

## PART C – Decision under Appeal

The decision being appealed is the Ministry of Social Development and Social Innovation (the “Ministry”) May 26, 2014 reconsideration decision in which the Ministry determined that the Appellant was not eligible for Persons with Disabilities (“PWD”) designation because he did not meet all the requirements for PWD designation in section 2(2) of the Employment and Assistance for Persons with Disabilities Act. Based on the information provided, the Ministry was not satisfied that the Appellant has a severe mental or physical impairment that in the opinion of a prescribed professional

(i) directly and significantly restricts his ability to perform daily living activities either continuously or periodically for extended periods; and,

(ii) as a result of those restrictions he requires help to perform those activities.

The Ministry was satisfied that the Appellant has reached 18 years of age and in the opinion of a medical practitioner his impairment is likely to continue for at least 2 years.

## PART D – Relevant Legislation

Employment and Assistance for Persons with Disabilities Act (“EAPWDA”) Section 2(2) and 2(3).

Employment and Assistance for Persons with Disabilities Regulation (“EAPWDR”) Section 2.

## PART E – Summary of Facts

For its reconsideration decision the Ministry had the following evidence:

1. The Appellant's PWD application consisting of the following:
  - His self-report dated January 12, 2014.
  - A physician's report completed by a doctor (hereafter referred to as "Dr. I"), who indicated that the Appellant had been his patient for 1.5 years and he had seen him 11 or more times in the preceding 12 months. The doctor did not date this report (see below in hearing summary).
  - An assessor's report completed by a different doctor (hereafter referred to as "Dr. M"), who indicated she had known the Appellant for 3 months and had seen him 2-10 times in the last year. She also added that she had seen the Appellant in the ER department and in her office. (see below in hearing summary regarding the date for this report).
2. The Appellant's request for reconsideration, dated May 6, 2014, with a written statement from him as well as the following documents:
  - Letters from the federal government, the Appellant and his doctor, relating to the Appellant's application for Canada Pension Plan disability benefits, including an April 20, 2014 letter from Dr. M. to an adjudicator.
  - Hospital Discharge Summary dated March 31, 2014 and indicating an admission date of March 19, 2014.
  - Psychiatric Discharge Summary dated March 31, 2014, with references to the Diagnostic Imaging Report dated March 26, 2014 and Occupational Therapy Assessment/Treatment dated March 24, 2014, included in the reconsideration request package
  - Psychiatric Consultation Summary completed on March 21, 2014 at the same hospital as the two previous discharge summaries, and indicating an admission date of March 19, 2014.

The Panel has reviewed all of the documents in the record and summarizes the relevant evidence as follows.

### *Diagnoses*

In the physician's report, Dr. I. diagnosed the Appellant with musculoskeletal system, arthritis neck, degenerative disc neck, cardiovascular –hypertension, arthritis –OA-right knee, amputated left 5<sup>th</sup> toe, pacemaker and arhythmias.

Dr I. also diagnosed the Appellant with mood disorder. In her April 20, 2014 letter, Dr. M stated that the Appellant battles addiction and chronic depression. The March 21, 2014 Psychiatric Consultation Summary stated diagnoses of adjustment disorder with mixed anxiety and depressed mood, and severe substance use disorder. The March 31, 2014 Psychiatric Discharge Summary noted that the Appellant was admitted with these diagnoses.

### *Physical Impairment*

In his self-reports, the Appellant described his disabilities as follows:

- Has a pacemaker and irregular heart beat which causes breathing problems; makes it impossible to walk far or go up too many stairs.
- Has chronic neck and shoulder pain, which makes it very painful and hard to turn his neck and to lift his right arm; his hands go numb and his fingers lock up which is very painful and causes him to drop things.

- Gastric bypass surgery limits him to lifting only 30-40 lbs.; he over lifted once and almost bled to death internally.
- Surgery to his feet to remove a toe on each foot makes it impossible to stand for more than 2-3 hours at a time.
- His right knee pops out sometimes, causing him to fall.
- These conditions make it impossible for him to work as a chef.
- His chronic and severe physical pain cause difficulties for him on a daily basis; he needs a minimum of 1 hour to get ready in the morning.
- For a minimum of 2 days per week, he is unable to leave the house due to physical pain, and chronic, severe and persistent symptoms of depression and anxiety.

