

## PART C – Decision under Appeal

The decision under appeal is the Ministry of Social Development and Social Innovation (the ministry) reconsideration decision dated May 27, 2015 which found that the appellant did not meet four 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. However, the ministry was not satisfied that the evidence establishes that:

- the appellant's impairment is likely to continue for at least two years;
- 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 ministry did not attend the hearing. After confirming that the ministry was notified, the hearing proceeded under Section 86(b) of the *Employment and Assistance Regulation*.

The evidence before the ministry at the time of the reconsideration decision included the Persons With Disabilities (PWD) Application comprised of the applicant information and self-report dated February 26, 2015, a physician report (PR) dated February 18, 2015 and an assessor report (AR) dated March 11, 2015 and both completed by a general practitioner who has known the appellant for 10 months. The evidence also included the appellant's Request for Reconsideration dated May 20, 2015.

### **Diagnoses**

In the PR, the appellant was diagnosed by the general practitioner with chronic severe tinea pedis, with secondary infection, possible osteomyelitis, with an onset of October 2014. The general practitioner also wrote: "psychosocial disturbance does complicate his recovery." In the AR, asked to describe the mental or physical impairments that impact the appellant's ability to manage daily living activities, the general practitioner wrote: "paranoid ideation that may be due to a personality disorder or a function of a more profound psychiatric condition."

### **Duration**

In the PR, the appellant's general practitioner indicated "no" in response to the question whether the appellant's impairment is likely to continue for two years or more. This response was changed from a "yes" response and initialed by the general practitioner. The general practitioner wrote: "this chronic fungal infection is being treated topically and systemically and must be resolved along with the secondary bacterial infection."

In the Request for Reconsideration, the appellant's general practitioner wrote:

- The appellant's chronic foot infection has dragged on for over one year due to his inability to access proper treatment. The special authority to release [a type of medication] depends on a laboratory culture test that the appellant has not been able to get done.
- In view of the slow response to [another medication], his foot problems could easily extend into 2016.

### **Physical Impairment**

In the PR and AR, the general practitioner reported that:

- In terms of health history, the chronic fungal infected soles of both feet have become intermittently infected by bacteria, secondarily, leading to osteomyelitis.
- The appellant requires an aid for his impairment, described as: "has been prescribed orthopedic inserts to help relieve his foot pain."
- In terms of functional skills, the appellant can walk 1 to 2 blocks unaided, he can climb 5 or more steps unaided, he can lift 2 to 7 kg. (5 to 15 lbs.) and there is no limitation with how long he can remain seated.
- The appellant is not restricted with mobility inside the home, although the general practitioner also indicated "continuous," and the appellant is restricted with mobility outside the home but neither continuous nor periodic is marked for the level of restriction. For additional comments regarding the degree of restriction, the general practitioner wrote that "if he is required to be ambulatory, it aggravates the recovery from the infection and subsequent healing process."

- In the additional comments to the PR, the general practitioner wrote that “the infection in both feet (soles) leads to pain with walking, and the secondary osteomyelitis could be even more debilitating and detrimental to his long-term health and employability.”
- The appellant is assessed as independent with all aspects of mobility and physical ability, specifically with walking indoors and walking outdoors, climbing stairs, standing, lifting and carrying and holding. The general practitioner wrote: “persistent infection of the feet (sole) makes extended walking difficult due to pain, and additional trauma to the already friable skin.”
- Orthotic inserts are indicated as assistive devices that the appellant routinely uses to help compensate for his impairment as “shoe inserts relieve pressure on the metatarsal arch.”

In his self-report, the appellant wrote:

- He has an infection in his feet that is chronic.
- He has had trouble getting employment due to his chronic health problems.
- He cannot stand for lengthy periods of time because of foot pain and people refuse to help him for social reasons.

In the Request for Reconsideration, the general practitioner wrote that the damage to the soles of the appellant’s feet makes standing and walking difficult on a day-to-day basis.

