

PART C – Decision under Appeal

The decision under appeal is the Ministry of Social Development and Social Innovation (the ministry) reconsideration decision dated March 18, 2015 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 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 dated June 12, 2014, with no self-report provided by the appellant, and a physician report (PR) and assessor report (AR) both dated June 13, 2014 and completed by a general practitioner who has known the appellant for 15 years.

The evidence also included the following documents:

- 1) Letters dated December 12, 2001, January 15, 2002, February 5, 2002, May 15, 2002 and October 30, 2009, from pediatric consultants to the appellant's general practitioner;
- 2) Letter dated July 22, 2009 from the general practitioner to another physician;
- 3) Letter dated October 27, 2009 from the general practitioner to the psychiatrist;
- 4) Outpatient Consultation Report dated November 6, 2009;
- 5) Report dated July 26, 2012 from a Registered Respiratory Therapist addressed to the appellant's general practitioner;
- 6) Letter dated February 4, 2013 from a physician certified in phlebology;
- 7) Letter dated April 8, 2014 from the general practitioner to a psychiatrist;
- 8) Completed Patient Health Questionnaire dated April 8, 2014;
- 9) Hematology Report dated April 8, 2014;
- 10) Summary Report dated April 24, 2014 from the psychiatrist;
- 11) Letters dated November 2, 2009, November 23, 2009, April 23, 2014, and May 21, 2014 from the psychiatrist to the general practitioner;
- 12) Medical Report- Employability dated June 13, 2014; and,
- 13) Request for Reconsideration dated March 11, 2015 with the following attached documents:
 - Additional handwritten pages; and,
 - Letter dated February 24, 2015 from a dermatologist.

Diagnoses

In the PR, the appellant was diagnosed by the general practitioner with ADHD [attention deficit hyperactivity disorder], depression, and drug use, all categorized as "other" mental disorders. The appellant is also diagnosed with severe acne, with a date of onset as 2008. In the AR, in response to a request to describe the impairment that impacts the appellant's ability to manage daily living activities, the general practitioner wrote that the appellant is "in constant pain; does not feel comfortable around others. Rarely leaves home."

Physical Impairment

In the PR, the general practitioner reported that:

- In terms of health history, the appellant "has severe acne on his chest which causes him discomfort. Sees dermatologist regularly and is on [medication]"
- 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 unaided, climb 5 or more steps unaided, has no limitation with lifting and can remain seated for 2 to 3 hours.
- In the additional comments, the appellant is "very self-conscious re: acne."

In the AR the general practitioner indicated that:

- The appellant is assessed as being independent in all aspects of mobility and physical ability, specifically with walking indoors and walking outdoors, climbing stairs, standing, lifting and

carrying and holding.

- No assistive devices are indicated in the section of the AR relating to assistance provided and this section has been crossed out and marked “NA,” or not applicable to the appellant.

In his Request for Reconsideration submission, the appellant wrote that:

- Most days his acne is debilitating as he gets good-sized boil-like acne, mainly in his groin, armpits and back of neck areas.
- He has to wear loose underwear and not move around too much as it is very painful.
- They last for about a week, but as one is settling down another pops up and most of the time he has multiple ones in different areas.
- He has been seeing a dermatologist for over a year now with no results. She has recently referred him to another dermatologist and his appointment is in July 2015.
- He has been seeing a naturopath for about 4 months and has seen no results.
- He cannot work at this time.

In the report dated July 26, 2012, the Registered Respiratory Therapist provided an opinion based on a sleep test that the appellant's results were within the normal range.

In the letter dated February 4, 2013, the physician certified in phlebology wrote that the appellant's diagnosis is acne evident on his chest, underarms, groin: red nodules scattered, no tracts.

In the Medical Report- Employability dated June 13, 2014, the general practitioner reported that the appellant's secondary medical condition is severe acne.

In the letter dated February 24, 2015, the dermatologist wrote that:

- The appellant has treatment-resistant inflammatory scarring acne and hidradenitis super T Eva (sic) and, due to the location of these lesions (i.e. body folds), he is temporarily unable to work until the condition is improved.
- The days of improvement are not known as it depends on how his body heals.

