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PART C – Decision under Appeal

The decision being appealed is the Ministry of Social Development and Social Innovation (the "Ministry") May 16, 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.

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PART E – Summary of Facts

For its reconsideration decision, the Ministry had the following evidence:

1. Appellant's PWD application consisting of:
   - His self-report dated September, 24, 2013 and an additional undated written statement.
   - A physician's report completed on November 7, 2013, by a doctor (hereafter referred to as Dr. C.), who indicated that he is a specialist in Psychiatry/Addictions and that he had seen the Appellant in 11 or more visits in the preceding 12 months. The doctor added 1-2 week visits.
   - An assessor's report completed on November 14, 2013 by a doctor (hereafter referred to as Dr. A), who noted that he had known the Appellant for 3 months and checked the box indicating that he had seen the Appellant 2-10 times in the last year.
   - A letter dated October 25, 2013 from Dr. A to a third doctor (hereafter referred to as Dr. R) regarding his assessment of the Appellant. Dr. C was copied on this letter.
   - A referral for physiotherapy dated November 8, 2010 and signed by a fourth doctor (hereafter referred to as Dr. H). Except for medications, the doctor's writing was illegible.
   - A note dated September 23, 2013 from Dr. R to "employer" stating that the Appellant is medically ill, awaiting tests and a specialist consult to clarify his condition. He cannot work over the next month.
   - A note on a prescription paid dated November 8, 2010, with a signature similar to Dr. H's and with a date stamp from the Ministry of June 26, 2013; and stating, "the above patient [Appellant] is unable to work due to meds and lower back spasm and arthritis.".
2. Appellant's request for reconsideration dated April 16, 2014, together with:
   - A letter dated April 16, 2014 from the Appellant's mother who is also his representative.

For this appeal, the Appellant's advocate submitted three documents:

- A revised page 12 of the physician's report part of the PWD application, completed by Dr. R on August 18, 2014.
- An assessor's report completed by a registered nurse on August 10, 2014 who indicated that she had seen the Appellant once; this was her first contact with him.
- Written arguments which are summarized in Part F of this decision.

At the hearing, the Appellant, his mother and advocate provided the following information about the various medical professionals, and when and why the Appellant had seen them:

- Dr. C is the physician who oversees the Appellant's methadone treatment because he can have regular appointments and the doctor is close to where he currently lives.
- Dr. R is the Appellant's family physician and the Appellant has been seeing him for about a year. Dr. R referred him to Dr. A for a COPD (chronic obstructive pulmonary disease) assessment. Dr. R prepared a revised page 12 of the physician's report on August 18, 2014. Dr. C gave his permission for the Appellant to have Dr. R complete this form.
- Dr. A saw the Appellant twice, once to do the COPD assessment and once to do the assessor's report. The Appellant said that when he asked Dr. A to complete the assessor's report for his original PWD application, Dr. A took about 5 minutes to check the boxes and did not ask the Appellant any questions. The Appellant also said that he had never seen the application form before, did not understand it at all or what was needed. The Appellant's mother confirmed that the Appellant was with the doctor for only about 5 minutes.
- The advocate explained that the registered nurse has done other PWD assessments.

According to the Appellant and his mother, the nurse did a very thorough interview, including helping the Appellant and his mother remember his childhood injuries and other difficulties. They said that they provided her with his whole medical history, including medical reports.

The following information was available to the Ministry at the time of reconsideration.

Diagnoses
Dr. C, in the physician's report diagnosed the Appellant with narcotic dependence, abuse of an illegal substance, COPD, degenerative disc disease, low testosterone, hepatitis C positive, depression and post traumatic stress disorder ("PTSD").

In the October 25, 2013 letter, Dr. A refers to the Appellant's chronic dyspnea and fibrothorax.

