APPEAL #

PART C – Decision under Appeal

The decision under appeal is the Ministry of Social Development and Social Innovation (the ministry) reconsideration decision dated December 24, 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

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

The evidence before the ministry at the time of the reconsideration decision included the Persons With Disabilities (PWD) Application comprised of the applicant information and a typed self-report dated June 2, 2014, a physician report (PR) and an assessor report (AR) both dated June 2, 2014 and completed by a general practitioner who has known the appellant for 6 months.

The evidence also included the appellant's Request for Reconsideration dated December 5, 2014 with submissions prepared by an advocate on the appellant's behalf and attached documents, namely:

- Excerpts from the court decision in *Hudson v. EAAT, 2009 BCSC 1461*;
- Letter dated December 10, 2014 with the general practitioner's responses to various questions.

Diagnoses

In the PR, the appellant was diagnosed by the general practitioner with lumbar pain OA [osteoarthritis] DDD [degenerative disc disease] with an onset of 2014, bilateral foot pain with onset in 2012, dizziness and depression, which both started in 2013.

Physical Impairment

In the PR, the general practitioner reported that:

- In terms of health history, the appellant has "chronic lumbar pain and bilateral foot pain... dizziness/ vertigo for 1 year"
- The appellant does not require any prosthesis or aid for his impairment.
- In terms of functional skills, the appellant can walk less than 1 block unaided ("back pain, foot pain"), can climb 2 to 5 steps unaided ("foot pain"), lift 2 to 7 kg. (5 to 15 lbs.)("back pain"), and remain seated less than 1 hour ("back pain").

In the AR the general practitioner indicated that:

- The appellant is assessed as being independent with walking indoors and taking significantly longer than typical, and requiring continuous assistance from another person with walking outdoors, climbing stairs, standing, lifting and carrying and holding. The appellant takes significantly longer than typical with climbing stairs, standing, lifting and carrying and holding. The general practitioner commented with respect to mobility and physical ability: "due to arthritis, osteoarthritis."
- No assistive devices are indicated in the section of the AR relating to assistance provided.

In his self-report, the appellant indicated that:

- He suffers from chronic back pain, plantar fasciitis, high blood pressure, dizziness and blurred vision for about a year and he is taking medication, and chronic stomach pain for which he is taking medication.
- He has a difficult time walking or using stairs.
- He is unable to lift things without pain in his back.
- He cannot stand for very long to prepare meals.
- His disability makes it difficult for him to go up and down stairs, walk from room to room

indoors, walk on flat or uneven ground outdoors.

In the letter dated December 10, 2014, the general practitioner responded to questions as follows:

- Yes, the appellant has a severe mental and physical impairment that directly and significantly restricts his ability to perform daily living activities continuously or periodically for extended periods.
- The appellant has chronic back pain and vertigo.
- Yes, in his opinion the appellant should be entitled to PWD benefits from the ministry.

Mental Impairment

In the PR, the general practitioner reported:

- In terms of health history, the appellant has major depression for 1 year.
- The appellant has difficulty with communication other than a lack of fluency in English, described as "second language."
- The appellant has significant deficits with cognitive and emotional function in the areas of memory, emotional disturbance, and attention/concentration, with a comment added that the appellant "has had major depression for 1 year."

In the AR, the general practitioner indicated that:

- The appellant has a good ability to communicate in hearing and poor ability with speaking, reading and writing, for which the general practitioner commented: "poor English."
- There are six major impacts to the appellant's cognitive and emotional functioning in the areas of bodily functions, consciousness, emotion, attention/concentration, memory and motivation. There are no impacts to the remaining 8 areas of functioning. The general practitioner wrote: "symptoms of major depression for one year due to chronic pain and vertigo."
- With respect to social functioning, the appellant is assessed as requiring continuous support/supervision with making appropriate social decisions, interacting appropriately with others, dealing appropriately with unexpected demands, and securing assistance from others. The appellant requires periodic support/supervision with developing and maintaining relationships. The general practitioner wrote: "decreased self-esteem, isolates himself from others."
- The appellant has marginal functioning in both his immediate and extended social networks, with no further comment added by the general practitioner.
- Asked to describe the support/supervision required by the appellant that would help to maintain him in the community, the general practitioner left this section blank.