In the physician's report, Dr. I provided the following information about the Appellant's conditions:

- Hypertension causes dyspnea –shortness of breath; pain in the neck from a gunshot; shoulder pain causes pain or unable to lift objects or turn the neck sideways; knee pain with difficulty walking or standing; previous gastric bypass and cannot lift heavy loads between 30-40 lbs.
- Can walk 2-4 blocks unaided on a flat surface; can climb 5+ steps unaided, can lift 15-35 lbs. and can remain seated for 1-2 hours.
- Has difficulty with communication – “hearing decreased”.

In the assessor's report and April 24, 2014 letter, Dr. M reported that the Appellant:

- Independently manages walking indoors and outdoors, climbing stairs, standing, lifting, carrying and holding.
- Has weight restrictions with lifting, carrying, prolonged lifting; carrying causes increased chronic neck pain.
- Has significant and debilitating chronic pain, mainly in his neck, right shoulder/arm and back that makes finding and maintaining gainful employment unfeasible.
- Was taking pain medications in November 2013 and the dosage was increased for better pain control and to improve functioning; however, he was using the medications inappropriately.

The March 13, 2014, Hospital Discharge Summary provided the following information about the Appellant:

- He has had numerous severe trauma episodes over the years with various injuries, as well as, several surgeries (foot, elbow, gastric bypass, elbow); has minor superficial neurological damage to his neck following a gun incident.
- He takes several medications, including strong pain killers; Dr. M tried to curtail the inappropriate use and volume of narcotics.
- A different medication regime was started to take him off opiates altogether; his pain sensitization syndrome was secondary to chronic opiate use; after about a week of the new medication course, the Appellant was a new person, every day ambulating independently.

The Psychiatric Discharge Summary also referred to tests conducted at the hospital, including a CT of the cervical spine which showed C2-C3 moderate right-sided facet arthropathy without neural foraminal narrowing, C4-C5 moderate right-sided arthropathy without neural foraminal narrowing, at C5-C6 there is a small central posterior disc protrusion, and C6-C7 circumferential endplate osteophytes with serial central posterior disc protrusion and calcification of the central posterior

annulus.

The Occupational Therapy Assessment/Treatment report identified the Appellant's past medical history as gastric bypass, depression, decreased RCM and sensation in right side of face, shoulder torso and upper arm, related to neck wound, hip and knee pain, neck pain, intermittent paralysis in the 3<sup>rd</sup>, 4<sup>th</sup> and 5<sup>th</sup> digits of his right, dominant hand. The report also reviewed the findings of the Diagnostic Imaging report, noted a long-standing history of pain and had the following summary of the Appellant's conditions:

- He reported a long-standing history of pain and currently experiences pain in both knees, his right hip, his feet after standing for long periods of time, his right face/shoulder/upper arm/torso and right hand; over the last few nights he has been woken by knee pain.
- He indicated that increased anxiety aggravates his pain and the pain fluctuates day-to-day and usually gets worse over the course of the day.
- He was observed to walk slowly and carefully; his active range of motion in his right shoulder was limited to horizontal in shoulder flexion, abduction and extension; he was unable to shrug his shoulders equally with a decreased response in his right shoulder.
- He reported that he is hypersensitive to touch over the right side of his face, his neck, his upper arm and upper torso, describing a sensation of "prickliness" in this area.
- His grip was equal bilaterally and assessed to be a 4/5 strength.
- He reported that he has intermittent pain and paralysis in his right hand, resulting in items being dropped.
- The report noted the Appellant's long history of pain, use of prescription medication and that he has few non-medication options to manage his pain; his current pain levels appear to be having a significant impact on his functioning and his ability to manage work; radiological data supports his self-report.

### *Mental Impairment*

In his self-reports the Appellant described his disabilities as follows:

- Suffers from bouts of depression.
- A minimum 2 days per week he is unable to leave the house due to physical pain and chronic, severe and persistent symptoms of depression and anxiety.
- When circumstances become overwhelming he feels hopeless that there is no solution and he struggles with suicidal thoughts.