Physical Impairment
In his self-report, the Appellant described his disabilities as follows:

- Chronic lung and back problems; had surgery and suffers from continuous pain in his back; x-rays show that permanent scarring in his lower L4-L5; has scoliosis and some curvature in the spine.
- Has been diagnosed with a serious lung disease; x-rays show long-standing right pleural thickening and patchy right basal primary scarring; left convex scoliosis.
- Has club fingers which are a direct result of lung disease.
- Deals with constant sciatic pain in his back and right leg; some days he can barely get out of bed; he cannot lift heavy objects or sit in one place for long periods of time.
- Deals with walking hunched over on bad days and often retreats home.
- Breathing is so bad that he has been to the doctor's office and hospital numerous occasions; if he walks fast or starts to feel anxious for any reason, his breathing gets very shallow and he starts to drown in his own body.
- Cannot run, cannot do anything that will raise his heart rate; loses his breath at least a couple of times a day to the point he drops to his knees prepared to call 911.
- If he can calm himself, he can regain his breathing, but the emotional toll is indescribable.
- Is very limited to what he can do with his back and lung problems; very difficult to get around, to even clean his house without over exerting himself.
- Has problems even sliding his bed away from the wall to change his sheets.
- If he has to hurry to catch a bus, often ends up kneeling on the bus trying to catch his breath.
- Has problems carrying groceries, even up stairs to his apartment, without losing his breath.

In the undated statement the Appellant wrote:

- His life in the last ten years has been a constant battle with back pain and surgery; has permanent scar tissue damage and lives with sciatic pain every day.
- Makes it almost impossible to get out of bed on the bad ones; has landed in the hospital on numerous occasions; had x-rays in 2010 showing even more permanent damage.
- Some days it is almost impossible to dress himself or even go to the bathroom.
- Recently he was diagnosed with lung problems, which has made his life almost impossible; he runs out of breath several times a day from just walking to the bus stop; he runs out of breath even tying his shoes.
- His life has fallen apart as he is completely limited to almost anything that won't raise his heart

rate.
- If he catches transit, he has to walk slowly for fear of not being able to breathe.
- His handicaps have destroyed his relationships and have led him to living alone and loneliness.

Dr. A, in the October 2013 letter to Dr. R, wrote that the Appellant was reviewed that day regarding his chronic dyspnea. The doctor provided the following report about the Appellant's conditions:
- Recent CT scan showed significant pleural thickening in the sub pleural bands, a likely fibrothorax due to prior hemopneumothoraces.
- PFTs showed moderately severe impairment; has a mixed obstructive restrictive picture.
- DLCO was surprisingly low at 66%; however, it did correct for his lung volumes.
- Also had significant bronchodilator reversibility and remains on two medications.
- On that day's examination, had a significant wheeze; also diminished thoracic expansion.
- Added another medication for obstructive lung disease and stressed the importance of smoking cessation.
- Fibrothorax will be a very difficult problem; ordered a high-resolution CT to ensure there is no associated parenchyma disease given the diminished DLCO; also ordered an echocardiogram to ensure no evidence of pulmonary hypertension given previous drug use.
- Will refer the Appellant to a thoracic surgeon for an opinion as to whether the Appellant might benefit from surgical decortications; and will review him in about 3 months.

Dr. C wrote in his physician's report that he was seeing the Appellant for narcotic dependence. This doctor, who has known the Appellant since 2012, described the severity of the Appellant's impairment and functioning abilities as follows:
- Had chronic back pain from 2012, low energy – hepatitis C positive.
- Had subsequently injured his back at work and was not able to work.
- New diagnoses of COPD and restricting lung disease; possible surgical resection to lungs (planned).
- Does not require any prostheses or aids for his impairment.
- Unlikely to recover to the point of doing the jobs he was skilled to do.
- Functionally can walk 2-4 blocks unaided on a flat surface; cannot climb any stairs unaided – uses elevator; cannot lift and can remain seated for less than 1 hour.
- "Currently seeing a medical and thoracic specialist for managing lung disease. Appointment upcoming for possible lung resection ('scarred lungs")".

Dr. A reported that the Appellant:
- Independently manages walking indoors and outdoors, and standing.
- Takes significantly longer climbing stairs, lifting, and carrying and holding.
- "Significant mixed ventilatory defect on PFTs [pulmonary function tests] secondary to COPD and fibrothorax from prior pleural effusion/pneumothorax".

