

PART C – Decision under Appeal

The decision under appeal is the Ministry of Social Development and Social Innovation (the ministry) reconsideration decision dated December 8, 2014 which found that the appellant did not meet three of the five statutory requirements of Section 2 of the *Employment and Assistance for Persons with Disabilities Act* 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 dated August 5, 2014, physician reports dated June 20, 2014 completed by a general practitioner who has known the appellant since 2006 (PR #1) and a physician report dated August 20, 2014 completed by a general surgeon who has known the appellant since December 2013 (PR #2), and an assessor report (AR) dated September 9, 2014, completed by a registered social worker who has known the appellant for one month. The approaches and information sources used to complete the AR consisted of both a home assessment and file/chart information and medical records.

The evidence also included:

- 1) General Surgery Consult dated December 12, 2013;
- 2) Operative Report dated December 20, 2013 for an ileocolic resection for fistulizing Crohn's disease;
- 3) Histopathology Report dated December 24, 2013;
- 4) Letter dated July 23, 2014 from general surgeon to the general practitioner; and,
- 5) Request for Reconsideration dated December 4, 2014 with Reasons prepared by the social worker on behalf of the appellant and attaching the following additional documents:
 - Progress Note dated January 14, 2013;
 - Gastroenterology Consult dated December 13, 2013;
 - Anaesthetic Consult dated April 28, 2014;
 - Operative Report dated May 1, 2014 for a right shoulder arthroscopy, subacromial decompression and AC joint excision.
 - Operative Report dated September 11, 2014 for a colonoscopy.

Diagnoses

In the PR #2, the appellant was diagnosed by the surgeon with Crohn's disease, and the general practitioner also diagnosed disease of the musculoskeletal system and connective tissue (shoulder) and epigastric pain in PR #1. Neither medical practitioner diagnosed a mental health disorder.

Physical Impairment

The general practitioner reported in the PR #1 that:

- The appellant does not require any prosthesis or aid for his impairment.
- In terms of functional skills, the appellant can walk 4 or more blocks, climb 5 or more stairs, it is unknown how much he can lift, and there is no limitation with how long he can remain seated.

The surgeon reported in the PR #2 that:

- In terms of health history, the appellant experiences "severely disabling abdominal pain and diarrhea."
- The appellant does not require any prosthesis or aid for his impairment.
- For the degree and course of impairment, the Crohn's disease is "non-curable but may go into remission with medication."
- In terms of functional skills, it is unknown how far the appellant can walk, he can climb 5 or more stairs, and he has no limitation with lifting or remaining seated.
- The appellant "will require pain management plus medical management of condition. He may require surgery again if medical management fails."

In the AR the social worker indicated that:

- The appellant's physical impairments include Crohn's, shoulder injury, COPD, skin boils, chronic lower back pain (Schuman's disease), and hernia.
- The appellant is assessed as being independent with walking indoors, climbing stairs and standing. He requires periodic assistance from another person with walking outdoors (note: "COPD, cramps in stomach"), lifting (note: "sore joints from Crohn's") and carrying and holding (note: "shoulder injury"). The appellant also takes significantly longer than typical with walking outdoors and "3 times slower" with climbing stairs. The social worker wrote: "fistulizing Crohn's disease with no remission for over four years; chronic pain from Crohn's, back and shoulder."
- No assistive devices are indicated in the section of the AR relating to assistance provided.
- The appellant "had a shoulder operation in May for ligament repair- chronic pain" and has a hernia that requires surgery.

In his self-report, the appellant indicated that:

- He has Crohn's disease, right shoulder (injury), skin condition that causes sores and boils in his groin and armpit, hernia, and some breathing issues.
- Every day he suffers from loose bowel movements, stomach pain and cramping. He has aches and pains all over.
- He frequently has bowel movement accidents which makes him never want to leave his home.
- On average, he has 15 to 20 bowel movements per day.
- He had colon surgery 7 months ago and shoulder surgery in May 1,2014.

In the Progress Note dated January 14, 2013, the physician wrote that:

- The appellant came to the cast clinic for a diagnosis injection of his right shoulder. He presented with pain in his right shoulder that appeared to be a combination of calcified tendinitis as well as possible acromioclavicular joint arthropathy.
- A diagnostic injection with a small amount of cortisone was done and this alleviated the majority of his pain.
- He might have some biceps tendinitis but the symptoms subsided significantly after the injection.

