

PART C – Decision under Appeal

The decision under appeal is the Ministry of Social Development and Social Innovation (the ministry) reconsideration decision dated April 9, 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 appellant's adult son attended the hearing as both a witness and to provide translation into the appellant's original language.

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 October 12, 2013, a physician report (PR) and an assessor report (AR) both dated October 18, 2013 and completed by the appellant's family physician who has known the appellant for approximately two weeks. The approaches and information sources used to complete the form were solely an office interview with the appellant.

The evidence also included the following:

- 1) Letter dated March 26, 2014 with statements to which the appellant's physician responded;
- 2) Submission dated April 7, 2014 prepared by an advocate on behalf of the appellant; and,
- 3) Request for Reconsideration dated February 25, 2014.

Diagnoses

In the PR, the appellant was diagnosed by his physician with degenerative disc disorder, migraine headaches and gastritis secondary to analgesic use. There was no diagnosis indicated for a mental health condition.

Physical Impairment

In the PR, the appellant's physician reported that:

- In terms of health history, the appellant "...has had severe low back pain for which had surgery 2 years ago. Still has residual low back pain with radiation to his thighs. Pain at time aggravates. Pain worse when up and about. Following using NSAID's [non-steroidal anti-inflammatory drugs] has experienced upper abdominal pain which is due to increased acidity and ulceration which has been under treatment. He has also been bothered with migraine headaches for 5 years and has been taking medication for pain. Has also had pain in both hands and had surgery for his right thumb bone abnormality 4 years ago."
- The appellant does not require any prosthesis or aid for his impairment.
- In terms of functional skills, the appellant can walk 1 to 2 blocks and climb 2 to 5 steps unaided and is able to lift 2 to 7 kg. (5 to 15 lbs.) and remain seated 1 to 2 hours.
- In the additional comments, the physician wrote: "as described, is unable to attend to tasks which need lifting, carrying items (moderately heavy items)."

In the AR, the appellant's physician 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 physician noted: "cannot lift or carry moderately heavy items due to low back and leg pain."
- The section of the AR relating to assistance provided through the use of assistive devices is not completed by the physician.

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

- This back problem that he has in the last 4 or 5 years has been giving him a lot of unbelievable pain. Whenever he walks more than 5 minutes or stands more than 5 minutes, the pain gets

worse and makes him sit down on the ground in public no matter where he is.

- It has been almost 2 years since surgery and nothing changed. He still has the same pain and he cannot do any work.
- The amount of money he gets in assistance is not enough for his family to live on and, because of this, his second most painful health problem is migraines, which get worse and he has to take 6 to 8 different types of pills almost every day.
- Because of these difficulties, his other health problem is stomach pain which turns his world into a "black day." He wishes he was healthy enough to work and make money for his family.

In the letter dated March 26, 2014, the physician responded to the question whether, when the impact of the appellant's medical conditions on his daily life is considered, the appellant has a severe physical or mental impairment by writing that:

- The appellant has low back pain which "he expresses to be most of the time and severe."
- He also has migraine headaches which respond to medications.
- He also complains of poor sleep pattern at nights resulting in fatigue during the day time.
- "The effect of these conditions as listed will result in severe impact on his daily life."

Mental Impairment

In the PR, the appellant's physician reported that:

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

In the AR, the physician indicated that:

- The appellant has a satisfactory ability to communicate in all areas: speaking, reading, writing and hearing.
- The section of the report describing impacts to cognitive and emotional functioning was not completed.
- The appellant is independent in all aspects of social functioning: making appropriate social decisions, developing and maintaining relationships, interacting appropriately with others, dealing appropriately with unexpected demands, and securing assistance from others.

In the appellant's self-report, he did not describe a mental health condition. In the March 26, 2014 letter, there were no statements describing impacts from a mental health condition.