In his self-report, the appellant indicated that:

- He suffers from anxiety.
- He gets nervous, impatient and anxious, which may be from the medication or anxiety.
- He does not sleep well.

Daily Living Activities (DLA)

In the PR, the general practitioner indicated that:

- In terms of health history, the appellant is "unable to do his activities of daily living in a timely fashion. It takes patient 3 times as long to do a daily chore than the average person."
- 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 is independent with moving about indoors and requires continuous assistance from another person with walking outdoors.
- The appellant takes significantly longer than typical with all assessed tasks of the DLA personal care, and is independent with toileting, and transfers in/out of bed and on/off of chair. He requires periodic assistance from another person with dressing, grooming and bathing, described as "due to chronic, generalized back pain and feet pain, osteoarthritis +++ and vertigo +++." There was no assessment provided for the tasks of feeding self and regulate diet.
- For the DLA of basic housekeeping and shopping the appellant takes significantly longer than typical and requires continuous assistance from another person with all tasks "due to chronic, generalized back pain and feet pain, osteoarthritis +++ and vertigo +++.".
- For the DLA meals, the appellant takes significantly longer than typical and requires continuous assistance from another person with each task, described as: "due to decreased energy, decreased motivation, chronic pain."
- Regarding the DLA pay rent and bills, the appellant takes significantly longer than typical and requires continuous assistance from another person with each task, described as "due to poor English, decreased memory."
- The appellant is independently able to perform each task of managing his medications.
- The appellant requires continuous assistance from another person with each task of the DLA transportation, described by the general practitioner as "due to chronic pain."

In his self-report, the appellant indicated that:

- He is constantly fatigued which impacts his ability to perform his DLA.
- He does not sleep very well and he has difficulty doing housework.
- His wife does the grocery shopping and goes to the pharmacy to fill his prescriptions.
- He is only able to drive short, quick distances due to pain but if he is having a dizzy spell then he is completely unable to drive. He gets blurred vision when he gets dizzy sometimes.
- Showering can be difficult if he is dizzy. He cannot stand in the shower for too long due to pain. He is unable to reach or bend on his left side without pain.
- His disability makes it difficult for him to manage personal hygiene and self care (bathe, dress, and get in and out of furniture including his bed) and prepare and eat meals (food preparation and cooking). It is also difficult for him to keep his home clean (housework and laundry) and to shop for personal needs (walking around stores, standing long enough to make good choices and managing line-ups, handling groceries).
- He has difficulty moving about indoors and outdoors (climbing stairs, walking).
- He has difficulty using public or personal transportation (he cannot drive for too long or if he is dizzy).

In the letter dated December 10, 2014, the general practitioner responded to questions as follows:

- Asked to identify DLA that are restricted continuously, the general practitioner circled meal preparation, basic housework, daily shopping, mobility outside the home and use of transportation. The general practitioner did not circle personal self care, management of medications, mobility inside the home, management of finances or social functioning. In his explanation, the general practitioner wrote: "has chronic back pain, anxiety, vertigo, depression."

- Asked if, in his opinion, the appellant requires help to perform these activities as result of these restrictions, the general practitioner circled yes.
- Asked to explain what kind of help the appellant gets or what activities the appellant is unable to do, the general practitioner wrote: "house chores and finances, mobility outside of home."
- Asked whether, in his opinion, the appellant should be entitled to PWD benefits from the ministry, the general practitioner circled yes.

Need for Help

In the AR, the general practitioner reported that, with respect to the assistance provided by other people, the appellant's family and health authority professionals assist him. In the section of the AR for identifying assistance provided through the use of assistive devices, the general practitioner did not indicate any of the listed devices.

