APPEAL #

PART C – Decision under Appeal

The decision under appeal is the Ministry of Social Development and Social Innovation (the ministry) reconsideration decision dated October 31, 2014 which found that the appellant did not meet three of the five statutory requirements of Section 2 of the *Employment and Assistance for Persons with Disabilities Act* for designation as a person with disabilities (PWD). The ministry found that the appellant met the age requirement and that his impairment is likely to continue for at least two years. However, the ministry was not satisfied that the evidence establishes that:

- the appellant has a severe physical or mental impairment;
- the appellant's daily living activities (DLA) are, in the opinion of a prescribed professional, directly and significantly restricted either continuously or periodically for extended periods; and,
- as a result of these restrictions, the appellant requires the significant help or supervision of another person, the use of an assistive device, or the services of an assistance animal to perform DLA.

PART D – Relevant Legislation

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

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

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PART E – Summary of Facts

With the oral consent of the appellant, a ministry observer attended but did not participate in the hearing.

The evidence before the ministry at the time of the reconsideration decision included the Persons With Disabilities (PWD) Application comprised of the applicant information dated May 28, 2014, a physician report (PR) dated April 2, 2014 and an assessor report (AR) dated June 18, 2014, both reports completed by a general practitioner who has known the appellant for two years. The evidence also included:

1) Functional Capacity Evaluation for the appellant dated April 23, 2014; and,
2) The appellant's Request for Reconsideration dated October 20, 2014 with attached two copies of an Addendum to the initial PWD application, stamped by the general practitioner who completed the PR and AR and stamped as received by the ministry on October 21, 2014, as well as an employment benefits table covering the period October 9, 2005 through December 22, 2007 indicating that a majority of the time the appellant was receiving sickness benefits.

Diagnoses

In the PR, the appellant was diagnosed by the general practitioner with Hepatitis C causing generalized fatigue, with an onset of 2007, and anxiety disorder, with an onset of 2009.

Physical Impairment

In the PR, the general practitioner reported that:

- In terms of health history, the main symptom for Hepatitis C is fatigue and generalized weakness and poor stamina. Unfortunately the appellant has been unable to get his old medical records as there was a fire at his previous clinic. "See functional testing."
- The appellant does not require any prosthesis or aid for his impairment.
- In terms of functional skills, the appellant can walk 2 to 4 blocks unaided ("with difficulty"), climb 5 or more steps, lift 2 to 7 kg (5 to 15 lbs.), and he has no limitation with remaining seated.
- In the additional comments: "He states that fatigue is very significant. He is unable to do heavy lifting, prolonged walking and standing."
- The appellant is not restricted with mobility inside the home or with mobility outside the home.
- Regarding the degree of restriction, the general practitioner wrote: "limited walking, stairs, lifting, etc."

In the AR the general practitioner indicated that:

- The appellant is assessed as being independent with standing, requiring periodic assistance with walking indoors, climbing stairs and carrying and holding. He requires continuous assistance from another person with lifting ("can't lift") and takes significantly longer than typical with walking outdoors ("needs a rest").
- No assistive devices are indicated in the section of the AR relating to assistance provided.
- The general practitioner provided an additional comment to refer to the functional assessments.

In the Functional Capacity Evaluation dated April 23, 2014, the registered rehabilitation professional provided a summary, analysis and recommendations that included:

- Medical history of constant fatigue and lack of energy due to Hepatitis C. Increasing shortness

of breath and frequent episodes of bronchitis over the last 10 years. The appellant stated that his doctor is of the opinion that he can be diagnosed with COPD [chronic obstructive pulmonary disease] and he will be referred to a lung specialist. He was involved in a fight in 1995 where he cut the tendons in his left hand. He had surgery but never received proper follow-up with physiotherapy as he was in jail and therefore still does not have full use of his hand. He also had a MRSA infection in the left wrist contributing to poor function of the left wrist. The appellant reported pain in his calves and buttocks/hamstrings when he walks more than 10 to 15 minutes. According to the appellant his doctor is of the opinion it may be a vascular problem and he will reportedly be referred to a vascular specialist. The appellant further reported an ACL tear in his right knee in 2007 after slipping on a wet floor at work.

