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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 May 6, 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 appellant did not attend the hearing. After confirming that the appellant was notified of the date and time of the hearing, the hearing proceeded under Section 86(b) of the *Employment and Assistance Regulation*.

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 21, 2013, a physician report (PR) dated December 16, 2013 completed by a general practitioner who has known the appellant for 2 months and an assessor report (AR) dated December 2013 completed by a nurse practitioner who has also known the appellant for approximately 2 months. The evidence also included the following:

1) Notice of Suspension of the appellant's Driver's License from another province dated May 12, 2005, with stated reason of evidence of a medical condition that would affect his ability to safely operate a motor vehicle;
2) Consultation Report dated July 29, 2010 for a CT scan of the head and a summary stating "no significant abnormality to explain symptoms. Nil acute."
3) ECG scan from 2010 stamped "not interpreted";
4) ECG Report dated May 26, 2011 with no interpreted findings provided;
5) Pulmonary Function Report dated July 18, 2011 finding very mild obstruction;
6) One of two pages of a report dated April 20, 2012 indicating that the appellant has evidence of both fatty liver disease and alcohol-related liver disease. With his abstinence from alcohol and improvement in his diet, a natural improvement in all his symptoms and blood work has been observed;
7) Report dated June 4, 2012 for X-Ray of the lumbar spine with a finding of marked degenerative disc disease at L5-S1 and L2-3 and to a lesser extent the levels above and below; mild to moderate degenerative change at the L4-5 and L5-S1 facet joints bilaterally;
8) Report dated November 14, 2013 for X-Ray of the lumbar spine with a finding of degenerative lumbar disc changes;
9) Handwritten letter dated December 17, 2013 in which an unidentified author wrote that the appellant has been referred to several specialists and for more tests, including EEG, CT scan and ultra sound to continue to monitor his spinal, liver and brain conditions. His medication was increased on December 17, 2013.
10) Letter dated February 13, 2014 from a neurologist to the nurse practitioner who completed the AR;
11) Referral form stamped December 31, 2013 indicating a recent increase in seizures and types of seizures with the ordering physician identified as the same name as that of a nurse practitioner who completed the AR;
12) Letter dated April 14, 2014 from the appellant's spouse;
13) Letter dated April 25, 2014 in which another physician responded to a number of questions; and,
14) Request for Reconsideration dated March 19, 2014.

Diagnoses

In the PR, the appellant was diagnosed by the general practitioner with epilepsy, degenerative disc disease, chronic liver disease (fatty liver), and MSK [musculoskeletal] pseudo-gout. The general practitioner noted that the appellant is new to the practice and the old chart notes were requested but are incomplete which made it difficult to complete the PR.

Physical Impairment

In the PR, the general practitioner reported that:

- In terms of health history, there was a cardiac consult in 2011 with a diagnosis of GERD [Gastroesophageal Reflux Disease] with no heart issues, HTN [hypertension]. With the pseudo-gout, inflammatory symptoms in right wrist improved with medical Tx [therapy]. A consult was provided for the fatty liver disease. X-Ray reports for the lumbar spine were attached for the degenerative disc disease. Epilepsy is not well-controlled and the appellant planned to see the neurologist on February 13, 2014.
- The appellant does not require any prosthesis or aid for his impairment.
- In terms of functional skills, it is unknown how far the appellant can walk, how many stairs he can climb, how much he can lift or how long he can remain seated.