In his self-report, the appellant indicated that:

- He gets or needs help from community agencies, family members, and health professional.

In his Notice of Appeal dated January 7, 2015, the appellant expressed his disagreement with the ministry's reconsideration decision and wrote that he has a severe health condition and that he needs continuous assistance with his DLA.

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

1) Copy of the page from the ministry reconsideration decision with the questions posed to the general practitioner by fax sent on December 22, 2014; and,
2) Letter dated January 9, 2015 from the general practitioner to the ministry with his responses to the questions as follows:

- The reason he did not mention for the appellant to have a scooter is because he believes it would not benefit him but instead aggravate his symptoms by sending his muscles into atrophy. A more reasonable alternative could be a cane at this point in time.
- The appellant has not gone to physiotherapy due to his not being able to afford it.
- Yes, he could benefit from seeing a psychiatrist for his major depressive disorder.
- The appellant has had 10 visits with him at his office or at a walk-in clinic at this point in time, and has been a patient since November 8, 2013.
- The appellant is currently taking medication for his osteoarthritis and another to protect his stomach lining against gastritis.

At the hearing, the appellant's advocate stated that:

- The doctor was not given much time to respond to the ministry's request for further information. He has now responded. This is the most thorough application she has seen where the ministry has denied the PWD designation.
- The ministry infers in the decision that the appellant is not performing his DLA for a reason besides his impairment, because he is male for example, and that is an unfair conclusion.
- There is ample information, given the additional response from the appellant's doctor, to show that the remaining 3 criteria have been met.

At the hearing, the appellant stated that:

- He can walk only a little distance without help. He does not currently use a cane. His doctor said it is better to walk even a little bit on his own.

- He gets vertigo about 3 times a day. He also gets blurry vision some times. He takes medication 3 times per day to help with his dizziness. It lasts for 3 or 4 hours and then he feels dizzy again. He has to sit down when he feels dizzy because he is afraid that he will fall down.
- He drove to the hearing location. His doctor has said it is OK to drive a short distance after he takes the medication, but not long distances.
- He went to see a specialist about his back pain 2 or 3 years ago and, about 4 or 5 times, he had X-Rays taken. He was told that he could have an operation but it was not certain that this would improve his pain. He was told there was a risk that there would be damage to the nerve endings and he decided not to have the operation.
- He takes medication every day for his back pain but also has to take another medication because the medication irritates his stomach. Some days he feels better than other days. Sometimes he can go for about 4 to 5 hours without dizziness or pain.
- He went to a specialist about his feet a few years ago. He decided that he did not want to have the operation that was discussed. He needs shoes.
- His doctor has said he needs to see a psychiatrist and has made the referral but also said it will take a long time to get an appointment. The doctor said "it is not easy" and it could take up to a year. The doctor said that since the appellant is already taking medications for his back pain and dizziness he did not want to prescribe medication for his depression. The doctor said the psychiatrist will decide whether anti-depressant medication is appropriate in his situation.

Admissibility of New Information

The ministry did not object to the admissibility of the fax page or the letter from the general practitioner dated January 9, 2015 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, and is a response to specific questions posed by 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 Section 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:

- Although the general practitioner responded to the ministry's questions, there are still some holes in the information that the ministry would like to have filled to be 'satisfied' that the criteria have been met. The ministry needs to understand the full medical picture.
- Although a PWD designation is open to review by the ministry every 5 years, this does not often occur so it can essentially be a life-time designation, and the ministry proceeds cautiously where the information is not clear.
- The ministry prefers to see all the things that a person has tried for a solution to make him or herself independent, such as medications, surgery, or referrals to specialists. Here, there are no medical reports from specialists.
- The ministry requested clarification from the appellant's general practitioner in an effort to address the holes that were perceived in the information provided in the PWD application.
- It is still not clear why the appellant is not using a cane or a walker to address his balance issues and increase his mobility.
- There does not appear to be a medical intervention for the appellant's depression. He is not taking anti-depressants or going to counseling.