In the Anaesthetic Consult dated April 28, 2014, the anesthesiologist wrote that the concerns for anesthesia included COPD with chronic smoking, Crohn's disease and morbid obesity.

In the letter dated July 23, 2014 to the general practitioner; a general surgeon wrote:

- A recent CT scan shows that the appellant has a large ventral hernia which should be repaired.

Mental Impairment

In the PR #1, the general practitioner reported:

- The appellant has no difficulty with communication.
- The appellant has a significant deficit with cognitive and emotional function in the area of motivation, with no comment added by the general practitioner.

In the PR #2, the surgeon reported:

- The appellant has no difficulty with communication.
- It is unknown whether the appellant has any significant deficits with cognitive and emotional

function.

In the AR, the social worker indicated that:

- The appellant's mental impairments include dyslexia (elementary school education).
- The appellant has a good ability to communicate in speaking and hearing and poor reading and writing due to dyslexia and an elementary school education.
- There are major impacts to the appellant's cognitive and emotional functioning in 6 areas, namely: bodily functions (note: "Crohn's disease severely impacts toileting; in bathroom for 5 to 6 hours a day; sleep severely impacted by Crohn's, sleeps in windows; diet severely restricted"), consciousness (note: "severely impacted by lack of sleep"), emotion (note: "depression, anxiety and severe stress related to Crohn's and toileting"), and motivation (note: chronic Crohn's effects global functioning").
- Moderate impacts are assessed to attention/concentration (note: "chronically tired- effects attention/concentration"), memory and other emotional or mental problems (note: "dyslexia-[elementary school] education; medication [steroids] causes rage and hostility").
- There are no impacts assessed to the remaining 6 areas of functioning.
- With respect to social functioning, the appellant is assessed as being independent with making appropriate social decisions, interacting appropriately with others, dealing appropriately with unexpected demands, and securing assistance from others. There is no assessment for support or supervision needed for developing and maintaining relationships and the social worker commented: "socially isolated by illness."
- The appellant has marginal functioning in both his immediate and extended social networks, with the comment "socially isolated" added by the social worker.
- The appellant has significant anxiety, stress and depression related to his multiple health issues.

In his self-report, the appellant indicated that:

- He experiences stress and embarrassment.
- Since 2010, he has lost his job, his home and his dignity. As a father, he feels like a failure.

Daily Living Activities (DLA)

The general practitioner reported in the PR #1 that:

- The appellant has not been prescribed any medications and/or treatments that interfere with his ability to perform daily living activities.
- The appellant's impairment does not restrict his ability to perform daily living activities.

The surgeon reported in the PR #2 that:

- The appellant has not been prescribed any medications and/or treatments that interfere with his ability to perform daily living activities.
- It is unknown whether the appellant's impairment restricts his ability to perform daily living activities.
- More particularly, the appellant is not restricted with the DLA of personal self care, meal preparation, management of medications, basic housework and one aspect of mobility (inside the home). It is unknown whether the appellant is restricted with the DLA of daily shopping, one aspect of mobility (outside the home), use of transportation, management of finances and social functioning.

In the AR, the social worker reported that:

- The appellant is independent with moving about indoors and requires periodic assistance and takes significantly longer than typical with walking 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 with doing laundry, with a comment added: "chronic pain."
- For shopping, the appellant is independent with making appropriate choices and paying for purchases and requires continuous assistance from another person with going to and from stores (note: "cannot leave house for extended periods; toileting and related anxiety"), reading prices and labels (note: "functionally illiterate"), and carrying purchases home (note: "unable to be away from toilet; chronic pain"). The social worker added that the appellant "has severe and chronic Crohn's; cannot leave the house for fear of incontinence."
- Regarding use of transportation, the appellant is independent with getting in and out of a vehicle and requires continuous assistance from another person with using public transit (note: "anxiety, incontinence") and using transit schedules and arranging transportation (note: "functionally illiterate").
- The appellant is independent with all tasks of the DLA meals, pay rent and bills, and manage medications.

In his self-report, the appellant indicated that:

- He has lost many job opportunities due to his condition.

