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## PART C – Decision under Appeal

The decision under appeal is the Ministry of Social Development and Social Innovation (the ministry) reconsideration decision dated December 17, 2014 which found that the appellant did not meet three of the five statutory requirements of Section 2 of the *Employment and Assistance for Persons with Disabilities Act* for designation as a person with disabilities (PWD). The ministry found that the appellant met the age requirement and that his impairment is likely to continue for at least two years. However, the ministry was not satisfied that the evidence establishes that:

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

## PART D – Relevant Legislation

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

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

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PART E – Summary of Facts

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 June 1, 2014, a physician report (PR) and an assessor report (AR) both dated June 6, 2014 and completed by a general practitioner who has known the appellant since October 2009.

The evidence also included:

1) Medical Imaging Report dated May 27, 2011 for the appellant's right hip, right femur;
2) Letter dated October 24, 2011 from the orthopedic surgeon to the general practitioner;
3) Medical Imaging Report dated October 30, 2011 for the pelvis and bilateral hips;
4) Nuclear Medicine Report dated October 30, 2011 for a 3-phase bone scan of hips;
5) Medical Imaging Report dated January 17, 2013 for the appellant's right hip;
6) Letter dated December 12, 2013 from the orthopedic surgeon to the general practitioner;
7) Medical Imaging Report dated January 8, 2014 for the appellant's chest, pelvis and right hip;
8) Operative Report dated February 11, 2014 from the orthopedic surgeon;
9) Medical Imaging Report dated March 5, 2014 for the appellant's left hip;
10) Extracts from the records of an orthopedic surgeon for the period April 17, 2013 through November 24, 2014; and,
11) Request for Reconsideration with reasons dated November 22, 2014.

***Diagnoses***

In the PR, the appellant was diagnosed by the general practitioner with bilateral hip labral tear with an onset of May 2011. There is no diagnosis of a mental health condition.

***Physical Impairment***

In the PR, the general practitioner reported that:

- In terms of health history, "walking is affected (difficult)."
- The appellant requires an aid for his impairment, described as "uses cane."
- In terms of functional skills, the appellant can walk less than 1 block unaided, can climb 2 to 5 steps unaided, lift 2 to 7 kg. (5 to 15 lbs.), and it is unknown how long he can remain seated.

In the AR the general practitioner indicated that:

- The appellant is assessed as using a cane as an assistive device "sometimes" with walking indoors, and with walking outdoors, climbing stairs and standing. The appellant requires periodic assistance from another person with lifting and carrying and holding. The general practitioner did not provide further comments regarding the appellant's need for assistance.
- A cane was identified as an assistive device routinely used by the appellant to help compensate for his impairment.
- For additional information, the appellant has "chronic bilateral hip pain."

In his self-report, the appellant wrote that:

- For the past two years, he has had hip issues. The condition is hip dysplasia and he was born with it. It was diagnosed as torn labrums. On March 21, 2014, the results of the left hip MRI showed the same problem with both hips.
- Dates and treatment for the left hip are unknown but the doctor has indicated that treatments will be the same.
- He can sit or stand for 30 to 40 minutes until the pain starts. He can lift no more than 10 to 15

lbs.
- Fatigue can become an issue.

In his Request for Reconsideration, the appellant wrote that:
- When surgery was done for pain and to reduce worsening of the tear, a whole part of his joint had degenerated, resulting in stage 3 arthritis. The stages range from 1 to 4 with 4 being the worse and requiring total hip replacement.
- He had to accept that he could not be the active person he once was. He still has hip stiffness and finds it painful to walk long distances and to get in and out of his car and up the stairs.
- His back and hip are "wrecked." He has pinching and impingement, a compressed disc and a slight 'tweak' of the lower lumbar which causes direct pressure to the sciatic nerve. He has constant pain when sitting.
- Pain is usually felt in the groin, hip and/or buttock. Symptoms typically increase with weight-bearing activity and twisting movements of the hip. He also experiences pain when climbing stairs, getting in and out of the car, during kicking or when squatting. The hip may also feel weak or unstable and may click or lock during certain movements.
- He has severe pain and significant restriction in his hip range of movement, intermittent locking, clicking sensations and episodes of giving way or collapsing.
- He walks with a limp or is unable to weight-bear due to pain.
- He is forced to walk at a deep stoop, cannot stand for more than 10 to 15 minutes at a time and has to sit at specific angels so as not to irritate the nerve and cause excruciating pain. This makes employment impossible.
- Symptoms get worse with long periods of standing, sitting, or walking.