Daily Living Activities (DLA)

In the PR, the physician indicated that:

- The appellant has not been prescribed any medication and/or treatment that interfere with his daily living activities.
- He is restricted on a periodic basis with basic housework and daily shopping.
- The appellant is not restricted with personal self care, meal preparation, management of medications, mobility inside the home, mobility outside the home, use of transportation, management of finances, and social functioning.
- For further explanation of "periodic" restrictions, the physician wrote that the appellant "feels back and leg pain after a few minutes."
- Regarding the degree of restriction, the physician wrote "moderate."
- With respect to the assistance needed with DLA, "his family members help with housekeeping and shopping tasks."

In the AR, the physician reported that:

- The appellant is independent with moving about indoors and outdoors.
- The appellant is independent in 7 of 8 tasks of the DLA personal care: dressing, grooming, toileting, feeding self, regulating diet, transfers in/out of bed and transfers on/off chair. He requires periodic assistance from another person with bathing, with no further description provided.
- The appellant requires periodic assistance with basic housekeeping and laundry, with no further explanation or description provided.
- For shopping, the appellant is independent with 4 of 5 tasks, namely going to and from stores, reading prices and labels, making appropriate choices and paying for purchases. The appellant requires periodic assistance with carrying purchases home. The physician noted that the appellant "has low back/leg and, at times, wrist pain; family members help to lift and carry shopping/ items."
- The appellant is independent in performing 1 of 4 tasks of the DLA meals, namely safe storage of food. The appellant requires periodic assistance from another person with meal planning, food preparation and cooking, described as "due to back and leg pain, cannot stand for more than a few minutes."
- 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 letter dated March 26, 2014, the physician wrote that:

- In response to the question whether it takes the appellant longer than normal to perform many DLA, or does he put tasks off, as a direct result of his health-related limitations, the physician commented that the appellant "says pain in his lower back and legs prevent him from walking more than 3 to 4 minutes.
- Asked whether the appellant's level of activity is significantly reduced, the physician wrote that "he expresses that is unable to walk, carry items, etc. due to his leg and lower back pain."
- In response to a question about how often the appellant is significantly restricted in performing DLA, the physician wrote that "he expresses most of the time he is restricted in his daily tasks."
- Asked whether the appellant's impairment significantly restricts his ability to perform a range of DLA continuously or periodically for extended periods, the physician wrote that the appellant "expresses his symptoms of low back pain and migraine headaches and fatigue result in significant restriction in a number of activities of daily living, such as basic housework, shopping, meal preparation, and personal care, etc."

Need for Help

In the AR, the physician reported that:

- The help required for DLA is provided by the appellant's family. Asked to describe the assistance that would be necessary if help was not available, the physician wrote: "help for lifting and carrying moderately heavy items; help for cooking and meal preparation."
- The section of the report indicating assistance provided through the use of assistive devices is not completed.

In the letter dated March 26, 2014, the physician wrote that:

- In response to the question whether he can confirm that the appellant requires significant help with DLA, the physician wrote that "his family members provide help; he uses a walking cane outdoors; says at home has difficulty in bathroom and a grab bar will be helpful."

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 PWD designation.

Prior to the hearing, the appellant provided an additional document, namely a Medical Report dated January 6, 2011 completed by a specialist in neurosurgery and attaching part of an MRI and CT scan report. The advocate explained that the Medical Report dated January 6, 2011 was submitted in application for disability assistance in another province and the appellant was successful in being granted disability designation. The diagnosis is multilevel degenerative disc disease and bilateral foraminal narrowing, with a comment that the "condition is degenerative and related to long standing from heavy labour work." In terms of attitude/emotional stability/ behavioral patterns, the neurosurgeon wrote "no concerns" and comprehension/orientation/memory is "N/A" or not applicable. The treatment is conservative with medications and a note that physiotherapy was tried and failed before. The prognosis is "guarded", present response to treatment is "not well" and the opinion for the future is "surgery is not indicated but has to avoid heavy lifting, bending, prolonged sitting, standing permanently" and he "can be autonomous with the above limitations."

At the hearing, the advocate provided a page with excerpts from the court decision *in Hudson v. EAAT*, 2009 BCSC 1461.