Need for Help

- In the AR, the social worker reported that, with respect to the assistance provided by other people, the appellant's family assists him. The social worker wrote: "wife assists with ADL's." The section of the report indicating assistance provided through the use of assistive devices is not completed.

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

- Due to a bad relationship with his doctor, he believes his medical history has not been properly documented.

At the hearing, the appellant's advocate, who is the social worker who completed the AR, stated:

- This is a unique situation in the appellant's community since the appellant cannot change doctors and the general practitioner refused to properly fill out the PWD booklet. Other doctors in the community refuse to take patients from this general practitioner. There is conflict between doctors in the appellant's community, including litigation with his general practitioner.
- They have tried to include information from other doctors to confirm some of the appellant's medical history, including his COPD, his shoulder injury and Crohn's disease.
- The general practitioner was not willing to indicate that the appellant's conditions will last for two years or more, so the surgeon completed a second PR that confirmed the duration of the appellant's conditions. The difficulty is that the specialist does not see the appellant on a regular basis and does not know about the appellant's other issues besides the Crohn's

disease.

- In the AR, the home assessment that he conducted was more of an informal observation of the appellant in his environment than a formal assessment of the appellant's ability to perform his DLA.
- The appellant's conditions are progressing and will only get worse over time.

At the hearing, the appellant stated that:

- The general practitioner bought the medical practice from the appellant's previous family physician but says he does not have access to the appellant's previous medical history.
- He has serious pain 24 hours a day and he eats a large amount of pain killers which makes him concerned about the possibility of getting addicted to them.
- He has cramping all the time but it can be much worse and he can also have nausea, depending on what he eats.
- He has gone through surgeries, including removal of about 3 feet of his intestine, and he almost died because of infection that developed.
- His breathing is "no good" and he gets short winded just walking a block. He had pneumonia as a child. He was given a puffer that he has to use as a breathing device for a period of time after he undergoes surgery. He admits he does not use it as often as recommended.
- He had to fast for a period before attending the hearing because of his Crohn's disease. He needs to plan several days in advance if he has to go anywhere. He has had accidents in public before so he is very reluctant to go out.
- The drug therapies recommended for his Crohn's disease are not working. The steroids have caused anger issues for him and create another problem.
- There are new ulcers developing and he also has to go for further surgery to repair a hernia. He cannot lift anything.
- If he takes his pain medications, he can do his laundry and housekeeping. He has a hard time lifting.
- He had surgery on his right shoulder about 6 months ago and has limitations with lifting.
- He quit school because of his dyslexia and started work. He will mix up numbers and the power has been shut off in the past because he made mistakes with paying bills. His wife handles paying the bills now. She also helps him with reading prices and labels.

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 acknowledged that there are not many doctors in the appellant's community that are willing to complete the PWD reports.

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 epigastric pain from his Crohn's disease, pain and limitations as a result of his shoulder injury and hernia, and shortness of breath due to COPD. The advocate wrote that the appellant requires periodic assistance with lifting, carrying and holding due to ongoing shoulder problem. The advocate wrote that the appellant has a lifelong history of asthma and puffer use, COPD was listed as one of the concerns in the anaesthetic consult dated April 28, 2014, and the appellant experiences limited outdoor mobility and takes 3 times longer to walk short distances.

The ministry's position is that there is a discrepancy in the information provided in the PR's and in the AR with respect to the appellant's functional skill limitations and the information does not establish that he has a severe physical impairment. The ministry argued that the general practitioner reported that the appellant does not require an aid for his impairment and he can walk 4 or more blocks unaided, he can climb 5 or more steps, his ability to lift is unknown and he has no limitation with remaining seated. The ministry argued that while the social worker indicates that the appellant requires periodic assistance with walking outdoors due to COPD, the physician did not diagnose the appellant with COPD.

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 the ability to perform 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 general practitioner, surgeon and social worker.

The general practitioner, who had known the appellant since 2006, diagnosed the appellant with Crohn's disease, disease of the musculoskeletal system and connective tissue (shoulder) and epigastric pain. The social worker, as the appellant's advocate, explained some challenges with obtaining information from the general practitioner and the Anaesthetic Consult dated April 28, 2014 documents that concerns for anesthesia for the appellant included COPD and a surgeon reported to the general practitioner, in the letter dated July 23, 2014, that a recent CT scan shows that the

appellant has a large ventral hernia which should be repaired. In the Progress Note dated January 14, 2013, the physician wrote that the appellant presented with pain in his right shoulder that appeared to be a combination of calcified tendinitis as well as possible acromioclavicular joint arthropathy.

