

## 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

## PART E – Summary of Facts

The evidence before the ministry at the time of the reconsideration decision included the Person With Disabilities (PWD) Application comprised of the applicant information and self-report dated November 13, 2013, a physician report (PR) dated September 19, 2013 and an assessor report (AR) dated October 25, 2013 and both completed by a neurosurgeon who has known the appellant for approximately 1 month.

The evidence also included the following:

- 1) Operative Report for lumbar discectomy L5-S1 right side performed on August 20, 2013;
- 2) Letter dated September 19, 2013 from the neurosurgeon who completed the reports included with the PWD decision. The neurosurgeon wrote that he saw the appellant in follow-up after a L5-S1 lumbar discectomy for a herniated disc with back and leg pain. The pain is significantly improved although the appellant continues to have some pain in the back and right leg numbness. He is 1 month post-op. He can gradually increase activity as tolerated. Anticipate further improvement although may continue to have back pain and numbness in right leg. Currently, pain precludes gainful employment (labourer) although anticipate may be able to return to work with further gains in time;
- 3) Letter dated April 25, 2014 in which another physician, who has seen the appellant since having his surgery in August 2013, responded to a number of questions; and,
- 4) Request for Reconsideration dated March 19, 2014.

### ***Diagnoses***

In the PR, the appellant was diagnosed by the neurosurgeon with herniated lumbar disc L5-S1, right side with S1 radiculopathy, motor deficit and pain. There was no diagnosis indicated for a mental health condition.

### ***Physical Impairment***

In the PR, the neurosurgeon reported that:

- In terms of health history, the appellant was admitted to emergency at the hospital on August 15, 2013, the lumbar discectomy was performed August 20, 2013 and the appellant was discharged on August 23, 2013.
- The appellant does not require any prosthesis or aid for his impairment.
- For the degree and course of impairment, the neurosurgeon noted that the impairment was not likely to continue for 2 years or more with a note: "anticipate some improvement with time."
- In terms of functional skills, the appellant can walk 2 to 4 blocks and climb 5 or more steps unaided and is able to lift 2 to 7 kg. (5 to 15 lbs.) and remain seated 1 to 2 hours.

In the AR completed one month after the PR, the neurosurgeon indicated that:

- The appellant is assessed as independent with all mobility, including walking indoors and outdoors, climbing stairs, and standing, while requiring periodic assistance with lifting and carrying and holding.
- The section of the AR relating to assistance provided through the use of assistive devices is not completed.

In the appellant's self-report, he wrote that:

- His mobility has been drastically reduced due to nerve damage as a result of a severe bulging disc. Prior to surgery, the pain shooting up and down his right leg was unbearable. It seems

that there has been some permanent nerve damage as a result.

- Since surgery in late summer, his right leg and foot have been left mostly numb.
- He has great difficulty with stairs and walking for any distance. His motor skills for walking have been greatly reduced. He is walking mostly on memory as opposed to motor function.

In the letter dated April 25, 2014, the physician responded to the questions posed as follows:

- Asked whether the appellant has a severe mental and/or physical impairment, the physician wrote that he continues to have post-surgical pain. He has a severe physical impairment. Right leg numbness is constant and the appellant's ability to use his leg is severely restricted. The physical impairment has a significant impact on his daily functioning. His ability to stand, walk, climb stairs, and bend is significantly restricted.
- The physician confirmed that the appellant's impairment is likely to last at least 2 years.

### ***Mental Impairment***

In the PR, the neurosurgeon reported that:

- The appellant has no difficulties with communication and no significant deficits with cognitive and emotional function.

In the AR, the neurosurgeon indicated that:

- The appellant has a good ability to communicate in all areas: speaking, reading, writing and hearing.
- The section of the report describing impacts to cognitive and emotional functioning is marked not applicable to the appellant.
- With respect to social functioning, the appellant is independent in all aspects, with no assessment of his functioning in his immediate or extended social networks as these are marked as not applicable to the appellant.

In the appellant's self-report, he did not describe a mental health condition. In the April 25, 2014 letter, there were no statements describing impacts from a mental health condition.

### ***Daily Living Activities (DLA)***

In the PR, the neurosurgeon indicated that:

- The appellant has not been prescribed any medication and/or treatment that interfere with his daily living activities.
- The appellant has unspecified restrictions with basic housework and mobility outside the home.
- The appellant is not restricted with personal self care, meal preparation, management of medications, daily shopping, mobility inside the home, use of transportation, management of finances, and social functioning.

