

PART C – Decision under Appeal

The decision under appeal is the Ministry of Social Development and Social Innovation's (the ministry) reconsideration decision dated July 8, 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* (EAPWDA) 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 that
- as a result of those restrictions, the appellant requires the significant help or supervision of another person, 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 reconsideration consisted of:

- 1) The appellant's Request for Reconsideration (RFR) dated June 30, 2014;
- 2) PWD Decision Summary dated June 6, 2014;
- 3) A PWD application comprised of a Self-report (SR) signed by the appellant on May 27, 2014; a Physician Report (PR) and an Assessor Report, both dated June 2, 2014 and completed by the appellant's general practitioner. The general practitioner reports that the appellant has been his patient for five years and he has seen him two to ten times in the last year;
- 4) Letter from the ministry to the appellant dated June 6, 2014 advising that his application for PWD designation was denied.

In his Notice of Appeal the appellant states that there has been a drastic worsening of his mental and emotional well being, that he has seen his physician twice and is now taking an anti-depressant to cope with extreme depression, anxiety and sleeplessness. The appellant states that he is trying to cope with effects of radiation and chemotherapy as well as chronic obstructive pulmonary disease (COPD).

Admissibility of New Information

At the hearing, the appellant provided oral testimony and submitted a written submission, six pages, regarding his condition. He states that he has seen his family doctor twice in the last month and his condition has changed drastically in the last two months. The appellant reports that his physical condition is changing rapidly and he is about 30% of his normal functioning, and spends most of his day sitting, laying down or sleeping. He cannot walk more than one block, is breathless going up one flight of stairs and cannot stand for more than 3-4 minutes before he has to sit down. He continues to go to the washroom 40 times per day. His wife has assumed all duties of shopping, driving, cooking, cleaning, financial matters, and taking care of him. The appellant states that he is extremely depressed, caused by stress, financial worries, poor health and constant pain and discomfort from cancer radiation therapy, chemotherapy and COPD. He reports that he lapses into a state of inaction that can last up to an hour at a time. He reports occasional thoughts of suicide and has daily panic and anxiety attacks. The appellant provides a list of the activities that he is unable to do and the assistance provided by his wife.

The ministry did not object to the new information and documentation.

The panel has admitted the new documentation and oral testimony into evidence as it is in support of information and records that were before the ministry at the time of reconsideration, in accordance with section 22(4) of the *Employment and Assistance Act*. In particular, the new documentation provides further information regarding the impact of the appellant's impairment on his impairment and functional abilities. In addition, although there was no diagnosis of depression at the time of reconsideration the appellant had, in his SR, indicated that he had a lot of stress and worry and in the RFR, he stated that he was extremely frustrated, depressed and avoided social situations and interactions.

The ministry did not submit any new information and relied on the reconsideration decision.

Physical Impairment

In the SR, the appellant states that he has rectal cancer and is about to begin six weeks of radiation followed by reassessment, surgery and further chemotherapy. He states that he is unable to work at all due to physical limitations from COPD and cancer and has extreme shortness of breath and cannot lift heavy weight or do

strenuous labor. The appellant states that he has chronic pain and discomfort that are increasing in intensity as time goes on. He states that he goes to the washroom at least 40 times per day, has daily weakness and dizziness and has sporadic and interrupted sleep of no more than two hours at a time. The appellant states that his disability has compromised his ability to be independent and self-reliant. He states that he is unable to walk more than two blocks or up and down stairs without the need to go to the washroom and be out of breath.

In the RFR the appellant states that his general practitioner was mistaken in his reports of his functional abilities. The appellant states that although the general practitioner reported that he could walk 4+ blocks, that is not accurate as in his SR he stated that he is unable to walk more than 2 blocks. The appellant states that if he had to walk 4 blocks he would be on the ground gasping for breath and would certainly have uncontrollably soiled himself.

At the hearing and as reported in his written submissions, the appellant stated that his physical symptoms have drastically worsened and he is about 30% of his normal functioning and he is now unable to walk more than one block, is breathless after going up one flight of stairs and cannot stand for more than 3-4 minutes.

In the PR, the general practitioner reports that the appellant has COPD and impairment to his digestive organs and peritoneum and that he is about to undergo treatment including chemotherapy, radiotherapy and surgery. He reports that the appellant is unable to work in any capacity due to his extensive cancer treatment. He also reports that the appellant's COPD is permanent and may get worse following his chemotherapy. The general practitioner reports that the appellant's chemotherapy may interfere with the appellant's ability perform daily living activities (DLA) and his condition post surgery will be poor initially. His COPD will never improve and the duration of his cancer treatments is harder to estimate.