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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 in his back due to osteoarthritis and degenerative disc disease, bilateral foot pain due to plantar fasciitis, and dizziness/vertigo. The advocate argued that the general practitioner assessed the appellant as requiring continuous assistance with walking outdoors, climbing stairs, standing, lifting, carrying and holding due to osteoarthritis and arthritis.

The ministry's position is that there were some apparent inconsistencies in the evidence of the appellant's functional skill limitations and the other evidence provided in the PWD application. The ministry stated that the general practitioner reported that the appellant does not require an aid for his impairment, did not mention any referrals to specialists or how much contact he has had with the appellant, and also did not specify the degree to which medications are available to help with the appellant's symptoms. The ministry argued that, without further clarification as requested from the general practitioner, there is not sufficient information 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 clarified that he has known the appellant since November 2013, diagnosed the appellant with lumbar pain (osteoarthritis and degenerative disc disease) with an onset of the condition in 2014, bilateral foot pain that started in 2012, and dizziness with an onset in 2013. The general practitioner reported in the PR that the appellant can walk less than 1 block unaided ("back pain, foot pain"), can climb 2 to 5 steps unaided ("foot pain"), lift 5 to 15 lbs. ("back pain"), and remain seated less than 1 hour ("back pain"). In the AR, the appellant is assessed as being independent with walking indoors and taking significantly longer than typical, and requiring

continuous assistance from another person with walking outdoors, climbing stairs, standing, lifting and carrying and holding, "due to arthritis, osteoarthritis." The appellant also takes significantly longer than typical with climbing stairs, standing, lifting and carrying and holding. In his self-report, the appellant wrote that he has a difficult time walking or using stairs and he is unable to lift things without pain in his back.

The ministry pointed out that, with these restrictions as described in the PWD application, it would be thought that the appellant would benefit from at least a basic mobility aid such as a cane, but the general practitioner reported that the appellant does not require any prosthesis or aid for his impairment. The ministry requested that the general practitioner explain why the appellant would not benefit from an assistive device. In the letter dated January 9, 2015, the general practitioner wrote that the reason he did not recommend a scooter is because he believes it would aggravate the appellant's symptoms by sending his muscles into atrophy. The general practitioner wrote that "a more reasonable alternative could be a cane at this point in time," but he stopped short of indicating that the appellant requires an assistive device. At the hearing, the appellant stated that he can walk only a little distance without help, his doctor told him it is better to walk even a little bit on his own, and the appellant confirmed that he does not currently use a cane. While the concern about muscle atrophy partially explains the appellant's reluctance to use an assistive device to aid his mobility, the appellant also stated that he gets vertigo and dizziness about 3 times a day and there is no explanation provided for why an assistive device is not needed to maintain his balance.

The ministry pointed out that the general practitioner did not mention referrals to specialists, such as a physical therapist or podiatrist, in the PWD application, nor did he provide any test results such as X-Ray results for the appellant's feet or back. The ministry requested that the general practitioner advise whether the appellant has been referred to or visited any specialists and whether medical reports are available from these specialists. In the letter dated January 9, 2015, the general practitioner wrote that the appellant has not gone to physiotherapy due to his not being able to afford it. While the appellant stated that he went to see a specialist about his back pain 2 or 3 years ago and he had X-Rays taken "4 or 5 times" and that he went to a specialist about his feet a few years ago, the general practitioner did not refer to this specialist referral or the X-Rays although provided an opportunity to do so in the letter and in the health history section of the PR. The information provided by the appellant at the hearing is also not consistent with the report by the general practitioner that the onset for the osteoarthritis and degenerative disc disease was in 2014.