### ***Mental Impairment***

In the PR and AR, the general practitioner reported:

- The appellant has no difficulty with communication.
- The appellant has significant deficits with cognitive and emotional function in 2 of the 11 listed areas, specifically: psychotic symptoms and emotional disturbance, with a comment added by the general practitioner that the appellant “became distressed when he was unable to support himself. Admittedly, paranoid ideation.”
- The appellant is not restricted with social functioning; however, the general practitioner wrote that the appellant is “unable to interact socially when the pain flares up.”
- The appellant has a good ability to communicate in all areas, specifically speaking, reading, writing and hearing.
- There are no major impacts to the appellant’s cognitive and emotional functioning. There are moderate impacts in the area of emotion, insight and judgment, attention/concentration, and psychotic symptoms. There are minimal or no impacts assessed for the remaining 10 areas of functioning. The general practitioner commented that the appellant “feels persecution and may have become hostile as a result. Depressive components; grandiosity thought patterns; distractible with poor concentration; borders on delusional at times.”
- 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 and securing assistance from others. The general practitioner wrote: “paranoid ideation prevents fully normal interaction and may be the result of schizoid thinking.”
- The appellant has very disrupted functioning in his immediate social networks and marginal functioning in his extended social networks. .
- Asked to describe the support/supervision required by the appellant that would help to maintain him in the community, the general practitioner wrote “Safe, understanding home/housing with professional over site for medicating, if necessary.”

In his self-report, the appellant wrote:

- His chronic foot infection has led to depression for 6 months, with anxiety and trust issues with social interaction difficulties.
- He has had emotional trouble getting employment due to his chronic health problems.
- He has insomnia and depression, high anxiety, and trust issues with people who are trying to help him but they refuse to for social reasons unknown to him.
- People misinterpret his words.

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

In the PR and AR, general practitioner indicated that:

- The appellant has not been prescribed any medication and/or treatments that interfere with his ability to perform daily living activities.
- The appellant is not restricted with many listed DLA, specifically: personal self care, meal preparation, management of medications, mobility inside the home, use of transportation, management of finances and social functioning.
- The appellant is restricted periodically with basic housework, described as: “the level of pain associated with the foot condition periodically limits his activity.”
- The appellant is restricted with daily shopping and with mobility outside the home, but it is not the level of restriction is not indicated.
- The appellant is independent with moving about indoors and outdoors.
- The appellant is independent with all of the tasks of several listed DLA, including personal care, basic housekeeping, shopping, meals, paying rent and bills, and transportation (note: “when the chronic foot condition flares, it is impossible for the patient to walk to public transit”).
- For the medications DLA, the appellant requires periodic assistance with all the tasks of filling/refilling prescriptions, taking as directed, and safe handling and storage. There is no explanation or description provided by the general practitioner.

In his self-report, the appellant wrote that he has had trouble getting employment due to his chronic health problems.

### ***Need for Help***

In the PR, asked to describe the assistance needed with DLA, the general practitioner wrote: “denies need for daily living assistance.” In the AR, the general practitioner reported that, with respect to the assistance provided by other people, there is none available. Asked to describe the assistance necessary if help is required but there is none available, the general practitioner wrote: “ideally, supervised living would be available; perhaps a group home-type setting with professional staffing to monitor behavior and/or medication as prescribed after assessment.” In the section of the AR for indicating the assistance provided through the use of assistive devices, the general practitioner has identified “orthotics inserts” and that “shoe inserts relieve pressure on the metatarsal arch.”

In his self-report, the appellant wrote that there are people trying to help him but they refuse to for social reasons.

### ***Appellant’s additional information***

In his Notice of Appeal dated June 3, 2015, the appellant expressed his disagreement with the ministry’s reconsideration decision and wrote that the medical report states that he does have problems, physical and emotional/mental.