Functional skills reported in the PR indicate that the appellant can walk 4+ blocks unaided, can climb 5+ stairs, lifting limitations were unknown and he can remain seated for 1 to 2 hours. The physician reports that the appellant does not require any prostheses or aids for his impairment.

Under Part F – additional comments, the general practitioner reports that the appellant's condition is going to worsen as he starts his cancer treatment which will be extensive and prolonged. He notes that the appellant will require a lot of support during his treatment.

In the AR, the general practitioner reports that the appellant has severe shortness of breath and weakness. He is independent with walking indoors, standing, lifting and carrying and holding but takes significantly longer than typical with walking outdoors and climbing stairs. The general practitioner comments that the appellant has emphysema, and is about to undergo extensive cancer treatment that will worsen his condition.

Mental Impairment

In the SR the appellant states that he has a lot of stress and worry, particularly about financial matters. In the RFR the appellant states that he feels extremely frustrated, depressed and avoids social situations and interacting with others because of a feeling of inadequacy. He reports that he does not feel equal and finds himself wondering why he cannot react normally.

At the hearing, and in his written submissions, the appellant stated that he has daily anxiety and panic attacks, severe depression, suffers from periods of confusion and decreased self-esteem. His position is that his mental impairment has diminished his energy reserves leaving him constantly fatigued, sluggish and unable to get through his daily appointments. The appellant states that he finds his mind wanting to disassociate.

In the PR, the general practitioner reports that the appellant does not have any significant deficits with cognitive and emotional function.

In the AR, the general practitioner reports that the appellant's ability to communicate with speaking, reading, writing and hearing are good. For section 4, cognitive and emotional functioning, the appellant's physician reports that there is a major impact to the appellant's bodily functions but no impact to the remaining areas: consciousness, emotion, impulse control, insight and judgment, attention/concentration, executive, memory, motivation, motor activity, language, psychotic symptoms, other neuropsychological symptoms or other emotional or mental problems.

DLA

In the SR, the appellant states that he can no longer continue his usual occupation of flooring installation, that he has a lessening ability to take care of his basic needs on a daily basis. He cannot do laundry, cleaning, shopping or cooking by himself. Due to his extreme shortness of breath he cannot lift heavy weights or do strenuous labour.

In the PR, the general practitioner reports that the appellant has continuous restrictions to his DLA of basic housework, daily shopping, mobility outside the home and use of transportation. His DLA of personal self-care, meal preparation, management of medications, mobility inside the home, management of finances and social functioning are not restricted.

In the AR, the general practitioner reports that the appellant is independent with the following DLA: dressing, grooming, bathing toileting, feeding self, regulating diet, transfers (in/out of bed), transfers (on/off of chair), making appropriate choices, paying for purchases, meal planning, safe storage of food, banking, budgeting, paying rent and bills, filling/refilling prescriptions, taking prescriptions as directed, safe handling and storage of medications, getting in and out of a vehicle, using transit schedules, and all aspects of social functioning. The general practitioner reports that the appellant takes significantly longer with the following DLA: laundry, basic housekeeping, going to and from stores, reading prices and labels, carrying purchases home, food preparation, cooking and using public transit.

The general practitioner also reports that once the appellant starts chemotherapy and has surgery he will require assistance with toileting, transfers, bathing, etc. reports that the appellant has good functioning with his immediate and extended social networks.

In the RFR the appellant states that his physical limitations have permanently impaired his ability to walk, climb stairs, personal care, cooking, cleaning and shopping.

At the hearing, and in his written submissions the appellant reports that he is capable of eating, dressing, bathing, shaving and going to appointments, but he is unable to perform the following on his own: cooking, dishes, cleaning, laundry, shopping, driving, meal preparations, dealing with financial matters, answering telephone calls, participating in social situations, walking any distance, keeping track of commitments, picking up medications, dealing with stressful situations, performing any physical tasks that require physical stamina.

Need for Help

In the SR, the appellant states that he requires daily medications and cannot afford to purchase them.

In the PR the general practitioner reports that the appellant requires help with any physical activity and that he cannot walk long distances to bus stops.

In the AR, the general practitioner reports that the appellant requires help from his wife. He does not require any assistive devices or the assistance of an assistance animal.

In the RFR the appellant states that he requires significant assistance with personal care, cooking, cleaning

and shopping.

At the hearing, and in his written submissions the appellant reports that he requires helping with cooking, cleaning, dishes, laundry, shopping, driving, meal preparations, answering phone calls, picking up medications, participating in social situations, walking any distance at all, ensuring that he attends appointments, dealing with stressful situations and performing any physical tasks that require strength or stamina. He states that without his wife's help he could not function properly or maintain his health, cleanliness, diet, financial matters, appointments, housekeeping, travel, purchases, cooking, cleaning, decision making and preparations in advance of commitments.

