APPEAL #

PART C – Decision under Appeal

The decision under appeal is the Ministry of Social Development and Social Innovation (the Ministry) October 24, 2014 reconsideration decision in which the Ministry determined that the Appellant did not meet all of the statutory requirements for designation as a person with disabilities (PWD) under Section 2 of the *Employment and Assistance for Persons with Disabilities Act*. 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;
- in the opinion of a prescribed professional, the Appellant's daily living activities are directly and significantly restricted either continuously or periodically for extended periods by a severe impairment; and,
- in the opinion of a prescribed professional, 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 daily living activities.

PART D – Relevant Legislation

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

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

PART E – Summary of Facts

The Ministry did not appear at the hearing. The Panel confirmed that the Ministry was provided with notice of the hearing and then proceeded with the hearing in accordance with section 86(b) of the Employment and Assistance Regulation.

For its reconsideration decision the Ministry had the following evidence:

1. Appellant's PWD application consisting of:
   - His self-report dated October 10, 2013.
   - A physician's report and an assessor's report, both completed on May 21, 2014 by the Appellant's doctor who wrote that the Appellant has been his patient for about a year (new patient) and he had seen the Appellant between 2-10 times in the preceding 12 months. The doctor noted consultations with a neurologist, a neurosurgeon and [illegible].
   - February 27, 2013 consultation report from a doctor who is a pain management specialist.
   - Radiologist report dated May 21-22, 2013 and MRI report dated February 16, 2014.
   - Neurologist's report dated February 19, 2014.
   - Outpatient clinic consultation note dated May 17, 2014 completed by a medical specialist.
2. Appellant's request for reconsideration with his typed statement prepared by an advocate and a letter dated October 3, 2014 from his doctor.

Diagnoses

In the physician's report, the doctor diagnosed the Appellant with neuropathic low back and leg pain (onset about 2012), cervical spondylosos and degenerative disc disease. The doctor also added that the Appellant had back problems for years, but they worsened considerably in 2012 when working with a tool. There was no diagnosis of any mental health condition.

Physical Impairment

In his PWD application and reconsideration statement, the Appellant stated that:

- His back, hips and knees are in constant pain making it very difficult to walk, stand or sit for any length of time; can climb 2 or 3 stairs before pain causes him to stop and then requires lying down for an hour or more; is unable to go down stairs without a handrail – loses balance and falls, and also increases pain so that has to lie down for an hour or more to recover.
- He cannot lift anything over 10 lbs. without severely increasing his pain and requiring him to lie down for an hour or more to recover, including carrying groceries.
- He is unable to sit for more than 10 minutes without his pain getting worse, requiring him to stand or lie down to try to bring his pain down.
- He fell in the shower and injured himself.
- He is unable to work at his trade because of the heavy lifting, bending and climbing involved.
- Without the ability to earn an income his standard of living is critical.
- Constant pain in his back, hips and knees makes it difficult to sleep comfortably, to get in the shower, to walk even short distances, to stand in one spot for periods of time.
- Doing basic housework is very difficult; bending and kneeling is almost impossible; any back and forward motions (vacuuming, making a bed, washing dishes) increase his back pain immediately to intolerable levels, so mostly these tasks don't get done.
- He is unable to flush the toilet without aggravating his pain; dressing and grooming increase the pain; bending over to put on his pants gives him a flare- up, requires resting.

- Sitting for a meal must be done in 5 to 10 minute increments with breaks to rest on his back
- Getting in and out of a car, sitting in a car all greatly increase his pain and require resting for an hour or more to recover.
- It can take him as much as ten minutes to get out of a chair and it always increases his pain.
- All daily living activities aggravate his existing pain and require a rest of an hour or more to return to his "normal" levels of pain.
- He is also having increasing problems with his balance, having more falls and is therefore, at risk of breaking bones.