Regarding the appellant's Crohn's disease, the surgeon reported in the PR #2 that the appellant experiences "severely disabling abdominal pain and diarrhea," that his condition is "non-curable but may go into remission with medication." The surgeon wrote that the appellant "will require pain management plus medical management of condition. He may require surgery again if medical management fails." The appellant stated at the hearing that the drug therapies recommended have not been working, the steroids prescribed also have side effects which cause other problems including anger issues, and he will likely require further surgery. In his self-report, the appellant wrote that every day he suffers from loose bowel movements, stomach pain and cramping and has an average of 15 to 20 bowel movements per day. He frequently has bowel movement accidents which makes him never want to leave his home. The appellant wrote that he also has a skin condition that causes sores and boils in his groin and armpit.

In terms of the appellant's functional skills limitations, two PR's have been completed by the general practitioner who has known the appellant for approximately 8 years and the surgeon who has know the appellant for approximately one year and both agree that the appellant does not require any prosthesis or aid for his impairment. The general practitioner and surgeon also agree that the appellant can climb 5 or more steps unaided and he has no limitation with how long he can remain seated. While the surgeon reported that it is unknown how far the appellant can walk, the general practitioner indicated that the appellant can walk 4 or more blocks unaided and while the general practitioner reported that it is unknown how much the appellant can lift, the surgeon indicated that the appellant has no limitation with lifting. The appellant stated at the hearing that he gets short winded after walking a block because of his COPD. He also admitted that he does not use the puffer prescribed to him after his surgery as often as recommended. There were no further medical reports provided to indicate the extent or progress of the appellant's COPD.

In the AR, the social worker who has known the appellant for one month assessed the appellant as being independent with walking indoors, climbing stairs and standing. The social worker indicated that the appellant requires periodic assistance from another person with walking outdoors due to his COPD and stomach cramps, periodic assistance with lifting due to sore joints from Crohn's, and periodic assistance with carrying and holding due to his shoulder injury. The appellant also takes significantly longer than typical with walking outdoors and is "3 times slower" with climbing stairs. The social worker indicated that the appellant does not use an assistive device.

The panel finds that the evidence demonstrates that the appellant's functional skills are not significantly limited. The information from the medical practitioners in the two PR's indicates no limitation and the assessment by the social worker for periodic assistance required is considered as additional information in keeping with the functional skills described. While the social worker explained the challenges with obtaining information from the appellant's general practitioner, the appellant did not directly dispute the information provided by the general practitioner concerning his functional skills. Considering all of the evidence, 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 chronic anxiety and depression related to his Crohn's disease and the impact it has on his life and he also suffers from dyslexia, that he has an elementary school education and is functionally illiterate.

The ministry's position is that there is insufficient evidence to establish that the appellant has a severe mental impairment. The ministry argued that neither the general practitioner nor the surgeon diagnosed the appellant with dyslexia or any mental impairment. The ministry argued that the surgeon reported that the appellant has no difficulties with communication and no significant deficits with cognitive and emotional functioning.

Panel Decision

In the two PR's, neither the appellant's general practitioner nor the surgeon diagnosed the appellant with a mental health condition. The social worker wrote that the appellant suffers from chronic anxiety and depression related to his Crohn's disease and the general practitioner refused to look at the global health issues impacting the appellant's life and, instead, told the appellant that his issue is that he is "fat."

In the AR, the social worker reported that there are major impacts to the appellant's cognitive and emotional functioning in 6 areas, namely: bodily functions (note: "Crohn's disease severely impacts toileting; in bathroom for 5 to 6 hours a day; sleep severely impacted by Crohn's, sleeps in windows; diet severely restricted"), consciousness (note: "severely impacted by lack of sleep"), emotion (note: "depression, anxiety and severe stress related to Crohn's and toileting"), and motivation (note: chronic Crohn's effects global functioning"). The social worker also wrote that the appellant suffers from dyslexia which caused him to exit the public school system at a very young age and he is functionally illiterate. In the two PR's, while the surgeon indicated that it is unknown whether the appellant has any significant deficits with cognitive and emotional function, the general practitioner reported that the appellant has a significant deficit with cognitive and emotional function in the area of motivation, with no further comment 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 social worker 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), and meal preparation (meal planning and food storage). The social worker reported that the appellant requires continuous assistance with using transit schedules and arranging transportation due to being functionally illiterate. At the hearing, the appellant stated that he has experienced difficulty with paying bills in the past due to his dyslexia; however, this has not been confirmed by a prescribed professional.