PART F – Reasons for Panel Decision

The issue on the appeal is whether the ministry's reconsideration decision denying the appellant designation as a PWD was reasonably supported by the evidence or was a reasonable application of the applicable legislation in the circumstances of the appellant. In particular, was the ministry reasonable in determining that the appellant:

- does not have a severe physical or mental impairment;
- that the appellant's DLA's 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, the appellant does not require the significant help or supervision of another person, 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.

Severity of mental impairment:

The appellant's position is that he meets the criteria of severe mental impairment as he has daily anxiety and panic attacks, severe depression, suffers from periods of confusion and decreased self-esteem. His position is that his mental impairment has diminished his energy reserves leaving him constantly fatigued, sluggish and unable to get through his daily appointments.

The ministry's position is that there is not enough evidence to establish that the appellant has a severe mental impairment.

Panel Decision

The panel finds that the appellant's general practitioner reports that the appellant has no significant deficits in the areas of cognitive and emotional functions and no impacts on the appellant's daily functioning due to cognitive and emotional functioning. The general practitioner reports that the appellant's reading, writing, speaking and hearing are good and that his relationships with his immediate and extended social networks is good.

The panel accepts the appellant's information as to his declining mood and emotional condition. However, as the general practitioner has not diagnosed a mental disorder or identified any mental impairment or any impact to the appellant's cognitive and emotional functions, the panel finds that the ministry's decision, which found that there was not enough information to establish a severe mental impairment under section 2(2) of the EAPWDA, was reasonable.

Severe physical impairment:

The appellant's position is that he has debilitating COPD and is undergoing cancer treatment including chemotherapy that has drastically worsened his condition. He reports that he is functioning at 30% of normal and that without his wife's significant help he could not maintain even the basic functions in his day to day life. The appellant's position is that the information provided by his general practitioner in the PWD application is sufficient to establish a severe physical impairment.

The ministry's position is that the information provided by the appellant's general practitioner is not sufficient to establish a severe physical impairment. The ministry notes that the general practitioner indicates that the appellant takes significantly longer with mobility outside the home and stairs but does not provide any information on how much longer it takes. The ministry notes that the general practitioner reports that the appellant is independent with walking indoors, standing, lifting and carrying and holding. The ministry notes

that although the general practitioner indicates that the appellant is unable to work due to the extensive cancer treatment, the application is not intended to assess employability and employability is not an eligible criterion for designation as a PWD.

Panel Decision

Although the general practitioner reports that the appellant is unable to work the panel notes that employability is not an eligible criterion for designation as a PWD.

To assess the severity of an impairment, one must consider the nature of the impairment and its impact on the appellant's ability to manage his DLA as evidenced by functional skills limitations, the restrictions to DLA, and the degree of independence in performing DLA.

The determination of severity of impairment is at the discretion of the minister – the minister must be “satisfied” that the statutory criteria for granting PWD designation are fulfilled. In making its determination the ministry must act reasonably and consider all the relevant evidence, including that of the appellant. While the legislation is clear that the fundamental basis for the analysis is the evidence from prescribed professionals, the professional evidence has to be weighed and assessed like any other evidence.

In the appellant's case, the panel finds that a medical practitioner, the appellant's general practitioner, has diagnosed the appellant with COPD and Neoplasms to his digestive organs and peritoneum, and that he is about to undergo cancer treatment including chemotherapy, radiation and surgery. On the AR the general practitioner reports that the appellant has severe shortness of breath and weakness. He also reports that the appellant has emphysema and is about to undergo cancer treatment, which will worsen his condition.

On the RFR the appellant states that the general practitioner made a few mistakes regarding his physical abilities. In particular, the general practitioner reports that the appellant can walk 4+ blocks whereas the appellant says he cannot walk more than 2 blocks. However, although the general practitioner reports that the appellant can walk 4+ blocks he provides further comment that the appellant cannot walk long distances to bus stops and requires help with any physical activity. The panel also notes that in terms of severity, on the PR the general practitioner reports that the appellant is continuously restricted with respect to basic housework, daily shopping, mobility outside the home and use of transportation, and on the AR the general practitioner reports that the appellant takes significantly longer with shopping, food preparation and use of transit.