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

- 1) Prescription marked "void;"
- 2) Undated letter in which the appellant's sister wrote that the appellant lived in another country and experienced difficulties when he discovered he was not a citizen of that country and he ended up homeless. The appellant has "some issues in focusing and maybe other mental issues, though he has never been diagnosed." While being homeless, he started having issues with his feet and legs and he also became a victim of a violent crime. He was able to enter a mental health program in the other country but in April of 2014 he was dropped from the program because they felt they could go no further in helping him and they had others on a waiting list. He returned to Canada in June of 2014;
- 3) Self-Certification of homelessness dated January 22, 2012 in which the appellant indicated that he has no residence in the other country and has been sleeping outside since September 2010. He has had repeated violence against him and he has no income due to his undocumented citizen status;
- 4) Certificate from another country dated August 15, 2012 indicating that the appellant tested negative for HIV, Hepatitis B and syphilis;
- 5) Letter dated August 15, 2013 in which the program director of a homeless assistance program in another country wrote that the appellant is enrolled in a "safe haven" mental health program;
- 6) Medical Report in July 2014 that the appellant tested negative for Hepatitis A, B and C, HIV and syphilis;
- 7) Letter dated July 30, 2014 'To Whom It May Concern' in which the general practitioner wrote that he examined the appellant on July 4, 2014 and he has been incapacitated for several weeks. He had a large, thrombosed, external hemorrhoid. He was advised not to engage in any strenuous activity which made employment unattainable. After weeks of treatment, he has recovered and is now able to work;
- 8) Letter dated August 7, 2014 from the case manager with an employment contractor advising that the appellant was in the process of accessing short-term occupational certification as a requirement to return to work;
- 9) Letter dated September 29, 2014 from a family nurse practitioner 'To Whom It May Concern' stating that the appellant needs orthopedic shoes due to his hammered toe and poor arch to maintain health on his feet. He has been wearing regular shoes causing multiple blisters and open wounds on plantar of foot. Open wounds may cause osteomyelitis;
- 10) Letter dated October 22, 2014 'To Whom It May Concern' in which the general practitioner wrote that the appellant was examined and he has developed a chronic skin infection on his right foot;
- 11) Medical report in December 2014 that the appellant tested negative for chlamydia and gonorrhea;
- 12) Prescription dated January 9, 2015 for a topical cream;
- 13) Email correspondence in January and February 2015 between the appellant and an employment contractor regarding the appellant achieving certification for driving trucks;
- 14) Handwritten notes dated February 25, 2015 regarding the appellant, including: 1) Insomnia-difficulty to stay asleep; infection in feet that is chronic; depression- since 6 months, has felt depressed with anxiety, trust issues. Have had trouble getting employment due to chronic health problems, like foot infection and depression, with social interaction difficulties. 2) These disabilities directly affect his ability to get work since he cannot stand for lengthy periods of time due to foot pain and people refuse to help him for social reasons. Also, his words get misinterpreted and they judge him wrongly. 3) He hopes to get well and return to full-time

employment in the coming months; and,  
15) Letter dated May 27, 2015 in which the ministry advised the appellant that he had been denied the PWD designation at reconsideration.

At the hearing, the appellant stated that:

- He has appointments next week with mental health and with an advocate. He talked to the advocate over the phone and went over his PWD application but he also set up a meeting in person. He was prepared to represent himself and wanted to go ahead with the hearing.
- His doctor wrote the information in the Request for Reconsideration and the handwritten notes dated February 25, 2015.
- In 2014 he was hit over the head and was hospitalized. His feet were inflamed at that time.
- He has had blood tests done for various diseases because he had been with a woman who had a child who was HIV positive and he wanted to check this out.
- The company that made the inserts for his shoes insisted on making the moulds when his feet were still inflamed. The appellant showed the panel that the moulds have deep impressions where his feet were swollen. The appellant stated that the orthotic inserts do not fit in his boots and do not help him because he still feels the pain. The appellant showed his room-mate's orthotics as a sample of a hard orthotic to compare with the soft, pliable orthotics that he received. When he tried to talk to the company who made them, they called the police.
- He is not wearing the right-sized shoes or they are damaged and that makes his foot condition worse. He is in pain because of the shoes. Sometimes he has to lie down to get relief from the pain.
- When he came to Canada, he was not used to the colder weather here, especially when sleeping outside. He had a driver's license from another country but he needs to transfer it to Canada.
- He had foot problems when he tried to work on a forklift and discovered he could not work.
- His feet hurt in the middle of the night and he wakes and takes pain medication. The swelling in his feet "comes and goes." He sometimes bathes during the day to bring the swelling down.
- He can walk around his apartment on his own and he goes to the washroom on his own. He cannot walk the 20 minutes to get to the ministry office. He is not walking very much and tends to stay indoors.
- He fell down one time because he was standing in line and the pain in his feet was too much.
- He takes the bus to the food bank. He needs to sit at the front of the bus because of abuse he has suffered in the past.
- The general practitioner has sent him to hematology for tests because he has a general weakness that does not relate to his foot problems.
- He goes to the medical clinic every other week to get shots because of his low energy. He needs medications for his feet. He is looking into getting a cane.
- At the time that his doctor filled out the reports for the PWD application, he did not have a room-mate and had no help with his daily activities. He was managing, but it was hard. They became room-mates in May 2015. They help each other.
- He needs to get back to school to learn to be a truck driver. His feet are okay to drive.
- He knows he has some psychological conditions because he has had the police called on him 3 times. No one has diagnosed a problem but he has a mental health appointment next week.
- He does not "hear" voices, there is actually someone there because he has recorded it. Some things that have come up have caused violence.
- The time that he was an undocumented citizen put a lot of stress on him.