- The appellant is able to sit for lengthy periods without difficulty.
- He is capable of all aspects of light strength material handling (lift, carry, push, pull).
- He demonstrated decreased tolerance for climbing stairs, for performing low level or overhead work, and he lacks adequate energy to perform full work shifts.
- Long distance walking would be taxing given general de-conditioning and balance issues.
- The appellant is able to stand for periods of approximately 25 minutes at a time.
- The appellant is able to lift 20 lbs. occasionally and 10 lbs. frequently.
- The appellant was breathing heavily during all physical testing and coughed frequently.
- The appellant provided low physical effort levels through the majority of his functional capacity evaluation which suggests that the functional findings are an underestimate of the appellant's current functional capabilities. Accordingly, it is recommended that decision-makers use considerable caution when interpreting the functional findings.
- Overall, she is of the opinion that the appellant is not capable of gainful employment.

In the Addendum to the initial PWD application stamped by the general practitioner who completed the PR and AR indicated that:

- The appellant requires continuous assistance with lifting on an ongoing basis, i.e. lifting a 20 lb. bag of potatoes.
- Walking, climbing, carrying items takes 3 times longer to perform and will result in fatigue and weakness due to a lack of physical stamina.
- Although the appellant is, at times, able to walk 2 to 4 blocks and lift up to 15 lbs., the ensuing level of physical exhaustion is debilitating.

Mental Impairment

In the PR, the general practitioner reported:

- The appellant has had generalized anxiety for at least 10 years and has self-medicated with drug and alcohol. He stopped in 2010 and his anxiety became more problematic. He will be receiving help with this.
- The appellant has no difficulty with communication.
- The appellant has significant deficits with cognitive and emotional function in the areas of emotional disturbance and motivation, with a comment added: "does have depressive and anxious symptoms- see functional assessment."
- The appellant is restricted with social functioning, with no assessment as to whether this is continuous or periodic. The general practitioner wrote: "limited in participation in activities outside of home due to fatigue and anxiety."
- In the additional comments: "His anxiety also is a significant limiting factor. He is extremely reluctant to leave his home."

In the AR, the general practitioner indicated that:

- The appellant has a good ability to communicate in all areas.
- There are major impacts to the appellant's cognitive and emotional functioning in the areas of emotion, motivation and motor activity. Moderate impacts are assessed to bodily functions, attention/concentration, executive, and memory. There are minimal or no impacts to the remaining 7 areas of functioning, with no comments added by the general practitioner.
- With respect to social functioning, the appellant is assessed as being independent with making appropriate social decisions, developing and maintaining relationships, and interacting appropriately with others. The appellant requires continuous support/supervision in dealing appropriately with unexpected demands, and periodic support/supervision with securing assistance from others.
- The appellant has marginal functioning in both his immediate and extended social networks.
- Asked to described the support/supervision required which would help to maintain the appellant in the community, the general practitioner provided no comments.

In the Functional Capacity Evaluation dated April 23, 2014, the registered rehabilitation professional provided a summary, analysis and recommendations that included:

- Medical history included the appellant's report of anxiety attacks with light headedness and dizziness when he is around people.
- Broadly intact memory functions although the appellant reported he could not remember having done an activity that morning.
- Effective attention to maintain concentration when working and produces most work accurately.
- The appellant advised of anxiety issues when being around people and took two unscheduled breaks to go outside and smoke, mentioning anxiety.
- Some weakness with planning and organizational skills.

In the Addendum to the initial PWD application stamped by the general practitioner who completed the PR and AR indicated that:

- Due to the appellant's physical limitations, depression and anxiety, he developed an introverted lifestyle. The appellant stated that he only leaves his place of residence twice per month.
- Social functioning has been severely impacted due to the level of depression currently experienced by the appellant. Social networks and family connections rarely occur.

Daily Living Activities (DLA)

In the PR, the general practitioner indicated that:

- The appellant has not been prescribed any medication and/or treatments that interfere with his daily living activities.
- The appellant is not restricted with the DLA of personal self care, meal preparation, management of medications and finances, or with mobility inside and outside the home,.
- The appellant is continuously restricted with basic housework.
- The appellant is restricted with daily shopping, use of transportation, and social functioning, with no assessment as to the degree of restriction.

