

PART C – Decision under Appeal

The decision under appeal is the Ministry of Social Development and Social Innovation (the ministry) reconsideration decision dated May 13, 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 appellant's Person With Disabilities (PWD) Application comprised of the applicant information and self-report (not completed) dated November 12, 2013, a physician report (PR) dated December 30, 2013 and prepared by the appellant's general practitioner ("the GP") of 1 month and an assessor report (AR) dated December 8, 2013 prepared by a Nurse Practitioner ("NP") who has known the appellant since December 2012.

Further evidence before the ministry at the time of the reconsideration decision included the following:

- 1) An undated and unsigned questionnaire setting out the appellant's his disability and how it affects his life and his ability to care for himself ("the Questionnaire"); and
- 2) The appellant's Request for Reconsideration ("RFR") dated May 5, 2014 which had attached to it a letter dated May 2, 2014 and signed by the appellant's counselor ("the Counselor Letter") as well as a letter dated May 5, 2014 and signed by the appellant's probation officer ("The PO Letter"). The panel notes that the bodies of these two letters are identical to one another.

Admissibility of Additional Evidence

Documents

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

- 1) A letter dated June 4, 2014 prepared by the NP who prepared the AR and setting out the appellant's current medical conditions ("the NP Letter");
- 2) An updated copy of the AR ("the Revised AR"); and
- 3) Two pages of typewritten notes setting out the appellant's medical conditions ("the Notes").

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

Oral Evidence

The appellant gave oral evidence at the hearing. In addition, the appellant called two witnesses, his counsellor ("Counsellor") who signed the Counselor Letter and his probation officer ("PO") who signed the PO Letter, to give evidence on his behalf. The panel notes that the appellant, the Counselor and the PO each gave evidence of the appellant's impairments and their impact on his DLA and that their evidence was consistent with that in the PWD application, the Counselor Letter and the PO Letter. Therefore, the panel is satisfied that the oral evidence of the appellant, the Counselor and the PO is admissible as oral testimony in support of the information and records that were before the minister when the decision being appealed was made pursuant to section 22(4)(b) of the *Employment and Assistance Act*.

Diagnoses

In the PR, the GP indicates that the appellant has been diagnosed with Chronic Obstructive Pulmonary Disease ("COPD") with date of onset in 2013, Substance Related Disorder with date of onset in 1994, Osteoporosis with date of onset in 2009 and musculoskeletal ("MSK") conditions including left shoulder bursitis, chronic left foot pain not yet diagnosed, hip pain and right knee pain all with date of onset as 2007.

Physical Impairment

In the PR, the GP reported that:

- The appellant has multiple MSK symptoms including sub deltoid bursitis in his left shoulder which causes him pain and limits his mobility, hip, knee and foot pain which causes him difficulty standing for prolonged periods of time, COPD for which he is being treated with puffers and a history of substance use disorder.
- The appellant requires no aids or prostheses for his impairment and his impairment is likely to continue for two years or more.
- The GP comments further that the appellant will likely continue to experience MSK symptoms and that he may have some benefit with his shoulder pain with physio and rehab exercises. He continues that the appellant's COPD is chronic and will likely not improve but rather worsen over time. The GP states that the appellant is receiving treatment for his substance use disorder.
- Functional skills reported indicate that the appellant can walk 2 to 4 blocks and climb 5 or more steps unaided, lift under 2 kg and remain seated for 2 to 3 hours. The GP adds comments that the appellant has limitations lifting heavy items with his left arm due to shoulder bursitis and some difficulty with walking and climbing stairs as a result of both COPD and MSK pain.
- The appellant is not restricted with mobility inside the home or with mobility outside the home.
- Further comments are that the appellant has multiple MSK complaints that cause him pain and contribute to his inability to work. He is unable to work as he has previously in construction as he is no longer able to tolerate the physical stress.

In the AR, the NP reported that:

- The appellant is independent walking indoors and outdoors, climbing stairs (but takes twice as long as typical with stairs) and standing but requires periodic assistance from another person with lifting, carrying and holding.
- Further comments are that the appellant has COPD and shortness of breath on exertion with more than 4 blocks of walking and 2 flights of stairs. Due to the appellant's left sub deltoid bursitis, he is unable to carry, lift or hold items that are greater than 5 lbs using his left arm and he has been referred to a physiotherapist for treatment which could potentially resolve his problems. The appellant is noted as having no limitation to his right arm currently.