At the hearing, the appellant's room-mate stated that:

- Her orthotics, which are hard and not pliable like the appellant's, help her.
- She helps the appellant with many things. She does the cooking and they share doing the dishes. The appellant can stand for about 10 minutes at most and then he has to sit down.
- The appellant has trouble walking, going to the library or going for walks.
- She does the basic housekeeping, including the vacuuming. The appellant could do it but it hurts him.
- They do the laundry together but use the elevator. The appellant has trouble lifting the laundry.
- They will go shopping together but she has to hold the appellant's hand because he has problems with his balance. They both carry the purchases home. The other day, he tripped over the sidewalk and dropped some groceries because he felt weak. The appellant has limited mobility so they try to do much of the shopping all at once.
- She massages his feet to help relieve the pain.
- They both do the meal planning. She provides some advice to the appellant about his diet. They both do the cooking since they have a small kitchen and the appellant can move around somewhat.
- The bills and rent are paid through direct deposit with the ministry.
- She does not help with the appellant's medications.
- She helps the appellant with transit schedules and holds his hand on the bus.
- The appellant is full of anxiety and is very inquisitive and sometimes asks too many questions. The appellant does not make friends easily.

***Admissibility of Additional Information***

The ministry did not attend the hearing and did not previously raise an objection to the additional documents provided by the appellant prior to the hearing. The panel considered the testimony on behalf of the appellant and the documents relating to the conditions diagnosed in the PWD application as additional information that corroborates the extent of the appellant's impairment, 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 panel also considered the additional documents that related to health conditions not diagnosed in the PWD application or raised at reconsideration and did not admit the certificate or medical reports for testing of communicable diseases or the general practitioner's letter dated July 30, 2014 as these issues were not before the ministry at the time of reconsideration.

The ministry did not attend the hearing, did not provide additional information, and relied on its reconsideration decision.

## 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 that, in the opinion of a medical practitioner, is likely to continue for at least 2 years. The ministry also found 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 and that, 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.

### **Duration**

The appellant's position is that his doctor had meant to confirm the duration of his foot condition, as indicated by the changes in his response in the PR regarding degree and course of his impairment. The appellant argued that his doctor completed the Request for Reconsideration and confirmed that his foot problems could easily extend into 2016.

The ministry's position is that the appellant's general practitioner has not confirmed, in either the PR or the Request for Reconsideration, that the appellant's impairment will continue for two years or more.

### ***Panel Decision***

Section 2(2)(a) of the EAPWDR requires that there must be the opinion of a medical practitioner indicating that the appellant's impairment is likely to continue for at least two years. In response to the question in the PR whether the appellant's impairment is likely to continue for two years or more, the general practitioner indicated "no" and initialed this response. Although the general practitioner's response was initially "yes", as pointed out by the appellant, the general practitioner has marked over the initial response and applied his initials to the "no" response to clarify his opinion. The appellant stated at the hearing that the general practitioner wrote the information in the Request for

Reconsideration and argued that the general practitioner indicated that his foot problems could easily extend into 2016. However, the ministry must be satisfied that the opinion of the medical practitioner is that the impairment is likely to continue for *at least 2 years* (emphasis added). The appellant's PWD application was made on March 16, 2015 and even if the appellant's foot problems were to extend all the way to the end of 2016, it will not be "at least 2 years" from the date of the application. The panel finds that the ministry's determination that the medical practitioner had not confirmed that the appellant's impairment will continue for two or more years from the date of the application was reasonable.

