APPEAL #

PART C – Decision under Appeal

The decision under appeal is the Ministry of Social Development and Social Innovation (the ministry) reconsideration decision dated April 16, 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 December 5, 2014, with no self-report provided by the appellant, and a physician report (PR) and assessor report (AR) both dated December 10, 2014 and completed by a general practitioner who has not reported how long she has known the appellant.

The evidence also included the following documents:

1) Undated Request for Consultation from the general practitioner to psychiatry to assess the appellant with longstanding depression and gambling issues;
2) Letter dated July 14, 2014 from an endocrinologist to the appellant's general practitioner;
3) First page of two-page letter dated August 6, 2014 from the endocrinologist to the general practitioner;
4) Medical Imaging Report dated November 25, 2014 for a contrast-enhanced CT scan of the abdomen and pelvis for a history of abdominal pain;
5) Discharge Summarization Note dated December 11, 2014 for hospital admission October 22 to 24, 2014;
6) Discharge Summarization Note dated December 11, 2014 for hospital admission November 25 to December 1, 2014 due to abdominal pain;
7) Consultation Note for endocrinology service in hospital dated December 11, 2014;
8) Outpatient Clinic Consultation Note dated December 11, 2014; and,
9) Request for Reconsideration dated March 5, 2015.

Diagnoses

In the PR, the appellant was diagnosed by the general practitioner with depression gambling addiction with an onset in January 2010, hyperaldosternonism and left adrenal removed in June 2014, DM [diabetes mellitus] since 2009 and high blood pressure.

Physical Impairment

In the PR, the general practitioner reported that:

- In terms of health history, the appellant "has chronic abdominal pain, increased dose morphine, history of aldosternonism, left adrenal removed, now increased abdominal pain will have right adrenal out. Diabetes and high blood pressure."
- The appellant does not require any prosthesis or aid for his impairment.
- In terms of functional skills, the appellant can walk less than one block unaided, cannot climb any steps unaided, has no limitation with lifting and can remain seated for 1 to 2 hours.
- In the additional comments, the appellant is "financially destitute."

In the AR the general practitioner indicated that:

- The appellant is assessed as requiring periodic assistance with most aspects of mobility and physical ability, specifically with walking indoors and walking outdoors, climbing stairs, standing, and lifting. He requires continuous assistance with carrying and holding. The general practitioner did not add any comments in this section.
- No assistive devices are indicated in the section of the AR relating to assistance provided and the general practitioner indicated none applied but also wrote "?cain" (sic).

In the Discharge Summarization Note dated December 11, 2014 for hospital admission October 22 to

24, 2014, the physician notes included:

- The appellant had been feeling unwell for approximately 24 hours prior to coming in. He described episodes of chest discomfort with nausea, vomiting, and diaphoresis.
- The appellant was found to be quite hypertensive.
- He was seen by endocrinology who suspected that he continues to have hyperaldosteronism.
- His symptoms seemed to resolve while in hospital and he was able to ambulate around with no significant limitation.

In the Discharge Summarization Note dated December 11, 2014 for hospital admission November 25 to December 1, 2014, the physician notes included:

- The appellant has a history of chronic abdominal pain which the appellant feels is secondary to his endocrine disease. He has known hyperaldosteronism for which he had a left adrenalectomy in July 2014.
- The appellant stated that his abdominal pain resolved for approximately a month and then it began to recur.
- Given the normal CT scan, acute pancreatitis was ruled out as the cause of the appellant's pain.
- Given the history of dyspepsia, the appellant was offered a GI consult to consider a repeat scope but he declined as he is quite convinced that this pain is from his endocrine issues.
- He wants to follow up with his endocrinologist for consideration of right adrenalectomy in the hopes that this will cure his pain.
- In the meantime, his pain had largely settled on hydromorphone and he could tolerate eating.