Mental Impairment

In the PR, the general practitioner reported:

- In terms of the appellant's health history, the appellant uses marijuana every day. He has decreased motivation, decreased focusing and decreased energy.
- The appellant has no difficulty with communication.
- The appellant has significant deficits with cognitive and emotional function in 3 of the 11 listed areas, specifically: memory, emotional disturbance, motivation and attention or sustained concentration, with a comment added that the appellant “has decreased attention span, suffers from anxiety, and has poor memory.”
- In the additional comments, that the appellant has been referred to a psychiatrist, has seen pediatricians in the past, he dropped out of high school as he could not keep up with his studies.

In the AR, the general practitioner indicated that:

- The appellant has a good ability to communicate in speaking and hearing, but is poor with reading and writing, described as “writing is shaky. Does not know how to handwrite properly.”

- There are four major impacts to the appellant's cognitive and emotional functioning in the areas of emotion, attention/concentration, memory and motivation. There are no moderate impacts to any areas of cognitive and emotional functioning. There are minimal or no impacts assessed for the remaining nine areas of functioning. The general practitioner commented that the appellant "worries constantly, +OCD [obsessive compulsive disorder]. Patient does not want to leave home. Unable to maintain a job. Worries and feels anxious. Difficulty with insomnia, fatigue. Decreased energy, decreased memory and feels sad. Impulsive at times. Lacks motivation. Difficulty completing tasks. Stutters occasionally."
- With respect to social functioning, the appellant is independent with making appropriate social decisions and requires continuous support/supervision with developing and maintaining relationships (note: "does not have many friends- '2'"). He also requires periodic support/supervision with interacting appropriately with others and dealing appropriately with unexpected demands. There is no assessment for the appellant's ability to secure assistance 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 wrote "patient keeps to himself."
- In the additional comments, that the appellant "is struggling... has symptoms of depression, OCD, anxiety, decreased intellect and drug usage. Keeps to himself. Very little friends. Rarely goes out of home on his own."

In the dated letters, the pediatric consultants wrote that it appears that the appellant has some learning difficulties, that the psycho-educational assessment showed an IQ in the borderline range. His cognitive testing showed him to be in the borderline range, but no specific learning disability. The testing needs to be updated.

In the letter dated April 8, 2014 to the psychiatrist, the general practitioner wrote that:

- The appellant admits he is struggling, that he feels sad and has poor ambition.
- He has trouble focusing and concentrating. He stays in the house all day and has very little in the way of friends. He has difficulty with sleep disturbances and has no energy.
- The appellant has a poor attention span and is starting to feel anxious.
- He is smoking dope every second day or two but this is minimal and not like it used to be.

In his letter dated April 23, 2014, the psychiatrist wrote that:

- The appellant's score was in the severely depressed range. Although anti-depressants were prescribed, the appellant said he could not take this medication with the medication for his acne, although the psychiatrist is not aware of this contraindication.
- He recommended that the appellant stop smoking cannabis but the appellant's mother says it is not likely. He made them aware of the alcohol and drug clinic.
- He recommended a wellness program but the appellant said he would not like to talk to other people.
- In summary, every suggestion made was "shot down."

In his letter dated May 21, 2014, the psychiatrist wrote that:

- The appellant stated he did not intend to quit cannabis.
- The appellant's active problems are ADD, major depressive disorder, and cannabis

dependence.

In the Medical Report- Employability dated June 13, 2014, the physician reported that the appellant's primary medical conditions are drug use, depression, anxiety and OCD.

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 is independent with moving about indoors and outdoors.
- The appellant is independent with all tasks of the DLA personal care.
- The appellant needs continuous assistance with all tasks of basic housekeeping, described as "needs guidance and help from mother."
- The appellant requires continuous assistance with all tasks of the DLA shopping, with a comment: "all done by his mother; does not shop."
- The appellant requires continuous assistance with all tasks of the DLA meals, described as: "mother looks after all cooking, etc."
- The appellant requires continuous assistance with all tasks of the DLA pay rent and bills, with the comment: "all looked after by mother."
- For the DLA medications, the appellant requires continuous assistance with filling/refilling prescriptions (note: "mother fills") and he is independent with taking his medication as directed and with safe handling and storage.
- The appellant is independent with getting in and out of a vehicle, but requires continuous assistance with using public transit and using transit schedules and arranging transportation, described as: "does not use, not comfortable around other people."

In his Request for Reconsideration submission, the appellant wrote that he cannot work at this time due to his acne.

Need for Help

In the AR, the general practitioner reported that, with respect to the assistance provided by other people, the appellant's mother "is instrumental in caring for his needs." In the section of the AR for identifying assistance provided through the use of assistive devices, the general practitioner crossed out this section and marked it "N/A", or not applicable to the appellant.