In the AR the nurse practitioner indicated that:

- The appellant is assessed as independent with walking indoors and outdoors and standing. He takes significantly longer than typical with climbing stairs, with the note added: "cannot always climb at all." He requires continuous assistance from another person with lifting (note: "does not lift due to back") and he requires periodic assistance with carrying and holding. The nurse practitioner commented that the appellant "may need some help with getting up."
- 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:

- He suffers from several conditions including epilepsy, degenerative disc disease and a liver condition.
- He is taking medications 3 times per day for his seizures. With medication, his seizures are generally petit, but he can still have grand mal seizures at any time.
- His seizures cause him to fall and sometimes injure himself and he is not allowed to drive.
- The degenerative discs cause varying degrees of pain in his back, hips and legs and a lot of lower limb weakness.
- The pain and weakness in his back, hips and legs make it difficult to sit, stand or lie down for any length of time. It is difficult to walk up and down steps or an incline.
- With his fatty liver, he gets swelling and water retention in his legs and abdomen.
- These conditions have been ongoing for some time, but the weakness in his lower body has increased dramatically over the last 2 years.
- The overall affect on his life is that his ability to work physically on an ongoing basis or be free from pain or the possibility of seizure is restricted and restrictive.

In the letter dated February 13, 2014, the neurologist wrote that:

- The appellant was seen on February 13, 2014 for a consultation. The appellant has a lifelong history of epilepsy and experiences both generalized tonic-clonic as well as petit mal seizures.
- With a change of medications, he did not experience any generalized tonic-clonic seizures until approximately 6 to 7 months ago, at a frequency of 3 to 4 events per week. After an increase in the medication 8 weeks ago, he has not had any further generalized tonic-clonic seizures.
- The appellant is still experiencing petit mal seizures at a frequency of 5 per week, which consist of episodes during which he stares blankly into space while being unresponsive without loss of body tone. The appellant estimates that these events last about 20 to 30 seconds at a time. Because of the ongoing nature of these attacks, he has not driven for the past 8 years.

- The appellant admits that he experiences some myoclonic jerks, not only in relation to sleep but also while he is fully awake.
- The appellant also complains of long-standing pain in the legs, which is more pronounced on the left. The pain starts in the buttocks and hips from where it radiates over the side of the legs into the feet. The pain is exacerbated by walking or changing postures such as when getting in and out of the car.
- An EEG on January 14, 2014 was normal. CT imaging of the lumbosacral spine on December 24, 2013 showed an annular disc bulge at the L5-S1 level causing a bilateral foramina narrowing, more so on the left.
- The conclusion includes that the appellant's seizures have been responding well to the medications of which he is still taking a relatively low dose. There is room to increase the medications.
- For the chronic lower back pain which radiates into the left leg, arrangements are being made for an MRI of the lumbosacral spine, suspecting mild L5 nerve root impingement.

In the letter dated April 14, 2014, the appellant's spouse wrote that:

- She has experienced living with an epileptic for over 30 years as his caregiver and that it is an ongoing situation.
- When the appellant has a grand mal seizure, he loses all body co-ordination, speech and comprehension and definitely needs assistance. He slurs his words and he cannot understand or compute anything she says. She gets him into bed and he will sleep for up to 15 hours. When he awakes, he is dozy and seems disconnected and it takes a while for his brain to clear.
- Even the petit mal seizures have consequences, and he has been accused of being drunk.
- The 4 disintegrating discs in his back also cause pain and he walks "like an old man, limping."

In his Request for Reconsideration dated April 14, 2014, the appellant wrote that:

- At any moment of any day or hour he might experience one of the two types of seizures described by the neurologist, in particular the general tonic-clonic seizures and the petit mal seizures. Physical ability is temporarily shut down or severely interrupted during a seizure and the after effects can last for several hours.
- When he is in a public place, the possibility of having a seizure is a safety concern. For example, if he is attempting to climb a set of stairs, there is always a fear he will have a seizure.
- He walks slowly and awkwardly. If it takes a typical person 4 or 5 minutes to walk from a parking lot to a building, it takes him about 15 minutes usually, or about 3 times longer.
- He cannot walk or stand for more than about 20 minutes without reaching a point of not being able to further tolerate the pain in his back and legs.
- He is taking pain medication and to help him sleep as his leg and back pain often wake him up several times during the night.

Mental Impairment

In the PR, the general practitioner reported that:

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

In the AR, the nurse practitioner 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 as no impact in all 14 areas of functioning, including consciousness, executive, and memory.
- With respect to social functioning, the appellant is independent in all aspects, with good functioning in both his immediate and extended social networks.

