

PART C – Decision under Appeal

The decision under appeal is the Ministry of Social Development and Social Innovation (the ministry) reconsideration decision dated April 24, 2014 which found that the appellant did not meet two 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 he has a severe mental impairment that, in the opinion of a medical practitioner, 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 impairment;
- the appellant's daily living activities (DLA) are, in the opinion of a prescribed professional, directly and significantly restricted either continuously or periodically for extended periods; and,
- as a result of these restrictions, the appellant requires the significant help or supervision of another person, the use of an assistive device, or the services of an assistance animal to perform DLA.

PART D – Relevant Legislation

Employment and Assistance for Persons with Disabilities Act (EAPWDA), Section 2

Employment and Assistance for Persons with Disabilities Regulation (EAPWDR), Section 2

PART E – Summary of Facts

The evidence before the ministry at the time of the reconsideration decision included the Person With Disabilities (PWD) Application comprised of the applicant information dated August 14, 2013, a physician report (PR) dated September 20, 2013 completed by a general practitioner who has known the appellant for approximately 9 years and an assessor report (AR) dated December 2, 2013 completed by a registered social worker who has also known the appellant for approximately 5 months.

The evidence also included the following:

- 1) Consultation Report dated June 3, 2008 from a neurologist who had seen the appellant for persistent altered behavior of a delirious nature following an unwitnessed collapse at work. He has a history of ongoing alcohol abuse, fall with left frontal and temporal contusions and epidural hematoma 2006, and ongoing cannabis use.
- 2) Letter dated July 4, 2013 from a dermatologist to the appellant's physician indicating that the appellant has had some lesions on his feet as well as painful feet, painful calves and a painful back for 17 years. He has suggested that the appellant get some orthotics for his shoes;
- 3) Letter dated July 16, 2013 from a specialist in neurology to the appellant's physician indicating that clinically the appellant does not appear to have a peripheral neuropathy though has risk factors for alcohol/nutritional neuropathy based on past history. Recommendation for an EEG to look for epileptiform activity;
- 4) EEG [Electroencephalography] test result dated July 24, 2013 of "normal record. No areas of focal slowing or epileptogenic activity are evident";
- 5) Daily Living Activities for PWD checklist;
- 6) Photographs of bottom of feet; and,
- 7) Request for Reconsideration dated April 15, 2014 with attached revised page 10 of the PR stamped by the appellant's physician and noting under the degree and course of impairment that the appellant "sustained a severe head injury that he has not and will not recover from completely." Comments regarding the significant deficits identified with cognitive and emotional function (in the areas of executive, memory, impulse control, and attention or sustained concentration) are: "this is a disabling issue- poor decisions, poor judgement, impaired insight- pervasive and disabling." Page 11 of the PR is also attached but has not been modified from the original assessment.

Diagnoses

In the PR, the appellant was diagnosed by the general practitioner with traumatic brain injury (onset in 2006), bilateral foot calluses, mild cognitive impairment (onset in 2006), and alcohol abuse in remission.

Physical Impairment

In the PR, the general practitioner reported that:

- In terms of physical health history, he has abnormally callused feet, with photos attached. The appellant states they cause him significant pain and disability.
- The appellant requires an aid for his impairment as "orthotics would significantly aid his foot problem. He cannot afford them."
- In terms of functional skills, the appellant can walk 4 or more blocks unaided on a flat surface, he can climb 5 or more stairs unaided, and has no limitation with lifting or with remaining seated.

- In the additional comments, that "if one considers this man's issues on an individual bases, they do not appear significantly disabling. However, they all impact him all the time and, taken together, he is impaired on physical and cognitive levels."