In the Extracts from the records of an orthopedic surgeon for the period April 17, 2013 through November 24, 2014, the orthopedic surgeon indicated:
- In July 2013, the recommendation was to start progressively his routine activity and reassess sometime during the fall.
- The appellant has reported daily pain at the level of 5 to 7/10. The pain is exacerbated with prolonged standing and walking and sitting in a straight position.
- The appellant had surgery in February 2014 which involved right hip arthroscopy and debridement of anteriorsuperior labrum.
- The appellant has received injections of pain medication in his hips and reported mild improvement.
- The appellant has pain in both hips. When he walks uphill, the left hip is more painful than the right. With certain activities, the right hip is more painful. It remains uncertain if most of the pain is intra- or extra- articular in origin. A bone scan will be requested as the last one was done in 2011 and, at that time, this was normal.

In the Medical Imaging Report dated January 8, 2014 for the appellant's chest, pelvis and right hip, the findings indicated:
- The pelvic ring is intact. Sacroiliac joints and pubic symphysis are normal.
- Both hip joints are congruent without evidence of fracture, dislocation, or obvious arthropathy.

In the Medical Imaging Report dated March 5, 2014 for the appellant's left hip, the findings indicated:
- Minimal dysplasia of the acetabulum with slight over coverage as well as irregularity to the anterior labrum suggestive of some degenerative tearing through the free edge is seen, similar

to the contralateral side. There is associated chondral labral separation along the anterior aspect extending superiorly to involve the posterior labrum.

***Mental Impairment***

In the PR, the general practitioner reported:

- The appellant has no difficulty with communication.
- The appellant has no significant deficits with cognitive and emotional function.

In the AR, the general practitioner indicated that:

- The appellant has a good ability to communicate in all areas.
- There are no impacts to the appellant's cognitive and emotional functioning in any of the listed areas.
- 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.

***Daily Living Activities (DLA)***

In the PR, the general practitioner indicated that:

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

In the AR, the general practitioner reported that:

- The appellant uses a cane for moving about outdoors and "sometimes" uses a cane for moving about indoors.
- The appellant is independent with all tasks of several listed DLA, namely: personal care, meals, paying for rent and bills, and managing medications.
- For basic housekeeping, the appellant requires periodic assistance from another person, with no explanation or description provided.
- Regarding shopping, the appellant is independent with going to and from stores, reading prices and labels, making appropriate choices, and paying for purchases. He requires periodic assistance from another person with carrying purchases home. No further explanation or description is provided.
- For managing transportation, the appellant requires periodic assistance from another person and uses a cane as an assistive device for all tasks, namely getting in and out of a vehicle, using public transit, and using transit schedules and arranging transportation. The general practitioner wrote: "very difficult to use public transit."

In his self-report, the appellant wrote that:

- Personal grooming and necessity activities can take up to twice as long as before.
- Fatigue can become an issue if he has to just walk across the street to the store to purchase food.
- Any type of personal activities have been stopped such as working out, playing sports, going on family trips and even attending activities in public.
- Taking public transit is no longer an option unless it is absolutely necessary.
- The medication he is required to take can affect concentration, speech, and just performing the

simplest tasks around the house.

***Need for Help***

- In the AR, the general practitioner reported that, with respect to the assistance provided by other people, the appellant's family assists him.
- The appellant routinely uses a cane to help compensate for his impairment.