In the letter dated April 14, 2014, the appellant's spouse wrote that:

- The appellant's epilepsy does not only affect him physically, but the mental damage is just as debilitating and an ongoing frustration for him.

In his Request for Reconsideration dated April 14, 2014, the appellant wrote that:

- If during periods that he is not experiencing a seizure he is cognitively alert and appears able to function in social interactions, it does not follow that this is the case all the time. Becoming unconscious, fatigued and confused at unpredictable intervals erases any ability to mentally function. Effective communication is temporarily shut down or severely interrupted, and the after effects can last for several hours.
- Having uncontrolled or poorly controlled seizures that can arise at any time is like always waiting for a "surprise attack" and there is constant emotional stress.
- There is always a fear that he will have a seizure in a public place, which is both a safety concern and embarrassing. Supervision in public is prudent.
- If it appears to others that he is emotionally intact, it is because he works at overcoming fear of injury or embarrassment by preparing ahead of time for something that may or may not occur.

Daily Living Activities (DLA)

In the PR, the general practitioner indicated that:

- The appellant has not been prescribed any medication and/or treatment that interfere with his daily living activities.
- The appellant is continuously restricted with basic housework and daily shopping. There are no comments provided regarding the degree of restriction with these DLA.
- It is unknown whether the appellant is restricted with mobility outside the home, use of transportation or management of finances.
- The appellant is not restricted with personal self care, meal preparation, management of medications, mobility inside the home and social functioning.
- Regarding the assistance required with DLA, the general practitioner wrote that he is aware that the appellant cannot walk for long periods and cannot drive. He is unable to shop locally and would need to drive to another community.

In the AR, the nurse practitioner reported that:

- The appellant is independent with moving about indoors and outdoors.
- The appellant is independent in 5 of 8 tasks of the DLA personal care, and requires periodic assistance from another person with dressing (note: "trousers/socks/shoes- needs help"), transfers in/out of bed and transfers on/off chair.
- The appellant requires periodic assistance with basic housekeeping and laundry. No further description or explanation is provided.
- For shopping, the appellant is independent with 3 of 5 tasks, namely reading prices and labels, making appropriate choices and paying for purchases, and requires continuous assistance

from another person with going to and from stores (note: "unable to drive- epilepsy") and carrying purchases home. The nurse practitioner commented that the appellant's seizures are unpredictable and, therefore, safety is a concern.
- 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 requires periodic assistance from another person with getting in and out of a vehicle, with the note: "difficult due to decreased leg strength." The other 2 tasks relating to public transit are marked as not applicable.

In the appellant's self-report, he wrote that:
- It is difficult to get in or out of a vehicle and he often needs assistance.
- His range of movement often makes it difficult for him to dress (putting on pants, shoes and socks).

In his Request for Reconsideration dated April 14, 2014, the appellant wrote that:
- There is always a fear that he will have a seizure in a public place, which is both a safety concern and embarrassing. Supervision in public is prudent.
- He requires assistance with some aspects of daily living because of pain and weakness. Mobility is a challenge. Not all daily tasks are beyond his ability. Most he can do with help and some independently for short periods.

Need for Help
The nurse practitioner indicated in the AR that the assistance required for DLA is provided by the appellant's family and friends with a note that he lives with his wife. The section of the report indicating assistance provided through the use of assistive devices is also not completed.

In his Request for Reconsideration dated April 14, 2014, the appellant wrote that:
- The combined physical and mental impairments affect his daily living functions to a severe enough extent that assistance from his wife and others is both necessary and prudent to ensure his safety and well-being.

In his Notice of Appeal, the appellant expressed his disagreement with the ministry's reconsideration decision, and wrote that the nurse practitioner reported that epilepsy is a safety concern.

The ministry relied on its reconsideration decision.