In the AR the social worker indicated that:

- The appellant is assessed as taking significantly longer than typical with walking indoors, and requiring continuous assistance from another person with walking outdoors ("two blocks daily"), climbing stairs ("slowly with great pain"), standing ("none"), lifting ("not more than 10 lbs") and carrying and holding ("can't- takes cart home from grocery store"). The social worker commented that the appellant "pushes through but with severe pain- activity makes sores on feet far worse. Can't walk on gravel or uneven surfaces due to both brain injury and foot condition."
- 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:

- For moving around inside his home, such as walking from room to room, going up or down stairs or ramps, getting in and out of chairs, "just thinking about these activities hurts. Even when my feet are resting on the ground while sitting my legs and back hurt."
- For moving around outside his home, such as walking very far or on uneven ground, or going up or down stairs or ramps, he "can't walk on uneven ground at all without pain. Can't walk 2 blocks without taking a 5 to 10 minute break."

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 has no difficulties with communication.
- It is unknown whether the appellant's impairment directly restricts his ability to perform DLA.
- The appellant is continuously restricted with mobility outside the home.
- There are no other comments provided regarding the degree of restriction or the assistance needed with DLA.

In the AR, the social worker reported that:

- The appellant has a satisfactory ability to communicate in all areas: speaking, reading, writing and hearing.
- The appellant takes significantly longer than typical with walking indoors and requires continuous assistance from another person with walking outdoors ("Two blocks daily.")
- For the DLA personal care, the appellant requires continuous assistance from another person and takes significantly longer than typical with bathing (note: "can't stand in shower; 10 times slower in/out of tub"), and requires continuous assistance with regulating his diet ("poor appetite; eats maybe once per day"). The appellant is independent with toileting and feeding self and takes significantly longer than typical with dressing and grooming ("everything extremely slow"), transfers in/out of bed and transfers on/off of chair ("10 times slower").
- The appellant takes significantly longer than typical with basic housekeeping and laundry, with a note: "all extremely slow; waits for a good day. Can't do multiple tasks in one day."
- 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: "can't walk far enough") and carrying purchases home ("uses shopping cart to take all the way home"). The social worker commented that the appellant "plans tasks so he only has one to do each day. Cannot stand at sink to wash dishes. Feet hurt when not standing- pain is constant."

- The appellant is independent in performing 2 of 4 tasks of the DLA meals, namely meal planning and safe storage of food, and requires continuous assistance from another person with food preparation and cooking. The social worker commented that the appellant cannot stand at the sink or lift pots.
- 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 continuous assistance from another person with using public transit ("can't walk far enough or stand at the bus stop"), he is independent with using transit schedules and arranging transportation, and takes significantly longer than typical with getting in and out of a vehicle.
- In additional comments, noted that the appellant "has several bad days each week. Only leaves home once per week. Meds make him drowsy as well."
- For additional information, the social worker wrote that the appellant is in constant pain all the time. He is "very limited. Can do one task and then pain becomes too much and cannot do anymore that day. Leave home once per week when has an appointment or absolutely has to go get groceries."
- 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 appellant's self-report, he wrote that:

- For preparing meals, he cannot stand without pain, therefore cooking, standing at the stove or counter are out of the question. He sometimes goes without eating. He loses motivation to eat when in pain and he is unable to prepare something for himself.
- With shopping, he can only make it out a couple of times per month when his uncle is able to drive him to the store. He helps him with carrying. He cannot walk by himself without the support of the shopping cart.
- For housework, he vacuums at most once a month and has to sit down to rest every 20 minutes between all chores.
- Using transportation, he cannot climb more than a couple of stairs without taking a rest. Standing and climbing are both very painful. He has to switch from foot to foot while standing, and can stand for 10 minutes at most.
- For personal hygiene, he is never able to take a bath due to his head injury. He is at risk of seizure and death. He feels unmotivated to do these activities when he is in pain.
- With respect to mental and emotional skills, he has difficulty with planning ahead, remembering information and appointments, and "due to my head injury I suffer from short term memory loss."
- He did not complete the sections of the checklist dealing with managing money and paying bills, social skills, taking medications, and communication.

Need for Help

The social worker indicated in the AR that the assistance required for DLA is provided by the appellant's family and friends as well as community service agencies. For help required where none is available, the social worker noted "needs transportation assistance, help with shopping, housekeeping assistance." The section of the report indicating assistance provided through the use of assistive devices is also not completed.

