

PART C – Decision under Appeal

The decision under appeal is the Ministry of Social Development and Social Innovation (the ministry) reconsideration decision dated November 3, 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

PART E – Summary of Facts

The evidence before the ministry at the time of the reconsideration decision included the Persons With Disabilities (PWD) Application comprised of the applicant information and self-report including attached typed pages dated May 12, 2014, a physician report (PR) dated April 3, 2014 completed by an anesthesiologist who has known the appellant since March 2013, and an assessor report (AR) dated May 12, 2014, completed by a registered nurse who has known the appellant for 8 years. The approaches and information sources used to complete the AR consisted of both a home assessment and family/friends/caregivers.

The evidence also included:

- 1) Letter dated May 28, 2014 from the anesthesiologist who completed the PR; and,
- 2) The appellant's Request for Reconsideration dated September 29, 2014 with attached written submission by a legal advocate on behalf of the appellant and excerpts from the *Interpretation Act* RSBC 1996, c. 238.

Diagnoses

In the PR, the appellant was diagnosed by the anesthesiologist with chronic low back pain and depression, both with an onset of 2010.

Physical Impairment

In the PR, the anesthesiologist reported that:

- In terms of health history, the appellant has been in constant pain since an MVA [motor vehicle accident] in 2010. He had to give up his trade. The initial musculoskeletal injuries likely initiated his pain syndrome. His condition is chronic and not curable, with a low likelihood of resolution. His pain symptoms are severe and unpredictable. He is prone to exacerbations which are significantly disabling. He will likely require a combination of treatment to manage his symptoms, including medications which cause him significant side effects, and invasive procedures as required.
- The appellant does not require any prosthesis or aid for his impairment.
- In terms of functional skills, it is not known how far the appellant can walk or how many stairs he can climb, he can lift 7 to 16 kg. (15 to 35 lbs.) and remain seated less than 1 hour.
- The appellant is not restricted with mobility inside the home and is continuously restricted with mobility outside the home.

In the AR the nurse indicated that:

- The appellant is assessed as being independent with walking indoors and outdoors, climbing stairs and standing. He requires continuous assistance from another person with lifting and carrying and holding, with a comment: "unable to lift any items over a few pounds; lifting difficult and unable to carry any heavy items."
- No assistive devices are indicated in the section of the AR relating to assistance provided and the nurse wrote "N/A," or not applicable.

In his self-report, the appellant indicated that:

- He was involved in a serious motor vehicle accident in 2010 and suffered severe injuries.
- He struggles getting around due to constant severe back and overall body pain. He is now on medications and injections to help with the back pain. He does not ever sleep properly (3 to 4

hours) and when he wakes during the night he cannot always get back to sleep due to the severe pain.

- For mobility inside the home, it is extremely difficult and takes significantly longer. For climbing stairs, he relies heavily on the handrail and he is otherwise unable. He is unable to bend to pick things up off the floor or to kneel and get up from.
- For mobility outside the home, he avoids walking on uneven pavement/ground. He can walk 1 to 2 blocks maximum without aid or rest. Driving makes him anxious.

In the letter dated May 28, 2014, the anesthesiologist who completed the PR added:

- He wanted to clarify his assessment of the appellant as well as the severity of his chronic pain condition that restricts his daily function.
- The appellant describes constant pain in the lower back area; he rates this pain as severe and unremitting. He uses medications to help control his symptoms; however, he reports significant side effects from the medications including: dizziness, drowsiness, gastrointestinal upset and cognitive slowing.
- The appellant's condition is chronic and severe in nature; he has recently undertaken treatment that has provided some benefit but is not a permanent fix and, if repeated in the future, there is no guarantee that a similar benefit will be obtained.
- His symptoms are constant and can periodically worsen in severity. When he experiences exacerbations, his activity is significantly limited.

Mental Impairment

In the PR, the anesthesiologist reported:

- In terms of health history, the appellant developed depression with his pain.
- The appellant has no difficulty with communication.
- The appellant has a significant deficit with cognitive and emotional function in the area of emotional disturbance, with a comment added: "depression and sleep disorder secondary to chronic pain."
- It is unknown whether the appellant is restricted with social functioning.