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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 pain and weakness in his back, hips and legs due to degenerative disc disease, the swelling and water retention in his legs and abdomen caused by chronic liver disease, and the loss of function and risk to his safety as a result of epileptic seizures. The appellant argued in his Notice of Appeal that his testimony and that of his wife regarding the impact of his medical conditions was not given sufficient consideration by the ministry. The appellant argued that the medical professionals believe his conditions require specialist referrals on an ongoing basis and the nurse practitioner reported that epilepsy is a safety concern. The appellant argued that his physical ability is temporarily shut down or severely interrupted during a seizure and the effects can last for several hours.

The ministry's position is that while the appellant experiences limitations to his physical functioning, particularly in the areas of lifting/ carrying and holding and climbing stairs, 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 general practitioner indicated in the PR that the appellant's functional skill limitations are unknown and the nurse practitioner reported the need for continuous assistance with lifting and periodic assistance with carrying and holding. The ministry argued that the nurse practitioner also reported that the appellant is independent with walking indoors and outdoors and standing. The ministry argued that the imaging and consult reports provided with the original application and the documents submitted at reconsideration speak to a moderate level of 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.

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 general practitioner.

The general practitioner, who had known the appellant for 2 months, diagnosed the appellant with

epilepsy, degenerative disc disease, chronic liver disease and pseudo-gout. With the pseudo-gout, the general practitioner noted that the inflammatory symptoms in right wrist improved with medical therapy and the consult for the fatty liver disease dated April 20, 2012 indicated that, with the appellant's abstinence from alcohol and improvement in his diet, a natural improvement in all his symptoms has been observed. The general practitioner noted that the appellant is new to the practice and the old chart notes were requested but are incomplete which made it difficult to complete the survey. In terms of functional skills, the general practitioner indicated that it is unknown how far the appellant can walk, how many stairs he can climb, how much he can lift or how long he can remain seated. In the section of the PR relating to restrictions to DLA, the general practitioner reported that it is unknown whether the appellant is restricted with mobility outside the home, but he is aware that the appellant cannot walk for long periods. The general practitioner reported that the appellant does not require an aid for his impairment.

In his self-report, the appellant wrote that his degenerative discs cause varying degrees of pain in his back, hips and legs, which make it difficult to sit, stand or lie down for any length of time. In his Request for Reconsideration, the appellant wrote that he walks slowly and awkwardly and about 3 times longer than typical. The information provided by the nurse practitioner in the AR, however, is that the appellant is independent with walking indoors and outdoors and with standing. There is no indication that it takes the appellant longer than typical or that he has a need for assistance by another person or with an assistive device.

In the AR, the nurse practitioner indicated that the appellant takes significantly longer than typical with climbing stairs, with the note added: "cannot always climb at all." In his Request for Reconsideration, the appellant wrote that when he is in a public place, the possibility of having a seizure is a safety concern. For example, if he is attempting to climb a set of stairs, there is always a fear he will have a seizure. In his self-report, the appellant also wrote that the pain in his back, hips and legs makes it difficult to walk up and down steps or an incline. The nurse practitioner reported that the appellant requires continuous assistance from another person with lifting (note: "does not lift due to back") and he requires periodic assistance with carrying and holding. The appellant did not mention restrictions to lifting in his self-report or his Request for Reconsideration. The appellant wrote that, with medication, his seizures are generally petit, but he can still have grand mal seizures at any time which cause him to fall and sometimes injure himself and he is prohibited from driving. The appellant's wife wrote in her letter that when the appellant has a grand mal seizure, he loses all body co-ordination, speech and comprehension and definitely needs assistance. She gets him into bed and he will sleep for up to 15 hours. When he awakes, he is dozy and seems disconnected and it takes a while for his brain to clear.