The ministry pointed out that the general practitioner did not mention in the PWD application whether the appellant takes any medications and, if so, to what extent they help alleviate his symptoms. The ministry requested that the general practitioner advise whether the appellant takes medication for any of his diagnoses and, if so, to what degree they help his symptoms. In the letter dated January 9, 2015, the general practitioner wrote that the appellant is currently taking medication for his osteoarthritis and another to protect his stomach lining against gastritis. The appellant stated at the hearing that he takes medication every day for his back pain and sometimes he can go for about 4 to 5 hours without dizziness or pain. Although the appellant also stated at the hearing that he takes medication 3 times a day to help with his dizziness, this has not been confirmed by the general practitioner in the PWD application or in his letter. The appellant stated that he has to sit down when he feels dizzy because he is afraid that he will fall down, but he also admitted that the general practitioner has not prohibited him from driving a vehicle and that he drove to the hearing location.

In the letter dated December 10, 2014, the general practitioner indicated that the appellant has

chronic back pain and vertigo and his opinion is that the appellant has a severe mental and physical impairment that directly and significantly restricts his ability to perform daily living activities continuously or periodically for extended periods. The ministry pointed out that it is not enough for a physician to state a person is severely impaired but, rather, this determination is based on an all-encompassing review of the information in the application and the additional information as a whole. The ministry determined that the answers posed to the general practitioner are essential in determining the severity of the appellant's impairment.

The panel finds that while the general practitioner provided some information in his January 9, 2015 letter, it was not entirely consistent with the information provided by the appellant at the hearing, and questions remain about the appellant's need for an assistive device, involvement by a specialist, and the use and effectiveness of medications. Given these inconsistencies and gaps in the information, despite the ministry providing an opportunity to the appellant's general practitioner to directly address the ministry's concerns, the panel finds that the ministry's determination that there is not sufficient evidence to establish that the appellant has a severe physical impairment under Section 2(2) of the EAPWDA is reasonable.

Severe Mental Impairment

The appellant's position is that he suffers from major depression. The advocate wrote in the submission that the doctor indicated that the appellant has a major impact in 6 areas of social functioning due to major depression and pain. The advocate wrote that the doctor indicated that the appellant needs continuous support with 4 out of 5 areas of social functioning.

The ministry's position is that there is insufficient evidence to establish that the appellant has a severe mental impairment. The ministry argued that the general practitioner reported that there are 6 areas of the appellant's cognitive and emotional functioning to have a major impact on his daily functioning, but the general practitioner also assessed the appellant as marginally functioning and not 'very disrupted' functioning, in both his immediate and extended social networks. The ministry argued that the general practitioner did not mention a referral to a mental health specialist such as a psychiatrist.

Panel Decision

The general practitioner diagnosed the appellant with depression and reported that the appellant has significant deficits with cognitive and emotional function in the areas of memory, emotional disturbance, and attention/concentration, with a comment added that the appellant "has had major depression for 1 year." The general practitioner assessed six major impacts to the appellant's cognitive and emotional functioning in the areas of bodily functions, consciousness, emotion, attention/concentration, memory and motivation and the general practitioner wrote: "symptoms of major depression for one year due to chronic pain and vertigo." In his self-report, the appellant wrote that he suffers from anxiety. He gets nervous, impatient and anxious, which may be from the medication or anxiety, and he does not sleep well.

The ministry pointed out that it would be expected that if the appellant's depression were considered severe, a referral to a mental health specialist for assessment and an action plan would have been put in motion in order for the appellant to get the help he needs (i.e. medication, counseling). The ministry requested that the general practitioner advise whether the appellant has been referred to a psychiatrist or other mental health professional. In the letter dated January 9, 2015, the general practitioner wrote that the appellant "could benefit from seeing a psychiatrist for his major depressive

disorder," but stopped short of indicating that a referral had been made or that other counseling had been recommended or medications prescribed in the meantime. At the hearing, the appellant stated that his doctor has said he needs to see a psychiatrist and has made the referral but also said it will take a long time to get an appointment. The appellant stated that his doctor said that since he is already taking medications for his back pain and dizziness he did not want to prescribe medication for his depression and the psychiatrist will decide whether anti-depressant medication is appropriate.