In the AR, the neurosurgeon reported that:

- The appellant is independent with moving about indoors and outdoors.
- The appellant is independent in all tasks of the DLA personal care: dressing, grooming, bathing, toileting, feeding self, regulating diet, transfers in/out of bed and transfers on/off chair.
- The appellant is independent with basic housekeeping and laundry.
- For shopping, the appellant is independent with all 5 tasks: going to and from stores, reading prices and labels, making appropriate choices, paying for purchases, and carrying purchases home.

- The appellant is independent in performing all 4 tasks of the DLA meals: meal planning, food preparation, cooking and safe storage of food.
- The appellant is independent with all 3 tasks of the DLA paying rent and bills: banking, budgeting, and paying rent and bills.
- The appellant is independent in performing all 3 tasks of managing his medications: filling/refilling prescriptions, taking as directed and safe handling and storage.
- The appellant is independent with all 3 tasks of managing transportation: getting in and out of a vehicle, using public transit and using transit schedules and arranging transportation.

In the appellant's self-report, he wrote that:

- He has difficulty travelling from his residence to the public transit station to go shopping for food. He has limited ability to get groceries home if there are more than a few bags.
- His quality of life has been greatly affected as well as his ability to earn any money as most work he was able to find prior to his medical problem was labour.
- His surgeon says this could linger for up to or over 2 years.

In the letter dated April 25, 2014, the physician indicated that:

- It takes the appellant significantly longer than normal to perform many DLA, or he puts tasks off, as a direct result of his health-related limitations.
- The appellant's level of activity is significantly reduced due to his impairment.
- He is significantly restricted in performing DLA by one or more of his medical conditions and recurring symptoms on a daily basis.
- Asked whether his impairment significantly restricts his ability to perform a range of DLA continuously or periodically for extended periods, the physician wrote that there are significant restrictions on a continual basis.
- With personal self care, getting in/out of bed takes significantly longer than normal due to pain.
- For meal preparation, the appellant cannot stand long enough to prepare meals.
- Basic housekeeping is neglected due to pain/ restricted mobility.
- Basic daily shopping is put off as long as possible due to pain.
- For outdoor mobility, he cannot walk fast and it takes 3 times longer to walk. He cannot climb stairs or hills.
- For transportation, the appellant has restricted ability to get in/out of vehicles.

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

The neurosurgeon did not complete the section of the AR to indicate who provides the help required for DLA. The section of the report indicating assistance provided through the use of assistive devices is also not completed.

In the letter dated April 25, 2014, the physician indicated that:

- As a result of his health restrictions, the appellant requires significant help with DLA, either by taking much longer than typical to complete routine tasks or needing other people for ongoing help and support.
- The appellant requires ongoing help with the activities listed or else it takes significantly longer for him to do by himself.

In his Notice of Appeal, the appellant expressed his disagreement with the ministry's reconsideration decision and wrote that it was not reasonable to deny the PWD designation.

At the hearing, the appellant and his advocate stated that:

- The physician who completed the reports for the PWD application is the neurosurgeon who performed the appellant's back surgery.
- The appellant went to the hospital following an injury to his spine caused by jumping on a diving board and the neurosurgeon admitted him immediately. After his injury, the appellant experienced a "lightning bolt" sensation going up and down his leg.
- The neurosurgeon has very limited availability, he is only in his office a couple of hours each week, and the appellant was told it would take 2 months to get in to see him for a follow-up appointment. The appellant has not been followed up for any further X-Rays or investigation by the neurosurgeon.
- The appellant went to a doctor who he had seen previously in a medical clinic for more information and he completed the letter dated April 25, 2014. He had seen this doctor about his back once before and had seen him a total of 6 to 7 times. The doctor spent 10 to 15 minutes with him to explain his restrictions and the doctor could see that his walking is not what it should be.
- He had surgery at the same point on his spine 15 years ago. At first, he was given Tylenol 3's and he laid on the floor for a week in agony until an MRI showed the disc bulge and he was given morphine right away for the pain.
- He felt "like a million dollars" after his surgery 15 years ago and he thought there would be great improvement after his recent surgery as well.
- He had a discectomy in August 2013 and it alleviated the pain that he had before the surgery and he felt pretty good in comparison; however, he is still experiencing pain and numbness and it is not getting any better. The report of his abilities might have been better than they actually were because, in comparison, he was feeling much better than before the surgery. The state of his pain is the same as the day after the operation. He is in pain every day.
- The neurosurgeon had stated in his letter dated September 19, 2013 that the appellant "may" be able to go back to work, but there was nothing certain at that time.
- The appellant still has a residual sensation of "volts" going up his leg. Mostly it is a numb feeling with a bit of tingling in his leg. Sometimes it feels like he is carrying around a 60 lb. weight. The front muscle is not too bad but further down his leg and in his foot there is no feeling.
- His friend gave him a cane but it was too short and caused him to hunch over so he could not use it. He does not currently use a cane to walk.
- In a typical day he will go from his bed to the living room floor and lie down on cushions. Lying flat is the only position where he does not feel any discomfort. Anything not done from a position of lying on the floor is not getting done.
- He used to be a fast walker and now he is "getting passed by 60-year-old women." He has not been able to feel his foot since the surgery.
- He cannot make his bed. He does not vacuum but leaves it for the other resident in the house who is "a bit of a clean freak" and is more than happy to vacuum.
- The appellant microwaves something simple to eat because he does not want to cook. It is also a "bit of a problem" to stand to cook.
- He can carry a couple of bags of grocery onto the public transit and he can walk the 5 or 6 blocks back to his place. He cannot carry \$60 to \$80 of groceries at a time like he used to. He can only carry about ¼ of what he used to.
- He cannot stand on the bus so he lets any full buses pass by and it takes longer to get places.
- Since he has "bone on bone," it is only about 8 minutes of exerting himself before he starts to

feel pain, whereas it used to be 2/3rds of an hour before he got sore. If he does too much, he will be laid up for days.

- Asked to provide an example of an activity that would cause him to be laid up, the appellant said if he walked uphill to his friend's place and helped him with lifting boxes, he would be in bad shape afterwards.
- Asked about the assistance that he could use, the appellant suggested a live-in maid to do some of the chores since everything takes more effort and is "not as easy as it used to be."

The ministry relied on its reconsideration decision.

## PART F – Reasons for Panel Decision

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

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

### Persons with disabilities

2 (1) In this section:

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

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

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

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

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

(b) in the opinion of a prescribed professional

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

(A) continuously, or

(B) periodically for extended periods, and

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

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

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

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

(i) an assistive device,

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

(iii) the services of an assistance animal.

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

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

### Definitions for Act

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

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

(i) prepare own meals;

(ii) manage personal finances;

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

### **Severe Physical Impairment**

The appellant's position is that a severe physical impairment is established by the evidence of the reduced function of his right leg and back pain following a lumbar discectomy performed in August 2013 for a herniated lumbar disc L5-S1. The advocate argued that the neurosurgeon who completed the reports for the PWD application was optimistic about the appellant's prognosis as he did not confirm that the appellant's impairment would continue of 2 or more years, whereas the general practitioner who prepared the additional letter in April 2014 spent more time with the appellant and could see that the appellant was still suffering with pain 6 months later. The advocate argued that the ministry did not put sufficient weight on the evidence of the general practitioner who provided an opinion that the appellant's impairment met the duration criteria and also that he has a severe physical impairment.

The ministry's position is that while the appellant experiences limitations to his physical functioning, particularly in the areas of lifting/ carrying and holding, the assessments provided in the PWD application and confirmed in the document submitted at reconsideration speak to a moderate degree of physical impairment. The ministry argued that, in terms of physical functioning, the neurosurgeon indicated in the PR that unaided the appellant can walk 2 to 4 blocks and climb 5 or more steps and he can lift 5 to 15 lbs. and remaining seated for 1 to 2 hours, and this is supported by the appellant's description of walking to public transit and carrying a few bags of groceries home. The ministry argued that the neurosurgeon indicated that the appellant is independently able to do most aspects of mobility and physical abilities and that he anticipated some improvement with time. The ministry argued that although the general practitioner reported in the subsequent letter that the appellant's physical impairment has a significant impact on his daily functioning, affecting his ability to stand, walk, climb stairs and bend, the general practitioner did not submit a complete functional assessment to facilitate comparison with the original assessment by the neurosurgeon.

### ***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.

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 appellant's physician.