In the AR, the general practitioner reported that:

- The appellant requires periodic assistance with moving about indoors and takes significantly

longer with moving about outdoors.

- The appellant is independent with all tasks of the DLA paying rent and bills and managing medications.
- Regarding personal care, the appellant is independent with the tasks of dressing, grooming, bathing, toileting, and transfers in/out of bed and on/off of chair. He requires continuous assistance from another person with feeding self and periodic assistance with regulating his diet. Not explanation or description is provided.
- For basic housekeeping, the appellant requires periodic assistance from another person with doing laundry and continuous assistance with basic housekeeping, with no comments added.
- For shopping, the appellant is independent with reading prices and labels, making appropriate choices and paying for purchases and requires continuous assistance from another person with going to and from stores ("needs help carrying things") and carrying purchases home.
- Regarding meals, the appellant is independent with safe storage of food and requires periodic assistance with meal planning and continuous assistance with food preparation and cooking. The general practitioner did not provide any comments.
- For transportation, the appellant requires periodic assistance from another person with getting in and out of a vehicle and with using transit schedules and arranging transportation. He takes significantly longer than typical with using public transit ("needs a rest on the way").

In the Functional Capacity Evaluation dated April 23, 2014, the registered rehabilitation professional provided a summary, analysis and recommendations that included:

- The appellant's self perception of functional status, including walking 10 to 15 minutes of continuous walking before he requires a break sitting down for 10 minutes. For personal care, he lacks the energy to shave or take a shower every day. Regarding house maintenance, he resides in a room he rents in a friend's house and his friend takes care of most household chores like cooking, grocery shopping and laundry. The appellant occasionally wipes the counters and helps with dishwashing. The home owner usually cooks supper and he opens cans of soup for lunch and he does not eat breakfast.
- Regarding the reliability of pain and disability reports, the objective measurements revealed discrepancies between the appellant's reports of limitation and his demonstrated functioning (both greater and lesser levels of restriction than his reports suggested), which is not meant to imply intent, but the appellant's reports of function are not consistently accurate.

In the Addendum to the initial PWD application stamped by the general practitioner who completed the PR and AR indicated that:

- The use of public transit, rarely accessed by the appellant, requires 2/3 times the normal amount of time to complete due to the nature of his physical health challenges.
- This situation also translates to the completion of household tasks, which are often carried out by others in the household due to the appellant's limitations.
- All daily activities are difficult to complete for the appellant, taking at least twice the amount of time to complete.

Need for Help

The general practitioner indicated in the PR that the appellant's "room-mate is a must to complete basic house chores including cleaning." In the AR, the general practitioner reported that, with respect to the assistance provided by other people, the appellant's friends assist him. The section of the report indicating assistance provided through the use of assistive devices is not completed.

In his Notice of Appeal dated November 12, 2014, the appellant expressed his disagreement with the ministry's reconsideration decision and wrote that:

- Physically, he is able to walk 2 to 4 blocks and climb a few steps and lift a bag of potatoes. However, if he does any of these tasks it takes several hours to recover.
- His doctor says that although he needs a walker, she is reluctant to prescribe one because she feels it will accelerate his physical decline.

At the hearing, the appellant stated that:

- His DLA are restricted. He has a hard time cooking, doing dishes, and doing laundry because he gets dizzy. Once, when trying to do his DLA he started coughing and became short of breath, passed out, fell and hurt his ribs. He did not see a doctor about his ribs because it has happened before and there is not much they can do for it.
- If he stands for too long or gets coughing, he becomes light-headed and feels dizzy. His doctor has said she will get him in to have a breathing test at the hospital to check his lung capacity and also wants him to see a heart specialist. He does not like doctors but his current doctor is setting up various tests because she is "starting from scratch" with him.
- He does not need a walker to walk but he has one at home and keeps it available for when he feels dizzy and short of breath. His doctor does not want him to use it all the time because she is trying to get him to be stronger and is afraid he will become too reliant on it.
- He gets leg pain if he is standing or walking too long. His doctor has not made a referral to a specialist for this but just told him to rest and not to push it.
- For the Addendum to the PWD application, he had someone help him complete it and then his doctor read it, made corrections, had someone re-type it and stamp it.
- The employment benefits table was provided to show that, when he was working, he ended up taking more sick days than actually being at work. He has a history of not being able to work. He does not have much strength and if he gets sick it takes him a long time to get better. He has a reduced immune system. He ended up getting the MRSA virus and had to have intravenous antibiotics. He had a sore on his hand that became infected. The virus has not returned for 3 or 4 years but if he has to go into the hospital he gets put in isolation.
- His doctor could not get his records from the previous medical clinic because the records were destroyed in a fire at the clinic.
- For the Functional Capacity Evaluation, it was an employment counselor who had him do the testing to determine his strength and capabilities for work and it took an entire day to complete. He thought the person who tested him was a physiotherapist and he did not understand why the ministry did not consider this information.
- He was taken outside to walk for 15 minutes but he was told he could rest when he wanted.
- His hand is not very flexible due to a previous injury. He can lift something but he cannot carry and hold it for long.
- His doctor has recently prescribed anxiety medications but she said it takes a while for them to have an effect. He is relatively new to this doctor but he is starting to feel more relaxed with her and has been telling her more information.
- He is okay with feeding himself and commented that "it would be pretty bad if I couldn't feed myself." If he is sitting down, he can feed himself with no difficulty. The problem is more with cooking and cleaning.
- His room-mate does the cooking and cleaning. His room-mate also supervises him because of his fatigue and weakness and the risk that he could fall. He needs a railing for stairs to steady

himself or, otherwise, he is hesitant to climb stairs.

- With his Hepatitis C, the doctor gets him to do blood work and so far it is at moderate levels. The doctor has not recommended the treatment yet since it takes a year and makes a person very sick and there is no guarantee that it will work. Right now, his doctor is monitoring his condition.

Admissibility of New Information

The ministry did not raise an objection to the appellant's oral testimony or the information provided in his Notice of Appeal. The appellant provided additional information regarding the impact of his impairment as diagnosed in the PWD application. The panel admitted this additional information as being in support of information and records that were before the ministry at the time of reconsideration, in accordance with s. 22(4)(b) of the *Employment and Assistance Act*.

The ministry relied on its reconsideration decision as summarized at the hearing. At the hearing, the ministry stated:

- Another indicator of the secondary nature of the appellant's anxiety disorder is the order of listing in the PR.
- The ministry stated that the Functional Capacity Evaluation dated April 23, 2014 is completed by a registered rehabilitation professional, which accreditation is not listed as a prescribed professional according to the definition in the EAPWDR and, therefore, the ministry did not take this information into consideration.

APPEAL #

PART F – Reasons for Panel Decision

The issue on the appeal is whether the ministry's reconsideration decision, which found that the appellant is not eligible for designation as a person with disabilities (PWD), was reasonably supported by the evidence or was a reasonable application of the applicable enactment in the circumstances of the appellant. The ministry found that the appellant does not have a severe mental or physical impairment based on the information provided and that his daily living activities (DLA) are not, in the opinion of a prescribed professional, directly and significantly restricted either continuously or periodically for extended periods. Also, as a result of those restrictions, it could not be determined that the appellant requires the significant help or supervision of another person, the use of an assistive device, or the services of an assistance animal to perform DLA.

The criteria for being designated as a person with disabilities (PWD) are set out in Section 2 of the EAPWDA as follows:

Persons with disabilities

2 (1) In this section:

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

"daily living activity" has the prescribed meaning;

"prescribed professional" has the prescribed meaning.

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

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

(b) in the opinion of a prescribed professional

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

(A) continuously, or

(B) periodically for extended periods, and

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

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

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

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

(i) an assistive device,

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

(iii) the services of an assistance animal.

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

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

Definitions for Act

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

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

(i) prepare own meals;

(ii) manage personal finances;

(iii) shop for personal needs;

(iv) use public or personal transportation facilities;

(v) perform housework to maintain the person's place of residence in acceptable sanitary condition;

(vi) move about indoors and outdoors;

(vii) perform personal hygiene and self care;

(viii) manage personal medication, and

(b) in relation to a person who has a severe mental impairment, includes the following activities:

(i) make decisions about personal activities, care or finances;

(ii) relate to, communicate or interact with others effectively.