In his Notice of Appeal, the appellant expressed his disagreement with the ministry's reconsideration decision, and wrote that the ministry failed to consider new information submitted with the Request for Reconsideration.

At the hearing, the appellant stated that:

- Although he can walk more than 4 blocks, he has to rest after 2 blocks. Therefore, it takes a long time to get anywhere. To walk a few blocks from his place to the hearing location, it took him 40 minutes.
- At first the doctors did not know what was wrong with his legs. In October 2013, the specialist told his doctor that he has a condition called "PAD" or peripheral arterial disease which causes pain in his leg. He has started taking an aspirin every day along with his medication to prevent seizures.
- His doctor has told him he has to walk every day or there is a 50% chance that he could lose his left leg. He has been walking but his left calf was swollen to twice the size of his right calf because of the walking he has been doing.
- When asked about the comment that he cannot walk on gravel or an uneven surface due to both his brain injury and his foot condition, the appellant stated that if he walks on gravel, it aggravates the bottom of his feet and is painful.
- He does not take any pain medication because nothing is effective in alleviating the pain.
- He wears slippers indoors and flip-flops in the shower to help.
- He was given a reference sheet by his doctor setting out the changes that need to be made to his lifestyle as a result of the diagnosis of claudication disease. The condition causes discomfort and the lifestyle changes required include quitting smoking and getting more exercise, like walking.
- He saw the specialist and had a CT Scan done and it showed that his right leg is 50% blocked and his left leg is 100% blocked above his knee. He was told he has to quit smoking and drinking. He smoked for 40 years and it was very difficult but he "went cold turkey" but half of his friends smoke and many things he does he associates with smoking.
- He also had a chest X-Ray and an MRI scan. He is supposed to see the neurologist again because there was an injury to the left side of his brain. If he forgets to take his seizure medication, he does not feel right. He does not have seizures if he takes the medication.
- Although he can climb over 5 steps, he has to use the handrail or his left knee will "go out." He cannot climb any stairs without the handrail.
- Although he has no limitation with remaining seated, he has to shift his weight from side-to-side to get comfortable.
- For lifting, he can pick weights up and "put it on the counter" but he cannot carry it anywhere. He does any lifting with his right hand because he cannot lift with his left hand.
- For going about his daily activities, it takes him a long time to do anything. He will make coffee in the morning, for example, and then have to sit down to rest. He will brush his teeth and then have to sit down to rest.

- He lives on his own so he does the dishes and then sits down for 5 minutes to rest. He stated that he has considered using disposable plates to avoid doing dishes.
- He cannot carry groceries home. He uses the shopping cart to bring them all the way home or his uncle will pick him up and give him a ride home.
- He will sit down to prepare a meal so it takes considerably longer than someone else.
- If he walks a mile, it takes him an hour because he has to stop and rest so often.
- He sometimes will convince a friend to do some vacuuming for him.
- Otherwise, he has to get things done but it takes him much longer.
- He also has to write everything down or he will forget it. He has forgotten something as soon as 10 minutes later. Sometimes he will wonder if he has forgotten to turn off the stove or left the water running. He left his coffee pot on and ruined the pot.
- His head injury occurred in 2006 and, after that, he lost his sense of smell and taste and he had to start wearing glasses because he could not see well.
- Asked why the sections of the PWD checklist that served as his self-report were not completed, in particular those that relate to managing money and paying bills, social skills, taking medications, and communication, the appellant stated that he thought they were not applicable. For example, he does not have any money to “manage.” For social skills, his friends and family try to help him as much as possible but he does not interact much with strangers. He gets quite a bit of help from his uncle.
- With the amount he receives in social assistance, he pays his rent and bills and then he has \$10 left to feed his cat. He “lives at the soup kitchen” and goes to the food bank.
- He worked up until March 2013 and then went on medical EI [employment insurance] due to his health conditions. He kept forgetting things and could not perform the job properly.