In the physician's report, Dr. I reported that the Appellant has significant deficits in the areas of consciousness, memory, emotional disturbance, motivation, and attention or sustained concentration; adding - "Hx [history] of depression".

In the assessor's report and in her April 20, 2014 letter, Dr. M provided the following information about the Appellant's cognitive and emotional functioning, and his mental health conditions:

- No impact to bodily functions, consciousness, impulse control, insight and judgement, motor activity, language, psychotic symptoms and other neuropsychological problems.
- Minimal impact to attention/concentration, executive, memory, motivation and other emotional or mental problems.
- Moderate impact to emotion; and, "struggling emotionally with physical limitations and loss of economic autonomy".

- When approached about inappropriate use of medication, became very distraught and suicidal, and was admitted to a hospital psychiatry ward.
- Spent 2 weeks as an inpatient and was assessed by occupation therapy and addictions medication, as well as psychiatry to address his mental health; on discharge was started on a methadone program and was engaging well with an addiction counselor.
- Past medical history of severe depression with prior suicide attempts; had undergone gastric bypass surgery for severe obesity – food addiction.
- Requires lifelong pain management which will be a significant struggle for the Appellant as he also battles addiction and chronic depression.

The March 13, 2014 Discharge Summary provided the following information:

- When the Appellant was told he would not be provided with prescriptions any longer, he threatened to kill himself and was transferred to a hospital psychiatry unit; he had tried to kill himself before following a marital incident.
- The Appellant has a long history of addiction, including a food addiction; has used a lot of illegal drugs over the years.
- He has a very serious co-morbidity of depression and suicidality.

The psychiatrist who prepared the Psychiatric Consultation Summary reviewed the same information regarding the Appellant's use and overuse of pain medication, and use of illegal substances as described in Dr. M's reports, in the March 13, 2014 Discharge Summary and in the March 31, 2014 Psychiatric Discharge Summary (see below). This doctor also recommended that the Appellant continue to see the pain medication specialist and be referred to a pain clinic. The doctor wrote that the Appellant remains a difficult patient to manage in terms of his past history of suicide attempts, serious problems with substance abuse, personality structure and impulsivity, and chronic pain. The Appellant was kept on medication for these problems.

The March 31, 2014 Psychiatric Discharge Summary provided information about the Appellant's admission to a hospital on a certificate after he threatened to harm himself because his medication was to be discontinued. The reporting doctor noted that the Appellant was doing very well on methadone. During his stay in the hospital and on his discharge, there was no evidence of depression, no suicidal ideation, and no signs or symptoms of psychosis. The Appellant remained focused on pain medication treatment and agreed to continue to see the doctor who started his methadone treatment.

#### *Daily Living Activities*

In his self-report, the Appellant wrote that there have been times when he was in too much pain and had to hire someone to clean his house, do his laundry and his shopping.

In the physician's report, Dr. I answered "yes" to the question whether the Appellant has been prescribed any medication and/or treatments that interfere with his ability to perform daily living activities. He wrote that certain drugs cause drowsiness with effects on daily living activities. With respect to the anticipated duration of the medications/treatments, the doctor wrote "chronic as they help him to function at least". However, he also answered "no" to the question does the impairment directly restrict the Appellant's ability to perform daily living activities. The doctor added "when on medications, he seems to function well & does activities of daily living though not 100%".

In the assessor's report, Dr. M. reported the following:

- Independently manages all areas of personal care, meals, paying rent and bills, medications, transportation and social functioning; with good functioning in his immediate and extended social networks.
- Independently manages all areas of basic housekeeping, adding - sometimes has someone in to do housekeeping because of neck, shoulder pain.
- Independently manages all areas of shopping, adding – again if heavy items needs help.