In the Questionnaire, the appellant reports suffering from arthritis in his hips and spine, bursitis in his left shoulder, COPD, emphysema and a history of drug addiction.

As referenced above, the Counselor Letter and the PO Letter are identical to one another and they will therefore be addressed together. In these letters, the appellant is noted as suffering from COPD, MSK, osteoporosis and a substance related disorder as well as undiagnosed symptoms of paranoia and social anxiety. The letters describe the appellant's functional skills as "not considered severe" but also not typical of someone who works in physically demanding jobs as he has in the past. The letters describe the appellant as being unable to lift more than 5 lbs and not being able to walk more than 4 blocks.

In the NP Letter, the NP lists the appellant's current medical conditions as:

- Left shoulder sub deltoid bursitis with complaints of persistent pains and limitations in mobility. Examples cited are an inability to carry, lift or hold items that are greater than 5 lbs using his left arm. The appellant would benefit from physiotherapy but he is unable to access such treatment due to financial restraints;
- History of chronic left foot pain aggravated by prolonged standing and walking. The appellant is noted

as having been treated by a podiatrist who recommended a full leg air cast but again the appellant is unable to access this due to financial restrictions;

- COPD with complaints of shortness of breath on exertion when climbing more than 1 flight of stairs or more than 2 to 4 blocks of walking; and

The NP further comments that the appellant has achieved "overall improvement in health since engaging in his medical care."

In the Revised AR, the NP has made the following changes:

- The appellant was originally assessed as independent walking outdoors but is now assessed as requiring continuous assistance from another person or unable with the further comment "[history of] chronic left foot pain – aggravated by prolonged standing and prolonged walking."
- The appellant was originally assessed as independent while standing but is now assessed as requiring continuous assistance from another person or unable.

In the Notes, the appellant's various medical conditions are set out along with their respective symptoms as follows:

- *Osteoporosis/Arthritis* – chronic sharp pain in hips and lower back when waking up and through the day when performing activities that require a range of repeated motion. Including bending over, sitting in a stationary position, twisting from side to side, standing for more than an hour, walking up stairs, lifting or pushing heavy objects, varying degrees of muscle stiffness, soreness and strain. Right knee experiences some loss of motion and movement including sharp pain and reacts to walking moderate distances and down the stairs.
- *COPD* – feels winded and experiences respiratory distress including shortness and shallowness of breath, racing heart beat and wheezing after walking up inclines for more than a couple minutes. Relies on puffer approximately four times a day to relieve these symptoms which typically last more than 10 minutes. Physically activities are limited to very low impact and minor amounts of time that require little physical output. Speed of movement and activity is delayed including walking long distance, carrying items and taking the stairs. Sporadic bouts of chest pain and tightness in chest approximately twice a month strikes randomly.
- *Bursitis* – Left shoulder has a disproportionate loss of movement and increased muscle pain in the presence of repetitive and sustained movements involving reaching, lifting, carrying or any type of strength based activity. Reaching and extending arm past resting or 90 degree angle results in discomfort and in both acute and chronic pain.

At the hearing, the appellant gave evidence that he is unable to work to afford better accommodation and that he had known the GP who completed the PR for approximately 1 month. The appellant gave evidence that the changes were made to the AR due to the worsening condition of his left foot. He stated that he was told by a podiatrist that he needed to wear an air cast for one month but that he could not afford it. The appellant gave evidence that he has begun seeing a specialist regarding his COPD and is now taking breathing therapy 3 times each week for 1 hour each session and that he won't know whether he will require portable oxygen until the class ends in two months. The appellant added that he is left handed.

At the hearing, the Counselor gave evidence that the appellant has arthritis and osteoporosis, problems with his back and right knee including repeated movement and range of motion or staying in a stationary position for too long. With respect to his COPD, the appellant feels winded and feels respiratory distress, a racing heart and wheezing and he relies on a puffer for symptoms that last 10 minutes or more. The Counselor stated that physically it's better that he not walk up hills or more than a few steps at a time and that he walks quite slowly. The Counselor gave evidence that the appellant has bursitis in his left shoulder, that he suffers from chronic

left foot pain and is seeking therapy. The appellant has a hard time walking and standing. The Counselor understood that the appellant had been told by his physician to obtain an air cast for his left foot as well as physiotherapy but he can't afford it and in addition that he is going to attend some sort of doctor on a weekly basis for his breathing and may have to carry oxygen.