Admissibility of New Information

The ministry did not raise an objection to the admissibility of the oral testimony. The appellant provided new information regarding his impairment as diagnosed in the PWD application, which provided additional detail with respect to those conditions. 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 s. 22(4) of the *Employment and Assistance Act*. However, the appellant also discussed his diagnosis of PAD and the impacts of this condition, which was not included as a diagnosis in the PWD application. The panel did not admit this information as it was not in support of information and records that were before the ministry at the time of reconsideration.

The ministry relied on its reconsideration decision.

PART F – Reasons for Panel Decision

The issue on the appeal is whether the ministry's decision, which found that the appellant is not eligible for designation as a person with disabilities (PWD) as he does not meet all the criteria in Section 2 of the EAPWDA, 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 has a severe mental impairment but 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.

At reconsideration, the ministry was satisfied that the information provided is evidence of a severe mental impairment, but was not satisfied that the information provided is evidence of a severe physical impairment.

Severe Physical Impairment

The appellant's position, as expressed by the advocate at the hearing, is that the appellant has a severe impairment which is as a result of a combination of impacts from both mental and physical health conditions. The appellant argued that the physical impairment is established by the evidence of the impacts as a result of the severe head injury the appellant sustained, the PAD diagnosis, and the pain in both feet due to bilateral foot calluses. The advocate argued that the assessment for functional skills limitations as set out in the PR can be misleading as it does not show how long it takes to reach the limits, which the appellant is able to describe in more detail in his testimony. The advocate argued that any inconsistencies between the information provided by the physician and the social worker are as a result of the practicalities of the short time accorded the physician for his interview of the appellant, compared to the in-depth process followed by the social worker. In his Notice of Appeal, the appellant argued that the ministry failed to consider new information submitted with the Request for Reconsideration, which included pages 10 and 11 of the PR in which the appellant's physician clarified some earlier statements and added new information.

The ministry's position is the information provided by the general practitioner and the social worker is not sufficient to establish that the appellant has a severe physical impairment. The ministry argued that in assessing the appellant's physical ability, the general practitioner indicated in the PR that the appellant is able to walk 4 or more block unaided, he can climb 5 or more steps unaided and he has no limitation with lifting or remaining seated. The ministry argued that the social worker's information is not consistent with that of the general practitioner and it is difficult to develop a clear and cohesive picture of the degree of restrictions the appellant has with his mobility and physical abilities. The social worker reported the need for continuous assistance with walking outdoors, climbing stairs, standing, lifting and carrying and holding due to severe pain from both his head injury and foot condition and that he takes significantly longer with walking indoors.

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 and a social worker.

The general practitioner, who had known the appellant for 9 years, diagnosed the appellant with traumatic brain injury and bilateral foot calluses. The general practitioner reported, in terms of physical health history, that the appellant has abnormally callused feet which the appellant states causes him significant pain and disability. The general practitioner indicated that the appellant requires an aid for his impairment as "orthotics would significantly aid his foot problem." In the letter dated July 4, 2013, a dermatologist reported that the appellant has had some lesions on his feet as well as painful feet, painful calves and a painful back for 17 years and the dermatologist suggested that the appellant get some orthotics for his shoes. In terms of functional skills, the general practitioner reported that the appellant can walk 4 or more blocks unaided on a flat surface, he can climb 5 or more stairs unaided, and has no limitation with lifting or with remaining seated. The general practitioner also indicated in the PR that the appellant is continuously restricted with mobility outside the home. At the hearing, the appellant stated that he has been advised to walk every day but he has to stop and rest after walking about 2 blocks. The appellant also stated that when he walks a mile, it takes him a long time. He has to use the handrail when climbing stairs, he can only lift with his right arm and cannot carry weights any distance and he has to continually shift his weight when he remains seated.

In the AR, the social worker indicated that the appellant is assessed as taking significantly longer than typical with walking indoors, and requiring continuous assistance from another person with walking outdoors ("two blocks daily"), climbing stairs ("slowly with great pain"), standing ("none"), lifting ("not more than 10 lbs") and carrying and holding ("can't- takes cart home from grocery store"). In his self-report, the appellant wrote that he can stand up to 10 minutes and, at the hearing, he stated that the restrictions to lifting are with his left arm. The social worker commented that the appellant "pushes through but with severe pain- activity makes sores on feet far worse. Can't walk on gravel or uneven surfaces due to both brain injury and foot condition." At the hearing, the appellant clarified that walking on gravel is painful on his feet. The appellant does not currently use orthotics, which were recommended by the specialist and which his general practitioner indicated would significantly aid his foot problem.