The March 25, 2014 occupational Therapy Assessment/Treatment had the following information about the Appellant's functioning abilities:

- The Appellant reported that he is independent in his showering and washing his hair, although he notices his actions related to decreased range of motion in his right shoulder.
- He worked until September 2013, and was able to manage the work despite his pain levels by self-medicating with his prescription medications; when he ran out of medications and went into withdrawal he was fired from his job.
- At this job, he was required to lift heavy objects and stand for long periods of time; he reported that his ability to manage these tasks are limited by pain.
- He has attempted several small jobs, such as snow shoveling and splitting firewood; he reported that he was able to complete these by working with frequent breaks, about every 15 minutes and then have a significant recovery time of a few days; full time work would not be manageable at this time.
- He reported that he has been able to manage his home adequately by working at tasks such as vacuuming and sweeping slowly.
- His typical day is spent visiting friends and walking to downtown from home.

#### *Help with Daily Living Activities*

In the assessor's report, Dr. M. noted that friends help with getting transportation or physical assistance with lifting and carrying. She did not complete the section for assistive devices and indicated no assistance is provided by an assistance animal.

The psychiatrist, who assessed the Appellant in the hospital in March 2014, recommended that the Appellant continue to see the pain medication specialist and be referred to a pain clinic.

The following recommendations were noted in the Occupational Therapy Assessment/Treatment:

- Introduce to relaxation techniques while in hospital
- Refer to physiotherapist in community.
- Discuss treatment plan with community mental health team.

#### *Hearing Summary*

At the hearing, the Panel asked the Appellant when Dr. I and Dr. M completed their portions of the PWD application because the completion dates are blank or not clearly written. The Appellant said because of earlier injuries he has difficulty remembering events and he could not remember when he asked Dr. I to complete the physician's report. He did remember that he asked Dr. M to be his doctor after she treated him for a heart attack at the local hospital. He thought that might have been in late 2013. The Panel notes that in her April 20, 2014 letter, the doctor wrote that the Appellant has been

her patient commencing in November 2013. Therefore, the Panel finds that the date of completion in the assessor's report is January 9, 2014 and not 2012 as noted in the reconsideration decision. The Panel also notes Dr. M's comment in the assessor's report that she has provided primary and emergency care to the Appellant in conjunction with Dr. I. Therefore, the Panel finds that it is likely that the physician's report was completed before or at about the same time as the assessor's report.

At the hearing, the Appellant's advocate explained that the Appellant did not give a full picture about the seriousness of his medical conditions in his PWD application or in the information he gave Dr. I and Dr. M for that application. He was giving a picture of his best days. The Appellant agreed that the information in the PWD application was based on his best days. However, he also said the information in the assessor's report was wrong. On some days he can't get out of bed and has to roll out. He also has a lady come in on a regular basis to help him.

The Appellant said that when he is having a bad day with severe pain from arthritis, which is in his feet, knees, hands, neck and shoulder, he just sits at home in a chair. He doesn't even cook, just eats toast. The Appellant explained that at times he can hardly walk ½ a block and this happens quite a few times a month. He estimated that between 10-15 days a month he has bad days with severe pain and then he is incapable of doing anything except sitting at home. The Appellant gave the example of cutting his lawn, which he does slowly. Afterwards, he can be laid up for 2 days.

The Appellant stated that he can barely lift his left arm over his shoulder and he can't lift more than 40 lbs after his gastric surgery. The Appellant described his right arm as about 50% disabled. He has foot problems from surgery on one foot and he can only spend about 1-2 hours on his feet. He also said that he has used a cane, but doesn't use it all the time. The Appellant said that when he was in the hospital, he was taken off prescription pain medications. He is on a different treatment program that helps with the pain, but does not get rid of all of it. The Appellant also said that he has severe hearing problems and needs hearing aids.

The Appellant also stated that he gets depressed when he has bad days with his physical pain. Once he had an accident and injured his shoulder, so now he sees a psychiatrist once a month. He also takes medication for depression and sees a counselor for his addiction problems.

Pursuant to section 22(4) of the Employment and Assistance Act, the Panel admits the Appellant's hearing testimony because it provided additional details and was in support of the evidence that the Ministry had at reconsideration.

The Ministry relied on and reaffirmed its reconsideration decision.