Mental Impairment

In the PR, the GP indicates that:

- The appellant has a history of substance use disorder with alcohol abuse/dependence and cocaine use resulting in poor decision making skills and some deficits in impulse control.
- The appellant has no reported difficulties with communication and significant deficits with cognitive and emotional function in the areas of executive, emotional disturbance and impulse control.
- The GP comments further that the appellant has some difficulty with executive functioning and impulse control and he also exhibits some depressive symptoms.
- The GP does not report any restrictions to the appellant's social functioning.

In the AR, The NP notes that:

- The appellant's speaking, reading, writing and hearing are good.
- With respect to cognitive and emotional functioning, the appellant experiences no major impact to daily functioning in any area, moderate impact in the area of bodily functions, emotion, impulse control and motivation and no impact on daily functioning in the remaining 10 areas of cognitive and emotional functioning.
- The NP comments further that the appellant's medical diagnosis of alcohol dependence and cocaine abuse impairs his cognitive and emotional function in the categories as described.

The evidence with respect to the appellant's mental impairment is not changed in the Revised AR.

In the Questionnaire, the appellant notes that he has a history of drug addiction.

In the Counselor and PO Letters, the appellant is described as suffering from a "Substance Related Disorder" as well as undiagnosed symptoms of paranoia and social anxiety. In the NP Letter, the appellant is noted as suffering from polysubstance abuse/dependence although currently abstinent for 6 months with exacerbation of social anxiety symptoms. No changes are made in the Revised AR concerning the appellant's mental impairment.

In the Notes, the appellant is reported as being involved with substance abuse from 1994 through 2014 as well as prolonged alcohol dependence. The appellant is described as experiencing daily and ongoing cognitive problems with memory, focus, disorientation, reading comprehension and overall mental clarity as well as chronic social anxiety.

At the hearing, the Counselor gave evidence that the appellant has had an addiction to crack cocaine and alcohol for 14 years and that his mental health challenges include social anxiety and cognitive problems which impact his ability to focus, his memory and which causes him to become disoriented and paranoid which puts him at risk of relapse. Even coming to the center sometimes can be difficult for the appellant and he requires significant support from his "helping team."

At the hearing, the PO gave evidence that she has witnessed the appellant demonstrate a great deal of anxiety around others. She stated that she meets with the appellant 3 times per week at which time they discuss what is happening in his life.

Daily Living Activities (DLA)

In the PR, the GP reports that:

- It is unknown whether the appellant's impairment directly restricts his ability to perform DLA.
- The appellant is noted as not being restricted in any category of DLA aside from meal preparation for which the GP has noted "unknown."
- The GP adds the comment that the appellant is able to do most DLA but he has limited income and resources which makes meal preparation difficult. He adds that the appellant sometimes neglects DLA due to pain and seems to have a good sense of his personal finances.

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

- The appellant is independent with all tasks of personal care laundry and basic housekeeping but the latter takes him twice as long as typical.
- The appellant is independent with all aspects of shopping, meals, paying rent and bills, medications and transportation.
- The NP comments that due to the appellant's left shoulder bursitis, he reports basic housekeeping takes twice as long as the average person, that the appellant has been referred to physiotherapy which could resolve his symptoms and that the appellant has no limitation to his right arm currently.
- With respect to social functioning, the appellant is assessed as independent in all aspects aside from making appropriate social decisions for which the NP comments "patient accessing ongoing assistance via counseling in enhancing functioning and treatment of polysubstance abuse/dependence."
- The appellant is further described by the NP as having marginal functioning with his immediate and extended social networks.

The evidence with respect to the appellant's DLA is not changed in the Revised AR

In the Questionnaire, the appellant comments that dressing is difficult due to his shoulder and that he has to sit down to put on his shoes and socks. He says that he does not take baths anymore and no longer takes daily showers as his stability is impaired, his shoulder hurts and his breathing worsens. With respect to meal preparation, the appellant states that he can't stand in one spot for too long, his meals are quick, simple and easy and when he tries to multitask he doesn't always finish things. The appellant says he cannot clean as he used to as he lacks motivation and energy and it is painful which makes it difficult to start. The appellant does not grocery shop as he doesn't cook at home and he comments further that he has difficulty getting to bus stops and standing on buses due to pain and as such he requires rest after getting off the bus.

At the hearing, the appellant stated that he obtains his meals through community meal programs.

At the hearing, the Counselor stated that the appellant has difficulty traveling on transit due to social anxiety and paranoid symptoms.