### **Severe Physical Impairment**

The appellant's position is that he has a severe physical impairment as a result of the pain and lack of mobility due to chronic severe tinea pedis with secondary infection and possible osteomyelitis. The appellant argued that the damage to the soles of his feet makes standing and walking difficult on a day-to-day basis. The appellant argued that he has had trouble getting employment due to his chronic health problems.

The ministry's position is that there is not sufficient evidence from the general practitioner to demonstrate a severe physical impairment. The ministry wrote that the general practitioner indicated that the appellant is unable to work as a result of his medical conditions but the PWD application is not intended to assess employability or vocational ability and employability is not an eligibility criterion for designation as a PWD. The general practitioner indicated that the appellant is independent in all aspects of his mobility and physical abilities.

### ***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 general practitioner.

The general practitioner, who has known the appellant for about 10 months, diagnosed the appellant with chronic severe tinea pedis, with secondary infection, possible osteomyelitis, with an onset of October 2014. The general practitioner wrote for health history that the chronic fungal infected soles of both feet have become intermittently infected by bacteria, secondarily, leading to osteomyelitis. In the additional comments to the PR, the general practitioner wrote that "the infection in both feet (soles) leads to pain with walking, and the secondary osteomyelitis could be even more debilitating and detrimental to his long-term health and employability." Although a family nurse practitioner also wrote in a letter dated September 29, 2014, that the appellant has been wearing regular shoes causing multiple blisters and open wounds on plantar of foot and that the open wounds "may cause osteomyelitis," the panel finds that there is no information to indicate that this condition has presently developed. Although the general practitioner referred to the impact of the appellant's foot condition on his ability to work, and this was also emphasized by the appellant, the panel finds that the ministry reasonably concluded 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 Request for Reconsideration, the general practitioner wrote that the damage to the soles of the appellant's feet makes standing and walking difficult on a day-to-day basis. The general practitioner reported in the PR that the appellant requires an aid for his impairment, described as: "orthopedic inserts to help relieve his foot pain." At the hearing, the appellant described problems with the way the company made the inserts for his shoes and he stated that the orthotic inserts, which are not like his room-mate's hard orthotics, do not fit in his boots and do not help him because he still feels the pain. In the PR, the general practitioner reported that the appellant can walk 1 to 2 blocks unaided, climb 5 or more steps unaided, lift 5 to 15 lbs., and there is no limitation with how long he can remain seated. The general practitioner indicated that the appellant is not restricted with mobility inside the home, although he also checked off "continuous," and the appellant is restricted with mobility outside the home but neither continuous nor periodic is marked for the level of restriction. For additional comments in the PR regarding the degree of restriction, the general practitioner wrote that "if he is required to be ambulatory, it aggravates the recovery from the infection and subsequent healing process." In the AR, the general practitioner assessed the appellant as independent with all aspects of mobility and physical ability, specifically with walking indoors and walking outdoors, climbing stairs, standing, lifting and carrying and holding, and wrote: "persistent infection of the feet (sole) makes extended walking difficult due to pain, and additional trauma to the already friable skin."

At the hearing, the appellant stated that the swelling in his feet "comes and goes" and he sometimes bathes during the day to bring the swelling down, or has to lie down to get relief from the pain. His feet often hurt in the middle of the night and he wakes and takes pain medication. Although the appellant referred to exacerbations in his foot condition and stated that he is "looking into" getting a cane to help with his mobility, this was not mentioned by the general practitioner in the PWD application or the family nurse practitioner in the letters. 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 an assessment of significant impacts to the appellant's physical functioning, the panel finds that the ministry reasonably determined that there is not sufficient evidence to establish that the appellant has a severe physical impairment under Section 2(2) of the EAPWDA.

### **Severe Mental Impairment**

The appellant's position is that he has a severe mental impairment due to the impacts from his chronic foot infection, which has led to depression for 6 months, with high anxiety and trust issues, and social interaction difficulties. The appellant argued that he also has insomnia, people misinterpret his words, and he has had emotional trouble getting employment due to his chronic health problems.

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 a few areas of the appellant's cognitive and emotional functioning, the impacts are assessed as moderate. The ministry argued that the general practitioner indicated that the appellant does not have any difficulty with communication.