Severe Physical Impairment

The appellant's position is that a severe physical impairment is established by the evidence of the fatigue, generalized weakness and dizziness as a result of his Hepatitis C diagnoses and possible COPD. In his Notice of Appeal, the appellant argued that although he is able to walk 2 to 4 blocks and climb a few steps and lift a bag of potatoes, if he does any of these tasks it takes several hours to recover. The appellant argued that his doctor says that although he needs a walker, she is reluctant to prescribe one because she feels it will accelerate his physical decline. At the hearing, the appellant argued that if he stands for too long or gets coughing, he becomes light-headed and feels dizzy and has fallen and hurt himself.

The ministry's position is that the appellant's functional skill limitations are not significantly restricted and the information provided does not establish that he has a severe physical impairment. The ministry argued that the appellant's general practitioner reported that he is able to walk 2 to 4 blocks unaided, climb 5 or more stairs unaided, lift 5 to 15 lbs. and has no limitation with remaining seated. The ministry argued that the general practitioner indicated the appellant's main symptoms are fatigue, generalized weakness and poor stamina yet the general practitioner does not indicate that the appellant uses or requires any assistive devices to enable him to take breaks when performing his daily living activities.

Panel Decision

A diagnosis of a serious medical condition does not in itself determine PWD eligibility or establish a severe impairment. An "impairment" is a medical condition that results in restrictions to a person's ability to function independently or effectively.

To assess the severity of an impairment the ministry must consider the nature of the impairment and the extent of its impact on daily functioning as evidenced by functional skill limitations and the degree to which performing DLA is restricted. In making its determination the ministry must consider all the relevant evidence, including that of the appellant. However, the legislation is clear that the fundamental basis for the analysis is the evidence from a prescribed professional – in this case, the appellant's general practitioner.

The general practitioner, who had known the appellant for two years, diagnosed the appellant with Hepatitis C causing generalized fatigue and weakness and poor stamina. At the hearing, the appellant stated that his doctor is monitoring his blood work and so far she has not recommended the treatment for Hepatitis C since it takes a year and makes a person very sick and there is no

guarantee that it will work. The appellant stated that his doctor is referring him for a lung test at the hospital as his doctor suspects he may have COPD because if he stands for too long or gets coughing, he becomes light-headed, feels dizzy, and has fallen and hurt himself. His doctor has also referred him to a heart specialist for possible vascular problems.

The general practitioner reports that the appellant does not require any prosthesis or aid for his impairment and does not require an assistive device. At the hearing, the appellant stated that he has a walker at home that he uses occasionally when he feels light-headed but his doctor will not prescribe one. In terms of functional skills, the general practitioner indicated in the PR that the appellant can walk 2 to 4 blocks unaided ("with difficulty"), climb 5 or more steps, lift 5 to 15 lbs., and he has no limitation with remaining seated. In the Addendum to the PWD application, the general practitioner indicated that the appellant requires continuous assistance with lifting on an ongoing basis, i.e. lifting a 20 lb. bag of potatoes. Walking, climbing, carrying items takes 3 times longer to perform and will result in fatigue and weakness due to a lack of physical stamina. Although the appellant is able to walk 2 to 4 blocks and lift up to 15 lbs., the ensuing level of physical exhaustion is debilitating. In the PR, the general practitioner summarized the appellant's assessment as being that his fatigue is very significant and he is unable to do "heavy" lifting, "prolonged" walking and standing.

The general practitioner assessed the appellant in the AR as independent with standing, requiring periodic assistance with walking indoors, climbing stairs and carrying and holding. He requires continuous assistance from another person with lifting ("can't lift") and takes significantly longer than typical with walking outdoors ("needs a rest"). At the hearing, the appellant clarified that the assistance required with walking indoors and climbing stairs is supervision in case he feels dizzy. He is able to lift up to 20 lbs. but he could not carry that weight.

In both the PR and the AR, the general practitioner referred to the Functional Capacity Evaluation dated April 23, 2014 and has thereby endorsed this report as another source of information regarding the appellant's physical and mental functioning. In the report, the registered rehabilitation professional concluded that the appellant is able to sit for lengthy periods without difficulty, he is capable of all aspects of light strength material handling (lift, carry, push, pull), he demonstrated decreased tolerance for climbing stairs, and long distance walking would be taxing given general de-conditioning and balance issues. The appellant is able to stand for periods of approximately 25 minutes at a time and to lift 20 lbs. occasionally and 10 lbs. frequently. The evaluator noted that the appellant was breathing heavily during all physical testing and coughed frequently.