Need for Help

- In the PR, the GP did not indicate that the appellant requires an assistive device but notes that the appellant often obtains food from community programs.
- In the AR, the NP indicates that the appellant lives alone and that he has been referred to physiotherapy for treatment. This is unchanged in the Revised AR.
- At the hearing, the Counselor indicated that the appellant had been prescribed an air cast for his left foot but that he was unable to afford it due to the cost.

APPEAL #

The ministry relied on the 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 DLA are not, in the opinion of a prescribed professional, directly and significantly restricted either continuously or periodically for extended periods and that, as a result of those restrictions, it could not be determined that the appellant requires the significant help or supervision of another person, the use of an assistive device, or the services of an assistance animal to perform DLA.

The criteria for being designated as a PWD are set out in Section 2 of the *EAPWDA* as follows:

Persons with disabilities

2 (1) In this section:

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

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

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

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

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

(b) in the opinion of a prescribed professional

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

(A) continuously, or

(B) periodically for extended periods, and

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

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

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

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

(i) an assistive device,

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

(iii) the services of an assistance animal.

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

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

Definitions for Act

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

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

(i) prepare own meals;

(ii) manage personal finances;

(iii) shop for personal needs;

(iv) use public or personal transportation facilities;

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

In his Notice of Appeal dated May 22, 2014, the appellant states that he has difficulty with day to day activities due to a combination of mental health, physical health and drug/alcohol barriers.

Severity of impairment

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

Severity of mental impairment

The appellant and his witnesses described his approximately 20 year struggle with substance related disorder including drug and alcohol dependency as well as social anxiety and paranoid symptoms. He takes the position that these conditions amount to a severe mental impairment.

The ministry's position is that while the evidence indicates that the appellant does have deficits with some emotional and cognitive function, overall the evidence does not support a finding that the appellant suffers from a severe mental impairment.

Panel Decision

The panel notes in reviewing all of the documentary and oral evidence that the appellant has clearly struggled with a diagnosed substance related disorder for approximately 20 years. However, the role of the panel is to consider whether the ministry was reasonable in its determination that the evidence of the appellant's mental impairment was not severe in nature.

In the PR, the GP notes that the appellant's deficits with cognitive and emotional function are limited to emotional disturbance, impulse control and executive and the GP offers the comment that the appellant only has "some difficulty" with the latter two deficits. Further, the NP notes in the AR that the appellant experiences moderate impact on daily functioning in four areas (bodily functions, emotion, impulse control and motivation) but no impact on the remaining ten areas. This was unchanged in the Revised AR. Further, while the Counselor and the PO commented on the appellant's struggles with social anxiety and paranoia which is to a certain degree reflected in the PR which describes the appellant as having marginal functioning with immediate and extended social networks, the PR also describes him as being independent in his ability to develop and maintain relationships, interact appropriately with others, secure assistance from others and deal appropriately with unexpected demands.

As well, the NP reports in the AR that the appellant has a good ability to communicate in all areas. With respect to the aspects of DLA that relate to decision making, while the appellant requires periodic support/supervision with making appropriate social decisions, described as ongoing counseling and treatment for poly-substance abuse/dependence, the evidence also indicates that the appellant independently manages

his finances (banking, budgeting, pay rent and bills) and his medications (taking as directed and safe handling) and the decision-making component of daily shopping (making appropriate choices), and meal preparation (meal planning and food storage).

The panel finds that while the evidence as a whole does suggest that the appellant suffers from a substance related disorder which has an impact on his cognitive, emotional and social functioning, the panel concludes that the ministry was reasonable in determining that the evidence did not establish that the appellant has a severe mental impairment under section 2(2) of the *EAPWDA*.

Severity of physical impairment

The appellant takes the position that a severe physical impairment is established by the evidence of his COPD, osteoporosis, left shoulder bursitis, chronic left foot pain, hip and right foot pain and the manner of their impact on his functional skills and ability.

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

Panel Decision

A diagnosis of a serious medical condition or conditions 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 GP and the NP.

On December 30, 2013, the appellant's GP completed the PR. She described the appellant's health history in the PR as including a constellation of conditions including multiple musculoskeletal symptoms and COPD. She describes the appellant as able to walk 2 to 4 blocks unaided on a flat surface, climb 5 or more steps unaided, lift under 2kg and sit for 2 – 3 hours. The GP reported that the appellant requires no aids to help compensate for his impairment. For those DLA that require physical functional skills such as personal self care, basic housework daily shopping and mobility inside and outside the home the GP indicates that the appellant has no restrictions.