Regarding the DLA of social functioning, the appellant is assessed in the AR as independent with interacting appropriately with others and securing assistance from others. The appellant was not assessed to require support or supervision with developing and maintaining relationships and the social worker noted that the appellant is "socially isolated by illness." At the hearing, the appellant stated that he had to fast prior to attending the hearing and that any outings require days of advanced

planning because of his toileting issues rather than due to a mental impairment. In the two PR's, the general practitioner and the surgeon both reported that the appellant has no difficulty with communication. The social worker indicated in the AR that the appellant has a good ability to communicate in speaking and hearing and poor reading and writing due to dyslexia and an elementary school education.

Given the absence of a mental health diagnosis and evidence of significant 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 wife. The advocate wrote that the appellant is unable to lift or carry on one side due to chronic shoulder pain and this creates significant limitations in his ability to do basic housework, assist with his young children, or perform yard work. The advocate wrote that since the appellant must take significant doses of pain medication for both his shoulder and his Crohn's, he is often unable to drive due to impaired consciousness. The advocate argued that the appellant suffers from chronic breathing issues that become exacerbated in cold weather that limit his mobility and ability to perform ADL's.

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 because of the discrepancies in the information provided by the medical practitioners and the information provided by the social worker, the ministry was not satisfied that the evidence established that the appellant's impairments directly and significantly restrict his DLA continuously or periodically for extended periods.

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, the surgeon and the social worker 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, there are two PR's and both the general practitioner and the surgeon agree that the appellant has not been prescribed any medications and/or treatments that interfere with his ability to perform daily living activities. While the social worker wrote that the appellant's consciousness is severely impacted by his pain medication, this has not been supported by the information available from either medical practitioner. The general practitioner reported that the appellant's impairment does not restrict his ability to perform daily living activities. The surgeon reported that the appellant is not restricted with the DLA of personal self care, meal preparation, management of medications, basic housework and one aspect of mobility (inside the home), and it is unknown whether the appellant is restricted with the DLA of daily shopping, one aspect of mobility (outside the home), use of transportation, management of finances and social functioning.

In the AR, the social worker reported that the appellant is independent with moving about indoors and requires periodic assistance and takes significantly longer than typical with walking outdoors, which is performed within the functional skill ability of walking 4 or more blocks unaided. The appellant is assessed as being independent with all tasks of the DLA personal care, meals, pay rent and bills, and manage medications. For basic housekeeping, the appellant requires periodic assistance from another person with basic housekeeping and with doing laundry, with a comment added: "chronic pain." At the hearing, the appellant stated that if he takes his pain medication he can do the laundry and housekeeping but he has limitations with how much he can lift. While his lifting may be limited on the right due to his shoulder injury and surgery, the surgeon reported that the appellant has no limitation with lifting. For shopping, the appellant is independent with making appropriate choices and paying for purchases and requires continuous assistance from another person with going to and from stores (note: "cannot leave house for extended periods; toileting and related anxiety"), reading prices and labels (note: "functionally illiterate"), and carrying purchases home (note: "unable to be away from toilet; chronic pain"). The social worker added that the appellant "has severe and chronic Crohn's; cannot leave the house for fear of incontinence." At the hearing, the appellant stated that he has to plan several days in advance for an outing, such as attending the hearing, due his toileting issues. Regarding use of transportation, the appellant is independent with getting in and out of a vehicle and requires continuous assistance from another person with using public transit (note: "anxiety, incontinence") and using transit schedules and arranging transportation (note: "functionally illiterate").

Considering the evidence as a whole, including that of the social worker as the prescribed professional who observed the appellant in his home environment, 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 wife.

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 prescribed professionals do not indicate that the appellant requires the use of an assistive device or an assistance animal.

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.

In the AR, the social worker wrote: "wife assists with ADL's." The section of the report indicating assistance provided through the use of assistive devices is not completed. 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.