Appellant's additional information

In his Notice of Appeal dated March 25, 2015, the appellant expressed his disagreement with the ministry's reconsideration decision and wrote that he feels that it is not being recognized where his severe acne is location on his body. This makes it impossible for him to hold down a job. He uses marijuana for pain and not every day.

At the hearing, the appellant provided three photographs of different areas of his body. The first photograph showed a lump under the skin, surrounded by scarring and discolouration of the skin. The second photograph showed a hole in the skin and profuse bleeding into a towel, and the third photograph showed a bright red rash in and surrounding the armpit area.

At the hearing, the appellant and his mother stated that:

- The ministry does not seem to have appreciated the severity of the appellant's acne. The dermatologist has been "stumped" since she has treated the appellant for over a year with a [strong acne medication] and it is not helping. She has run out of treatment options.
- They went to a naturopath and discovered that the appellant has problems with wheat and corn, and stomach problems with dairy, and eliminating these foods has "toned down" the acne but not cured it.
- The appellant gets acne on the back of his neck and in chest areas that are not normal for acne. The boils on the back of his neck will "ooze" and he needs to use a rag to absorb the discharge.
- The appellant has been referred to a dermatologist who does research and his appointment is in July 2015.
- He is not able to work because the acne consists of large boils which are extremely painful. Also, he also cannot be in the sun for more than 5 minutes without burning because of the side effects of the acne medication.
- Referring to the photographs, it shows the large size of the boils, which are sometimes the size of a tooney. A lot of the time it is too painful to dress and the appellant will wear only his underwear. When he pops the boils, they often bleed as shown in one of the photographs of the boil in his groin area or the crease of his leg. He has had boils that seem to cover his whole chest. One photograph shows the "cherry red" rash which covers the whole area around his armpit and down his side.
- They wanted the ministry and the panel to understand that the acne makes it uncomfortable for the appellant to wear clothing and, sometimes, to move because of the location in the folds of the body.
- The acne has "calmed down" a little after seeing the naturopath since eliminating some foods has helped and there is less inflammation. It gets expensive for the family because he has to eat special food which is gluten and dairy free.
- About 80% of the time the appellant has very bad boils. When they are in his groin area he cannot walk. This is a problem because he will only be able to get a laboring job and not one where he can sit down.
- The appellant also gets an odour from profuse sweating, as a side effect of his medication, and he cannot wear anti-deodorant so it makes it even more challenging with getting a job.
- The medication he is taking for the acne is also quite harsh and the appellant worries about the effect on his liver, which already has problems. His skin also gets dry because of the medication and he gets flaking skin sometimes on the back of his knee and on his face.
- They are hopeful that someone will figure out how to "fix" his acne but, in the meantime, he needs financial assistance because he cannot work.
- The appellant could only work on days when he has no flare-ups of his acne. On the days when he has the "bad ones", he will be lying in bed and needs help with everything.
- Since the appellant cannot go out of the house, his mother does the shopping. She also cooks the meals for the family.
- When the acne flares up, the appellant will not shower because it is painful to even have the water touch his skin.
- He can only walk 4 or more blocks if he does not have the boils in his groin area and there is no sun. Out of a month, he will have boils in his groin area "for a week or two," then they will go away for about 5 days, and then they are back again. He would only get about a week or a week and a half of relief in the month where he can walk around. Then his friends will pick him

up or his mother will drive him and he can go out.

- The last time the appellant worked, it was at a job where he was permitted to miss occasional shifts and to wear baggy sweatpants to work.
- Although the forms completed for the PWD application seem to stress that the appellant has depression, the appellant does not have full-blown depression. He is depressed because he does not go out with his friends and does not have a girlfriend but he is normally a happy person. He is currently sad because he cannot lead a normal life because of his acne. He cannot do many things. His friends will ask him to go to the beach but he cannot go in the sun. They might ask him to help someone move or to watch a movie but sometimes he cannot go. If he has acne in his arm pits he cannot lift heavy things.
- He has two friends, one of whom he sees 2 or 3 times a month and the other one he seeks only on the weekends. Much of the time he feels alone in his room by himself. He no longer engages in any self harm.
- The appellant does not want to take antidepressant medications prescribed by the psychiatrist, although he is taking a medication that helps with depression and another medical condition, and he does not want to go to social meetings to meet new people when he is happy with the couple of friends that he currently has and who he would see more of if he did not have the acne.
- The appellant saw pediatricians because his doctor diagnosed him with borderline intellectual functioning and suspected learning disabilities in school, and he was diagnosed with ADHD. This shows that it is not reasonable to expect the appellant to have a “sit down office job” but is not the reason that he is claiming the PWD designation.