The February 27, 2013 report from the pain management specialist reviewed the Appellant's complaints and history, and the impressions and treatment are summarized as follows:

- At least 10 years of chronic bilateral low back pain and stiffness; sustained severe right-sided low back pain and stiffness radiating to anterior aspect of both knees.
- Sitting for even a short period aggravates; is most comfortable when lying supine.
- Not taking medication, was drinking alcohol to relieve pain; chiropractic has not helped.
- Moderately severe signs of myofascial dysfunction affecting back and lower limb muscles.
- Signs and symptoms improved with manual therapy, but stiff legged gait persisted.
- Was taught some self-treatment techniques and remedial exercises.

The May 2013 radiologist's report indicated the following findings:

- Pelvis and bilateral hips findings: very minimal joint space narrowing seen within the right hip relative to the left, with very minimal lateral acatabular osteophyte formation on the right; no significant degenerative change seen on the left hip; no fracture or focal bone lesion identified; SI joints are normal in appearance bilaterally.
- Lumbar spine findings: alignment of the lumbar spine is normal; mild anterior wedging of T12 and L1 of indeterminate age; vertebral body height otherwise well preserved; diffuse degenerative disc disease seen within the lumbar spine, particularly at L5/S1 and a diffuse facet arthropathy, especially at the lower levels; symptoms of radiculopathy.

The February 2014 MRI of the Appellant's spine indicated the following conditions:

- 5 lumbar type vertebrae; osseous alignment is normal; no fractures.
- Conus medullaris terminates at lever of the L1/2 intervetebral disc, is morphologically normal.
- T11/12 – disc space narrowing and desiccation, no disc protrusion, mild bilateral facet osteoarthritis; T12/L1 – disc space narrowing and desiccation, no traversing or exiting nerve root impingement; L1/2 – disc space narrowing and desiccation, no disc protrusion, no traversing or exiting nerve root impingement.
- L2/3 – severe intervertebral disc space narrowing and pronounced associated vertebral and endplate reactive change, mild bilateral facet osteoarthritis, mild bilateral neural foraminal narrowing, no traversing nerve root impingement present.
- L3/4 – severe intervertebral disc spacing narrowing with moderate reactive change in adjacent vertebral endplates, large generalized posterior disc bulge, advanced bilateral facet osteoarthritis with associated redundancy of the ligamentum flavum; combination results in moderate central canal stenosis; moderate bilateral neural foraminal narrowing is present.
- L4/5 – pronounce intervertebral disc space narrowing, moderate generalized posterior disc bulge, advanced bilateral facet osteoarthritis with redundancy of ligamentum flavum; combination results in a moderate degree of central canal stenosis; severe bilateral neural foraminal narrowing is present.
- L5/S1 – severe intervertebral disc space narrowing, bilateral facet osteoarthritis, no traversing

nerve root impingement, severe bilateral neural foraminal stenosis.

The neurologist wrote that he saw the Appellant on November 14, 2013 and provided the following assessment regarding his low back pain and left posterior thigh pain:

- Had low back pain for 2 years radiating to both buttocks, both posterior thighs; had heaviness and tightness in the lower limbs which was worse when he walked.
- Clinical examination showed sensory changes in the L5/S1 distribution bilaterally.
- Ankle reflexes were diminished bilaterally; strength was normal.
- EMG and nerve conduction sturdy showed no generalized neuropathy or entrapment neuropathy in the right lower limb.
- Mild chronic right L5/S1 polyradiculopathy noted unassociated with neuropathic changes; was felt to have neuropathic and mechanical low back pain and neuropathic leg symptoms.
- Medications recommended.
- Has now had further studies – MRI scan of lumbosacral spine; has multiple level spondylosis; has significant disc space narrowing and exit foraminal multiple level spondylosis; has significant disc space narrowing and exit foraminal narrowing at L3/4 and L4/5 due to ligamentous thickening, facet joint degenerative changes and disc space narrowing; central canal stenosis and exit foraminal stenosis noted at those levels.
- Symptoms relate to combination of central spinal stenosis and lateral recess stenosis particularly at L3/4 and L4/5; has mechanical and neuropathic back pain as suspected; has neuropathic leg symptoms.
- If does not respond to medications might be considered for epidural steroid injections at L3/4 and/or L4/5.