In his Notice of Appeal dated January 7, 2015, the appellant expressed his disagreement with the ministry's reconsideration decision and wrote that:

- The general practitioner's AR was not fully completed.
- His self-report was not properly read through and not identified by the ministry and it should be dealt with.

Prior to the hearing, the appellant provided the following additional documents:

1) Letter dated November 8, 2011 from the appellant 'To Whom It May Concern' regarding his claim for indemnity (wage loss) benefits due to medical disability; and,
2) Letter dated December 12, 2011 from an insurance company to the appellant advising that his claim continues to meet the definition of disability in his plan to January 16, 2012.

At the hearing, the appellant provided the following additional documents:

1) Undated Referral Request from the general practitioner to the orthopedic surgeon for right hip pain;
2) Extracts from the records of an orthopedic surgeon for the period February 14, 2014 through January 12, 2015, which include the following additional information:
    - February 14, 2014- doing quite well 3 days after right hip arthroscopy. Already walking around the house without crutches.
    - February 24, 2014- doing quite well. Currently has only minimal discomfort. He will start focusing on ongoing conditioning with a bicycle and elliptical stepper. He is hoping to return to work, which may take another 6 months or so.
    - April 9, 2014- doing only fairly well. Apparent progress observed earlier has not sustained. He walks with a cane and can only walk without walking aid at home. On examination, he walks quite well with a mild right-sided limp.
    - April 23, 2014- appellant reported ongoing right hip pain. It is not deteriorating but remains painful according to the amount of activity. He cannot walk far and cannot sit for more than 20 minutes. The pain varies from day to day. On examination, he remains in good condition. He walks with a mild right-sided limp. Active range of motion of the hip remains in the functional range with discomfort at the end of range.
    - May 15, 2014- appellant reported to have ongoing right hip pain. Has not experienced any improvement, not any further deterioration. He still finds a cane is helpful with walking. On examination, he can walk without a limp using a cane. As soon as the cane is lifted, he assumes an antalgic gait. This was a little less progress than had been expected.
    - June 16, 2014- appellant received an injection of the right hip.
    - July 4, 2014- the appellant developed a good week or 10 days of [no] discomfort after the injection. This is moderately encouraging. Asked the appellant to gradually increase his activity level through the summer.
    - October 9, 2014- the appellant reported to be doing quite well. He has had

improvement in his right hip function. With walking, he still is painful. The left hip is at times more painful that the left, particularly with prolonged sitting.

- November 3, 2014- the appellant received an injection of the left hip.
- December 11, 2014- the bone scan was reviewed and was reassuring. The appellant noted that he had tenderness over the ASIS on both hips, which was confirmed clinically.
- December 15, 2014- the appellant reported he has pain over the greater trochanter on the right.
- January 12, 2015- the appellant received an injection over the ASIS right and left.

At the hearing, the appellant's mother, as his advocate, stated that:

- The appellant's health in the last 4 years has been deteriorating. At first he went on EI, then it was determined that he was eligible for disability through his work. This took some time for him to get.
- The letters dated in November and December 2011 show that the appellant has had a medical issue and was seeking financial help 4 years ago.
- The appellant needs help with his daily living activities. He can no longer carry a heavy laundry basket. He can do his own laundry.
- In his home, it is becoming increasingly difficult to keep things clean. He cannot get down on his knees to clean. He may need to hire some help for this.
- They got the appellant a new garbage can that he could reach and moved everything up from lower shelves because the appellant cannot reach down without discomfort and, if he does get down, he has limited ability to get back up again.
- He cannot carry his own groceries across the street. At least, not anything heavy.
- He used to be a very active young man and now he cannot do the recreational activities that he once did.
- She gave the appellant a mattress and memory foam to try to help because he cannot sleep through the night.
- Some activities have been taken over by his parents. For example, she drives the appellant because he cannot handle the pain involved with taking public transit. As well, he cannot walk the 3 blocks to get to the bus stop.