At the time of PWD application, the general practitioner wrote that the appellant's epilepsy was not well-controlled and the appellant planned to see the neurologist on February 13, 2014. The neurologist reported in his letter of February 13, 2014 that, following an increase in the medication, the appellant has not had any further generalized tonic-clonic seizures. He still experiences petit mal seizures at a frequency of 5 per week, which consist of episodes during which he stares blankly into space while being unresponsive but without loss of body tone. The neurologist's conclusion is that the appellant's seizures have been responding well to the medications of which he is still taking a relatively low dose and there is room to increase the medications, if required. The neurologist also reported that the appellant complains of long-standing pain in the legs, which is more pronounced on the left and is exacerbated by walking or changing postures such as when getting in and out of the car. The neurologist wrote that CT imaging of the lumbosacral spine on December 24, 2013 showed

an annular disc bulge at the L5-S1 level causing a bilateral foramina narrowing, more so on the left. The neurologist referred to arrangements being made for an MRI of the lumbosacral spine as he suspected "mild L5 nerve root impingement." No further reports were provided to the panel prior to the hearing.

The panel finds that the evidence demonstrates that while the appellant experiences some limitations to his physical abilities due to degenerative disc disease, particularly in the area of lifting and carrying and holding, he remains independent with his mobility and further investigations are pending. With the appellant's epilepsy, the consequences of experiencing a grand mal seizure as described by the appellant and his wife are pronounced since the appellant loses consciousness and there is a safety concern if he was climbing stairs at the time, for example, and he needs to sleep for many hours following in order to recover. However, the neurologist reported that the seizures are responding well to the medication and there is room to increase his dosage. Given the lack of detail provided by the general practitioner with respect to the appellant's functional skill limitations, the panel finds that the ministry reasonably concluded that there is not sufficient information to confirm that the appellant has more than a moderate degree of impairment in his functioning. In the absence of further detail, the panel finds that the ministry reasonably determined that there is not sufficient evidence to establish that the appellant has a severe physical impairment under section 2(2) of the EAPWDA.

Severe Mental Impairment

The appellant's position, as expressed in his Request for Reconsideration, is that having uncontrolled or poorly controlled seizures that can arise at any time is like always waiting for a "surprise attack" and there is constant emotional stress. The appellant argued that there is always a fear that he will have a seizure in a public place which is a safety concern for which supervision is prudent. The appellant argued that if during periods that he is not experiencing a seizure he is cognitively alert and appears able to function in social interactions, it does not follow that this is the case all the time. The appellant argued that becoming unconscious, fatigued and confused at unpredictable intervals erases any ability to mentally function. The appellant argued that effective communication is temporarily shut down or severely interrupted, and the after effects can last for several hours. The appellant argued that if it appears to others that he is emotionally intact, it is because he works at overcoming fear of injury or embarrassment by preparing ahead of time for something that may or may not occur.

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 and the nurse practitioner reported no impacts to cognitive and emotional or social functioning.

Panel Decision

In the PR, the general practitioner diagnosed epilepsy, which is a health condition with impacts to both physical and mental functioning. As the appellant's wife described in her letter dated April 14, 2014, the epilepsy does not only affect the appellant physically, "but the mental damage is just as debilitating and an ongoing frustration for him." In the letter dated February 13, 2014, the neurologist wrote that the appellant is still experiencing petit mal seizures at a frequency of 5 per week, which consist of episodes during which he stares blankly into space while being unresponsive without loss of body tone. The appellant estimates that these events last about 20 to 30 seconds at a time. While the appellant argued that uncontrolled or poorly controlled seizures that can occur at any time causes constant emotional stress, the neurologist's conclusion in his February 13, 2014 letter is that the

appellant's seizures have been responding well to the medications. The medical evidence in the PWD application confirms that there are currently no impacts to the appellant's cognitive and emotional function, to his communication or to his social functioning.

In the PR, the general practitioner reported that the appellant has no difficulties with communication and no significant deficits with cognitive and emotional function. In the AR, the nurse practitioner indicated that the appellant has a good ability to communicate in all areas and the section of the report describing impacts to cognitive and emotional functioning is marked as no impact in all 14 areas of functioning. With respect to social functioning, the appellant is independent in all aspects, with good functioning in both his immediate or extended social networks. Given the absence of reported impacts to the appellant's 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 appellant argued in his Request for Reconsideration there is always a fear that he will have a seizure in a public place, which is both a safety concern and supervision in public is prudent. The appellant argued that he requires assistance with some aspects of daily living because of pain and weakness, although not all daily tasks are beyond his ability, and mobility is a challenge.