The specialist who completed that outpatient assessment on May 17, 2014 described the Appellant's conditions as follows:

- Presents with right-sided, persistent low back pain; also described his knees not quite feeling right – feels weak; has no numbness or tingling in his legs by history.
- Feels he is unable to work, go up and down stairs, etc.
- On examination, has some flattening of lumbar lordosis; has fairly normal strength in his legs and specifically his knee extensors are 5/5 even though the Appellant said his knees feel wobbly; has no objective numbness in his legs, no nerve root tension signs; gait is steady.
- Review of MRI of February 2014 indicates multilevel degenerative disease with facet arthropathy and an L3-4 generalized disc protrusion with some lateral recess stenosis, but no foraminal nerve root compromise; overall degree of canal compressions is actually mild.
- Symptoms likely due to mechanical low back pain, facet arthropathy and should be managed conservatively; fusion for this type of problem generally does not help; could try facet injections.
- Knee symptoms are more puzzling; some degree of L4 lateral recess stenosis but does not have any sensory deficits or pain in the L4 distribution; knee extensions are full as are his ankle doral flexors.

In the physician's report, the Appellant's doctor reported the degree of impairment as follows:

- Unknown at that point if there are remedial treatments as the Appellant is still going for neurosurgical assessments; no surgical intervention indicated; must rely on medical treatments.
- Functional skills are limited as follows: can walk unaided on a flat surface for less than 1 block "before increased pain in back"; can climb 5+ steps – "can go up with a handrail; worsened

coming down"; no lifting; and can remain seated for less than 1 hour.

In the assessor's report, the same doctor noted that the Appellant:

- Takes significantly longer walking indoors and outdoors, and climbing stairs, but he manages these independently.
- Independently manages standing, but takes significantly longer – "cannot stand for long periods of time".
- Needs continuous assistance with lifting – "only light weights", and with carrying and holding.

Mental Impairment

The doctor reported that there are no significant deficits with or impacts to cognitive and emotional functioning. The doctor also did not complete the section in the assessor's report for the Appellant's need for support or supervision in areas of social functioning. The Appellant described no mental or emotional impairments in his PWD application or his reconsideration statement.

Daily Living Activities

In the physician's report, the doctor indicated that the Appellant has not been prescribed any medication and/or treatments that interfere with his ability to perform daily living activities. The doctor also checked "yes" in response to the question whether the Appellant's impairment directly restricts his ability to perform daily living activities and also checked off that basic housework is restricted. The rest of that form is blank. In the assessor's report, the doctor reported that the Appellant:

- Takes significantly longer walking indoors and outdoors, and climbing stairs, but he manages these independently.
- Independently manages standing, but takes significantly longer – "cannot stand for long periods of time"
- Needs continuous assistance with lifting – "only light weights", and with carrying and holding.
- Independently manages all areas of personal care; however, dressing takes significantly longer – "sits down to put socks on"; bathing takes significantly longer – "showers ok, getting in and out is difficult"; transfers in/out of bed take significantly longer – "rolls out of bed"; uses an assistive device for toileting – "has to use sink to get off toilet".
- Independently manages laundry using an assistive device – "needs to hold onto something to get up and down"; independently manages basic housekeeping, but takes significantly longer – "cannot do chores at regular pace".
- Independently manages going to/from stores, reading prices/labels, making appropriate choices, paying for purchases and carrying purchases home, but the latter takes significantly longer – "uses covered buggy".
- Independently manages all areas of meals; cooking takes significantly longer – "sits down when using barbeque".
- Independently manages all areas of paying rent/bills and all areas of medications.
- Takes significantly longer getting in/out of a vehicle and using transit schedules/arranging transportation; needs continuous assistance using public transit – "sitting or standing for prolong periods aggravates back".