The panel finds that while the evidence demonstrates that the appellant experiences some limitations to his physical abilities due to fatigue, weakness and poor stamina as a result of his Hepatitis C diagnosis, he is not to the point of requiring treatment and remains independent with his mobility. The cause of his dizziness after coughing and prolonged standing is still under investigation by his doctor through referrals to specialists. Considering all of the evidence regarding the moderate level of impacts to the appellant's current functioning, the panel finds that the ministry reasonably determined that there is not sufficient evidence to establish that the appellant has a severe physical impairment under Section 2(2) of the EAPWDA.

Severe Mental Impairment

The appellant's position, as expressed at the hearing, is that he suffers from an anxiety disorder, has recently been prescribed anti-anxiety medications, and there is sufficient information to show that he

has a severe mental impairment. The appellant argued that due to his physical limitations as well as depression and anxiety, he developed an introverted lifestyle. The appellant argued that he only leaves his place of residence twice per month and his social functioning has been severely impacted due to the level of depression currently experienced.

The ministry's position is that there is insufficient evidence to establish that the appellant has a severe mental impairment. The ministry argued that the general practitioner reported the appellant's generalized anxiety as a secondary condition and the general practitioner explained that the appellant self-medicated in the past with drugs and alcohol but stopped in 2010 at which time his anxiety became more problematic. At the hearing, the ministry stated that the general practitioner also listed the anxiety disorder after the Hepatitis C diagnosis, assigning the diagnosis secondary importance. The ministry argued that although the general practitioner indicated in the Addendum to the PWD application that, due to the appellant's physical limitations, depression and anxiety, he developed an introverted lifestyle, only leaving his place of residence twice per month, the general practitioner indicated in the AR that the appellant is independent in a majority of his social functioning and there is no explanation for the change in the assessment of degree of social functioning since then.

Panel Decision

In the PR, the general practitioner diagnosed the appellant with anxiety disorder, and commented that the appellant has had generalized anxiety for at least 10 years, has self-medicated with drug and alcohol, but stopped in 2010 at which time his anxiety became more of a problem. He will be receiving help with this. At the hearing, the appellant stated that his doctor has recently prescribed anti-anxiety medication which takes a while to become effective. In the PR, the general practitioner reported that the appellant has significant deficits with cognitive and emotional function in the areas of emotional disturbance and motivation, with a comment added: "does have depressive and anxious symptoms- see functional assessment." Although the ministry argued that the appellant's anxiety disorder is a secondary condition, the panel finds that there is nothing in the instructions to completing the PR that indicates the order of listing the diagnoses is significant and the panel considers this information insufficient to support the ministry's conclusion that his anxiety disorder is secondary.

In the Functional Capacity Evaluation dated April 23, 2014, the registered rehabilitation professional provided a summary, analysis and recommendations that included the medical history of the appellant's report of anxiety attacks with light headedness and dizziness when he is around people. He has broadly intact memory functions and effective attention to maintain concentration when working. He has some weakness with planning and organizational skills. The appellant advised of anxiety issues when being around people and took two unscheduled breaks to go outside and smoke, mentioning anxiety. In assessing the impacts to the appellant's cognitive and emotional functioning in the AR, the general practitioner reported major impacts in the areas of emotion, motivation and motor activity. Moderate impacts are assessed to bodily functions, attention/concentration, executive, and memory and there are minimal or no impacts to the remaining 7 areas of functioning, with no comments added by the general practitioner.

Considering the two DLA that are specific to mental impairment – make decisions about personal activities, care or finances (decision making), and relate to, communicate or interact with others effectively (social functioning), the available evidence indicates that the appellant is not significantly restricted in either. With respect to decision making, the general practitioner reported in the AR that the appellant is independent with making appropriate social decisions and independently manages

his finances (banking, budgeting, pay rent and bills) and his medications (taking as directed and safe handling). He is also reported as independent in the decision-making components of the DLA of daily shopping (making appropriate choices), part of meal preparation (food storage), and requiring unspecified periodic assistance with meal planning and using transit schedules and arranging transportation.