In her April 16, 2014 note, the Appellant's mother wrote that the Appellant:
- Learned more information about his health; saw a specialist and will be meeting with his family doctor next week.
- Has been diagnosed with COPD and emphysema; he is struggling and is very restricted in what he can do.

Mental Impairment
In his self-report and undated statement, the Appellant described his impairments as follows:

- Has battled with addiction due to pain relief and is now on the methadone program.
- He has a lifelong problem with the battle of addiction, but has been staying clean as he refuses to allow his body to get any worse.
- He just has to come to terms with his disabilities and he wants to be able to live a normal life.

Dr. C reported that the Appellant was stabilized well on a methadone maintenance program. The Appellant is adhering to his program and no longer using the illegal narcotic. The doctor wrote that the Appellant has dyspheria from depression and:

- Has significant deficits with cognitive and emotional functioning in the areas of memory and emotional disturbance (depression, anxiety)
- Has "post-traumatic stress symptoms, dysperia, poor short-term memory".

Dr. A wrote "no cognitive or emotional impairment" and indicated no impacts to any areas of cognitive and emotional functioning.

The Appellant's mother wrote that the Appellant:

- Is very depressed right now and that is why her help is needed; not only depressed but also has been very angry lately.
- His dependence on others to help him function is causing further depression which exacerbates the situation.

Daily Living Activities
Dr. C reported that the Appellant had not been prescribed any medication and/or treatment that interfere with his ability to perform daily living activities. This doctor also indicated that the Appellant's impairments directly restrict his ability to perform daily living activities as follows:

- Periodic restrictions with meal preparation.
- Continuous restrictions with mobility outside the home, use of transportation and management of finances.
- Checked box for no restriction for basic housework and daily shopping –"not able to daily", but also checked box for "continuous".
- No restriction with management of medications, mobility inside the home and social functioning.
- "Can sometimes cook, but not able to when worse in symptoms"
- "Not able to shop daily, limitations going out. Finances managed by parents who live elsewhere. Uses elevators only".

Dr. A, in his assessor's report, provided the following information about the Appellant:

- Wrote "none for ADLs (activities of daily living)" in response to the question whether the Appellant's mental or physical impairments impact his ability to manage daily living activities.
- Independently manages all areas of personal care, basic housekeeping, meals, paying rent and bills, medications, transportation and social functioning with good functioning with immediate and extended social networks.

- Independently manages all areas of shopping, but takes significantly longer going to and from stores, and carrying purchases home.
- "No difficulties with ADLs".

Help with Daily Living Activities
In the physician's report, in response to the question about what assistance the Appellant needs, Dr. C wrote "not usually, sometimes uses a cane".

Dr. A in his report:
- Wrote "nil" in response to whether the Appellant requires help, but did note that family provides assistance.
- Wrote "none" for any assistive devices used by the Appellant.
- Noted that the Appellant does not have an assistance animal.

In her April 2014 letter, the Appellant's mother wrote that the Appellant was very depressed at that point and that was why he needed her help. The Appellant has been getting emotional and physical help from his brother and family, and from his parents. If not for them, he would not be able to get by.

Hearing Summary
At the hearing, the Appellant described the same health conditions as are in the doctors' reports. He also described how hard it is for him to walk or stand. He does not shop without any help. Usually his mother cooks and she confirmed that she provides him with cooked and frozen dinners. His brother also provides meals. The Appellant said that he can't carry groceries up the stairs to where he lives. His brother often helps him. The Appellant stated that his lung capacity is at 60% and he is continuing to see a specialist for this condition. He is also continuing to see Dr. C. The Appellant also said that he gets very depressed and often feels really hopeless. He can't even dress himself and sometimes sleeps in his clothes. He is very embarrassed about all of his illnesses and now he is losing his teeth. Sometimes he wants to kill himself. The Appellant also described a very violent incident that happened when he was about 18 and which he said caused his PTSD symptoms.

The Appellant's mother said that for some time she did not realize how sick her son is. They have had a tough journey together. The Appellant's brother also has been helping him and now the Appellant is preparing to move closer to his parents.