In his October 3, 2014 letter, the Appellant's doctor stated that the Appellant:

- Does have problems with worsened pain with multiple activities of daily living; given that his back and lower extremities are involved in most movement this is not unusual.
- Such impacted activities include climbing stairs (only 2-3 at a time before resting) and requires

the handrail to go down, any lifting (groceries of only limited degree), housework (vacuuming is particularly difficult but also bed making and dish washing), bending over for dressing and grooming exacerbate his symptoms.

- Getting around, entry and exit into vehicles cause worsening of the Appellant's symptoms, and obviously impair his ability to get around easily.
- Requires significant amounts of time to recover from these and more strenuous tasks.
- Despite efforts to help control his pain, he does not have adequate pain control at this time.

Need for Help with Daily Living Activities
In the physician's report and assessor's reports, the doctor reported that the Appellant can use assistance devices to help him walk; that is, a cane. He also wrote in his October 3, 2014 letter that the Appellant's daughter has assisted him when she can in household tasks.

At the hearing, the Appellant said that:

- He has seen numerous doctors and had various tests done to relieve the chronic pain he has been experiencing for years; has tried different medications which didn't help and now is taking very strong medication, but it is not taking the pain away; he does not drink alcohol at all; he had steroid injections in his back, but that did not help.
- His balance is off and he is afraid to walk outside; he has fallen out of the shower, injuring his ribs and has installed handrails in the shower to help if he falls.
- He cannot sit for longer than15 minutes.
- He can barely do 2 stairs because of the pain and just cannot walk properly; he uses a cane when walking, but he cannot walk for a block and can barely walk to his front door; he feels he may need to use a walker soon.
- In the grocery store he uses a buggy and can lift a small item; cannot carry a bag of groceries.
- His daughter comes to help him when she can, about every 2-3 weeks bringing groceries, doing dishes, the laundry, vacuuming and making the bed.
- His stress level is increasing; he is getting depressed; he is at his wits end and very frustrated because he is not getting any help; feels that he is not living, just existing because he cannot do anything; cannot even lift tools anymore.
- He has an appointment with a psychologist because of his depression and stress.

The Appellant's testimony regarding his physical impairments and how they impact his ability to function is consistent with and tends to corroborate the information that the Ministry had at reconsideration. Therefore, the Panel admits that testimony in accordance with section 22(4) of the Employment and Assistance Act. The Appellant's testimony regarding his depression is not admitted because there was no evidence of any mental health conditions or impacts before the Ministry at reconsideration.

Since the Ministry did not appear at the hearing, the Panel will consider the reconsideration decision to be the Ministry's position for this appeal.

APPEAL #

PART F – Reasons for Panel Decision

The issue in this appeal is whether the Ministry's reconsideration decision, concluding that the Appellant was not eligible for PWD designation because he did not meet all the requirements in section 2(2) of the EAPWDA, was reasonably supported by the evidence or was a reasonable application of the applicable enactment in the Appellant's circumstances. Specifically, the Ministry determined that the Appellant does not have a severe mental or physical impairment that in the opinion of a prescribed professional directly and significantly restricts his ability to perform daily living activities either continuously or periodically for extended periods and as a result of those restrictions he requires help to perform those activities.

Applicable Legislation

The following sections of the EAPWDA apply to the Appellant's circumstances in this appeal:
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.

Severe Physical Impairment

The Appellant's position is that every physical activity he undertakes is severely affected and limited by chronic lower back and leg pain. Specialists, radiology tests and his family doctor have confirmed that he has significant pain from severe back conditions. His back, hips and knees are in constant pain making it very difficult to walk, stand or sit for any length of time. After every activity, he must rest for an hour or more. He already uses a cane to walk and thinks he may have to start using a walker. Medications and steroid infections have not helped to ease the pain or help with his mobility. Also, he is unable to work at his trade because of the heavy lifting, bending and climbing involved.