The ministry's position is that although the appellant has certain limitations that result from his medical conditions, particularly with shopping and housekeeping, 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 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 appellant's circumstances, the general practitioner initially reported in the PR that the appellant is not restricted with several DLA, namely: personal self care, meal preparation, management of medications, mobility inside the home and social functioning. In the AR, the nurse practitioner indicated that the appellant is independent in 5 of 8 tasks of the DLA personal care, and requires periodic assistance from another person with dressing, transfers in/out of bed and transfers on/off chair. There is no description for how often or how long the appellant requires assistance in these areas. In the appellant's self-report, he wrote that his range of movement 'often' makes it difficult for him to dress (putting on pants, shoes and socks); however, the frequency and duration of the assistance required is not specified. It is unknown by the general practitioner whether the appellant is restricted with mobility outside the home, use of transportation or management of finances. The nurse practitioner reported in the AR that the appellant requires periodic assistance from another

person with getting in and out of a vehicle, with the note: "difficult due to decreased leg strength" and the other 2 tasks relating to public transit are marked as not applicable. There are no further comments provided to indicate how often the appellant requires assistance getting in and out of a vehicle, or whether the use of public transit is not applicable as being not available in the appellant's community or whether he is unable to take public transit for some reason. In the appellant's self-report, he wrote that it is difficult to get in or out of a vehicle and he 'often' needs assistance; however, the frequency and duration of the assistance required is not specified. In the AR, the nurse practitioner indicated that the appellant is independent in all of the tasks of several DLA, namely: prepare his own meals, manage personal finances, move about indoors and outdoors, and manage personal medication.

The general practitioner reported that the appellant is continuously restricted with basic housework and daily shopping. The general practitioner commented that he is aware that the appellant cannot drive and he is unable to shop locally and would need to drive to another community. The nurse practitioner indicated that the appellant is independent with 3 of 5 tasks of the DLA shopping, namely reading prices and labels, making appropriate choices and paying for purchases, and requires continuous assistance from another person with going to and from stores (note: "unable to drive-epilepsy") and with carrying purchases home. The nurse practitioner commented that the appellant's seizures are unpredictable and, therefore, safety is a concern. Although the appellant cannot drive, the panel finds that driving is not one of the DLA listed in section 2 of the EAPWDR and there is not sufficient information provided to determine whether the use of public transportation may be an option available to the appellant for doing his shopping if the facilities were available to him locally. The nurse practitioner reported that the appellant requires periodic assistance with basic housekeeping and laundry; however, no further description or explanation is provided for the purposes of determining whether the need for assistance is for extended periods of time.

While there are restrictions reported with tasks of some DLA, the panel finds that there is not sufficient detail and description to support a finding that the periodic restrictions are for extended periods of time or that the continuous restrictions are not as a result of a factor other than the appellant's health condition, such as the shopping/ transit facilities available in his community. The panel finds that the ministry reasonably concluded that there is not enough evidence from the prescribed professionals 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, as expressed in his Request for Reconsideration, is that that his combined physical and mental impairments affect his daily living functions to a severe enough extent that assistance from his wife and others is both necessary and prudent to ensure his safety and well-being.

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 nurse practitioner indicated in the AR that the assistance required for DLA is provided by the appellant's family and friends with a note that the appellant lives with his wife. The section of the AR indicating assistance provided through the use of assistive devices is not completed. In her letter dated April 14, 2014 the appellant's wife wrote that she has experienced living with an epileptic for over 30 years as his caregiver and that it is an ongoing situation. She described assisting the appellant get to bed when he has a grand mal seizure but she does not describe her assistance with any of the listed DLA, especially since his seizures have now been responding well to the medication. 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 decision which determined that the appellant was not eligible for PWD designation was reasonably supported by the evidence, and therefore confirms the decision.