At the hearing, the appellant's adult son stated that:

- No one in the family is happy with the situation that their father is in. Either his mother or his siblings are with the appellant 24/7 because of his conditions.
- He spends a lot of time with his father and is usually the one that takes him to the hospital if his migraines become very bad. At other times, his father will go into a dark room until the pain goes away. He will sometimes take a hot shower and that might relieve the migraine. If it still does not go away, he will drive his father to the hospital. At the hospital, they will give his father an IV and the pain will go away.
- His mother will help the appellant get to the washroom most of the time in the mornings.
- Sometimes if they go shopping and are walking in the shopping mall, his father will walk for a minute or two and, if there is no bench around, will sit on the floor.
- Sometimes his father will drive to the grocery store, but his mother does the shopping. His father cannot carry the grocery bags. He cannot do any bending, lifting or carrying.
- For meal preparation, the rest of the family will not let the appellant get food because he cannot stand for long.
- His father just sits and eats and drinks and cannot do any cleaning. He and his sister have to do the cleaning.
- He takes his father to his appointments.
- In response to a question, he stated that his father's condition has not deteriorated since they moved from another province, and has not changed since when the doctor completed the reports for the PWD application, but it is the same.
- Before his father started having problems, the family used to do the household chores equally.
- The doctor who completed the reports with his father's PWD application speaks his father's

original language and there was no problem with communication. The doctor, however, is very busy and does not take much time as he is always in a rush and they are not satisfied and have been looking for a new doctor.

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

- The doctor who prepared the reports for the PWD application had only known the appellant for 2 weeks because the appellant moved recently from another province.
- The advocate prepared the letter and provided it to the appellant who met with the doctor. When the additional letter was presented to the doctor, he reviewed it and completed it with the appellant present.
- The doctor appears to adopt a cautious writing style, perhaps because he had not known the appellant for long, but the doctor would not sign the letter if he did not agree that the appellant's assertions are true.
- The appellant wakes up in the night with a migraine headache and cannot sleep so that he is fatigued during the day. He finds that he gets migraines when he thinks about the past.
- He has migraines about 3 to 4 times per week and will last up to 2 days.
- The problem with the medications prescribed for his migraines is that it makes him 'sleepy' and he does not want to sleep all the time and asks: what kind of life is that? The medications relieve the migraine for a period of time and then it will come back.
- Before he started having problems, he used to make very good money in his occupation. His more recent job involved prolonged sitting and it made his lower back pain much worse. Since the injury to his back, his life has changed and also his family's life. When he thinks about it, it makes his headaches worse.
- He can drive but not for that long, only 20 to 30 minutes. The family prefers to drive him because he experiences pain when he is driving and he might cause an accident and get hurt.
- With his back pain, he has problems getting up from sitting and he cannot walk for more than 2 minutes. He started using a cane to help with his walking after the surgery to his back and he now uses it both indoors and outdoors. Sometimes when he is sleeping, the pain in his back feels like someone is sticking nails in his back and it wakes him up. He has to get up and stretch or sit up.
- He always has pain. The medications provide a few hours of relief but then the pain comes back. He has gone for physiotherapy when he lived in another province but it has not helped. It helps if he lies down on the couch.
- With his stomach pain, he cannot eat certain foods or it will make it worse.

The ministry relied on its reconsideration decision.

Admissibility of New Information

The ministry did not object to the admissibility of the Medical Report dated January 6, 2011 but cautioned that disability designation is not transferable between provinces. The ministry did not raise an objection to the admissibility of the appellant's oral testimony. In the Medical Report and oral testimony on behalf of the appellant, new information was provided regarding the appellant's impairment. This information provides additional detail with respect to issues addressed in the original PWD application. The panel admitted this new information as being in support of information and records that were before the ministry at the time of reconsideration, in accordance with Section 22(4) of the *Employment and Assistance Act*. The advocate's written submission was considered as argument on behalf of the appellant.