In its reconsideration decision, the Ministry wrote that it reviewed the information provided by the Appellant and the doctors. It determined that the Appellant's functional skill limitations are not severe and that remedial medical treatments such as analgesics are available to control the symptoms. The Ministry concluded that the information provided did not demonstrate either a severe impairment or significant restriction in the Appellants' ability to perform daily living activities.

The Panel's Decision

The diagnosis of a serious medical condition does not in itself establish a severe impairment. To satisfy the requirements in section 2(2) of the EAPWDA, there must be evidence of how and the extent to which an impairment restricts daily functioning. This includes evidence from the Appellant as well as from prescribed professionals, such as in this case, the specialists and the Appellant's doctor.

The Panel notes that, in contrast to the Canada Pension Plan disability legislation and the province's Person with Persistent Multiple Barriers legislation, the ability to work and/or find work is not a criteria for designation as a PWD in the EAPWD statute.

The Appellant's doctor diagnosed the Appellant with neuropathic low back and leg pain (onset about 2012), cervical spondylosos and degenerative disc disease. These conditions were also detailed in the specialists' and radiology reports. The neurologist recommended medications and if that did not work, then epidural steroid injections should be tried. Chiropractic treatments have not worked. The Appellant's doctor wrote that no surgical intervention is indicated and the Appellant must rely on medical treatments.

In the May 2014 physician's report, the Appellant's doctor reported direct limitations to the Appellant's functional skills as follows. He can walk unaided on a flat surface for less than 1 block "before increased pain in back"; can climb 5+ steps - going up with a handrail; worsened coming down, no lifting; and can remain seated for less than 1 hour. Also, in the assessor's report, the doctor indicated that, although the Appellant manages many physical and mobility activities independently, most are directly restricted by the Appellant's physical impairments. For example, the following activities all take significantly longer: walking indoors/outdoors, climbing stairs, dressing, bathing, transfers in/out of bed, basic housekeeping, cooking and transfers in/ out of a vehicle. The Appellant also needs continuous assistance with lifting, carrying and holding as he can only lift light weights.

In his October 3, 2014 letter, which is the most recent medical report, the Appellant's doctor wrote that the Appellant has problems with worsened pain with multiple activities of daily living; given that his back and lower extremities are involved in most movement this is not unusual. In fact in this letter, the doctor's descriptions of the Appellant's limitations indicate increasing restrictions to physical activities. For example, the Appellant can climb only 2-3 stairs before resting. Also, any lifting, housework, bending over for dressing and grooming, getting around, and entry and exit into vehicles exacerbate his symptoms. The doctor also noted that the Appellant requires significant amounts of time to recover from these and more strenuous tasks. Despite efforts to help control his pain, the Appellant does not have adequate pain control at this time. The doctor also reported that the Appellant needs to use a cane and has help from his daughter.

The Appellant also described his pain and physical limitations as getting worse. He said that he had epidural steroid injections; they didn't work. The strong medications he is taking are not working and

he is at his wits end with stress and frustration over the inability to lessen the pain. The Appellant described how every kind of physical movement -, walking, standing, dressing, taking a shower, doing housework , getting in and out of a car, sitting , etc. - is directly impacted by such severe pain that he has to rest for an hour or more after even just 10 or 15 minutes of activity. The Appellant said he has been using a cane, but feels he will soon need a walker. He also had to install handrails in his shower because he fell. His daughter helps with groceries and housework when she can.

The Panel finds that all of the evidence, especially the Appellant's doctor's reports and the Appellant's statements which are consistent with the severe findings in the medical reports, indicate that the Appellant's physical health conditions and severe pain directly impair all his physical functioning to the degree that all activities take significantly longer and the Appellant must take long rests after only 10 to 15 minutes of activity. Moreover, despite the Ministry's comments about analgesics and epidural steroid injections being available as remedial measures, clearly in the Appellant's case, medications are not working. Therefore, when all of the medical information and the Appellant's descriptions of his condition are considered, the Panel finds that the Ministry was not reasonable in concluding that the Appellant does not have a severe physical impairment.