*Panel Decision*

The general practitioner did not diagnose the appellant with a mental disorder in the PR, although when asked in the AR to describe the mental or physical impairments that impact the appellant's ability to manage daily living activities, the general practitioner wrote: "paranoid ideation that may be due to a personality disorder or a function of a more profound psychiatric condition." The appellant's sister wrote in her letter that the appellant has "some issues in focusing and maybe other mental issues, though he has never been diagnosed." The appellant's sister also wrote that while being homeless, he started having issues with his feet and legs and he also became a victim of a violent crime. He was able to enter a mental health program in the other country but in April of 2014 he was dropped from the program and, in June of 2014, he returned to Canada. At the hearing, the appellant explained that he was hit over the head and was hospitalized. In the "Self-Certification of homelessness" dated January 22, 2012, the appellant indicated that he had no residence in the other country at that time and had been sleeping outside since September 2010. He indicated he had repeated violence against him. At the hearing, the appellant stated that he knows he has some psychological conditions because he has had the police called on him 3 times and some things that have come up have caused violence. The appellant stated that a problem has not yet been diagnosed but he has a mental health appointment next week.

In the PR, the general practitioner reported that the appellant has significant deficits with cognitive and emotional function in 2 of the 11 listed areas, specifically: psychotic symptoms and emotional disturbance, with a comment added by the general practitioner that the appellant "became distressed when he was unable to support himself; admittedly, paranoid ideation." In the AR, the general practitioner indicated that there are no major impacts to the appellant's cognitive and emotional functioning. There are moderate impacts in the area of emotion, insight and judgment, attention/concentration, and psychotic symptoms, and the general practitioner commented that the appellant "feels persecution and may have become hostile as a result; depressive components; grandiosity thought patterns; distractible with poor concentration; borders on delusional at times."

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 indicate that the appellant is significantly restricted in either. With respect to decision making, the general practitioner reported in the AR that the appellant is independent with the decision-making components of the DLA of personal care (regulate diet), daily shopping (make appropriate choices), meal preparation (meal planning and safe storage of food), "pay rent and bills" DLA (including budgeting), and transportation (using transit schedules and arranging transportation). The general practitioner indicated that the appellant requires periodic assistance from another person with the decision-making components of managing his medications (taking his medication as directed and safe handling and storage) but did not include an explanation or description to allow the ministry to determine that the assistance is required for extended periods of time. While the general practitioner also reported in the AR that the appellant requires periodic support/supervision with making appropriate social decisions, he wrote that the appellant's "paranoid ideation prevents fully normal interaction and may be the result of schizoid thinking" but does not indicate the frequency or extent of the periodic support/supervision required. Asked to describe the support/supervision required which would help to maintain the appellant in the community, the general practitioner wrote: "safe, understanding, home/housing with professional over site for medicating, if necessary."

Regarding the DLA of social functioning, the appellant is assessed in the PR as not restricted with

social functioning and wrote “unable to interact socially when the pain flares up.” However, asked to describe the assistance required with daily living activities, the general practitioner wrote “denies need for daily living assistance.” In the AR, the general practitioner indicated that the appellant requires periodic support/supervision in all areas, including with developing and maintaining relationships, interacting appropriately with others and securing assistance from others and wrote “paranoid ideation prevents fully normal interaction and may be the result of schizoid thinking.” The appellant has very disrupted functioning in his immediate social networks and marginal functioning in his extended social networks. The general practitioner did not add any comments regarding the appellant’s immediate or extended social networks; however, the appellant stated at the hearing that he has been living with his room-mate since May 2015 and that they help each other, indicating at least a marginal level of functioning in his immediate networks. The appellant’s room-mate stated that the appellant is very inquisitive and does not make friends easily. The appellant acknowledged that people often misinterpret his words. In the PR, however, the general practitioner reported that the appellant has no difficulty with communication and, in the AR, that the appellant has a good ability to communicate in all areas.

Given the absence of a mental health diagnosis, the assessment of mostly moderate impacts to the appellant’s cognitive and emotional functioning and the lack of detail regarding the support/supervision required with the social functioning DLA, 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 such that he requires the significant assistance of another person, specifically from his room-mate.