## PART F – Reasons for Panel Decision

The issue in this appeal is whether the Ministry reasonably determined that the Appellant was not eligible for PWD designation because he did not meet all of the requirements in section 2(2) of the EAPWDA, and specifically, that the Appellant does not have a severe mental or physical impairment that in the opinion of a prescribed professional (i) directly and significantly restricts his ability to perform daily living activities either continuously or periodically for extended periods; and, (ii) as a result of those restrictions he requires help to perform those activities.

The eligibility criteria for PWD designation are set out in the following sections of the EAPWDA:  
 2 (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.

The “daily living activities” referred to in EAPWDA section 2(2)(b) are defined in the EAPWDR as:

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.

The Panel will consider the reasonableness of the Ministry's decision under the applicable PWD criteria at issue in this appeal.

### **Severe Physical Impairment**

In his testimony at the hearing, the Appellant referred to his inability to work because of his medical conditions. Also, in documents in the appeal record, there are references to the Appellant's inability to find regular work. The Panel notes that finding work or being able to work are not criteria for determining eligibility for PWD designation in section 2(2) of the EAPWDA nor is employability listed among the prescribed daily living activities in section 2 of the EAPWDR.

The Appellant submitted that his physical health problems, combined with his mental illness, make it



difficult for him to cope with everyday tasks. He described how his severe, chronic pain limits him during his bad days, which he estimated at between 10-15 days a month. During those bad days, he cannot do anything except sit at home. The chronic pain has also caused him to be reliant on strong medications so that he can function. The Appellant said that he used a cane sometimes.

In its reconsideration decision, the Ministry reviewed the PWD application and the request for reconsideration. The Ministry determined that, while the Appellant experiences limitations to his physical functioning, the assessments provided speak to a moderate degree of physical impairment.

#### *The Panel's Findings*

The diagnosis of a medical condition is not in and of itself evidence of the severity of impairment. To satisfy the requirements in section 2(2) of the EAPWDA, evidence of how and the extent to which a medical condition restricts daily functioning must be considered. This includes the evidence from the Appellant and from a prescribed professional regarding the nature of the impairment and its impact on the Appellant's ability to manage the daily living activities listed in section 2(1) of the EAPWDR.

In the physician's report, Dr. I described the Appellant's conditions as musculoskeletal system, arthritis in the neck and right knee, degenerative disc, cardiovascular/ hypertension, arrhythmias and he has a pacemaker. These conditions, with additional details about the cause of the Appellant's chronic pain symptoms, were also reported in the Psychiatric Discharge Summary and Occupational Therapy Assessment/Treatment from March 2014. The latter report, which is the most recent medical information about the Appellant, noted that the Appellant has decreased sensation in the right side of his face, shoulder torso and upper arm; hip and knee pain, neck pain; intermittent paralysis in 3 digits of his right, dominant hand.

The Appellant provided details of his physical limitations, including chronic neck and shoulder pain, hands and fingers going numb so that he drops things, and a heart condition causing breathing problems and making it impossible to walk far or go up too many stairs. At the hearing he detailed his bad days, with severe pain in his feet, knees, hands, neck and shoulder. On such days, he can hardly walk ½ a block, he cannot cook and just sits at home. If he does something physical, like lawn mowing, he can be laid up for 2 days. The Appellant also described the limitations with his left and right arms. The Appellant said that someone comes in regularly to help him out at home. He stated that he uses a cane sometimes, but neither doctor confirmed any use of aids or assistive devices.

Dr. I doctor described the Appellant's physical limitations as being able to walk unaided for 2-4 blocks on a flat surface, being able to climb 5+ stairs unaided, and being able to lift 15-35 lbs. Dr. M. reported that the Appellant independently manages walking indoors and outdoors, climbing stairs, standing, lifting, carrying and holding, although she noted that he has weight restrictions with lifting and carrying which causes increased chronic neck pain. Dr. M. also reported that the Appellant was taking pain medications; however, he was using the medications inappropriately. The doctors who completed that March 2014 Hospital Discharge Summary and Psychiatric Discharge Summary reported that the use of strong pain medication was curtailed, the Appellant was on a new medication course and was ambulating independently. The therapist who completed the Occupational Therapy Assessment/Treatment reported that the Appellant was observed walking slowly and carefully; his active range of motion in his right shoulder was limited to horizontal in shoulder flexion, abduction and extension; and, his current pain levels appear to be having a significant impact on his functioning.