Regarding the DLA of social functioning, the appellant is assessed in the AR as independent with developing and maintaining relationships, interacting appropriately with others and requires unspecified periodic support/supervision for securing assistance from others. The appellant is assessed with a good ability to communicate in all areas. In the Addendum, the general practitioner indicated that due to the appellant's physical limitations, depression and anxiety, he developed an introverted lifestyle and the appellant stated that he only leaves his place of residence twice per month. The general practitioner indicated that social functioning has been severely impacted due to the level of depression currently experienced by the appellant and social networks and family connections rarely occur.

In the PR, the general practitioner had indicated that the appellant is restricted with social functioning, with no assessment as to whether this is continuous or periodic, and wrote: "limited in participation in activities outside of home due to fatigue and anxiety." In the additional comments to the PR, the general practitioner wrote: "His anxiety also is a significant limiting factor. He is extremely reluctant to leave his home." Despite these comments, the general practitioner reported that the appellant has marginal functioning in both his immediate and extended social networks and, asked to describe the support/supervision required by the appellant that would help to maintain him in the community, the general practitioner left this section blank.

At the hearing, the appellant explained that he is relatively new to this doctor but he is starting to feel more relaxed with her and has been telling her more information. His doctor does not have the advantage of consulting his prior medical history as she could not get his records from the previous medical clinic because the records were destroyed in a fire and she is "starting from scratch" assessing the appellant's medical conditions. Given the absence of detail from the general practitioner regarding impacts to the appellant's mental or social functioning, the panel finds that the ministry reasonably determined that a severe mental impairment was not established under Section 2(2) of the EAPWDA.

Restrictions in the ability to perform DLA

The appellant's position is that his physical and mental impairments directly and significantly restrict his ability to perform DLA on an ongoing basis to the point that he requires the significant assistance of another person, namely his room-mate. At the hearing, the appellant argued that his DLA are restricted and he has a hard time cooking, doing dishes, and doing laundry because he gets dizzy. The appellant argued that if he stands too long or starts coughing, he can became light-headed and short of breath, and he has fallen in the past and hurt his ribs. The appellant stated that his room-mate does the cooking and cleaning and also supervises him because of his fatigue and weakness and the risk that he could fall.

The ministry's position is that the information from the prescribed professional does not establish that the appellant's impairments significantly restrict his DLA either continuously or periodically for extended periods of time. The ministry argued that the Functional Capacity Evaluation dated April

23, 2014 is completed by a registered rehabilitation professional, which accreditation is not listed as a prescribed professional according to the definition in the EAPWDR and, therefore, the ministry has not taken this information into consideration for the purposes of determining whether the appellant's impairments significantly restrict his DLA continuously or periodically for extended periods. The ministry argued that the general practitioner indicated that the appellant is independent in many of his DLA and does not provide an explanation for those tasks indicated as requiring periodic assistance from another person. The ministry argued that although the general practitioner indicated in the Addendum that all DLA are difficult to complete for the appellant, taking at least twice the amount of time to complete, the general practitioner does not indicate that the appellant requires any assistive device to enable the appellant to rest throughout his day while performing his DLA.

Panel Decision

Section 2(2)(b) of the EAPWDA requires that a prescribed professional provide an opinion that an applicant's severe impairment directly and significantly restricts his DLA, continuously or periodically for extended periods. In this case, the general practitioner is the prescribed professional. DLA are defined in Section 2(1) of the EAPWDR and are also listed in the PR and, with additional details, in the AR. Therefore, a prescribed professional completing these forms has the opportunity to indicate which, if any, DLA are significantly restricted by the appellant's impairments continuously or periodically for extended periods.

While the ministry did not consider the information in the Functional Capacity Evaluation dated April 23, 2014 since the author does not qualify as a prescribed professional, the panel finds that the appellant's general practitioner endorsed the findings by referring to the report throughout both the PR and the AR. However, the registered rehabilitation professional wrote in the report that the objective measurements revealed discrepancies between the appellant's reports of limitation and his demonstrated functioning (both greater and lesser levels of restriction than his reports suggested), which was not meant to imply intent, but the appellant's reports of function are not consistently accurate. Therefore, the panel concludes that the ministry reasonably placed no weight on the report with respect to the appellant's reports of functional status relating to DLA.