The ministry’s position is that the information from the prescribed professional does not establish that the appellant’s impairments significantly restrict his DLA either continuously or periodically for extended periods of time. The ministry argued that although the general practitioner assessed the appellant as requiring periodic assistance from another person with tasks of the “medications” DLA, the general practitioner does not provide any comments or descriptions to indicate how often the appellant requires assistance. The ministry argued that there is insufficient information to demonstrate that the appellant requires this assistance for extended periods of time. The ministry argued that the general practitioner reported periodic support/supervision required for all aspects of social functioning but provided no information on how often the appellant requires assistance, and he is independent with all other tasks of DLA.

#### ***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 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 medications and/or treatments that interfere with his ability to perform DLA. In the PR, the general practitioner reported that the appellant is not restricted with mobility inside the home but is restricted with mobility outside the home, although the level of restriction is not indicated, and, in the AR, the appellant is assessed as independent with both moving about indoors and outdoors. According to the assessment of functional skills in the PR, the appellant is able to walk 1 to 2 blocks unaided and, although he stated that he is “looking into” getting a cane and he wears orthotic inserts in his footwear.

The general practitioner also indicated in the PR that the appellant is not restricted with the DLA of personal self care, meal preparation, management of medications, use of transportation, management of finances and social functioning. While the general practitioner reported in the AR that the appellant requires periodic assistance with all tasks of the DLA management of medications, he did not provide an explanation or description to allow the ministry to determine that the assistance is required for extended periods of time. The general practitioner indicated in the PR that the appellant is restricted periodically with basic housework, described as: “the level of pain associated with the foot condition periodically limits his activity;” however, the appellant remains independent with the tasks of laundry and basic housekeeping. At the hearing, the appellant stated that at the time of the PWD application he did not have any help available and he managed even though it was hard, but now he has a room-mate that helps him. The appellant’s room-mate stated that she does the basic housekeeping, including the vacuuming and she and the appellant do the laundry together. She stated that the appellant could do the vacuuming but it hurts him.

In the PR, the general practitioner reported that the appellant is restricted with daily shopping; however, the level of restriction is not indicated and the appellant remains independent in all tasks of the shopping DLA according to the assessment by the general practitioner in the AR. The appellant’s room-mate stated at the hearing that they will go shopping together but she has to hold the appellant’s hand because he has problems with his balance and they both carry the purchases home. The appellant has limited mobility so they try to do much of the shopping all at once. While the appellant’s room-mate confirmed that she helps the appellant with many things, including cooking and helping with transit schedules, she does not help with managing the appellant’s medications. In the appellant’s self-report he emphasized that he has had trouble getting employment due to his chronic health problems.

While the appellant stated that the swelling of his feet “comes and goes” and sometimes the pain is worse, without an explanation or description by the general practitioner, as the prescribed professional, regarding the nature and extent of the assistance required with DLA that require periodic assistance or periodic support/supervision, the panel finds that the ministry reasonably determined there is insufficient information to conclude that the assistance is required for extended periods of time. As previously discussed, the evidence of the prescribed professional does not clearly indicate that the appellant is significantly restricted in either DLA specific to mental impairment, namely decision making or social functioning, and employability is not listed among the prescribed daily living activities in section 2 of the EAPWDR. 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 and mental impairments significantly restrict his daily

living functions such that significant assistance is required.

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 indicated that the appellant uses orthopedic inserts as an assistive device, which is not in itself indicative of a severe impairment, 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.

In the PR, asked to describe the assistance needed with DLA, the general practitioner wrote: "denies need for daily living assistance." In the AR, the general practitioner reported that, with respect to the assistance provided by other people, there is none available. The appellant stated at the hearing that he managed with his DLA at the time but that it was hard and he now has the assistance of his roommate. In the AR, the general practitioner emphasized the appellant's mental impairment in describing the assistance necessary, although not available, and wrote: "ideally, supervised living would be available; perhaps a group home-type setting with professional staffing to monitor behavior and/or medication as prescribed after assessment." In his self-report, the appellant wrote that there are people trying to help him but they refuse to for social reasons. At the hearing the appellant stated that he will be meeting with mental health professionals to look at determining a possible diagnosis and the treatment or assistance he may need. In the section of the AR for indicating the assistance provided through the use of assistive devices, the general practitioner has identified "orthotics inserts" and that "shoe inserts relieve pressure on the metatarsal arch."

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.