The AR was completed by the NP on December 8, 2013. In it, she comments that the appellant is independent in all categories of mobility and physical ability other than lifting, carrying and holding for which he requires periodic assistance from another person although no further comments were provided in the AR as to the frequency or duration of assistance that is required. The restrictions to lifting were limited to the appellant's left arm, and while the appellant stated at the hearing that he is left-handed, the NP noted that he currently has no limitation with his right arm. For those DLA which are of a physical nature, the appellant is independent in all including personal care, basic housekeeping, shopping, meals, paying rent and bills, medications and transportation.

In the Questionnaire, the appellant states that he has some difficulty with mobility in that going up and down stairs hurts due to his arthritis and causes him to experience shortness of breath.

Turning to the Appeal Documents, the panel notes that the evidence in the NP Letter and the Revised AR does appear to reflect an exacerbation of the appellant's physical condition, and the appellant gave evidence

that his overall physical condition had worsened, but the issue to consider is whether this new evidence is sufficient to reflect a severe physical impairment.

The Revised AR has been changed to describe the appellant as requiring continuous assistance walking outdoors and standing whereas the original AR described these functional abilities as requiring only periodic assistance. However, the appellant's ability to lift, climb stairs and the distance he is able to walk is unchanged as between the NP Letter and the PR. Further, the appellant's ability to perform DLA of a physical nature is unchanged in the Revised AR.

The panel acknowledges that the evidence of the GP, the NP and the appellant certainly indicates that he suffers from a variety of physical conditions and impairments. However, the role of the panel is to determine whether the ministry was reasonable in its determination that the evidence did not support a finding that the appellant's physical impairment was severe in nature and for the reasons set out above 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*.

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. Specifically he points to the impact of his physical impairment on DLA such as personal self care, meal preparation, basic housework, daily shopping and use of transportation.

The ministry's position is that it has not been established by the evidence of a prescribed professional that the appellant's ability to perform DLA has been directly and significantly restricted by his physical or mental impairments either continuously or periodically for extended periods as required by section 2(2) of the *EAPWDA*.

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 GP and the NP are the prescribed professionals. DLA are defined in section 2(1) of the *EAPWDR* and are also listed in the PR and, with additional details, in the AR. Therefore, a prescribed professional completing these forms has the opportunity to indicate which, if any, DLA are significantly restricted by the appellant's impairments continuously or periodically for extended periods.

In the PR, the GP reports the appellant as experiencing no restrictions with personal self care, management of medications, basic housework, daily shopping, mobility inside and outside the home, use of transportation and management of finances. The GP comments that the appellant is "able to do most activities of daily living" but that he "sometimes neglects activities of daily living due to pain." In the Questionnaire, the appellant described difficulties with aspects of his personal care, a lack of motivation to do housework and that he does not cook at home or shop. At the hearing, the Counselor stated that the appellant has difficulty traveling on transit due to social anxiety and paranoid symptoms.

However, in the AR, the NP, as a prescribed professional, describes the appellant as independent in each of the 28 tasks of DLA. These categories were unchanged in the Revised AR.

Considering the evidence of two prescribed professionals, the appellant's GP and NP, the panel finds that the appellant is able to perform the majority of his DLA independently. The appellant's advocate made submissions that as a result of his impairments, the appellant was unable to work. However, the panel notes that employability is not a criterion for PWD designation in section 2(2) of the *EAPWDA* nor is it listed among

the prescribed daily living activities in section 2 of the *EAPWDR*.

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

Help with DLA

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

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

Panel Decision

Section 2(2)(b)(ii) of the *EAPWDA* requires that, as a result of direct and significant restrictions in the ability to perform DLA, a person requires help to perform those activities. Section 2(3) of the *EAPWDA* provides that a person requires help in relation to a DLA if, in order to perform it, the person requires an assistive device, the significant help or supervision of another person, or the services of an assistance animal.

In the PR, the GP does not indicate that the appellant requires any aids or prostheses for his impairment but notes that he would benefit from physiotherapy for his MSK symptoms, the continued use of puffers for his COPD and counselling or treatment for his substance abuse problems. There is no mention in the AR or the Revised AR as to the assistance provided to the appellant by other people or the suggested help and there is no reference to an assistive device.

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 which determined that the appellant was not eligible for PWD designation was a reasonable application of the applicable enactment in the circumstances of the appellant, and therefore confirms the decision.