In the revised page of the physician's report page, Dr. R reported that the Appellant's impairment directly restricts his ability to perform daily living activities as follows:
- Personal care is periodically restricted – "able to do some self care but limited by mood fluctuation".
- Meal preparation, management of medications, basic housework, daily shopping, mobility inside and outside the home, use of transportation and management of finances are all continuously restricted.
- Social functioning is continuously restricted – isolated due to depression, fatigue due to breathlessness, leads to isolation and less social interaction.
- Severely restricted due to COPD and dysprea as well as depression.

Dr R. also wrote that the Appellant needs a cane for mobility and the assistance of his parents, health

care, his brother and advocates.
The nurse indentified the Appellant's mental and physical impairments as chronic dyspnea, tachycardia, severe COPD – severe shortness of breath and fatigue, degenerative disc disease – cervical and lumbar spine, hepatitis C, depression, PTSD disorder, low testosterone level 3, obsessive compulsive tendencies, possible head injury/fractured skull as a child. The nurse reported the Appellant's ability to communicate as follows:

- Poor speaking ability – shortness of breath affects speech.
- Reading – 10 minute attention span.
- Writing – loses train of thought, takes 2x as long to write a page.

As for the Appellant's mobility and physical ability, the nurse reported that the Appellant needs the following assistance:

- Continuous assistance walking indoors – 5-10 minutes with back pain & S.O.B. [shortness of breath]; walks with back hunched over in pain.
- Continuous assistance walking outdoors – uses cane - cannot manage hills; needs to rest every 5 minutes with S.O.B and fatigue.
- Continuous assistance climbing stairs – elevators; extremely short of breath.
- Continuous assistance – cane – 10 minutes with support.
- Continuous assistance with lifting – 5 lbs.
- Continuous assistance with carrying and holding – 5 lbs & 5 minutes due to severe back pain; sciatica.
- Severe back pain/surgery 2006; despite surgery Appellant still suffers with daily chronic lower back pain – sitting, standing, lifting, uses a cane 25% of the time to support himself.

The nurse provided the following information regarding the Appellant's cognitive and emotional functioning:

- Major impact to bodily functions (eating and toileting problems, sleep disturbance) – weight fluctuations, appetite fluctuations, diarrhea daily.
- Major impact to consciousness –excessive drowsiness; to emotion (anxiety, depression) – major depression - self managed relaxation techniques; to impulse control - OCD (compulsive disorder) behaviors counting steps over lines, holds breath at stop lights, extreme attention to detail; to insight and judgment - self-mutilation in the past; severe depression and suicidality; to attention/concentration – very poor attention span – 5 minutes; to executive – requires help to organize; to motivation – "poor due to [incomplete]"
- Major impact to other neuropsychological problems (learning disabilities) – attention deficit, poor short term memory, fogging; to other emotional or mental problems – impulsive anger.
- Moderate impact to motor activity (bizarre behavior) – OCD behaviors/counting; to psychotic symptoms, hallucinations of people, some paranoia that people are waiting/listening to him.
- No impact to language.
- Sleep – awakens with shortness of breath every 2-3 hours a night; constantly falls asleep during the day.

For assistance with daily living activities, the nurse noted that the Appellant manages as follows:

- Personal Care – independent with grooming, with bathing (showers every 2nd day), and with toileting but takes significantly longer (diarrhea once/day and severe heartburn); needs periodic assistance with dressing & takes significantly longer (15 minutes, holds breath to bend over due to back pain, needs to lay down on side to put socks on), with feeding self/regulating diet & takes significantly longer (teeth breaking and falling out, difficulty

chewing food, low appetite), with transfers in/out of bed & takes significantly longer (10 min to crawl out on knees), with transfers on/off chair & takes significantly longer (push up off table/support).