The neurosurgeon who performed the lumbar discectomy in August 2013 diagnosed the appellant with herniated lumbar disc L5-S1, right side with S1 radiculopathy, motor deficit and pain. In his letter dated one month after the surgery, the neurosurgeon wrote that he saw the appellant in follow-up and the pain is significantly improved although the appellant continues to have some pain in the back and right leg numbness. He anticipated further improvement although the appellant may continue to have back pain and numbness in his right leg. The neurosurgeon wrote that the appellant can gradually increase activity as tolerated and he anticipated that the appellant may be able to return to work with further gains in time. The PR was also completed by the neurosurgeon in September 2013 and he reported that the appellant can walk 2 to 4 blocks and climb 5 or more steps unaided and is able to lift 5 to 15 lbs. and remain seated 1 to 2 hours, which is in the moderate range of the functional skill assessment.

In the AR, which was completed on October 25, 2013, the neurosurgeon indicated that the appellant is assessed as independent with all mobility, including walking indoors and outdoors, climbing stairs, and standing, while requiring periodic assistance with lifting and carrying and holding. As there were no further notes provided by the neurosurgeon, the periodic assistance is more likely than not for heavier items in excess of the functional skill limitation of 5 to 15 lbs. The neurosurgeon indicated that the appellant does not require an aid for his impairment and he did not complete the section of the AR relating to assistance provided through the use of assistive devices. In his self-report dated November 13, 2013, the appellant wrote that since the surgery his right leg and foot have been left mostly numb and he has great difficulty with stairs and walking for any distance since his motor skills for walking have been greatly reduced. The appellant consulted his general practitioner and, in April 25, 2014, he wrote that the appellant continues to have post-surgical pain, that his right leg numbness is constant and the appellant's ability to use his leg is severely restricted. The general practitioner wrote that the appellant's physical impairment has a significant impact on his daily functioning and his ability to stand, walk, climb stairs, and bend is significantly restricted. The general practitioner did not provide further information regarding the limits to the appellant's functional skills, and the panel finds that the ministry reasonably determined that it is difficult to assess whether the general practitioner's evidence is indicative of deterioration in the appellant's abilities since the assessment by the neurosurgeon.

At the hearing, the appellant described times when he will go from his bed to the living room floor and lie down on cushions since lying flat is the only position where he does not feel any discomfort. The appellant stated that anything not done from a position of lying on the floor is not getting done. However, the appellant also described walking to public transit and carrying several bags of groceries back to his residence, although he can carry less than he used to be able to. The appellant stated that if he does too much, he will be laid up for days and that climbing up the hill to his friend's and helping move boxes is an example of over-exertion that would cause him to be laid up. The panel finds that the periods of time described by the appellant, after over-exerting himself, are not referred to in the reports by either the neurosurgeon or the general practitioner and it is not clear how often they occur.

As discussed in more detail in the subsequent section of this decision under the heading 'Restrictions in the ability to perform DLA', any physical limitations resulting from the appellant's impairments do not appear to have translated into significant restrictions in his ability to manage his DLA

independently. Given the appellant's current level of independent functioning, the panel finds that the ministry reasonably determined that there is not sufficient evidence to establish that the appellant has a severe physical impairment under section 2(2) of the EAPWDA.

### **Severe Mental Impairment**

The appellant did not maintain a position that he has a severe mental impairment.

The ministry's position is that there is insufficient evidence to establish that the appellant has a severe mental impairment. The ministry argued that the general practitioner did not indicate that the appellant has any significant deficits with his cognitive and emotional function or that his impairments have an impact on his communication or social functioning.

#### *Panel Decision*

The neurosurgeon did not diagnose a mental disorder in the PR and the general practitioner did not refer to a mental health condition in his April 25, 2014 letter. No significant deficits were reported with cognitive and emotional functioning and impacts to areas of daily functioning were marked by the neurosurgeon as not applicable to the appellant. In the PR, the neurosurgeon reported that the appellant does not have difficulties with communication and, in the AR, that the appellant has a good ability to communicate in all areas. With respect to social functioning, the appellant is independent in all aspects. Given the absence of a mental disorder diagnosis and no impacts reported to mental or social functioning, the panel finds that the ministry reasonably determined that a severe mental impairment was not established 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 advocate argued that while the appellant may not have the support structure available to allow him to receive the assistance from another person, he 'requires' this assistance with many DLA since he struggles to do things on his own and takes significantly longer than typical with many tasks.

The ministry's position is that although the appellant has certain limitations that result from his medical condition, the information provided does not establish that a severe impairment significantly restricts his ability to perform DLA either continuously or periodically for extended periods.

#### *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 neurosurgeon and the general 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 appellant's circumstances, the neurosurgeon initially reported in the PR that the appellant is not restricted with personal self care, meal preparation, management of medications, daily shopping, mobility inside the home, use of transportation, management of finances, and social functioning.