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 fatigue due to degenerative disc disorder, migraine headaches and gastritis. The advocate argued that the decision in *Hudson* is authority for the position that significant weight must be placed on the appellant's evidence unless there is a legitimate reason not to do so. The advocate argued that the appellant's physician acknowledged that the appellant suffers from severe lower back pain most of the time, as set out in both the application and the most recent letter. The advocate argued that the language used by the doctor in the letter is a matter of style and that he would not sign the letter if he did not agree that the appellant's assertions are true. The advocate argued that the physician also indicated that the appellant has recurring migraine headaches and, due to the anti-inflammatory medications he takes, he has increased stomach acidity and ulceration. The advocate argued that other health limitations include poor sleep patterns which have resulted in daytime fatigue. The advocate pointed out that the physician reported that the effect of these conditions will result in severe impact on the appellant's daily life.

The ministry's position is that the ministry does not have enough information from the general practitioner to establish that the appellant has a severe physical impairment. The ministry argued that, in terms of physical functioning, the general practitioner indicated in the PR that unaided the appellant can walk 1 to 2 blocks and climb 2 to 5 steps unaided and he can lift 5 to 15 lbs. and remaining seated for up to 1 to 2 hours, which the ministry considers to show a moderate degree of impairment. The ministry argued that the general practitioner reported that the appellant's gastritis and migraines are treated with medications and while he does not explain the success treating gastritis, he indicated that the migraines respond to medication. The ministry argued that the general practitioner did not know the appellant for very long and the information in the original reports is based only on an office interview with the appellant and the additional letter is framed in terms of the appellant's own assessment of his impairments. The ministry argued that the general practitioner reported the degree of restriction to DLA is "moderate" and this evidence is not sufficient to support a conclusion of 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.

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 the ability to perform 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 appellant's family physician of approximately 2 weeks, diagnosed the appellant with degenerative disc disorder, migraine headaches and gastritis. The physician noted in the health history that the appellant "...has had severe low back pain for which had surgery 2 years ago" and that he still has residual low back pain with radiation to his thighs. The physician wrote that the pain aggravates "at times" and is worse when the appellant is "up and about." The physician indicated that the appellant has experienced upper abdominal pain which has been under treatment and he has been taking medication for migraine headaches. In the letter dated March 26, 2014, the physician provided further comment couched throughout in terms of the appellant's perspective. For example, he wrote that: the appellant has low back pain which "he expresses" to be most of the time and severe, the appellant "says" pain in his lower back and legs prevent him from walking more than 3 to 4 minutes, and he "expresses" that he is unable to walk, carry items, etc. due to his leg and lower back pain. The advocate argued that this is a matter of style; however, the panel notes that the physician did not use this same language in the narrative of either the PR or the AR. The panel finds that the ministry reasonably determined that these statements are to be considered as assessments by the appellant rather than by the physician.

In the letter, the physician confirms that the appellant has low back pain which the appellant "expresses to be most of the time and severe," he has migraine headaches which respond to medications, and he complains of poor sleep pattern at nights resulting in fatigue during the day time. The physician concluded that the effect of these conditions as listed will result in severe impact on the appellant's daily life. The impact to the appellant's functional skills is further assessed by the physician in the PR, and the physician reported that the appellant can walk 1 to 2 blocks and climb 2 to 5 steps unaided and is able to lift 5 to 15 lbs. and remain seated 1 to 2 hours. In the additional comments, the physician wrote: "as described, is unable to attend to tasks which need lifting, carrying items (moderately heavy items)." In the PR, the physician reported that the appellant does not require any prosthesis or aid for his impairment. While the physician indicated in the March 26, 2014 letter that the appellant "uses a walking cane outdoors," the panel notes that the physician's language is again guarded as he does not indicate that the appellant "requires" a cane. The section of the AR relating to assistance provided through the use of assistive devices is not completed by the physician. At the hearing, the appellant stated that he uses a cane both indoors and outdoors.