In the AR, the nurse indicated that:

- The appellant has a good ability to communicate in all areas.
- There are no major impacts to the appellant's cognitive and emotional functioning. Moderate impacts are assessed to bodily functions, emotion and motivation. There is a minimal impact to attention/concentration and no impacts to the remaining 10 areas of functioning. The nurse commented: "Chronic pain and depression affects sleep habits. Unable to sleep for long periods of time. Long term h/o [history of] depression. Often finds it difficult to concentrate and maintain focus d/t [due to] medication."
- With respect to social functioning, the appellant is assessed as being independent in all areas, namely: with making appropriate social decisions, developing and maintaining relationships, interacting appropriately with others, dealing appropriately with unexpected demands, and securing assistance from others.
- The appellant has good functioning in both his immediate and extended social networks, with no further comments added.

In his self-report, the appellant indicated that:

- He needs assistance coping with depression and he chain smokes.

- He needs assistance coping with sensitivity to light specifically as it causes dizziness and spots in his vision.

Daily Living Activities (DLA)

In the PR, the anesthesiologist indicated that:

- The appellant has been prescribed medications that interfere with his daily living activities and the anesthesiologist wrote that the pain medications cause cognitive impairment and memory issues which the appellant reports interferes with his daily function.
- The appellant is not restricted with the DLA of personal self care, management of medications, or with mobility inside the home.
- The appellant is continuously restricted with meal preparation, basic housework, daily shopping, mobility outside the home and use of transportation.
- It is unknown whether the appellant is restricted with management of finances or social functioning.

In the AR, the nurse reported that:

- The appellant is independent with moving about indoors and outdoors.
- Regarding personal care, the appellant is independent with all tasks, namely: dressing, grooming, bathing, toileting, feeding self, regulating diet, transfers in/out of bed and on/off of chair.
- For basic housekeeping, the appellant requires periodic assistance from another person with basic housekeeping and is independent with doing laundry, with a comment added: "unable to perform tasks involving lifting/bending."
- For shopping, the appellant is independent with going to and from stores, reading prices and labels, making appropriate choices and paying for purchases and requires periodic assistance from another person with carrying purchases home, with a comment that the appellant "needs assistance for heavier items."
- The appellant is independent with all tasks of the DLA meals, pay rent and bills, medications and transportation.

In his self-report, the appellant indicated that:

- He needs assistance with meal preparation as tasks take significantly longer due to the constant severe pain.
- He needs assistance with eating since he has a lack of appetite and sometimes goes until late in the day or even without food.
- For shopping, he needs assistance with walking around stores since he is unable to do this on his own and requires assistance from his family or he does not go. He is unable to move/carry groceries.
- Regarding transportation, he is unable to stand at the bus stop or on the bus, it is extremely difficult and he relies on the handrail for going up and down stairs. He is unable to drive a car due to anxiety from his accident and needs to stop to rest after 30 to 45 minutes riding in a car. It is "extremely difficult" getting into and out of vehicles.
- He requires assistance for many tasks of house cleaning or he takes significantly longer.
- For mobility inside and outside of the home, he takes significantly longer and relies on handrails, he avoids walking on uneven pavement/ground and can walk a maximum of 1 to 2 blocks without aid or rest.
- Regarding personal hygiene and self-care, he would benefit from handrails and, due to the

- severe constant pain, he is not always able to get himself to brush his teeth and hair each day.
- For managing his personal medication, he struggles with taking the right amount, with remembering to take his medications and having his prescriptions filled.

In the letter dated May 28, 2014, the anesthesiologist who completed the PR added:

- The appellant is currently relying on his family and friends to assist with daily functions. He depends on them to assist with maintaining his home and transporting him to various appointments. He reports that his pain fluctuates in severity, which is a common feature of chronic pain.
- When his symptoms are exacerbated, he has difficulty maintaining his home and many of his DLA.
- He will also require the assistance of a cane for ambulation during these periods of exacerbation.

Need for Help

- The anesthesiologist indicated in the PR that the appellant “relies on his family and friends to provide assistance. His needs are greater when he is suffering from an exacerbation of his pain symptoms.”
- In the AR, the nurse reported that, with respect to the assistance provided by other people, the appellant’s family and friends assist him. The nurse wrote: “father provides transportation. Assists I/C [including] ADL’s [activities of daily living] that require lifting and carrying heavier items.” The section of the report indicating assistance provided through the use of assistive devices is not completed.
- In his self-report, the appellant indicated that he receives assistance from his family and friends and he also requires a number of assistive devices, namely: a raised toilet, toilet rails, shower/bathtub rail and stool, wall bars, jar openers and reacher/ “grabber.”

