant with respect to his physical impairment and the impact that it has on his functional abilities, the panel finds that the body of evidence, when looked at as a whole, is not consistent. The GP is of the view in the PR and AR as well as the Revised PR and Revised AR that the appellant is largely independent in terms of his mobility and functional capacity. While the evidence of the RN in the EAA Report differs somewhat, the revision to the PR and AR came subsequent to it and after the GP had an opportunity to review it. The panel notes that despite that opportunity, the GP did not change his opinion as to the appellant's mobility and functional ability.

For the reasons set out panel finds that the ministry reasonably determined that there is not sufficient evidence to establish that the appellant has a severe physical impairment under section 2(2) of the EAPWDA.

Restrictions in the ability to perform DLA

The appellant's position is that his physical impairment directly and significantly restricts his ability to perform DLA on an ongoing basis to the point that he requires the significant assistance of another person.

The ministry's position is that it has not been established by the evidence of a prescribed professional that the appellant's ability to perform DLA has been directly and significantly restricted by his physical or mental impairments either continuously or periodically for extended periods as required by section 2(2) of the *EAPWDA*. The ministry relied on the PR and AR and argued that the majority of the appellant's DLA were performed independently or required little help from others and that the new evidence did not change its position.

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 general practitioner and the nurse practitioner are the prescribed professionals. 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 continuously or periodically for extended periods.

In the PR, the GP reports the appellant as experiencing no restrictions with personal self care, management of medications, daily shopping, mobility inside the home, use of transportation, management of finances and social functioning. The appellant is described as being periodically restricted with meal preparation and basic housework and it is not indicated whether the appellant's restriction with mobility outside of the home is periodic or continuous in nature. The GP comments that for those activities requiring periodic assistance, the

appellant's fatigue and pain fluctuate and that he has a "good" day 1 or 2 times per week. As set out previously, the GP revised the PR to indicate that the appellant's restrictions in meal preparation, basic housework and mobility outside the home required continuous assistance but not further comments or narrative were included to clarify that change.

In the AR, the GP describes the appellant as independent in 22 of 28 tasks of DLA and for those that he is not independent (laundry, basic housekeeping, carrying purchases home, food preparation, cooking and using public transit), they are all DLA for which the appellant requires periodic assistance as opposed to continuous assistance. These categories were unchanged in the Revised AR by the GP who added the comments that his depressed mood and constant pain interfered with his ability to complete his DLA "consistently and in a timely fashion."

Considering the evidence of the RN as set out in the EAA Report, the appellant is described as having some difficulty and requiring some assistance dressing and bathing, that he needs a raised toilet seat and that he is able to transfer in and out of bed although this takes a long time. The appellant is further described as requiring assistance chopping wood and with laundry and general housekeeping tasks although he can complete dishes. The appellant is able to shop and make appropriate choices but not carry groceries for which he requires assistance. He has difficulty with food preparation and there are items that he cannot lift such as a frying pan, casserole dish or milk jug. The appellant's social interaction is described as "impaired" and marginal in nature.

The PR and AR must be considered in conjunction with the additional evidence as set out in the Revised PR and AR as well as the EAA Report. The evidence in the PR and AR when compared to that in the Revised PR and AR is consistent with most DLA reported as independent. While the GP did change his opinion to state that the appellant required continuous, rather than periodic assistance with some DLA, no further narrative was provided to explain that change. Further, the panel notes that for those DLA that required periodic assistance, no further information was provided to demonstrate the duration or frequency of that assistance.

Considering the evidence of two prescribed professionals, the appellant's GP and RN, the panel finds tthat the appellant is able to perform the majority of his DLA independently. Based on the evidence, the panel concludes that the ministry was reasonable in finding that there is not sufficient evidence to establish that the appellant's mental and physical impairments directly and significantly restrict his ability to perform DLA, either continuously or periodically for extended periods under section 2(2)(b) of the *EAPWDA*.

Help with DLA

The appellant's position is that that his physical and mental impairments affect his daily living functions to a severe enough extent that assistance from his son and others is necessary.

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.

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. Section 2(3) of the *EAPWDA* provides that a person requires help in relation to a DLA if, in order to perform it, the person requires an assistive device, the significant help or supervision of another person, or the services of an assistance animal.

In the PR and AR, as well as the Revised PR and AR, the appellant is noted by the GP as using a cane due to his impairment, relying on his son who assists with cooking and cleaning and requiring assistance with heavy household chores, cleaning, lifting and anything requiring manual labour. The RN notes in the EAA Report

that the appellant uses a cane and requires toileting and bathing aids.

The panel finds that while some assistance is provided to the appellant, 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 which determined that the appellant was not eligible for PWD designation was a reasonable application of the applicable enactment in the circumstances of the appellant, and therefore confirms the decision.