In the AR, the physician assessed the appellant as independent with all mobility, including walking indoors and walking outdoors, climbing stairs, and standing, while requiring periodic assistance with lifting and carrying and holding and wrote: "cannot lift or carry moderately heavy items due to low back and leg pain." In the Medical Report dated January 6, 2011, the physician who is a specialist in neurosurgery wrote at that time that the prognosis was "guarded", that "surgery was not indicated but the appellant has to avoid heavy lifting, bending, prolonged sitting, standing permanently" and he "can be autonomous with the above limitations." While the physician indicated in the March 26, 2014 letter that the appellant says he has difficulty in the bathroom and that a grab bar "will be helpful", the physician has not completed the section of the AR to indicate equipment or a device 'required' but not currently being used.

In his self-report, the appellant wrote that his back problem in the last 4 or 5 years has been giving him a lot of unbelievable pain. Whenever he walks more than 5 minutes or stands more than 5 minutes, the pain gets worse and makes him sit down on the ground. In the Medical Report dated January 6, 2011, the opinion by the neurosurgeon at that time was that surgery was not indicated but the appellant has to "avoid heavy lifting, bending, prolonged sitting, standing permanently" and he "can be autonomous with the above limitations." The appellant wrote in his self-report that it has been almost 2 years since surgery and nothing changed since he still has the same pain and he cannot do any work. As for finding work and/or working, the panel notes that employability is not a criterion in section 2(2) of the EAPWDA nor is it listed among the prescribed daily living activities in section 2 of the EAPWDR. The nature of work is different from managing DLA as work involves constant and prolonged performance of tasks, particularly as the appellant described his previous work as involving both heavy labour and prolonged sitting.

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 since the physician described the degree of restriction as "moderate". Given the physician's overall assessment of restrictions in the moderate range, the panel finds that the ministry reasonably determined that the evidence falls short of establishing 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, particularly since the appellant's general practitioner did not diagnose a mental health condition. The ministry argued that the general practitioner did not indicate that the appellant has any significant deficits with his cognitive and emotional function. The ministry argued that the appellant's application solely relates to his physical impairment and he does not mention any mental impairment in his self-report.

Panel Decision

The physician did not diagnose a mental disorder in the PR or in the March 26, 2014 letter. No significant deficits were reported with cognitive and emotional functioning and the section of the report for assessing impacts to areas of daily functioning was not completed by the physician. In the PR, the physician reported that the appellant does not have difficulties with communication and, in the AR, that the appellant has a satisfactory ability to communicate in all areas. The physician assessed the appellant as independent in all aspects of social functioning, with good functioning in both his immediate and extended social networks. Given the absence of a mental health diagnosis and no impacts reported to cognitive, emotional 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 and the use of a cane and a grab bar as assistive devices. The advocate argued that the court decision in *Hudson* is authority for the position that there must be evidence from a prescribed professional indicating a direct and significant restriction on at least two DLA, but there is no statutory requirement that more than two DLA be restricted in order to meet the PWD eligibility requirements. The advocate argued that the physician confirmed in the letter dated March 26, 2014 that the appellant is prevented from walking more than 3 or 4 minutes, he is restricted with shopping, housework, meal preparation and personal care, and this is consistent with the information provided in the AR. The advocate argued that the physician acknowledged that the appellant's symptoms of lower back pain, migraine headaches and fatigue result in significant restrictions in a number of DLA and that these restrictions occur most of the time.

The ministry's position is that the information provided by the general practitioner in the letter dated March 26, 2014 is from the appellant's own assessment of his impairments rather than the opinion of the general practitioner. The ministry pointed out that the general practitioner had just met the appellant at the time that he completed the PR and AR and did not use any other information sources besides an interview with the appellant and, therefore, the information provided is from the appellant rather than the opinion of the prescribed professional.

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 appellant's physician is the prescribed professional. 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.