At the hearing, the appellant stated that:

- He has been dealing with pain in his hips for 4 years. However, in the last 2 years, the pain has gotten progressively worse.
- It is not that he is incapable of doing his daily living activities, but it takes him an undue length of time and he will pay for it later.
- He does not have the initiative to do things and he keeps putting things off.
- He had surgery on one hip a year ago and was taking Tylenol-3 for a while but it made him "pretty fuzzy." He had to quit taking them because he is employed part-time as a building manager and he "felt stupid" and was stuttering and not himself. They were not helping much with the pain, and he was worried about becoming addicted to them.
- The pain is severe but manageable.
- He goes to the orthopedic surgeon for everything. He has received 5 cortisone injections in his hips in the last year and a half. The injection will work for 3 or 4 days and then becomes less effective.
- The orthopedic surgeon has said that a specialized "bony procedure" may be necessary that is

only available in another province and they will likely be talking about this as an option again. There is some risk because the hip bone is cut and there is no guarantee that the femur will fit. Since both hips have the same problem, the surgery will be for both.

- He knows that many of the references to his hip dysplasia are to a "mild" condition, but that is not what causes his pain, which comes from the torn labrum. The tendons around his hip joint are constantly tearing.
- When he had his surgery, the orthopedic surgeon told him that there was only so much he could do because his hip was so bad. He cleaned it up as best as he could and they decided to try the cortisone shots to see how it goes.
- He spent a significant amount of money to be trained in a job and then his hip pain started. He was emotionally upset and felt depressed at the time. He is young and all of his plans stopped for him. He applied for disability because he has no choice.
- He was not present when the general practitioner filled out the PR and the AR and it was completed based on his file information.
- He recently met with the general practitioner and asked whether he would change his report to reflect the deterioration in his condition. The general practitioner decided that he would not change the reports. His view is that the ministry's interpretation of "severe" relates to conditions like cancer or ALS.
- The general practitioner does refer to his condition as "chronic" as it is getting progressively worse and will not get better.
- He can no longer do things that he could do a year ago. For example, he managed to do the snow removal for the building last year, but this year he was "done" after 20 minutes.
- The general practitioner has not been very involved with his condition but he sees the orthopedic surgeon on a regular basis.
- He can only lift up to 10 lbs. since the lifting puts pressure on his hips. It is like when he is sleeping. Some positions will put pressure on his hips.

***Admissibility of New Information***

The ministry did not object to the admissibility of the additional documents provided by the appellant and did not raise an objection to the oral testimony on behalf of the appellant. The additional information related to the impact of the appellant's impairment as diagnosed in the PWD application tends to corroborate the appellant's written testimony available at reconsideration, and is in support of information that was before the ministry at reconsideration. Therefore, 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.

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## 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 pain and restriction due to bilateral hip labral tear, which started in May of 2011. In his Request for Reconsideration, the appellant argued that he has hip stiffness and finds it painful to walk long distances and to get in and out of his car and up the stairs. The appellant also argued that his back and hip are "wrecked," he has pinching and impingement, a compressed disc and a slight 'tweak' of the lower lumbar which causes direct pressure to the sciatic nerve. In his self-report, the appellant argued that he can sit or stand for 30 to 40 minutes until the pain starts, he can lift no more than 10 to 15 lbs., and fatigue can become an issue. At the hearing, the appellant argued that the general practitioner is not as familiar with his condition as he goes to the orthopedic surgeon for everything. The appellant pointed out that the orthopedic surgeon administered 5 cortisone injections in his hips in the last year and a half and this alleviates the pain for 3 or 4 days and then becomes less effective.

The ministry's position is that the appellant's functional skill limitations are more in keeping with a moderate physical impairment. The ministry argued that there is insufficient information from the medical practitioner to establish that the appellant has a severe physical impairment.

*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.