With respect to his brain injury, the advocate pointed to the revised page 10 of the PR in which the general practitioner described the appellant's head injury as "severe" and that the resulting poor decisions and judgment and impaired insight are "pervasive and disabling." The general practitioner identified significant deficits in the areas of memory as well as executive, impulse control, and attention or sustained concentration. The appellant stated at the hearing that a recent MRI showed an injury to the left side of his brain and that he has to meet with the neurologist again. He currently takes daily medication which prevents seizures. The appellant also stated that he has to write everything down or he will forget it, and he has forgotten something as soon as 10 minutes later. Sometimes he will wonder if he has forgotten to turn off the stove or left the water running, and he left his coffee pot on and ruined the pot. However, as discussed in more detail in the subsequent section of this decision reviewing restrictions to DLA, any physical limitations resulting from the appellant's brain injury have not translated into any significant restrictions in the appellant's ability to manage the

cognitive tasks of his DLA, as assessed in detail by the social worker.

The panel finds that the evidence demonstrates that while the appellant experiences some limitations to his physical abilities due to his head injury and foot calluses, he remains independent with his mobility and can walk up to a mile on a flat surface, albeit slowly, and his restrictions to lifting relate to his left arm. The panel finds that the ministry reasonably concluded that, considering the available admissible information, there is not sufficient consistent 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 mental and physical impairments 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 that his physician indicated that taking his medical issues on an individual bases, they do not appear significantly disabling; however, they all impact him all the time and, taken together, he is impaired on physical and cognitive levels.

The ministry's position is that although the ministry is satisfied that the appellant has a severe mental impairment, the ministry is not satisfied that the appellant has a severe physical impairment and the impacts to the appellant's DLA appear to be related to a physical impairment rather than a mental impairment. The ministry argued that the general practitioner reported that the appellant has no limitations to his functional skills and, therefore, the ministry does not have a clear and cohesive picture of the degree of restrictions the appellant has with his DLA.

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 social worker 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 it is unknown whether the appellant's impairment directly restricts his ability to perform DLA. Nevertheless, the general practitioner reported that the appellant is continuously restricted with his mobility outside the home and did not assess the appellant's functioning in the other listed DLA. Given an opportunity to update his assessment at the time of reconsideration, the general practitioner provided a second page 11 of the PR which had not been revised. While the social worker noted in the additional comments to the AR that the appellant's medications make him drowsy, the general practitioner reported in the PR that the appellant has not been prescribed any medication and/or treatment that interfere with his DLA.

The social worker indicated in the AR that the appellant takes significantly longer than typical with walking indoors and requires continuous assistance from another person with walking outdoors. The appellant stated at the hearing that he can walk outdoors up to a mile but it takes him a long time since he has to take a break after 2 blocks. This is consistent with the general practitioner's assessment in the PR of an ability to walk more than 4 blocks unaided on a flat surface while being

restricted with his outdoor mobility. As a result of his foot calluses, the appellant takes significantly longer than typical with his indoor mobility and stated at the hearing that he wears slippers to help as well as flip flops in the shower. For the DLA personal care, the social worker assessed the appellant as requiring continuous assistance from another person with 2 of 8 tasks, namely with bathing (note: "can't stand in shower; 10 times slower in/out of tub"), and regulating his diet ("poor appetite; eats maybe once per day"). The appellant is independent with toileting and feeding self and takes significantly longer than typical with dressing and grooming ("everything extremely slow"), transfers in/out of bed and transfers on/off of chair ("10 times slower"). In his self-report, the appellant wrote that he is never able to take a bath due to his head injury as he is at risk of seizure and he feels unmotivated to take care of his personal hygiene when he is in pain. The appellant also stated at the hearing that with the medication that he takes every day, he does not have seizures. The social worker indicated that the appellant takes significantly longer than typical with basic housekeeping and laundry, with a note: "all extremely slow; waits for a good day. Can't do multiple tasks in one day." In his self-report, the appellant wrote that he vacuums at most once a month and has to sit down to rest every 20 minutes between all chores. The appellant stated at the hearing that he needs to rest after each task and this makes all tasks requiring mobility take significantly longer to perform.