The panel's jurisdiction is to determine whether the ministry's reconsideration decision was reasonable in accordance with the legislative requirements. The panel finds that the ministry's decision that the appellant did not have a severe physical impairment was not reasonable considering the continuous restrictions noted by the general practitioner at the time of the application, and the additional comments that the appellant requires help with any physical activity. In the reconsideration decision, the ministry does not provide any information as to why the general practitioner's additional comments were not taken into consideration along with the functional skills assessment. Although the ministry notes that the general practitioner did not provide information about how much longer it takes the appellant with mobility outside the home and stairs the panel finds that the ministry was not reasonable in not considering all of the information provided by the general practitioner with respect to the appellant's functional limitations in determining the severity of the appellant's condition. In particular the panel finds that the ministry gave great weight to the functional skills limitations but did not reasonably take into account the noted restrictions to DLA and the appellant's degree of independence in performing DLA.

In addition, the ministry states that the appellant's physician reports that the appellant has “...*employment however you are about to undergo extensive cancer treatment which will worsen your condition*”. However the appellant's physician reports that the appellant has emphysema not employment and it is not clear if the ministry made a typographical error in the reconsideration decision or if the ministry did not understand the

physician's comments. It appears that the ministry preferred the information on the functional skills assessment without consideration of the comments of the appellant's worsening condition.

Although the general practitioner did not provide any further information to clarify this issue or an update as to the appellant's current circumstances, the panel finds that the appellant's information in the RFR and at the hearing and in the written submissions regarding his declining condition is entirely consistent with the general practitioner's reports that the appellant's COPD would worsen with the cancer treatment. The panel's determination is based on the assessment of the appellant's current limitations and not what may happen in the future. The appellant reports that his COPD related restrictions have worsened since he began the cancer treatments and this is consistent with the general practitioner's information that the chemotherapy may affect the appellant's ability to perform DLA. The panel finds that when considering the information at the time of reconsideration of both the prescribed professional and the appellant, the panel finds that the ministry's determination that the appellant's physical impairment was not severe was not reasonable.

The panel concludes that based on all of the evidence the ministry was not reasonable in finding that the appellant does not have a severe physical impairment under section 2(2) of the EAPWDA.

Restrictions in the ability to perform DLA

The appellant's position is that he is functioning at about 30% of his normal function and has significant restrictions to his DLA including unable to perform the following on his own: cooking, dishes, cleaning, laundry, shopping, driving, meal preparations, dealing with financial matters, answering telephone calls, participating in social situations, walking any distance, keeping track of commitments, picking up medications, dealing with stressful situations, performing any physical tasks that require physical stamina. The appellant's position is that the information provided by his general practitioner with respect to the restrictions to his DLA supports a designation of PWD.

The ministry's position is that based on the information provided by the appellant's physician, there is not enough evidence to establish that the appellant has a severe impairment that directly and significantly restricts his DLA continuously or periodically for extended periods. In particular the ministry notes that although the physician indicates that the appellant requires continuous assistance with basic housework, daily shopping, and mobility outside the home and use of transportation with the explanation that the appellant needs help with physical activities and cannot walk long distances, he is not restricted in DLA of self care, meal preparation, management of medications, mobility inside the home, management of finances and social functioning. The ministry notes that the appellant's physician indicates that the appellant takes significantly longer with laundry, basic housekeeping, going to/from stores, reading prices and labels, carrying purchases home, food preparation, cooking and using public transit but that no further information is provided on how much longer it takes to perform these tasks. The ministry states that the rest of the appellant's DLA are considered independent and there was no indication that that they take the appellant significantly longer to perform them.

The ministry is also unclear why the appellant takes significantly longer with reading prices and labels based on the diagnosis provided.

The ministry also notes that in the PR the physician indicates that the appellant requires continuous assistance with basic housework, daily shopping and mobility outside the home and use of transportation but on the AR the physician indicates that the appellant takes significantly longer in these areas. The ministry's position is that it is difficult to develop a clear and cohesive picture of the degree of restrictions the appellant has with DLA.

Panel Decision

The legislation requires that in the opinion of a prescribed professional a severe impairment directly and

significantly restricts the appellant's ability to perform DLA either continuously or periodically for extended periods. EAPWDR section 2 defines DLA to mean the following activities: prepare own meals, manage personal finances, shop for personal needs, use public or personal transportation facilities, perform housework to maintain the person's place of residence in acceptable sanitary condition, move about indoors and outdoors, perform personal hygiene and self care, and manage personal medications.

With respect to preparing his own meals, on the PR the appellant's physician reports that the appellant is not restricted but he comments that the appellant requires help with any physical activity. On the AR the physician reports that the appellant takes significantly longer with food preparation and cooking.

With respect to managing personal finances, the appellant's physician reports that he is not restricted and is independent with this DLA.