The general practitioner, who had known the appellant since October 2009, diagnosed the appellant with bilateral hip labral tear with onset in May 2011. Although the appellant also referred to his back being "wrecked" and that a compressed disc and a slight 'tweak' of the lower lumbar which causes direct pressure to the sciatic nerve, these conditions were not mentioned in the reports by either the general practitioner or the orthopedic surgeon. The findings from the Medical Imaging Report dated January 8, 2014 for the appellant's chest, pelvis and right hip indicated that the appellant's pelvic ring

is intact, sacroiliac joints and pubic symphysis are normal, and both hip joints are congruent without evidence of fracture, dislocation, or obvious arthropathy.

In the PR, the general practitioner reported for the health history that "walking is affected (difficult)." The appellant requires an aid for his impairment, namely a cane. In terms of functional skills, the appellant can walk less than 1 block unaided, climb 2 to 5 steps unaided, lift 5 to 15 lbs., and it is unknown how long he can remain seated. The appellant clarified in his self-report that he can sit or stand for 30 to 40 minutes until the pain starts. In the AR, the general practitioner assessed the appellant as using a cane as an assistive device with walking outdoors, climbing stairs and standing, and "sometimes" with walking indoors. The appellant requires periodic assistance from another person with lifting and carrying and holding, with no further comments by the general practitioner regarding the extent of the appellant's need for assistance. At the hearing, the appellant stated that he can only lift up to 10 lbs. since the lifting puts pressure on his hips and his mother stated that he needs assistance with "heavy" bags of groceries or laundry baskets. The panel considered that the need for assistance is in keeping with the new information and the functional skills, described to be for weights in excess of 10 lbs. The appellant stated in his Notice of Appeal that the general practitioner's AR was not fully completed; however, at the hearing the appellant stated that, given an opportunity to revise or update his assessment, the general practitioner declined.

The appellant stated at the hearing that his general practitioner is not that familiar with his condition and that he goes to the orthopedic surgeon for everything. In the extract from the records for November 24, 2014, the orthopedic surgeon wrote that the appellant has pain in both hips and, when he walks uphill, the left hip is more painful than the right. With certain activities, the right hip is more painful. It remained uncertain if most of the pain was intra- or extra- articular in origin and a bone scan was requested. In the extract from December 11, 2014, the orthopedic surgeon wrote that the bone scan was reviewed and was reassuring. The appellant stated at the hearing that he has received 5 cortisone injections in his hips in the last year and a half, which alleviate the pain for 3 or 4 days and then becomes less effective. The appellant also stated that he discontinued some of the prescribed pain medication because of the adverse side effects that were having an impact on his ability to perform his part-time job and that "the pain is severe but manageable."

At the hearing the appellant stated that the general practitioner referred to his condition as "chronic" as it is getting progressively worse and will not get better and his condition has deteriorated significantly in the last 2 years. Both the appellant and his mother stated that he was previously an active young man, having participated in many sporting and recreational activities, and that he can no longer do many things he used to. The appellant stated as an example that he managed to do the snow removal for his building last year, but this year he was "done" after 20 minutes. In his Request for Reconsideration, the appellant described his symptoms as getting worse with "long periods" of standing, sitting, or walking.

The panel finds that while the evidence demonstrates that the appellant's physical functioning is limited, these limitations, with the exception of walking unaided, remain in the middle of the range of functional skills and do not appear to have translated into significant restrictions to his ability to manage DLA, as discussed in more detail in these reasons for decision under the heading "Restrictions in the Ability to Perform DLA." Considering all of the evidence currently available, including the mostly moderate level of impacts assessed 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 did not maintain a position that he suffers from a severe mental impairment.

The ministry's position is that there is insufficient evidence to establish that the appellant has a severe mental impairment.