Admissibility of Additional Information

The ministry did not object to admitting the three photographs provided by the appellant and did not raise an objection to the oral testimony on behalf of the appellant. The panel considered the photographs and the testimony on behalf of the appellant as additional information that corroborates the extent of the appellant’s impairment as diagnosed in the PWD application, which 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 the 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 and did not provide any additional evidence.

PART F – Reasons for Panel Decision

The issue on 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) and (2) of the EAPWDR provide definitions of DLA and prescribed professionals 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.
- (2) For the purposes of the Act, "prescribed professional" means a person who is
- (a) authorized under an enactment to practise the profession of
 - (i) medical practitioner,
 - (ii) registered psychologist,
 - (iii) registered nurse or registered psychiatric nurse,
 - (iv) occupational therapist,
 - (v) physical therapist,
 - (vi) social worker,
 - (vii) chiropractor, or
 - (viii) nurse practitioner, or
 - (b) acting in the course of the person's employment as a school psychologist by
 - (i) an authority, as that term is defined in section 1 (1) of the Independent School Act, or
 - (ii) a board or a francophone education authority, as those terms are defined in section 1 (1) of the School Act, if qualifications in psychology are a condition of such employment.

Severe Physical Impairment

The appellant's position is that a severe physical impairment is established by his inability to function normally due to constant pain from severe acne. In his Request for Reconsideration, the appellant argued that most days his acne is debilitating as he gets good-sized boil-like acne, mainly in his groin, armpits and back of neck areas. The appellant argued that he can only wear loose underwear and he cannot move around too much as it is very painful. The appellant argued that he has been seeing a dermatologist for over a year and his acne has been resistant to treatment.

The ministry's position is that while the ministry acknowledged that the appellant may encounter some limitations due to the discomfort and pain from his severe acne, the evidence does not demonstrate a severe physical impairment. The ministry argued that the appellant does not use or require any prostheses, aids or assistive devices and he has no limitations with walking, climbing stairs, lifting or sitting (2 to 3 hours) and has been assessed as independent in all areas of mobility and physical ability.

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 appellant’s long-time general practitioner and the dermatologist.

The general practitioner, who has known the appellant for 15 years, diagnosed the appellant with severe acne with an onset in 2008, commenting that the appellant “has severe acne on his chest which causes him discomfort” and he “sees dermatologist regularly and is on [medication].” In the additional comments to the PR, the general practitioner wrote that the appellant is “very self-conscious re: acne.” In the AR, in response to a request to describe the impairment that impacts the appellant’s ability to manage daily living activities, the general practitioner wrote that the appellant is “in constant pain” he “does not feel comfortable around others” and he “rarely leaves home.” In the Medical Report- Employability dated June 13, 2014, the appellant’s general practitioner reported that severe acne is the appellant’s secondary medical condition and that his mental health issues are his primary medical condition. The general practitioner reported in the PR that the appellant does not require any prosthesis or aid for his impairment and, in terms of functional skills, the appellant is assessed as able to walk 4 or more blocks unaided, climb 5 or more steps unaided, has no limitation with lifting and can remain seated for 2 to 3 hours.

In his Request for Reconsideration, however, the appellant wrote that most days his acne is debilitating as he gets good-sized boil-like acne, mainly in his groin, armpits and back of neck areas. At these times, he has to wear loose underwear and not move around too much as it is very painful. At the hearing, the appellant stated that on the days when he has the “bad” boils, he lies in bed and needs help with everything. He can only walk 4 or more blocks if he does not have the boils in his groin area and there is no sun. Out of a month, he will have boils in his groin area “for a week or two,” then they will go away for about 5 days, and then they are back again. He would only get about a week or a week and a half of relief in the month where he can walk around and possibly be available for a labouring job. The appellant stated at the hearing that if he has acne in his arm pits he cannot lift heavy things. The photographs presented by the appellant at the hearing showed lumps and lesions, bleeding and inflammation that indicated a serious skin condition. The appellant and his mother also indicated at the hearing that the change in diet recommended by the naturopath had “toned down” the condition and provided some relief. While reporting that the appellant is in pain with his acne, the long-time general practitioner assessed him as being independent with walking indoors and walking outdoors, climbing stairs, standing, lifting and carrying and holding, and did not confirm periods of flare-ups or exacerbations to the impact of the acne whereby the appellant’s mobility and physical abilities are significantly diminished.