The Panel finds that the information from the Appellant, from Dr. I and Dr. M and from the various hospital reports, all indicate that the Appellant has several physical conditions and he experiences chronic pain. He is unable to function during what he called his bad days. However, the Panel notes that the medical reports do not confirm that same level of limited functioning described by the Appellant. For example, Dr. M. reported that, even with chronic pain, the Appellant independently manages walking indoors and outdoors, climbing stairs, standing, lifting, and carrying. In the Hospital Discharge Summary, the Appellant was on a new medication course and ambulating independently. Therefore, when all of the evidence is considered, the Panel finds that the Ministry reasonably determined that the information did not establish a severe physical impairment.

### **Severe Mental Impairment**

The Appellant submitted that his mental illness, combined with his physical limitations, make it very difficult to manage every day activities. When he gets too far down, he is at risk of seriously harming himself, and in fact has done so in the past. The Appellant stated that he suffers from depression, takes medication for depression and is now under psychiatric care. He also sees a counselor for his addiction problem.

The Ministry submitted that it reviewed the information provided in the PWD application and in the reports provided with the request for reconsideration. It noted the reports from Dr. I and Dr. M regarding the Appellant's functioning. It also found that the assessment of the Appellant's mental functioning in the reconsideration documents did not differ significantly from that provided in the original application. The Ministry determined that the information provided does not establish a severe mental impairment.

### *The Panel's Findings*

In his self-reports and at the hearing, the Appellant described his bouts of depression. He wrote that a minimum of 2 days a week he is unable to leave the house due to physical pain and persistent symptoms of depression and anxiety. He struggles with suicidal thoughts and has harmed himself. The suicide attempts are confirmed by the doctors' reports from March 2014.

In the PWD application, Dr. I diagnosed the Appellant with mood disorder, and reported that the Appellant has significant deficits in the areas of consciousness, memory, emotional disturbance, motivation and attention or sustained concentration. That doctor also added "depression". Dr. M also noted impacts to the Appellant's cognitive and emotional functioning ranging from minimal impact in 5 areas and moderate impact in 1 area. In her April 2014 letter, Dr. M. wrote that the Appellant has a past medical history of severe depression with prior suicide attempts and that he battles addiction and chronic depression.

The March 21, 2014 Psychiatric Consultation Summary indicated diagnoses of adjustment disorder with mixed anxiety and depressed mood, and severe substance use disorder. The March 31, 2014 Psychiatric Discharge Summary noted that the Appellant was admitted with these diagnoses and also noted that the Appellant has a past medical history of severe depression with prior suicide attempts and food addiction, and that the Appellant will require lifelong pain management which will be a significant struggle for the Appellant as he also battles addiction and chronic depression. The doctor who completed this summary also wrote that during the Appellant's stay in the hospital and on his discharge, there was no evidence of depression, no suicidal ideation, and no signs or symptoms of

psychosis. However, he also noted that the Appellant remains a difficult patient to manage in terms of his past history of suicide attempts, serious problems with substance abuse, personality structure and impulsivity and chronic pain.

The Panel finds that these documents, provided by the Appellant with his request for reconsideration, demonstrate that his mental health conditions are more serious than originally described by the two doctors' in the PWD application. The Appellant's conditions were so serious that he was hospitalized on a certificate in the spring of 2014. He is now under psychiatric care and seeing an addiction counselor. However, the Panel notes that the doctors who completed the hospital reports did not describe restrictions with daily tasks which would be impacted by a mental impairment, such as paying bills and social functioning. The reports did indicate issues with abuse of prescribed pain medications, but the latest reports indicated that the new medication regime was helping the Appellant cope with his pain. These reports also did not add anything to Dr. M's assessor's report that the Appellant independently manages daily tasks, which could be expected to be impacted by a mental impairment, such as paying rent and bills, making shopping choices, and all aspects of social functioning. Therefore, the Panel finds that the Ministry reasonably determined that the information provided did not establish a severe mental impairment.