- Basic Housekeeping – needs continuous help and takes significantly longer with laundry and basic housekeeping (low motivation, extreme fatigue, no energy to carry laundry or do housework).
- Shopping – needs continuous help with going to/from stores (mother assists with shopping, can't carry more than 5 lbs.), with making appropriate choices & takes significantly longer (takes 15-20 minutes to decide due to OCD behaviors plus changes his mind), with paying for purchase (loses change and money/uses an ATM card), with carrying purchases home (needs full assistance carrying more than 5 lbs; needs periodic assistance with reading prices and labels (contacts, struggles to see fine print).
- Meals – needs continuous help with meal planning, food preparation and cooking (brother or mother cooks and provides frozen meals for Appellant due to very low motivation, fatigue, depression); needs periodic assistance and takes significantly longer with safe storage of food (leaves some perishables out).
- Paying rent and bills – needs continuous assistance with all areas (mother assists with all executive and financial tasks).
- Medications – independent with filling/refilling prescriptions; needs continuous help with taking as directed and with safe handling and storage (daily supervision and dispensing).
- Transportation – independent with using transit schedules/arranging transportation (drives own vehicle); needs periodic assistance and takes significantly longer with getting in/out of a vehicle (5 min. to maneuver in or out due to back pain; needs continuous help using public transit (anxiety in crowds – gets off the bus).
- Social functioning – needs continuous support/supervision with making appropriate decisions (no friends for the last year), with being able to develop/maintain relationships (too much energy to develop new relationships with such severe health problems), with being able to deal appropriately with unexpected demands (increases anxiety), with being able to secure assistance from others (emotionally [illegable], impulsive anger); needs periodic supervision with interacting appropriately with others (brief social encounters only, very low attention span, self esteem and tolerance).
- Has very disturbed functioning with his immediate social network (major withdrawn) and with his extended social network (major social isolation).
- High risk of falling and profound depression, sleep walking.

The nurse wrote that the Appellant needs the following help – local liver services, social worker, life skills support through mental health, requires a life line due to severe shortness of breath, advocacy, treatment support, mental health services, rehabilitation, SIL - supportive independent living worker, assistance with cooking, cleaning, laundry, shopping, executive tasks, money management, counseling services and medication management. The nurse reported that the Appellant routinely uses a cane 25% of the time and breathing device (puffers), inhalers for shortness of breath 4x a day, but does not have an assistance animal.

She reported that the Appellant gets help from his family and health professionals; i.e., methadone physician & pharmacist, lung specialist and internist. The Appellant's mother or brother assist with shopping, executive tasks, budgeting bills, transportation, escorting him to appointments, laundry and

meals. The nurse added that the Appellant is involved with several specialists who are considering surgical intervention; however, his health is so compromised that he may not be able to tolerate a surgery or surgery is contraindicated. The surgeries would include spinal surgery, nasal septum, and lung surgery. The Appellant is losing feeling to his feet. He is stumbling more and is at high risk for falls.

The Panel finds that the information provided by the Appellant and his mother at the hearing, by Dr. R in the one page report and by the nurse in the assessor's report provides additional and clearer details about the Appellant's health conditions and how they impact him. Therefore, pursuant to section 22(4) of the Employment and Assistance Act, the Panel admits all of that information as substantiating and being in support of evidence that the Ministry had at reconsideration.

At the hearing, the Ministry reaffirmed its reconsideration decision.

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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.

Evidentiary Findings

The prescribed professionals who provided an assessment of the Appellant's daily functioning abilities are Dr. C, Dr. A, Dr R and the registered nurse. The Panel accepts the evidence from the Appellant and his mother that Dr. A spent about 5 minutes completing the assessor's report and asked no questions. That doctor also saw the Appellant only twice. Therefore, the Panel gives Dr. A's assessor's report little weight. In contrast, Dr. C and Dr. R have been treating the Appellant for over a year on a regular basis. The nurse conducted a detailed interview with the Appellant and his mother, and had access to his medical history. Dr. R and the nurse also provided the most recent

reports. Therefore, the Panel gives the evidence from Dr. C, Dr. R and the nurse more weight than Dr. A's assessor's report.

Severe Physical Impairment
In its reconsideration decision, the Ministry wrote that it had reviewed the Appellant's self-reports, the reports from Dr. C and Dr. A and the other documents in the record. Based on this information, the Ministry determined that there was not enough evidence to establish a severe physical impairment.