*Panel Decision*
The general practitioner did not diagnose a mental health condition in the PR and reported that the appellant has no significant deficits with cognitive and emotional function. At the hearing, the appellant stated that he invested a significant amount of time and money to be trained in a job and then his hip pain started 4 years ago and his plans came to a stop. He was emotionally upset and felt depressed at that time. In terms of impacts to daily functioning, the general practitioner assessed no impacts to each of the listed areas of the appellant's cognitive and emotional functioning.

The general practitioner indicated that the appellant has a good ability to communicate in all areas. With respect to social functioning, the appellant is assessed as being independent in all areas and he has good functioning in both his extended social networks. Given the absence of a mental health diagnosis and no 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 impairment directly and significantly restricts his ability to perform DLA on an ongoing basis to the point that he requires the significant assistance of another person and the use of a cane as an assistive device.

The ministry's position is that the information from the general practitioner, as the prescribed professional, does not establish that the appellant's impairments significantly restrict his DLA either continuously or periodically for extended periods of time. The ministry argued that for those few tasks of DLA for which the general practitioner assessed the need for periodic assistance, there is not sufficient information regarding the frequency and duration of these periods to establish that the assistance is required 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 is the prescribed professional. DLA are defined in Section 2(1) of the EAPWDR and are also listed in the PR and, with additional details, in the AR. Therefore, the prescribed professional completing these forms has the opportunity to indicate which, if any, DLA are significantly restricted by the appellant's impairments continuously or periodically for extended periods.

While the appellant wrote in his self-report that the medication he is required to take can affect concentration, speech, and just performing the simplest tasks around the house, the general practitioner reported in the PR that the appellant has not been prescribed any medication and/or treatments that interfere with his ability to perform DLA. In the AR, the general practitioner reported that the appellant uses a cane for moving about outdoors and "sometimes" uses a cane for moving

about indoors. The appellant wrote in his self-report that personal grooming and necessity activities can take up to twice as long as before. The appellant is assessed by the general practitioner as being independent with all tasks of several listed DLA, namely: personal care, meals, paying for rent and bills, and managing medications, and with all but one tasks of shopping, and there is no indication that these tasks take the appellant significantly longer than typical. The appellant requires periodic assistance for the tasks of basic housekeeping and laundry, and carrying purchases home when shopping. At the hearing, the appellant's mother stated that the appellant cannot carry "heavy" baskets of laundry or bags of groceries and that he requires assistance with these. She stated that it is becoming increasingly difficult for the appellant to keep his home clean, he cannot get down on his knees to clean, and may need to hire some help for this. However, there is no description or explanation provided by the general practitioner regarding the frequency or duration of the assistance required to allow the ministry to determined that the periodic assistance is required for extended periods of time.

The appellant's mother stated at the hearing that she drives the appellant because he cannot handle the pain involved with taking public transit. In his self-report, the appellant wrote that taking public transit is no longer an option unless it is absolutely necessary. The general practitioner assessed the appellant as requiring periodic assistance from another person and using a cane as an assistive device for the tasks of getting in and out of a vehicle, using public transit and using transit schedules and arranging transportation. The general practitioner wrote: "very difficult to use public transit." There was no further explanation by the general practitioner as to how often the appellant requires assistance or for how long, or why his physical condition impacts his ability to use transit schedules and arrange transportation. At the hearing, the appellant stated that it is not that he is incapable of doing his DLA, but it takes him an undue length of time and he "will pay for it later."

Considering the evidence as confirmed by the general practitioner as the prescribed professional, the panel finds that the ministry reasonably concluded that the evidence is insufficient to show 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 physical impairment significantly restricts his daily living functions to a severe enough extent that significant assistance is required from another person and the use of a cane as an assistive device.

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 acknowledged that the evidence shows that the appellant uses a cane as an assistive device.

*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 general practitioner reported that, with respect to the assistance provided by other people, the appellant's family assists him. At the hearing, the appellant's mother described the

assistance that she provides to the appellant. The general practitioner indicated in the AR that the appellant routinely uses a cane to help compensate for his impairment. 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.