The dermatologist indicated, in the letter dated February 24, 2015, that due to the location of the lesions in the appellant’s body folds, he is temporarily unable to work until the condition is improved and the “days of improvement” are not known as it depends on how his body heals. As for searching for work and/or working, the panel finds that the ministry reasonably determined that that employability is not a criterion in section 2(2) of the EAPWDA nor is it listed among the prescribed daily living activities in section 2 of the EAPWDR. Given the emphasis on the impact to the appellant’s ability to work and the absence of a confirmation from the appellant’s long-time general practitioner or the dermatologist of the extent of any exacerbations to his acne, 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 his ADHD is a reason for his inability to hold a "desk" job, he uses marijuana for pain and not every day, and he is depressed only to the extent that he cannot live a normal life due to his severe acne. The appellant argued that his severe acne is his primary medical condition and that his depressed mood is a result of being housebound most of the time due to the pain caused by his severe acne.

The ministry's position is that although the appellant has a multiple mental health barriers, there is insufficient evidence to establish that the appellant has a severe mental impairment as required by Section 2(2) of the EAPWDA. The ministry argued that while the general practitioner reported that there are significant deficits in several areas of the appellant's cognitive and emotional functioning, the reports do not diagnose a learning disorder and full psychological assessment has not been completed. The ministry argued that there are treatment options available for cannabis dependence that may offer a significant improvement to the appellant's overall health and reduce depression.

Panel Decision

The general practitioner diagnosed the appellant with "other" mental disorders, specified as ADHD depression and drug use, and did not use the diagnostic codes for mood or anxiety disorders or substance-related disorders, although the general practitioner indicated in the Medical Report-Employability dated June 13, 2014 that these are the appellant's primary medical conditions. The general practitioner, who has known the appellant for 15 years, wrote in the health history portion of the PR that the appellant uses marijuana every day and he has decreased motivation, decreased focusing and decreased energy. He assessed the appellant with significant deficits with cognitive and emotional function in 3 of the 11 listed areas, specifically: memory, emotional disturbance, motivation and attention or sustained concentration, with a comment added that the appellant "has decreased attention span, suffers from anxiety, and has poor memory."

The general practitioner further assessed four major impacts to the appellant's daily cognitive and emotional functioning in the areas of emotion, attention/concentration, memory and motivation. There are no moderate impacts to any areas of cognitive and emotional functioning and there are minimal or no impacts assessed for the remaining nine areas of functioning. The general practitioner commented that the appellant "worries constantly, +OCD. Patient does not want to leave home. Unable to maintain a job. Worries and feels anxious. Difficulty with insomnia, fatigue. Decreased energy, decreased memory and feels sad. Impulsive at times. Lacks motivation. Difficulty completing tasks. Stutters occasionally." In the additional comments to the PR, that the appellant has been referred to a psychiatrist.

In his letters dated April 23, 2014 and May 21, 2014, the psychiatrist wrote that, according to the appellant's score on a questionnaire, was in the severely depressed range. However, every suggestion for treatment made by the psychiatrist was "shot down" by the appellant as he said he could not take anti-depressant medications, he does not intend to quit smoking cannabis and was not interested in the wellness program. The psychiatrist identified the appellant's active problems as ADD, major depressive disorder and cannabis dependence. At the hearing, the appellant explained that he does not want to take depression medications prescribed by the psychiatrist, although he is taking a medication for another medical condition that also helps with depression, because he is worried about the interaction with his acne medication, which he feels is already causing problems

with his liver. He does not want to go to social meetings to meet new people when he is happy with the couple of friends that he currently has and who he would see more of if he did not have acne. The appellant's mother stated that the appellant is only sad because he cannot lead a normal life because of his acne.

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 with the decision-making components of the DLA of daily shopping (making appropriate choices), meal preparation (meal planning and safe storage of food), managing his finances (banking, budgeting, pay rent and bills), and transportation (using transit schedules and arranging transportation); however, the appellant's mother stated at the hearing that she does the shopping and other tasks in the community when the appellant is unable to leave the house due to his acne. The appellant is assessed as independent with the decision making components of managing his medications, specifically taking his medications as directed and safe handling and storage. The general practitioner also reported in the AR that the appellant is independent with making appropriate social decisions.