Severe Mental Impairment

The Panel notes that there was no diagnosis of any mental health condition and no medical reports of any impacts to or deficits in cognitive and emotional functioning. Also, the Appellant's doctor did not complete the section for social functioning in the assessor's report. Therefore, the Panel finds that the Ministry reasonably concluded that there is no severe mental impairment.

Restrictions to Daily Living Activities

The Appellant's position is that virtually every physical daily living activity is directly and significantly restricted by chronic pain. Every activity takes significantly longer and he has to rest for long periods afterwards. He uses a cane and may start using a walker. He needs continuous assistance with any lifting and carrying, and his daughter helps with groceries and housework.

The Ministry wrote that as the majority of daily living activities are performed independently or require little help from others, the information from the prescribed professionals does not establish that impairment significantly restricts daily living activities either continuously or periodically for extended periods.

The Panel's Decision

Section 2(2)(b) of the EAPWDA requires a prescribed professional's opinion confirming that the Appellant's severe 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 also are listed in the physician's and assessor's reports. The reports from several medical professionals are included in the record and all are considered prescribed professionals. However, only the Appellant's doctor completed the physician's and assessor's reports, and provided the most recent information in his October 3, 2014 letter about the Appellant's ability to manage daily living activities. Therefore, the Panel will consider the Appellant's doctor to be the prescribed professional for this requirement.

The Appellant provided detailed descriptions of how virtually every physical daily living activity is

directly restricted by pain, is limited in duration and requires long rest periods. He also described the aids he uses and how medications are not helping. The doctor also reported direct limitations in most physical activities and the need for a cane. However, in the assessor's report the doctor indicated that, notwithstanding such direct and severe impairments, the Appellant manages most daily living activities independently. These include aspects of mobility and physical ability, personal care, basic housekeeping, shopping, meals, paying rent/bills, medications and getting in/out of vehicles. The doctor reported that only using public transit, lifting, and carrying and holding require continuous assistance. Also, although in October 2014, the doctor described the Appellant as experiencing worsened pain with multiple activities of daily living and increased restrictions, the doctor did not indicate that the Appellant is unable to independently manage the activities described. The doctor only indicated that the daughter helps when she can with household tasks.

Therefore, absent more specific evidence from the family doctor or another prescribed professional assessing the Appellant's need for continuous or periodic assistance over an extended period with the majority of daily living activities, the Panel finds that the Ministry reasonably determined that the Appellant did not meet the requirements in section 2(2)(b) of the EAPWDA.

Help with Daily Living Activities

The Appellant's position is that he needs and uses assistive devices, especially a cane as confirmed by his doctor and he may soon need a walker. He needs and gets help from his daughter with housekeeping tasks and groceries. He also relies on friends to take him places and to carry things.

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

The Panel's Decision

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 needs help with those activities. The Appellant stated that he uses a cane, that his daughter helps him with groceries and housework and he installed rails in his shower. The Appellant's doctor also reported that the Appellant uses a cane and that the Appellant's daughter helps when she can. However, in the assessor's report and in the October 2014 letter, this doctor indicated that the Appellant needs continuous assistance only with carrying, lifting and holding, and with public transit. Most other activities are managed independently. The Panel finds, therefore, that based on the Appellant's doctor's' reports and based on the Ministry's determination that the Appellant's daily living activities are not directly and significantly restricted, the Ministry reasonably concluded that the evidence does not establish that the Appellant satisfied the requirements in section 2(2)(b)(ii) of the EAPWDA.

Conclusion

Having reviewed all of the evidence and the relevant legislation, the Panel finds that the Ministry's reconsideration decision was reasonably supported by the evidence and was a reasonable application of the applicable enactments in the Appellant's circumstances. Therefore the Panel confirms that decision.