In his Notice of Appeal dated November 18, 2014, the appellant expressed his disagreement with the ministry’s reconsideration decision and wrote that:

- He is unable to work and has trouble with daily activities.
- Financially, he is unable to keep a roof over his head let alone feed himself.

At the hearing, the appellant stated that:

- He is in constant pain and the anesthesiologist confirmed that in the PR. The ministry focused on the word “exacerbate” used by the anesthesiologist and he wants to clarify that this does not relate to shortness of breath such as with COPD [chronic obstructive pulmonary disease], which he does not have. It is meant to indicate that sometimes his back pain becomes much worse.
- He was involved in a motor vehicle accident in September of 2010 and suffered major injuries. He has major disc bulges in his spine at L4-L5 and a minor disc bulge at S1. His lawyer has advised that it will take some time to reach a settlement because they have to see how well he makes out, and he has not received any payments to cover his medical expenses in the meantime.
- He had many career aspirations that were taken away with the accident. He was working towards a trade designation and could no longer function in school. He had to move back to his home community and his room-mate helped him with the day-to-day chores.
- He qualified for benefits in another province that are meant for those who are severely

handicapped. He had treatments with a spine medication machine but these treatments were extremely expensive and they are not available in B.C.

- He had severe negative reactions to some of the medications available to him in B.C. and he ended up in the hospital twice. He had to live with his family while he fought to get the medications he needs to control his pain. His doctor has helped him to secure compassion care to provide the medications he needs.
- He found that some anti-depressant medication that he has taken in the past also helped with his back. He has been weaned off that medication and he battles depression but he tries to keep positive and mentally keep going.
- Every 6 months for the rest of his life he will have to get the "IDET" [Intradiscal Electrothermal Annuloplasty] procedure done for his back. The procedure involves cauterization of the discs at L4, L5 and S1, which helps to reduce the pain experienced. He has to keep stepping up his regular pain medication for about 3 weeks up to the point that he makes the trip on the "medical bus" into another community to get the procedure. After the procedure, he is laid up for about 3 weeks as he recovers. During this time, he is completely reliant on his family members who cook and bring him meals and buy him groceries. It is about 2 to 2 ½ months of a year that he is in severe pain.
- He will get some relief of the pain for a while and he is good for about 3 to 4 months and then he has to slowly start ramping up with his pain medications again. He also has to build up the muscle each time that he has lost while recovering.
- His situation is not always severe. It is severe to moderate and his hope is to maximize the time that it is 'moderate.' Even during the better times, he can have good days and bad days.
- He is concerned about the impact to his vital organs caused by ramping up and weaning off heavy pain medications and has wondered if there is an alternative. The current pain medication slows his mind which makes his situation overwhelming for him.
- His family has helped him around the house. He cannot commit to what he can do in any given day because it depends on how well he slept the night before. His father has helped him with cleaning because he cannot afford care workers to come in. He needs help to get his groceries and he is incapable of doing many things.
- He sometimes wakes up with migraines which make it hard to function and he feels confused during the day. If he has slept well, he can walk his dog for an hour. He volunteers at a local animal rescue shelter and sometimes walks other people's dogs but he cannot commit to doing so on any particular day.
- He can only sit for about 35 to 45 minutes at a time and he always has to move to keep comfortable. He has to do a half hour of stretches every day just to be comfortable enough to move about.
- He can lift 15 to 35 lbs. but this is not on a daily basis and he would have to "work up to" lifting that amount, like a weight-lifter does, if he has to move his dog's food, for example. Although 15 to 35 lbs. may seem like quite a bit, he used to be very muscular and could lift much more. Now he questions everything he lifts because his body "will pay for it." The assessments in the PR and in the AR are both correct as his ability to lift varies. Sometimes if he lifts 10 lbs., he will be bedridden the next day.
- The nurse who completed the AR is his father's wife who works at a hospital full time so she is not as available to help. She did not review the PR before completing the AR. She is more of a witness as to what he can and cannot do. On the other hand, he tries to stay positive when he is with her.
- He has lived with his father and his father's wife and she also helps with groceries, with some

rehabilitation, and discusses the medications with him. He lives on his own right now because it had become a strain on his relationships.