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 evidence does not clearly indicate that the appellant is significantly restricted in either. With respect to decision making, the general practitioner reported in the AR that the appellant requires continuous assistance from another person with the decision-making components of the DLA of daily shopping (making appropriate choices), and meal preparation (meal planning and safe storage of food). At the same time, the appellant is assessed as being able to independently perform decision-making tasks of managing his medications, namely: taking as directed and safe handling. While the general practitioner reported in the AR that the appellant requires continuous support/supervision from another person with making appropriate social decisions, he indicated in his December 10, 2014 letter that the appellant's social functioning is not continuously restricted. Further, although the general practitioner reported in the AR that the appellant requires continuous assistance from another person with managing his finances (banking, budgeting, pay rent and bills), he also wrote that this is due to his poor English and decreased memory, which makes it difficult to determine how much of the impact to the DLA is as a result of an identified mental impairment as opposed to unrelated language issues.

Regarding the DLA of social functioning, the appellant is assessed in the AR as requiring periodic support/ supervision from another person with developing and maintaining relationships, and continuous support/supervision with interacting appropriately with others and securing assistance from others. The general practitioner did not provide a description in the AR of the degree and duration of the support/supervision required for developing and maintaining relationships and wrote: "decreased self esteem; isolates himself from others." In the letter dated December 10, 2014, when the general practitioner was asked to indicate those DLA for which the appellant is restricted continuously, the general practitioner did not identify social functioning. In the AR, the general practitioner reported that the appellant has marginal functioning in both his immediate and extended social networks and, asked to describe the support/supervision required by the appellant that would help to maintain him in the community, the general practitioner left this section blank.

In the PR, the general practitioner reported that the appellant has difficulty with communication other than a lack of fluency in English, described as "second language." In the AR, the general practitioner indicated that the appellant has a good ability to communicate in hearing and poor ability with speaking, reading and writing, for which the general practitioner commented: "poor English." The panel finds that the ministry reasonably concluded that a language barrier is not considered a mental impairment.

Given the inconsistent and incomplete information regarding the appellant's social functioning, and the apparent misunderstanding by the general practitioner regarding the questions relating to the ability to communicate, as well as the lack of evidence of any mental health interventions to date, 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. The advocate wrote that the appellant's doctor indicated that the appellant needs continuous assistance with laundry, basic housekeeping, going to and from stores, reading prices and labels, making appropriate choices, paying for purchases and carrying purchases home due to chronic pain and vertigo. The advocate wrote that the doctor indicated that the appellant needs continuous assistance with meal planning, food preparation, cooking, safe storage of food, banking, budgeting, pay rent and bills, getting in and out of a vehicle, using public transportation, and using transit schedules due to pain, lack of motivation, and memory issues. The advocate wrote that the doctor indicated that the appellant needs continuous support with 4 out of 5 areas of social functioning.

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 recognized that the general practitioner assessed the appellant as requiring continuous or periodic assistance in a majority of his DLA with comments such as "due to arthritic osteoarthritis", but it is unclear why the appellant does not require at least a basic mobility aid given the degree of restriction described by his doctor. The ministry argued that since the questions posed to the general practitioner had not been answered, the ministry is not satisfied that the information establishes that the appellant has a severe impairment that, in the opinion of a prescribed professional, directly and significantly restricts his ability to perform DLA either 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 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.

In the appellant's circumstances, the general practitioner reported that the appellant has not been prescribed any medications and/or treatments that interfere with his ability to perform DLA. The appellant wrote in his self-report that he gets nervous, impatient and anxious, which may be from the medication or from anxiety, but he does not assert that the medications have an impact on his ability to perform his DLA. In the PR, the general practitioner indicated that the appellant is "unable to do his activities of daily living in a timely fashion. It takes patient 3 times as long to do a daily chore than the average person."

In the AR, the general practitioner reported that the appellant is independent with moving about indoors and requires continuous assistance from another person with walking outdoors. In the PR, the general practitioner reported that the appellant can walk less than a block unaided. In the January 9, 2015 letter the general practitioner wrote that "a more reasonable alternative [than a scooter] could be a cane at this point in time," but the general practitioner did not indicate that the appellant requires an assistive device to aid his mobility, as previously discussed, despite the appellant's reported dizziness due to vertigo.