In the Consultation Note for endocrinology service in hospital dated December 11, 2014, the endocrinologist's notes included:

- He has the notes from the appellant's usual endocrinologist.
- The appellant had a laparoscopic left adrenalectomy in June 2014 and the final pathology showed adrenal cortical hyperplasia with no evidence of adenoma. The endocrinologist found a thyroid mass and it was recommended that he have a right thyroid lobectomy and the appellant saw the surgeon but was at a loss to follow up.
- Meanwhile, the appellant has suffered from a number of drug dependencies and he became dependent on narcotics at some point but was able to completely withdraw narcotics despite some withdrawal symptoms of abdominal pain and has been narcotics-free for some months.
- Given that the appellant is presenting with hypertension, with his history, it is suggestive that he continues to have hyperaldosteronism of significance.
- Cardiology has been advised about the fairly high cardiovascular risk associated with hyperaldosteronism, more than would be expected simply for the hypertension itself.
- However, it is felt that the appellant's presenting event was not related to significant myocardial ischemia.
- The appellant is very well aware that his thyroid nodule is high risk for thyroid cancer and should be removed.

Mental Impairment

In the PR, the general practitioner reported:

- In terms of health history, the appellant has had "longstanding depression and anxiety dating

back to 1988; last 5 years increased gambling and increased dysphoria."

- The appellant has no difficulty with communication.
- The appellant has significant deficits with cognitive and emotional function in 6 of the 11 listed areas, specifically: executive, memory, emotional disturbance, motivation, impulse control, and attention or sustained concentration, with a comment added that the appellant is on medication for anxiety.
- In the additional comments, the appellant is "financially destitute; dysphoria due to anxiety; can't organize, stay on task."

In the AR, the general practitioner indicated that:

- The appellant has a good ability to communicate in speaking and a satisfactory ability with hearing, but is poor with reading (note: "can't concentrate") and writing (note: "can't stay on task").
- There are no major impacts to the appellant's cognitive and emotional functioning but there are moderate impacts in the areas of bodily functions, consciousness, emotion, attention/concentration, executive, memory, motivation, motor activity, language, psychotic symptoms, other neuropsychological problems, and other emotional or mental problems. There are minimal impacts assessed for the remaining two areas of functioning. The general practitioner commented that the appellant is "very disorganized (illegible), tries but doesn't complete tasks."
- With respect to social functioning, the appellant requires periodic support/supervision in all areas, specifically: with making appropriate social decisions, developing and maintaining relationships, interacting appropriately with others, dealing appropriately with unexpected demands (note: "good friend") and securing assistance from others (note: "tends to isolate").
- 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 "yes ADL (illegible)."

Daily Living Activities (DLA)

In the PR, the general practitioner indicated that:

- The appellant has been prescribed medications that interfere with his ability to perform daily living activities as he has "severe abdominal pain, huge dose morphine now (illegible)/ also severe depression, hard to stay on task, can't organize himself."

In the AR, the general practitioner reported that:

- The appellant requires periodic assistance with moving about indoors and outdoors, with no further comments provided.
- The appellant is independent with most tasks of the DLA personal care and requires periodic assistance with dressing and bathing; however, no further comments are provided.
- The appellant needs periodic assistance with all tasks of basic housekeeping, with no description or explanation provided.
- The appellant requires periodic assistance with all tasks of the DLA shopping, with an additional comment that the appellant "needs help with support and ADL."
- The appellant requires periodic assistance with most tasks of the DLA meals, and is independent with safe storage of food. No description or explanation is given by the general practitioner.

- The appellant requires periodic assistance with banking and paying rent and bills and continuous assistance with budgeting for the DLA pay rent and bills, with no comments provided.
- For the DLA medications, the appellant requires periodic assistance with filling/refilling prescriptions, taking his medication as directed and with safe handling and storage, with a comment added that he has "decreased concentration."
- The appellant also require periodic assistance with all tasks of the DLA transportation, specifically: getting in and out of a vehicle, using public transit, and using transit schedules and arranging transportation. No description or explanation is provided by the general practitioner.