- He has gone into debt with his family just to get by. The financial strain is very hard for him because he has provided for himself since he was a teenager and if he could work, he would. He relies on the food bank which is difficult to get to since he resides in a rural area.
- He was unable to find a general practitioner who is still taking patients so he had the anesthesiologist who administers his injections complete the PR.
- He relied on the use of a Transcutaneous Electrical Nerve Stimulation (TENS) machine in another province to help relieve his pain.
- This is the third time his application for PWD designation has been denied. He has been trying to get help from different people with each application. Although the advocate stated that he uses a cane, he had never brought that up since he does not use one.
- In the reconsideration decision, the ministry referred to the assessor as a social worker instead of a nurse and he only points that out to show that people make mistakes.
- He wants his MLA to review all three applications because he has been back and forth for 2 years and it was straight-forward in the other province where he qualified.

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 also clarified that, in the reconsideration decision, the ministry relied on the description by the appellant's anesthesiologist regarding the 'exacerbations' to his pain. The ministry stated that the assessor was incorrectly referred to in the reconsideration decision as a social worker whereas she is a registered nurse, but noted that both designations qualify as a prescribed professional under the legislative definition

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 his chronic low back pain. The advocate wrote that the anesthesiologist reported that the appellant's pain symptoms are severe and unpredictable and he is prone to exacerbations which are significantly disabling. The anesthesiologist also wrote that the appellant's symptoms are constant and can periodically worsen in severity. The appellant stated that he relies heavily on the handrail when going up/down stairs and if there is no handrail then he is unable to do stairs. The advocate highlighted Section 8 of the *Interpretation Act* which states that it applies to all provincial enactments, which must be construed as being remedial and must be given such fair, large and liberal construction and interpretation as best ensures the attainment of its objects.

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 anesthesiologist reported that the appellant's pain symptoms are severe and unpredictable and are prone to exacerbations; however, no information is provided on how often the exacerbations occur. The ministry argued that the anesthesiologist reported that the appellant does not require an aid for his impairment, it is unknown how far the appellant can walk or climb stairs and he can lift between 15 and 35 lbs. The ministry argued that the nurse reported a need for continuous assistance with lifting and carrying and holding and that the appellant is independent with mobility, climbing stairs and standing.

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 anesthesiologist and the registered nurse.

The anesthesiologist, who had known the appellant since March 2013, diagnosed the appellant with chronic low back pain. The anesthesiologist described the appellant's pain symptoms as severe and unpredictable and wrote that the appellant is prone to exacerbations which are significantly disabling.

The appellant clarified at the hearing that these exacerbations relate to the pain in his back which becomes increasingly worse and he ramps up the amount of pain medications he takes, for about 3 weeks, until he has a procedure involving cauterization of the discs in his back which have major bulges, at L4 and L5, and a minor bulge at S1. The appellant stated that, following the procedure, he has a period of recovery that lasts about 3 weeks where he is "laid up" and requires his family's assistance for many DLA, including meal preparation and grocery shopping. The appellant stated that he has this procedure performed every 6 months, or twice a year, which results in approximately 2 to 2 1/2 months of exacerbated pain over the period of a year. The appellant acknowledged that his condition is not always "severe," that he gets relief from his pain for several months and that the goal is to maintain a "moderate" level for as long as possible. At the hearing, the appellant also stated that during his moderate periods he can also have some bad days. In the letter dated May 28, 2014, the anesthesiologist wrote that the appellant has recently undertaken treatment that has provided some benefit but is not a permanent fix and, if repeated in the future, there is no guarantee that a similar benefit will be obtained.