In the AR, the general practitioner assessed the appellant as taking significantly longer than typical with all assessed tasks of the DLA personal care, and is independent with toileting, and transfers in/out of bed and on/off of chair. He requires periodic assistance from another person with dressing, grooming and bathing, described as "due to chronic, generalized back pain and feet pain, osteoarthritis +++ and vertigo +++." However, the general practitioner did not provide a description of the extent of the periodic assistance required by the appellant and, in the letter dated December 10, 2014, did not circle personal self care as a DLA that is continuously restricted. In his self-report, the appellant wrote that his disability "makes it difficult" for him to manage his personal hygiene and self care (bathe, dress, and get in and out of furniture including his bed). Showering can be difficult if he is dizzy and he cannot stand in the shower for too long due to pain.

For the DLA of basic housekeeping and shopping the appellant takes significantly longer than typical and requires continuous assistance from another person with all tasks "due to chronic, generalized back pain and feet pain, osteoarthritis +++ and vertigo +++." In his self-report, the appellant wrote that It is also difficult for him to keep his home clean (housework and laundry), to shop for personal needs (walking around stores, standing long enough to make good choices and managing line-ups, handling groceries), and his wife does the grocery shopping and goes to the pharmacy to fill his prescriptions. For the DLA meals, the appellant takes significantly longer than typical and requires continuous assistance from another person with each task, described as: "due to decreased energy, decreased motivation, chronic pain." In his self-report, the appellant wrote that his disability makes it difficult for him to prepare and eat meals (food preparation and cooking).

Regarding the DLA pay rent and bills, the appellant takes significantly longer than typical and requires continuous assistance from another person with each task, described as "due to poor English, decreased memory." As previously discussed, the general practitioner's comment makes it difficult to determine how much of the impact to the DLA is as a result of an identified mental impairment as opposed to unrelated language issues. Also, in the letter dated December 10, 2014, the general practitioner did not circle management of finances as a DLA that is continuously restricted. The general practitioner indicated in the AR that the appellant requires continuous assistance from another person with each task of the DLA transportation. In his self-report, the appellant wrote that he has difficulty using public or personal transportation (he cannot drive for too long or if he is dizzy). At the hearing, the appellant stated that the general practitioner has not placed a restriction on his ability to drive a vehicle due to his vertigo, other than to suggest that he not drive for long distances. The appellant is assessed by the general practitioner as independently able to perform all tasks of managing his medications.

In the letter dated December 10, 2014, when asked to indicate the DLA that are restricted continuously, the general practitioner identified meal preparation, basic housework, daily shopping, mobility outside the home and use of transportation. The general practitioner did not circle personal self care, management of medications, mobility inside the home, management of finances or social functioning. This information from the general practitioner is not consistent with his report in the AR that the appellant requires continuous assistance with most tasks of the DLA management of finances and social functioning. The panel finds that while the general practitioner provided some information in his January 9, 2015 letter, questions remain about the appellant's need for an assistive device, involvement by specialists, and the use and effectiveness of medications, and the general practitioner did not take the opportunity to explain some of the noted inconsistencies in his previous assessments.

Considering the evidence of the general practitioner, as the prescribed professional, in the PR, AR, the letter dated December 10, 2014 and the response of January 5, 2015, the panel finds that the ministry's conclusion 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, pursuant to Section 2(2)(b)(i) of the EAPWDA, was reasonable.

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 members, community agencies and health professionals.

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 no assistive devices are required.

Panel Decision

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

The panel finds that the evidence of the appellant's general practitioner, as the prescribed professional, is that the appellant receives assistance from his family and health care professionals and that he does not require an aid for his impairment. In his self-report, the appellant wrote that he gets or needs help from community agencies, health professional, and his family members. The appellant wrote that his wife and children help him with his DLA and he admitted that he does not currently use an assistive device. 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.