The court held in *Hudson* that that there must be evidence from a prescribed professional indicating a direct and significant restriction on at least two DLA, and the panel finds that section 2 of the EAPWDA stipulates that the ministry must be satisfied in each case that the opinion of a prescribed professional establishes direct and significant restrictions to the person's overall ability to perform DLA. In this case, the appellant's physician indicated in the PR that the appellant is not restricted with personal self care, meal preparation, management of medications, mobility inside the home and mobility outside the home, use of transportation, management of finances, and social functioning. In the letter dated March 26, 2014, the physician commented, in response to the question whether it takes the appellant longer than normal to perform many DLA as a direct result of his health-related limitations, that the appellant "says pain in his lower back and legs prevent him from walking more than 3 to 4 minutes." As previously discussed, the language used by the physician in the letter differs from that in the original reports and is limited to the appellant's own assessment of his restrictions; however, with respect to the DLA of moving about indoors and outdoors is consistent with the functional skill limitation of walking 1 to 2 blocks unaided and the panel finds that this does not reflect a significant restriction.

In response to a question about how often the appellant is significantly restricted in performing DLA, the physician wrote in the letter that the appellant "expresses most of the time he is restricted in his daily tasks." Asked whether the appellant's impairment significantly restricts his ability to perform a range of DLA continuously or periodically for extended periods, the physician wrote that the appellant "expresses his symptoms of low back pain and migraine headaches and fatigue result in significant

restriction in a number of activities of daily living, such as basic housework, shopping, meal preparation, and personal care, etc.” In the PR, the physician reported that the appellant is restricted on a periodic basis with basic housework and daily shopping, but he reported that the appellant is not restricted with his personal care or meal preparation, and, regarding the degree of restriction, the physician wrote “moderate.”

In the AR, the physician reported that the appellant is independent with moving about indoors and outdoors and with all tasks of the DLA managing his personal finances, managing his personal medication, and using public or personal transportation facilities. The appellant is also independent in 7 of 8 tasks of the DLA personal care: dressing, grooming, toileting, feeding self, regulating diet, transfers in/out of bed and transfers on/off chair, and he requires periodic assistance from another person with bathing, with no further description provided by the physician. The appellant requires periodic assistance with basic housekeeping and laundry, with no further explanation or description provided. In the additional comments to the PR, the physician wrote the appellant “is unable to attend to tasks which need lifting, carrying items (moderately heavy items),” which is consistent with a need for assistance with lifting within the functional skill limitation of 5 to 15 lbs. For shopping, the appellant is independent with 4 of 5 tasks, namely going to and from stores, reading prices and labels, making appropriate choices and paying for purchases, and requires periodic assistance with carrying purchases home. The physician noted that the appellant “has low back/leg and, at times, wrist pain; family members help to lift and carry shopping/ items.”

In the AR, the physician indicated that the appellant requires periodic assistance from another person with meal planning, food preparation and cooking, described as “due to back and leg pain, cannot stand for more than a few minutes.” The appellant’s son stated at the hearing that the rest of the family will not let the appellant get food because he cannot stand for long. The physician assessed the appellant as independent with standing and the appellant wrote in his self-report that he can stand up to 5 minutes, and the panel finds that there is not sufficient information to establish that assistance is required for extended periods of time with food preparation and cooking, or to explain how the periodic restrictions to standing have a significant impact on meal planning. At the hearing, the appellant stated that the problem with the medications prescribed for his migraines is that it makes him ‘sleepy’ and he does not want to sleep all the time. In the PR, the physician reported that the appellant has not been prescribed any medication and/or treatment that interfere with his daily living activities.

Given the appellant’s level of independence and the moderate nature of those restrictions identified by the physician, the panel finds that the ministry reasonably determined that there is insufficient information provided in the opinion of 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 advocate argued that the physician confirmed that the appellant relies on his family members to provide help and uses a cane when outdoors and would benefit from grab bars in the bathroom.

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. The ministry argued that the general practitioner indicated that the appellant does not require any assistive devices.

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 evidence of the physician, as a prescribed professional, is that the help required with DLA is provided by the appellant's family and that no assistive devices are required. As discussed previously, while the physician indicated in the March 26, 2014 letter that the appellant uses a cane for walking outdoors and he says that a grab bar will be useful in the bathroom, the physician did not report that these assistive devices are required by the appellant. 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.