In the appellant's circumstances, the general practitioner reported in the PR that the appellant has not been prescribed any medication and/or treatments that interfere with his DLA. In the AR, the general practitioner reported that the appellant requires unspecified periodic assistance with walking indoors and is independent with walking outdoors although taking significantly longer than typical due to rests. While the general practitioner assessed some tasks of DLA require periodic assistance from another person, namely: personal care (regulating diet), housekeeping (laundry), meals (meal planning) and transportation (getting in and out of a vehicle and using transit schedules and arranging transportation), the general practitioner provided no other comment regarding the frequency of assistance required in order to allow the ministry to determine that the assistance is required for extended periods.

The general practitioner reported that the appellant requires continuous assistance from another person with feeding self, but the appellant clarified at the hearing that he is okay with feeding himself as long as he is sitting down, and commented that "it would be pretty bad" if he could not feed himself. The appellant clarified that his problem is more with cooking and cleaning. The general practitioner reported in the AR that the appellant requires continuous assistance from another person with food preparation and cooking and also with basic housekeeping, going to and from stores ("needs help carrying things") and carrying purchases home. While the general practitioner also

reported in the PR that the appellant is continuously restricted with basic housework, she indicated that the appellant is not restricted with the DLA of meal preparation, personal self care, management of medications and finances, or with mobility inside and outside the home. While restricted with daily shopping, use of transportation, and social functioning, there is no assessment provided by the general practitioner as to the degree of restriction and the restriction to shopping tasks are tied to the appellant's ability to carry heavier items, over 10 lbs. in weight.

In the Addendum, the general practitioner indicated that the use of public transit, rarely accessed by the appellant, requires 2/3 times the normal amount of time to complete due to the nature of his physical health challenges, and "this situation also translates to the completion of household tasks, which are often carried out by others in the household due to [the appellant's] limitations." All DLA are difficult to complete for the appellant, taking at least twice the amount of time to complete. The appellant stated at the hearing that his DLA are restricted and he has a hard time cooking, doing dishes, and doing laundry because he gets dizzy. His room-mate does the cooking and cleaning and also supervises him because of his fatigue and weakness and the risk that he could fall. While the appellant reports that much of his restriction relates to dizziness, this symptom has not been identified by the general practitioner.

The evidence demonstrates that the appellant takes 2 to 3 times longer to perform his DLA without the need for an aid or assistive device for his impairment and within his function skill limitations, which are in the moderate range. As well, given the lack of an explanation by the general practitioner of the extent of periodic assistance required for some tasks, the panel finds that the ministry reasonably concluded that the evidence is insufficient to show that the appellant's ability to perform his DLA is significantly restricted either continuously or periodically for extended periods, thereby not satisfying the legislative criterion of Section 2(2)(b)(i) of the EAPWDA.

Help to perform DLA

The appellant's position is that his combined physical and mental impairments significantly restrict his daily living functions to a severe enough extent that assistance is required.

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

Panel Decision

Section 2(2)(b)(ii) of the EAPWDA requires that, as a result of direct and significant restrictions in the ability to perform DLA, a person requires help to perform those activities. Help is defined in subsection (3) as the requirement for an assistive device, the significant help or supervision of another person, or the services of an assistance animal in order to perform a DLA.

The general practitioner indicated in the AR that, with respect to the assistance provided by other people, the appellant receives help from his friends. The general practitioner wrote in the PR that the appellant's "room-mate is a must to complete basic house chores including cleaning." While the appellant stated that he makes use of a walker when he feels dizzy, the section of the AR indicating assistance provided through the use of assistive devices has not been completed by the general practitioner. The panel finds that the ministry reasonably determined that as direct and significant restrictions in the appellant's ability to perform DLA have not been established, it cannot be determined that the appellant requires help to perform DLA as a result of those restrictions, as defined by section 2(3)(b) of the EAPWDA.

Conclusion

Having reviewed and considered all of the evidence and relevant legislation, the panel finds that the ministry's reconsideration decision which determined that the appellant was not eligible for PWD designation was reasonably supported by the evidence, and therefore confirms the decision.