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 friends provide that assistance. In the section of the AR for identifying assistance provided through the use of assistive devices, the general practitioner indicated that there are no applicable items and also wrote: "?cain" (sic).

Appellant's additional information

In his Notice of Appeal dated April 28, 2015, the appellant expressed his disagreement with the ministry's reconsideration decision and wrote that he requires 24/7 pain medication to enable a level of daily living. Without this pain medication, he would be hospitalized. The pain intensity has been increasing every month. His doctor appears to have not been clear on this situation. She has been his doctor for 20 years.

At the hearing, the appellant provided a letter dated March 31, 2015 from his endocrinologist to a community advocate. The endocrinologist's comments included:

- Post left adrenalectomy July 3, 2014, the appellant reported resolution of abdominal pain . Halfway through September 2014 he started to experience occasional abdominal pain with eating. The pain progressively worsened in intensity.
- He presented to ER several times for abdominal pains. During this time, he was found to have subclinical hypothyroidism and vitamin D deficiency, but these do not explain the abdominal pains.
- A CT angiogram of the abdomen and pelvis January 2015 reports no cause for the appellant's pain or other significant abnormality identified.
- He has been unable to find an endocrine cause for his abdominal pain. He has no follow-up currently booked.

At the hearing, the appellant stated that:

- He feels that his doctor provided vague answers to many questions and he attended the hearing to provide further information. It seemed like his doctor did not like filling out the forms and was in a hurry to get through the reports. He met with her for about half an hour and she did not ask many questions because she is familiar with his situation and always gets the reports from the endocrinologist and the hospital. He did not see the reports before they were submitted to the ministry. He did not complete the self-report because he assumed that his doctor could give a more complete description of his problems.
- Since 2012 he has been trying to solve the problem of his abdominal pain. He has seen an endocrinologist and a gastroenterologist and they still do not know what is causing the pain.
- His abdominal pain is becoming more severe and he feels that he will eventually be

hospitalized. He has become reliant on pain medications and he cannot do anything.

- His daily life is severely limited and his young adult son had to move in with him to help him out. He cannot do any grocery shopping and his son does this. He tried going grocery shopping but after 20 minutes he was in pain, sweating, and exhausted and sat in the car.
- He is very limited with doing any laundry or household chores. As soon as he starts to do something, the pain increases until he has to sit down. His son prepares 95% of the meals. His son "spots" him when he is having a shower because he has had problems before. He can only stand for about half an hour to do the dishes and then his pain becomes too severe to continue.
- He feels it is a huge responsibility and burden on his son to be helping him so much and basically taking care of him. It is also a financial strain on him and his son. Since January, his son has been taking over more and more. He pays all the bills and drives him places because he cannot drive when taking these pain medications.
- It is almost impossible for him to climb stairs. If he walks a block, he needs to stop and rest.
- His doctor knows of the intensity of his pain and that it is becoming more severe. The dosage of his pain medications have been increased recently and will have to be increased again. The general practitioner has been his family doctor for 20 years.
- He has had to go to emergency several times, about 6 times in the last 18 months, just to get the pain to a level where he can eat again. His pain level is about 4 out of 10, with 10 being the highest level, all of the time. When he eats, the pain goes to 6 or 7 out of 10.
- He gets night sweats that have been attributed to the pain as well.
- He has gone through so many tests he feels like every area of his body has been probed. He had an endoscopic ultrasound at the end of April 2015 and there was nothing unusual found.
- He is unable to work. He can only sit for about one hour and then he has to move around.
- He has been diagnosed with depression and anxiety. It is frustrating not knowing what to do next. He is on a one-year waiting list for a pain clinic.
- They have ruled out an endocrine problem since the pain returned after the adrenal gland was taken out. This seems to have cured his diabetes though as his glucose levels have settled within the normal range.
- He is currently taking medications for anxiety, pain management, an anti-depressant, for high blood pressure and high cholesterol.
- Although he used a cane for a couple of months after his surgery, he no longer uses a cane.
- Some weeks the pain is "really bad" and other weeks are not as bad. He usually takes his pain medication in the morning and has to sit for 15 minutes to allow the medications to take effect before he can do anything.
- He does not disagree with any of the assessments made by his doctor.