Restrictions were indicated by the neurosurgeon with the appellant's basic housework and mobility outside the home; however, there was no information provided regarding whether these are continuous or periodic restrictions and no further description. In the AR completed one month later, the neurosurgeon indicated that the appellant is independent in all of the tasks of each DLA, namely: prepare his own meals, manage personal finances, shop for personal needs, use public or personal transportation facilities, perform housework to maintain his place of residence in acceptable sanitary condition, move about indoors and outdoors, perform personal hygiene and self care, and manage personal medication.

In the April 25, 2014 letter, the general practitioner reported that there are significant restrictions on a continual basis to the appellant's DLA. In particular, with personal self care, getting in/out of bed takes significantly longer than normal due to pain. For meal preparation, the appellant cannot stand long enough to prepare meals. At the hearing, the appellant stated that he microwaves something simple to eat because he does not want to cook and it is also a "bit of a problem" to stand to cook. The general practitioner indicated that the appellant's basic housekeeping is neglected due to pain/restricted mobility. The appellant stated at the hearing that he cannot make his bed and he does not vacuum but leaves it for the other resident in the house. The general practitioner indicated that the appellant's basic daily shopping is put off as long as possible due to pain, and the appellant stated that he can get his groceries but can only carry ¼ of the bags of groceries that he used to be able to carry. In his self-report dated November 13, 2013, the appellant wrote that he has difficulty travelling from his residence to the public transit station to go shopping for food and he has limited ability to get groceries home if there are more than a few bags. For outdoor mobility, the general practitioner reported in the letter that the appellant cannot walk fast and it takes 3 times longer to walk and he cannot climb stairs or hills. The appellant stated at the hearing that he walks the 5 to 6 blocks home from the transit station with his groceries and he walks very slowly but that he does not currently use a cane. The general practitioner indicated that, for transportation, the appellant has restricted ability to get in/out of vehicles. The panel finds that the restrictions described by both the general practitioner and the appellant indicate that some tasks of DLA take the appellant significantly longer than typical as a result of his reduced mobility and his need for assistance with lifting more than 5 to 15 lbs.

The appellant described periods of time, after over-exerting himself, that he can only find relief for his pain by lying flat on the floor and that he is unable to perform his DLA during these times; however, it is not clear how often these periods occur or for how long since neither the neurosurgeon nor the general practitioner referred to these periods of immobility. While there are some restrictions with tasks of DLA reported by the general practitioner, such as transfers in/out of bed, heavier chores of housekeeping, food preparation, and getting in and out of a vehicle, these restrictions are consistent with the moderate range of functional skills limitations specifically identified by the neurosurgeon and the appellant functions independently with most tasks of his DLA. The panel finds that the ministry reasonably concluded that there is not enough evidence from the prescribed professional to establish that the appellant's impairment significantly restricts his ability to manage his DLA either continuously or periodically for extended periods, thereby not satisfying the legislative criterion of section 2(2)(b)(i) of the EAPWDA.

#### **Help to perform DLA**

The appellant's position is that he requires the significant assistance of another person or an assistive device to perform DLA.

The ministry's position is that because it has not been established that DLA are significantly restricted, it cannot be determined that significant help is required.

*Panel Decision*

Section 2(2)(b)(ii) of the EAPWDA requires that, as a result of direct and significant restrictions in the ability to perform DLA, a person requires help to perform those activities. Help is defined in subsection (3) as the requirement for an assistive device, the significant help or supervision of another person, or the services of an assistance animal in order to perform a DLA.

The neurosurgeon did not complete the section of the AR to indicate who provides the help required for DLA and the section of the report indicating assistance provided through the use of assistive devices is also not completed. In the letter dated April 25, 2014, the general practitioner indicated that the appellant requires significant help with DLA, either by taking much longer than typical to complete routine tasks or needing other people for ongoing help and support. The panel finds that the ministry reasonably determined that as direct and significant restrictions in the appellant's ability to perform DLA have not been established, it cannot be determined that the appellant requires help to perform DLA as a result of those restrictions, as defined by section 2(3)(b) of the EAPWDA.

**Conclusion**

Having reviewed and considered all of the evidence and relevant legislation, the panel finds that the ministry's reconsideration decision which determined that the appellant was not eligible for PWD designation was reasonably supported by the evidence, and therefore confirms the decision.