With respect to shopping for personal needs, on the PR the appellant's physician reports that the restriction is continuous and on the AR he reports that the appellant takes significantly longer with going to and from stores, reading prices and labels and carrying purchases home.

With respect to use of public or personal transportation facilities, on the PR the appellant's physician reports that the appellant has a continuous restriction and on the AR he reports that the appellant is independent but takes significantly longer than typical.

With respect to housework, on the PR the appellant's physician reports that the appellant has a continuous restriction and on the AR he is noted to take significantly longer than typical in this area.

With respect to moving about indoors and outdoors, the PR indicates that his mobility outside the home is continuously restricted and he comments that the appellant requires help with any physical activity and cannot walk long distances to bus stop. On the AR, the physician notes that he is independent with getting in and out of a vehicle, walking indoors, standing, lifting and carrying and holding but takes significantly longer with walking outdoors and climbing stairs. In addition the physician comments that the appellant has emphysema and is about to undergo extensive cancer treatment which will worsen his condition.

With respect to performing personal hygiene and self care, the PR indicates that the appellant is not restricted but the physician adds that he requires help with any physical activity. On the AR the physician reports that the appellant is independent in all aspects of personal care but that once he starts chemotherapy and has surgery he will require assistance with toileting, transfers, bathing, etc.

With respect to managing personal medication, the PR and AR both indicate that the appellant is not restricted with this DLA.

Based on the information in the PR and the AR, the evidence of the prescribed professional indicates that the appellant is restricted continuously and/or takes significantly longer with 5 of the 8 prescribed DLA, being: preparing own meals, shopping for personal needs, use of public or personal transportation facilities, housework, and moving about outdoors. Although the general practitioner does not indicate that the appellant is restricted with DLA of personal care, he states that once the appellant starts his cancer treatment his condition is going to worsen. The physician also reports that his treatment will be extensive and prolonged and he will require a lot of support during his treatment.

While the ministry states that it finds it difficult to develop a clear and cohesive picture of the degree of restrictions the appellant has with his DLA, the panel finds that the physician's report, when taken together and considered with the appellant's evidence demonstrate that his physical impairment directly and significantly restricts his DLA continuously or periodically for extended periods. The panel finds that the ministry was not reasonable in determining that the information provided did not constitute a direct and significant restriction of

the appellant's ability to perform his DLA thereby not satisfying the legislative criteria of section 2(2)(b)(i) of the EAPWDA.

Help with DLA

The appellant's position is that he requires significant assistance with personal care, cooking, cleaning and shopping. The appellant's position is that the information from his general practitioner confirms that his severe physical impairment directly and significantly restricts his ability to perform DLA either continuously or periodically for extended periods and that as a result of those restrictions he requires help to perform those DLA.

In particular, the appellant's position is that due to the continuous restrictions to his ability to perform basic housework, daily shopping, mobility outside the home and use of transportation, he requires help with cooking, cleaning, dishes, laundry, shopping, driving, meal preparations, answering phone calls, picking up medications, participating in social situations, walking any distance at all, ensuring that he attends appointments, dealing with stressful situations and performing any physical tasks that require strength or stamina. His position is that without his wife's help he could not function properly or maintain his health, cleanliness, diet, financial matters, appointments, housekeeping, travel, purchases, cooking, cleaning, decision making and preparations in advance of commitments.

The ministry's position is that as it has not been established that DLA's are significantly restricted, it cannot be determined that significant help is required from other persons, and no assistive devices are required.

Section 2(2)(b)(ii) of the EAPWDA requires that, in the opinion of a prescribed professional, 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) of 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 panel notes that in the PR the physician reports that the appellant requires help with any physical activity. The general practitioner also states that the appellant's COPD will worsen as he starts his cancer treatment, and that he will require a lot of support during this treatment. The panel finds that the evidence of the prescribed professional establishes that the appellant has a severe physical impairment that directly and significantly restricts the appellant's ability to perform DLA continuously or periodically for extended periods. In particular, the general practitioner's information indicates that the appellant's severe physical impairment causes continuous restrictions to his DLA of basic housekeeping, shopping, mobility outside the house and use of transportation and that as a result of those restrictions he requires help to perform those activities.

The panel also finds that the information from the appellant regarding the decline in his condition is consistent with the physician's prognosis of what was to be expected and the increased level of help required with the commencement of his cancer treatment.

Based on the evidence, the panel finds that the ministry was not reasonable in determining that the appellant does not require help to perform DLA as a result of his restrictions as required by EAPWDA section 2(2)(b)(ii).

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 not reasonably supported by the evidence and was not a reasonable application of the applicable legislation in the circumstances of the appellant. Therefore, the panel rescinds the ministry's reconsideration decision.