Admissibility of Additional Information

The ministry did not object to admitting the March 31, 2015 letter and did not raise an objection to the appellant's oral testimony. The panel considered the letter 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.

APPEAL #

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 evidence does not establish that the appellant has a severe mental or physical impairment and that his daily living activities (DLA) are, 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 abdominal pain. The appellant argued that his pain is constantly at a level of 4 out of 10 and it rises to 6 or 7 out of 10 when he eats. The appellant argued that the dosage of his pain medications has recently been increased and will need to be increased again and, without the medications, he would be hospitalized. The appellant argued that It is almost impossible for him to climb stairs and if he walks a block, he needs to stop and rest, and his young adult son needs to help him most of the time.

The ministry's position is that while the ministry acknowledged that the appellant has a physical impairment, the evidence does not demonstrate a severe physical impairment. The ministry argued that there is a disparity between the functional assessments provided by the general practitioner as the appellant can walk less than one block unaided and yet he only requires periodic assistance with this task, for example, and he does not require an aid for his impairment. The ministry also argued that no narrative is provided by the general practitioner to allow the ministry to confirm the frequency and duration of this level of assistance.

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 his endocrinologist.

The general practitioner, who has known the appellant for 20 years, diagnosed the appellant with hyperaldosternonism since 2010 with the left adrenal removed in June 2014, diabetes mellitus since 2009 and high blood pressure. The general practitioner wrote that the appellant "has chronic abdominal pain, increased dose morphine, history of aldosternonism, left adrenal removed, now increased abdominal pain will have right adrenal out. Diabetes and high blood pressure." The appellant stated at the hearing that removal of his adrenal gland has resulted in resolution of his diabetes, he takes medication to control his high blood pressure, and the dosage of his pain medication has recently been increased in an effort to manage his abdominal pain. He has had to go to the emergency department at the hospital several times, about 6 times in the last 18 months, just to get the pain to a level where he can eat again. In the March 31, 2015 letter, the appellant's endocrinologist wrote that a CT angiogram of the abdomen and pelvis in January 2015 reported no cause for the appellant's pain and he has been unable to find an endocrine cause for the appellant's abdominal pain. At the hearing, the appellant stated that he is frustrated that he has gone through so many tests and neither the endocrinologist or the gastroenterologist have been able to determine a cause for his pain, for which he is on a lengthy wait list with the pain clinic.

The general practitioner reported in the PR that the appellant does not require any prosthesis or aid for his impairment. Although the question of the use of a cane was included in the AR, the appellant stated at the hearing that he used a cane for a couple of months after his surgery but that he no longer uses a cane. In terms of functional skills, the general practitioner indicated that the appellant can walk less than one block unaided, cannot climb any steps unaided, has no limitation with lifting and can remain seated for 1 to 2 hours. At the hearing the appellant stated that he has to rest after walking a block, it is almost impossible to climb any stairs and he can only sit for about one hour and then he has to move around. The appellant stated that he is unable to work. As for searching for work and/or working, the panel finds 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.

In the AR, the general practitioner indicated that the appellant requires periodic assistance with most aspects of mobility and physical ability, specifically with walking indoors and walking outdoors, climbing stairs, standing, and lifting, and he requires continuous assistance with carrying and holding. The general practitioner did not add any comments in this section and the panel finds that the ministry reasonably determined that this leads to some unexplained inconsistencies in the evidence. In particular, the general practitioner indicated that the appellant has no limitations with lifting and yet he requires periodic assistance from another person with lifting and continuous assistance with carrying and holding. While the appellant stated at the hearing that some weeks his abdominal pain is "really bad" and other weeks are not as bad, there was no description of the frequency or duration of the need for periodic assistance with his mobility and physical ability. Also, as discussed in more detail in these reasons for decision under the heading "Restrictions in the Ability to Perform DLA", the limitations to the appellant's physical functioning have not translated into significant restrictions to his

ability to manage DLA.