Regarding the DLA of social functioning, the appellant is assessed in the AR as requiring continuous support/ supervision from another person with developing and maintaining relationships, described as only having two friends. At the hearing, the appellant explained that he would spend more time with these friends if he did not have flare-ups of his acne. The general practitioner assessed the appellant as requiring periodic support/supervision with interacting appropriately with others and dealing appropriately with unexpected demands, but did not provide additional comments to allow for a determination of the extent of the support required. While the appellant is reported to have marginal functioning in both his immediate and extended social networks, the general practitioner also reported that the appellant's mother is "instrumental" in caring for his needs. The general practitioner reported in the PR that the appellant has no difficulty with communication and, in the AR, that the appellant has a satisfactory ability to communicate in speaking and hearing but poor reading and writing, described as not knowing how to handwrite properly.

While the psychiatrist confirmed the diagnoses of ADD, major depressive disorder and cannabis dependence, both he and the general practitioner emphasized the detrimental impact of cannabis dependence, for which there are treatment options that the appellant does not wish to pursue. Given the inconsistency of the information provided by the general practitioner, the psychiatrist and the appellant and his mother regarding the impacts to the appellant's social, cognitive and emotional 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, specifically his mother. In his Request for Reconsideration submission and at the hearing, the appellant argued that he cannot work at this time due to his acne.

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 the appellant has severe acne and some mental impairment but argued that he is fully independent in his personal care, mobility and physical functioning. The ministry recognized that the general practitioner assessed the appellant as receiving continuous assistance from his mother with meals, paying rent and bills, and filling prescriptions, and argued that it is not clear nor explained why the appellant's impairment would prevent him from completing these tasks as he has no significant physical or cognitive impairment. The ministry argued that being withdrawn and rarely leaving the home, in and of itself, is not a significant restriction to the appellant's overall DLA.

Panel Decision

Section 2(2)(b) of the EAPWDA requires that a prescribed professional provide an opinion that an applicant's severe impairment directly and significantly restricts his DLA, continuously or periodically for extended periods. In this case, the general practitioner, the psychiatrist, and the dermatologist are 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 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. In the AR, the general practitioner reported that the appellant is independent with moving about indoors and outdoors and with all tasks of the DLA personal care. At the hearing, the appellant stated that when his acne flares up, he will not shower because it is too painful to even have the water touch his skin, but he did not refer to any assistance required with personal care. The general practitioner indicated that the appellant requires continuous assistance with all tasks of the DLA basic housekeeping, shopping, meals, and paying rent and bills. For the DLA medications, the appellant requires continuous assistance with filling/refilling prescriptions and he is independent with taking his medication as directed and with safe handling and storage. At the hearing, the appellant's mother stated that she performs tasks in the community for the appellant as he often has flare-ups of his acne and is unable to leave the home and that she makes meals for the family. For all of these DLA, the general practitioner wrote that the appellant's mother "looks after" them, and the panel finds that the ministry reasonably concluded that it is not clear from the available evidence whether the appellant "requires" this assistance as opposed to simply "receiving" the assistance from his mother, given the independence assessed by the general practitioner to the appellant's mobility and physical abilities.

In his Request for Reconsideration submission and at the hearing, the appellant and his mother argued that he cannot work at this time due to his acne. In the letter dated February 24, 2015, the dermatologist wrote that due to the location of the appellant's lesions (i.e. body folds), he is temporarily unable to work until the condition is improved and the days of improvement are not known as it depends on how his body heals. As previously discussed, employability is not a criterion in section 2(2) of the EAPWDA nor is it listed among the prescribed daily living activities in section 2 of the EAPWDR. As also previously discussed, the evidence does not clearly indicate that the appellant is significantly restricted in either DLA specific to mental impairment, namely decision making or social functioning. Considering the evidence of the prescribed professionals, the general practitioner, the psychiatrist, and the dermatologist, the panel finds that the ministry was reasonable to conclude 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.

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 his mother.

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.

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 one of the prescribed professionals, is that the appellant receives assistance from his mother, who "is instrumental in caring for his needs." In the section of the AR for identifying assistance provided through the use of assistive devices, the general practitioner crossed out this section and marked it "N/A", or not applicable to the appellant. The dermatologist did not refer to help provided to the appellant and the psychiatrist wrote that his referrals to health professions to help with the appellant's conditions, including the alcohol and drug clinic and the wellness program, were discounted by the appellant. 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 pursuant to Section 2(2) of the EAPWDA was reasonably supported by the evidence, and therefore confirms the decision.