For shopping, the appellant is independent with 3 of 5 tasks and requires continuous assistance from another person with going to and from stores (note: "can't walk far enough") and carrying purchases home ("uses shopping cart to take all the way home"). In his self-report, the appellant wrote that he can only make it out a couple of times per month for shopping, when his uncle is able to drive him to the store and help him with carrying. The appellant is independent in performing 2 of 4 tasks of the DLA meals and requires continuous assistance from another person with food preparation and cooking. The social worker commented that the appellant cannot stand at the sink or lift pots. The appellant wrote in his self-report that he sometimes goes without eating since he loses motivation to eat when in pain. The appellant stated at the hearing that he will sit down to prepare food but that takes much longer. In the additional information, the social worker wrote that the appellant is in constant pain all the time and he "can do one task and then pain becomes too much and cannot do anymore that day." The social worker assessed the appellant as requiring continuous assistance from another person with using public transit ("can't walk far enough or stand at the bus stop") and he takes significantly longer than typical with getting in and out of a vehicle. In his self-report, the appellant wrote that he has to switch from foot to foot while standing, and can stand for 10 minutes at most.

With respect to the two DLA that are specific to mental impairment – make decisions about personal activities, care or finances (decision making), and relate to, communicate or interact with others effectively (social functioning), the evidence indicates that the appellant is not significantly restricted in either. With respect to decision making, the social worker reported in the AR 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 components of the DLA of daily shopping (making appropriate choices), meal preparation (meal planning and food storage) and transportation (using transit schedules and arranging transportation), and is also independent with making appropriate social decisions as part of his social functioning. While the appellant wrote in his self-report, with respect to mental and emotional skills, that he has difficulty with planning ahead, remembering information and appointments, and that he suffers from short term memory loss due to his head injury, this has not been confirmed by the social worker through an assessment of cognitive impacts to the appellant's DLA.

Regarding the DLA of social functioning, the appellant is assessed by the social worker in the AR as independent in developing and maintaining relationships, interacting appropriately with others, and securing assistance from others. Overall, the social worker reported that the appellant has good functioning in both his immediate and extended social networks and no difficulties with communication.

While the appellant's general practitioner of 9 years identified the deficits to the appellant's cognitive and emotional function as "his disabling issue," the impacts to the appellant's DLA as detailed by the social worker relate to the appellant's restrictions to mobility. While the advocate took issue with the appropriateness of the functional skills assessment as set out in the PR, the general practitioner who has known the appellant for some time indicated that the appellant functions at the higher end of this scale in all areas. There are restrictions reported by the social worker with tasks of DLA as a result of the appellant's foot calluses, however, the panel finds that the ministry reasonably concluded that the evidence of the prescribed professionals is not consistent and also differs in some respects with that of the appellant. 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 is that he requires the significant assistance of another person to perform DLA, even if he does not currently receive help with his DLA.

The ministry's position is that because it has not been established that DLA are significantly restricted, it cannot be determined that significant help is required. The ministry argued that no assistive devices are used at this time although the appellant requires orthoses for his feet.

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 social worker indicated in the AR that the assistance required for DLA is provided by the appellant's family and friends as well as community service agencies. The appellant stated at the hearing that his friends and family, particularly his uncle, help him with shopping and with some housework. He also relies on soup kitchens and the food bank for his meals. For help required where none is available, the social worker noted "needs transportation assistance, help with shopping, housekeeping assistance." The section of the AR indicating assistance provided through the use of assistive devices is not completed, but the general practitioner reported in the PR that orthotics would significantly aid the appellant's foot problem but "he cannot afford them." 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.