Given the absence of a description by the appellant's long-time general practitioner or the appellant's endocrinologist of the extent and frequency of exacerbations to the appellant's abdominal pain, 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 directly advance a position that he has a severe mental impairment, although he stated that he is being treated with medications for depression and anxiety. The appellant argued that it is frustrating for him not knowing what to do next about his abdominal pain. The appellant argued that he feels it is a huge responsibility and burden on his son to be helping him so much and basically taking care of him and, because he cannot work, it is also a financial strain on him and his son.

The ministry's position is that 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 impacts are assessed as moderate.

Panel Decision

The general practitioner diagnosed the appellant with depression, gambling addiction with an onset in January 2010 and wrote that the appellant has had "longstanding depression and anxiety dating back to 1988; last 5 years increased gambling and increased dysphoria." In the PR, the general practitioner reported that the appellant has been prescribed medications that interfere with his ability to perform daily living activities as he has "severe abdominal pain, huge dose morphine now (illegible)/ also severe depression, hard to stay on task, can't organize himself." The general practitioner reported that the appellant has significant deficits with cognitive and emotional function in 6 of the 11 listed areas, specifically: executive, memory, emotional disturbance, motivation, impulse control, and attention or sustained concentration, with a comment added that the appellant is on medication for anxiety. In the additional comments to the PR, the general practitioner wrote that the appellant is "financially destitute; dysphoria due to anxiety; can't organize, stay on task."

When assessing the degree of impact to the appellant's daily cognitive and emotional functioning, the general practitioner reported that there are no major impacts but there are moderate impacts in the areas of bodily functions, consciousness, emotion, attention/concentration, executive, memory, motivation, motor activity, language, psychotic symptoms, other neuropsychological problems, and other emotional or mental problems. There are minimal impacts assessed for the remaining two areas of functioning and the general practitioner commented that the appellant is "very disorganized (illegible), tries but doesn't complete tasks." At the hearing, the appellant stated that he is being treated with medications for depression and anxiety and it is frustrating for him not knowing what to do next about his abdominal pain and the wait list takes one year to get into the pain clinic. The general practitioner appears to have made a referral to psychiatric services but no further information was provided about whether a consultation occurred and the results.

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 periodic 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 medications (taking his medication as directed and safe handling and storage), and transportation (using transit schedules and arranging transportation). The appellant also requires periodic assistance from another person with the banking and paying rent and bills and continuous assistance with the task of budgeting. While the general practitioner also reported in the AR that the appellant requires periodic support/supervision with making appropriate social decisions, there are no explanations or descriptions provided to allow the ministry to conclude that the assistance or support/supervision are required for extended periods of time.

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, interacting appropriately with others and dealing appropriately with unexpected demands, but the general practitioner did not provide additional comments to allow for a determination of the extent of the support required. The general practitioner wrote "good friend" and "tends to isolate" which does not describe the type or amount of support/supervision required by the appellant. The general practitioner reported in the PR that the appellant has no difficulty with communication and, in the AR, that the appellant has a good ability to communicate in speaking and a satisfactory ability to hear but poor reading (note: "can't concentrate") and writing (note: "can't stay on task").

Given the assessment of moderate impacts to the appellant's cognitive and emotional functioning and the absence of detail regarding the assistance required with the DLA specific to a mental impairment, 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 young adult son.

The ministry's position is that the information from the prescribed professionals does not establish that the appellant's impairments significantly restrict his DLA either continuously or periodically for extended periods of time. The ministry argued that although the general practitioner assessed the appellant as requiring periodic assistance from another person with several tasks of DLA, the general practitioner does not provide any comments or descriptions as to the reason, the frequency and the duration of this required level of assistance. The ministry argued that there is insufficient information to demonstrate that the appellant requires this assistance for extended periods of time.