The Appellant submits that his medical conditions all contribute to his severe physical impairment. He experiences continuous pain in his back and right leg, extreme fatigue and shortness of breath. He is severely impaired in his ability to walk, to climb stairs, to stand and to lift and carry. He also needs continuous assistance with activities requiring physical abilities, such as basic housework shopping, carrying groceries, dressing, catching the bus and standing to cook.

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.

Dr. C diagnosed the Appellant with COPD, degenerative disc disease, low testosterone and hepatitis C positive. The doctor also noted that the Appellant has low energy from hepatitis C. Dr. A, in his October 25, 2014, letter refers to the Appellant's chronic dyspena and fibrothorax. The Appellant described his chronic lung and back problems and how he deals with constant back and leg pain. Sometime he can barely get out of bed. He also wrote about how he often gets short of breath just from walking to a bus stop, tying his shoes or carrying groceries. At least a couple of times a day he has to drop to his knees because he loses his breath. He cannot stand to cook and is limited in his functioning so that he needs help with mobility, meals, housework and shopping. The Appellant also wrote that he cannot lift more than 5 lbs.

Dr. C reported that the Appellant can walk 2-4 blocks unaided, cannot climb stairs unaided (uses an elevator), cannot lift and can remain seated for less than 1 hour. Dr. C also indicated that the Appellant is continuously restricted with mobility outside the home. Dr. R reported that the Appellant is continuously restricted with meal preparation, basic housework, daily shopping, and mobility inside and outside the home, in fact in almost all activities requiring physical abilities. That doctor also wrote that the Appellant is severely restricted due to COPD and needs a cane for mobility.

The nurse provided further details which substantiate the Appellant's self-reports and the information from Dr. C and Dr. R. She noted the Appellant's need for continuous assistance in all areas of mobility and physical ability, that he takes significantly longer getting in and out of bed or a chair, and he needs continuous assistance with housekeeping, with carrying purchases home and with cooking due to fatigue and other conditions,. The Panel acknowledges that the nurse's report was based on an interview with the Appellant and his mother: however, the Panel accepts their evidence that the nurse was very thorough in her ability to get information from them. Therefore, the nurse's report, in addition to being a prescribed professional's assessment, can also be considered as an additional

and more detailed self-report from the Appellant.

When all of the evidence is considered, the Panel finds that the Ministry was not reasonable in its determination that the evidence does not establish that the Appellant has a severe physical impairment.

Severe Mental Impairment
The Ministry referred to the reports from Dr. C and Dr. A and determined that, based on these reports, that there was not enough evidence to establish a severe mental impairment.

The Appellant submits that he has been diagnosed with depression, PTSD and narcotic dependence. He regularly sees Dr. C, a psychiatric and addiction specialist. The Appellant also submitted that Dr. C and the nurse reported significant deficits with cognitive and emotional functioning, and Dr. C, Dr. R and the nurse reported that many daily living activities are significantly restricted by his severe mental impairments.

The Panel's Findings
The Appellant described how his depression makes him feel hopeless and sometimes like killing himself. His mother wrote that her son was very depressed and she described how he needs her help, including with meal preparation and financial matters. Also, this dependence on others to help him function is causing further depression. The Appellant described how his depression and lack of motivation make it difficult for him to even get dressed and take care of himself.

Dr. C, the psychiatric and addiction specialist, diagnosed the Appellant with narcotic dependence, depression, PTSD, and dysperia from depression. This doctor also reported that the Appellant has significant deficits with cognitive and emotional functioning in the areas of memory and emotional disturbance. Dr. R noted that areas of daily living activities, which would be impacted by a mental impairment, such as management of medication, meal preparation and management of finances, are all continuously restricted. Dr. R also reported that the Appellant's social functioning is continuously restricted and added that the Appellant is isolated due to depression and fatigue. Dr. R wrote that the Appellant is severely restricted due to dysprea as well as depression.