In the PR the anesthesiologist reported that the appellant does not require any prosthesis or aid for his impairment; however, in the letter dated May 28, 2014, he wrote that the appellant will require the assistance of a cane for ambulation during the periods of exacerbation. At the hearing, the appellant stated that he is not using a cane and that he does not move about much during the periods of pain exacerbation. In terms of functional skills, the anesthesiologist reported that it is not known how far the appellant can walk or how many stairs he can climb. In his self-report, the appellant clarified that he can walk 1 to 2 blocks maximum without aid or rest and he relies heavily on the handrail for climbing stairs and he is otherwise unable. At the hearing, the appellant stated that if he has slept well, he can walk his dog for an hour the next day. The anesthesiologist indicated that the appellant can lift 15 to 35 lbs., and remain seated less than 1 hour. At the hearing, the appellant stated that he can only sit for about 35 to 45 minutes at a time and he always has to move to keep comfortable. He does stretches for a half hour every day to be comfortable enough to move about. The nurse reported in the AR that the appellant requires continuous assistance with lifting and carrying and holding and noted that he is "unable to lift any items over a few pounds; lifting difficult and unable to carry heavy items." The appellant stated at the hearing that the widely varying assessments are all accurate since his functioning varies depending on whether he is experiencing an exacerbation of his pain.

The panel finds that the evidence demonstrates that the appellant experiences periods of approximately 2 months in a year when his experience of pain increases to the level that his functioning is significantly reduced. The appellant acknowledged that he has several months of moderate functioning, with occasional "bad days" if he has not slept well. Considering all of the evidence including the appellant's independent mobility and the mostly moderate level of impacts to the appellant's physical 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 is that he suffers from depression, he has recently been weaned from an anti-depressant medication, and there is sufficient information to show that he has a severe mental impairment. The advocate wrote that the anesthesiologist reported that the pain medications cause cognitive impairments and memory issues that interfere with the appellant's daily function.

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 anesthesiologist reported that the appellant has a significant deficit to cognitive and emotional functioning in the area of emotional disturbance and the nurse assessed no major impacts to daily functioning. The ministry argued that both the anesthesiologist and the nurse reported that the appellant has no difficulties with communication.

Panel Decision

In the PR, the anesthesiologist diagnosed the appellant with depression described as having developed with the appellant's experience of pain. The appellant is assessed with a significant deficit with cognitive and emotional function in the area of emotional disturbance, with a comment added by the anesthesiologist that there is "depression and sleep disorder secondary to chronic pain." The anesthesiologist reported in the PR that the appellant has been prescribed medications that interfere with his daily living activities as the pain medications cause cognitive impairment and memory issues which the appellant reports interferes with his daily function. However, in assessing the impacts to the appellant's cognitive and emotional functioning in the AR, the nurse who has known the appellant for 8 years reported no major impacts. Moderate impacts are assessed to bodily functions, emotion and motivation, and there is a minimal impact to attention/concentration. The nurse commented: "Chronic pain and depression affects sleep habits. Unable to sleep for long periods of time. Long term history of depression. Often finds it difficult to concentrate and maintain focus due to medication."

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 nurse 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), meal preparation (meal planning and food storage), and using transportation (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 securing assistance from others. The appellant is assessed with a good ability to communicate in all areas. At the hearing, the appellant stated that he battles depression but he tries to keep positive and mentally keep going although the financial strain is very hard for him because he has provided for himself since he was a teenager. Given the absence of impacts assessed 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 family. The advocate wrote that nowhere in the legislation does it state that a length of time has to be determined or noted by a physician. The advocate wrote that the anesthesiologist noted that the appellant is continuously restricted with meal preparation, basic housework, daily shopping, mobility outside the home and use of transportation. The advocate wrote that the assessor notes that the appellant is continuously restricted with lifting and carrying/holding

and she notes that he is unable to lift any items over a few pounds, lifting is difficult, and he is unable to carry heavy items. The advocate argued that the anesthesiologist noted that the appellant relies on family and friends to provide assistance and his needs are greater when he is suffering from an exacerbation of his pain symptoms. The advocate argued that the assessor noted that the appellant's father provides transportation and assistance with those DLA that require lifting and carrying heavier items.

The ministry's position is that the information from the prescribed professionals 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 although the anesthesiologist reported that the appellant's impairment continuously restricts his ability to perform the DLA meal preparation, basic housework, daily shopping, mobility outside the home and use of transportation, he also explained that the appellant's needs are greater during exacerbation of his pain and there is no information provided on how often the appellant has the exacerbations. The ministry argued that the nurse indicated that the appellant requires periodic assistance with basic housekeeping and carrying heavier purchase home but no information is provide on how often the appellant requires assistance and he is assessed as independent in the remainder of 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 anesthesiologist and the nurse are the prescribed professionals. 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, the prescribed professionals completing these forms have the opportunity to indicate which, if any, DLA are significantly restricted by the appellant's impairments continuously or periodically for extended periods.