#### **Restrictions to Daily Living Activities**

The Appellant submitted that when he has bad days, 10-15 times a month, he is incapable of doing anything, including preparing a meal for himself. He stays at home in his chair. He also has someone come in regularly to help with housework.

The Ministry acknowledged that the Appellant has certain limitations that result from his medical conditions, particularly with housekeeping and lifting heavy objections. However, the Ministry determined that the Appellant does not have a severe impairment which significantly restricts his ability to perform daily living activities either continuously or periodically for extended periods.

#### *The Panel's Findings*

Section 2(2)(b) of the EAPWDA requires that a prescribed professional provide an opinion that the Appellant's severe mental or physical impairment directly and significantly restricts his daily living activities, continuously or periodically for extended periods. Daily living activities are defined in section 2(1) of the EAPWDR, and are also listed in the PR and in the AR. In this case, Dr. I and Dr. M are prescribed professionals. The doctors who completed the hospital reports and the occupational therapist are also prescribed professionals.

The Panel notes that the reports from Dr. M. and the hospital professionals provide more detail about the Appellant's ability to manage his daily tasks. Dr. M. indicated that the Appellant independently manages all areas of personal care, meals, paying rental and bills, medications, transportation and social functioning. She also reported that the Appellant independently manages all areas of basic housekeeping, although someone does come in to help sometimes and in areas of shopping he needs help only with lifting heavy items.

The occupational therapist noted that the Appellant reported that he is independent in showering and washing his hair although with decreased range of motion. His ability to lift heavy objects and stand for long periods of time is limited by pain. He has been able to complete small jobs, such as snow

shoveling and splitting firewood with frequent breaks and a recovery time. The Appellant also reported his typical day is spent visiting friends and walking to downtown from home. Therefore, based on the evidence from the prescribed professionals, the Panel finds that the Appellant independently manages the majority of his daily living activities. The Panel further finds that the Ministry reasonably determined that the Appellant does not have a severe mental or physical impairment which directly and significantly restricts his ability to perform daily living activities either continuously or periodically for extended periods.

### **Help with Daily Living Activities**

The Appellant stated that he has someone help him regularly at home. He is also seeing a psychiatrist once a month and an addiction counselor. The Appellant said that he has uses a cane, but not all the time. Friends help with lifting heavy items.

The Ministry noted that the information did not establish that the Appellant requires an assistive device, the significant help of another person or the services of an assistive device. Also, the Ministry's position is that, because the evidence does not establish that daily living activities are significantly restricted, it cannot determine that significant help is required from other persons.

### *The Panel's Findings*

Section 2(2)(b)(ii) of the EAPWDA also requires the opinion of a prescribed professional confirming that because of direct and significant restrictions in his ability to manage daily living activities, the Appellant requires help with those activities. Help in relation to a daily living activity is defined in section 3 of the EAPWDA as an assistive device, the significant help or supervision of another person or the services of an assistance animal.

In the assessor's report, Dr. M indicated that friends help the Appellant with getting transportation and with lifting and carrying, and with some housework. She provided no information about assistive devices and indicated no assistance is provided by an assistance animal. The psychiatrist, who assessed the Appellant in the hospital, recommended that the Appellant continue to see a pain medication specialist and be referred to a pain clinic. The occupational therapist recommended a referral to a physiotherapist and a treatment plan with the community mental health team. Based on the information from the prescribed professionals, the Panel finds that the Appellant receives some help with the daily living tasks, as noted by Dr. M., but for the majority of daily living activities, the Appellant does not require or receive help. There were recommendations for ongoing treatment, but no confirmation regarding those except for the Appellant's report that he is seeing a psychiatrist and addiction counselor.

Based on the evidence from the prescribed professionals and because the Ministry reasonably determined that the evidence does not establish that daily living activities are directly and significantly restricted either continuously or periodically for extended periods, the Panel finds that the Ministry reasonably concluded that the requirements in section 2(2)(b)(ii) of the EAPWDA were not met.

### **Conclusion**

Having reviewed and considered all of the evidence and the 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. Therefore the Panel confirms that decision.