Panel Decision

Section 2(2)(b) of the EAPWDA requires that the ministry be satisfied that a prescribed professional has provided 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 and the appellant's endocrinologist 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 been prescribed medications that interfere with his ability to perform daily living activities as he has "severe abdominal pain, huge dose morphine now (illegible)/ also severe depression, hard to stay on task, can't organize himself." In the AR, the general practitioner reported that the appellant requires periodic assistance with moving about indoors and outdoors, with no further comments provided. The appellant stated at the hearing that he needs to rest after walking a block but he does not currently use a cane to assist with his mobility. The appellant is independent with most tasks of the DLA personal care and requires periodic assistance with dressing and bathing; however, no further comments are provided by the general practitioner. At the hearing, the appellant stated that his son "spots" him when he is having a shower because he has had problems before, although he did not elaborate.

The general practitioner indicated that the appellant needs periodic assistance with all tasks of basic housekeeping, with no description or explanation provided. At the hearing, the appellant stated that he is very limited with doing any laundry or household chores since as soon as he starts to do something, the pain increases until he has to sit down. The general practitioner reported that the appellant requires periodic assistance with all tasks of the DLA shopping, with an additional comment that the appellant "needs help with support and ADL." At the hearing, the appellant explained that he cannot do any grocery shopping and his son does this for him; the appellant tried going grocery shopping but after 20 minutes he was in pain, sweating, and exhausted and he had to go to sit in the car. The general practitioner indicated in the AR that the appellant requires periodic assistance with most tasks of the DLA meals, and is independent with safe storage of food, but no description or explanation is given by the general practitioner. At the hearing, the appellant stated that his son prepares 95% of the meals now because the appellant is unable to do so most of the time.

In the AR, the general practitioner reported that the appellant requires periodic assistance with banking and paying rent and bills and continuous assistance with budgeting, with no comments provided. The appellant stated at the hearing that he feels it is a huge responsibility and burden on his son to be helping him so much. Since January, his son has been taking over more and more and he now pays all the bills and drives him places because he cannot drive when taking these pain medications. For the DLA medications, the general practitioner reported that the appellant requires periodic assistance with filling/refilling prescriptions, taking his medication as directed and with safe handling and storage, with a comment added that he has "decreased concentration." The appellant also require periodic assistance with all tasks of the DLA transportation, specifically: getting in and out of a vehicle, using public transit, and using transit schedules and arranging transportation; however, no description or explanation is provided by the general practitioner.

The appellant stated at the hearing that he does not disagree with any of the assessments made by his doctor and he acknowledged that she did not fill in the detail regarding the extent of the assistance he requires. The appellant stated that his condition has gotten worse since the time of the PWD application and he has become reliant on a high dosage of pain medications, without which he believes he would be hospitalized, and his son essentially has to take care of him. In the additional letter dated March 31, 20154, the endocrinologist did not provide further information about restrictions to the appellant's DLA and he indicated that he has been unable to find an endocrine cause for the appellant's abdominal pain.

As 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 and the endocrinologist, which lacks detail regarding the extent of the appellant's need for periodic assistance, the panel finds that the ministry reasonably determined that there is insufficient information to establish that the periodic assistance or support is required for extended periods of time. Therefore, 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 son.

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 argued that the general practitioner does not indicate that the appellant uses an assistive device although "cane?" is mentioned, and the appellant does not require the services of an assistance animal.

Panel Decision

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

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 family and friends and he lives with his son. In the section of the AR for identifying assistance provided through the use of assistive devices, the general practitioner indicated that there are no applicable items and also wrote: "?cain" (sic). The appellant clarified at the hearing that he used a cane for a couple of months after his surgery to remove his adrenal gland but he does not currently use a cane for his mobility. 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.