In the appellant's circumstances, the anesthesiologist reported in the PR that the appellant has been prescribed pain medication that cause cognitive impairment and memory issues which the appellant reports interferes with his daily function. At the hearing, the appellant stated that he ramps up the amount of pain medications he takes as his pain increases, for about 3 weeks, until he has a procedure involving cauterization of the discs in his back which occurs two times per year. In the AR, the nurse reported no impacts to cognitive and emotional functioning in the areas of executive and memory, with a minimal impact in attention/concentration.

The anesthesiologist reported that the appellant is continuously restricted with the DLA meal preparation, basic housework, daily shopping, mobility outside the home and use of transportation, and indicated that it is unknown whether the appellant is restricted with management of finances or social functioning. In the AR, the nurse who relied on a home assessment of the appellant, reported that the appellant independently performs all tasks of each DLA including moving about indoors and outdoors, with the exception of a requirement for periodic assistance from another person with basic housekeeping (note: "unable to perform tasks involving lifting/bending") and with carrying purchases home when shopping, with a comment that the appellant "needs assistance for heavier items." At the hearing, the appellant stated that the nurse, who is his father's wife, is more of a witness as to what he can and cannot do but he also tries to "stay positive" when he is with her. The advocate argued that nowhere in the legislation does it state that a length of time has to be determined or noted by a physician; however, where periodic assistance is required, there must be sufficient information from a prescribed professional to allow the ministry to determine that the periodic assistance is required for

'extended periods of time.' The nurse noted that the periodic assistance relates to certain activities relating to the two identified tasks, those involving lifting and bending and carrying heavier items, with no further explanations or descriptions added regarding the frequency or duration of the assistance required in order to allow the ministry to determine that the assistance is required for extended periods.

In the letter dated May 28, 2014, the anesthesiologist wrote that the appellant is currently relying on his family and friends to assist with daily functions, to assist with maintaining his home and transporting him to various appointments. The anesthesiologist indicated that when the appellant's symptoms are exacerbated, he has difficulty maintaining his home and many of his DLA. In his self-report, the appellant indicated that he needs assistance with several tasks, including: meal preparation as tasks take significantly longer due to the constant severe pain, with eating since he has a lack of appetite, with walking around stores and carrying groceries when shopping since he is unable to do this on his own, for transportation as he is unable to stand at the bus stop or on the bus and it is "extremely difficult" getting into and out of vehicles. The appellant also stated that he requires assistance for many tasks of house cleaning or he takes significantly longer and, due to the severe constant pain, he is not always able to get himself to brush his teeth and hair each day. For managing his personal medication, he struggles with taking the right amount, with remembering to take his medications and having his prescriptions filled. The appellant stated at the hearing that his functioning is reduced due to severe pain approximately 2 to 2 ½ months per year and his self-report reflects a lower level of functioning than that reported in the AR by the nurse, likely descriptive of an exacerbated period or "bad day."

Considering the evidence as a whole, particularly that of the nurse as the prescribed professional most familiar with the appellant's day-to-day functioning and including the appellant's evidence of the frequency of the exacerbations to his pain, the panel finds that the ministry reasonably concluded that the evidence is insufficient to show, on the balance of probabilities, that the appellant's overall 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 significant assistance is required from his family and friends and he also requires a number of assistive devices, namely: a raised toilet, toilet rails, shower/bathtub rail and stool, wall bars, jar openers and reacher/ "grabber."

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. The ministry stated that the use of an assistive device such as a cane does not, in itself, establish a severe impairment.

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 anesthesiologist indicated in the PR that the appellant relies on his family and friends to provide assistance and "his needs are greater when he is suffering from an exacerbation of his pain

symptoms." In the AR, the nurse wrote: "father provides transportation" and assists with DLA requiring lifting and carrying heavier items. The section of the AR indicating assistance provided through the use of assistive devices is not completed by the nurse and the appellant's need for other assistive devices is, therefore, not confirmed by a prescribed professional. While the anesthesiologist wrote in his May 28, 2014 letter that the appellant will also require the assistance of a cane for ambulation during periods of exacerbation, the appellant stated at the hearing that he does not use a cane. 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.