The nurse provided further details about the Appellant's cognitive and emotional functioning restrictions, in particular noting major impacts in the areas of consciousness, emotion (with major depression), impulse control, insight and judgment, attention/concentration and motivation. She also noted that the Appellant needs continuous help with basic housekeeping (low motivation), making shopping choices, meal planning (low motivation, depression), paying rent and bills, taking medications as directed, and social functioning. The Appellant gets help from his family and health professionals. His mother or brother assist with shopping, executive tasks, budgeting bills, transportation, escorting him to appointments, laundry and meals. The nurse added that the Appellant also needs help from mental health services and an independent living worker.

When all of the evidence from the Appellant, his mother, Dr. C, Dr. R, and the nurse is considered, the Panel finds that it was not reasonable for the Ministry to determine that the Appellant does not have a severe mental impairment.

Restrictions to Daily Living Activities
The Ministry noted that there were differences between the assessments by Dr. C and Dr. A, and Dr. C's report was not clear, so that it was difficult to develop a clear and cohesive picture of the degree of restrictions the Appellant has with his daily living activities. The Ministry acknowledged that the Appellant has serious medical issues; however, it determined that it did not have enough evidence to confirm that the Appellant's daily living activities were directly and significantly restricted either continuously or periodically for extended periods.

The Appellant submitted that because of his serious medical conditions he is directly and significantly restricted in all his daily living activities. His doctors confirmed these restrictions and Dr. R reported that every daily living activity is continuously restricted, except personal care for which he needs periodic assistance. The nurse also reported significant restrictions with almost all daily living activities.

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 listed in the physician's and assessor's reports.

Dr. C's checked boxes had a few inconsistencies; however, he clearly reported periodic restrictions with meal preparation, adding the Appellant is not able to cook when his symptoms are worse. Dr. C also reported continuous restrictions with mobility outside the home, use of transportation and management of finances. Dr. R reported that the Appellant is continuously restricted in all areas of daily living activities, except for personal care which is periodically restricted by mood fluctuations. Dr. R added that the Appellant is isolated due to depression, fatigue due to breathlessness, leading to isolation and less social interaction. Also, the Appellant is severely restricted due to COPD, dysprea as well as depression. The nurse not only checked boxes in the assessor's report indicating that the Appellant needs continuous or periodic assistance with most areas of daily living, she also added notes about the high degree of restrictions and the types of help the Appellant needs. Therefore, when all of the evidence from Dr. C, Dr. R and the nurse is considered, the Panel finds that it was not reasonable for the Ministry to determine that the Appellant's severe physical and mental impairments do not directly and significantly restrict his daily living activities either continuously or periodically for extended periods.

Help with Daily Living Activities
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 dog. 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 Appellant submits that he does need significant help from his family as well as health professionals, and various community services. He also uses a cane at times. The need for significant help was confirmed by Dr. C, Dr. R and the registered nurse. They listed the specific type of help he needs.

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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.

Dr. C reported that the Appellant is continuously restricted in a number of daily activities and wrote that the Appellant's parents manage his finances. Dr R. wrote that the Appellant needs a cane for mobility and he needs the assistance of his parents, health care, his brother and advocates. Dr. R also indicated that the Appellant needs continuous assistance with all daily living activities, except for periodic assistance with personal care. The nurse noted that the Appellant needs either periodic or continuous assistance with the majority of daily living activities. She wrote that the Appellant needs many different kinds of support and help, including the following: a social worker, life skills support through mental health, a life line due to severe shortness of breath, treatment support, mental health services, an independent living worker for assistance with cooking, cleaning, laundry, shopping, executive tasks, money management, counseling services and medication management. The nurse also reported that the Appellant routinely uses a cane 25% of the time and breathing devices. Based on this evidence from three prescribed professionals about the extent of the help that the Appellant needs because his severe impairments directly and significantly restrict his daily living activities, the Panel finds that it was not reasonable for the Ministry to determine that the Appellant did not meet the requirements in section 2(2)(b)(ii) of the EAPWDA.

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 not reasonably supported by the evidence. Therefore the Panel rescinds that decision.