

PART C – Decision under Appeal

The decision under appeal is the Ministry of Social Development and Social Innovation (“Ministry”) reconsideration decision dated June 15, 2015 in which the Ministry found that the Appellant was not eligible for designation as a Person With Disabilities (“PWD”) because he did not meet all of the requirements for PWD designation in Section 2(2) of the *Employment and Assistance for Persons with Disabilities Act* (“EAPWDA”). The Ministry was satisfied that the Appellant has reached 18 years of age and that his impairment is likely to continue for at least two years. However, based on the information provided in the PWD Designation Application (“PWD application”) and Request for Reconsideration, the Ministry was not satisfied:

- That the Appellant has a severe mental or physical impairment; and
- That the impairment, in the opinion of a prescribed professional, directly and significantly restricts his ability to perform daily living activities (“DLA”) either continuously or periodically for extended periods; and
- As a result of these restrictions, the Appellant requires help to perform those activities.

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 reconsideration consisted of the following:

1. The Appellant's Request for Reconsideration signed by the Appellant on May 4, 2015 in which he requested an extension of time to provide information, and attached four documents as follows:

(a) A Supplemental Medical Opinion form signed by the Appellant's physician on May 7, 2015 which contained the following information:

- In response to the question "Is (the Appellant's) ability to perform his daily living activities considered severely restricted due to his impairments", the physician check marked "Move about indoors and outdoors".
- In response to the question of whether the Appellant's ability to perform DLA is "directly and significantly restricted", the physician check marked "yes" with the comment, "Due to back pain – ambulation is restricted".
- In response to the question of whether the Appellant's ability to perform DLA is restricted continuously or periodically, the physician circled "continuously restricted" with the comment, "[illegible] pain with walking".
- In response to whether the Appellant requires help to perform DLA, the physician circled "No" with the comment, "He does it all despite pain". The physician then circled that help is required "2x-3x" per week".
- In response to the question, "does (the Appellant) have a severe physical and/or mental impairment, the physician circled "Yes" with the comment, "[illegible] pain back and hips".

(b) A letter from the Appellant's chiropractor dated May 13, 2015 which states that the Appellant is being treated for "a chronic lower back and right leg condition". The severity of the condition precludes the Appellant from working, and he will be re-examined in one month's time.

(c) A diagnostic imaging report for a Computed Tomography ("CT") scan of the Appellant's lumbar spine: date of exam, July 30, 2014. The report contained the following information:

- Reason for exam: "chronic progression of RT sciatica";
- History: "persistent worsening symptoms of right-sided sciatica";
- Vertebral body alignment maintained at assessed level, no vertebral body deformity;
- Mild reduction in disc spacing "at the L3-4, 4-5 levels with only minimal anterior endplate hyperostosis present at these levels";
- "Assessment in bony windows fails to demonstrate discrete lytic or sclerotic bony lesions";
- "no definite facet abnormality in the upper S1 joints and visualized portions of the sacrum unremarkable in appearances";
- "Assessment in soft tissue windows does demonstrate broad-based posterior disc bulging at the L4-5 level";
- "no significant attenuation of neural canal dimensions and there is preservation of epidural fat at this level";
- "although there is mild attenuation to intraforaminal perineural fat on the left at this level, findings do not correspond with the provided clinical history."
- "There is minimal broad-based disc bulging present at L5-S1...again without compromise to neural canal, foraminal nor lateral recess dimensions at this level. Disc bulging of a similar

degree is evident also at the L3-4 level, again without clinically significant findings.”

- Narrowing of disc space likely reflects early changes of Degenerative Disc Disease. While bulging disc material is identified, there are no findings that would account for “right lower extremity radiculopathy”.
- No “retroperitoneal abnormalities” at assessed levels.

(d) A medical imaging report from a radiologist dated May 13, 2015 indicating the following lumber spine observations:

- “Mild broad dextroconvex scoliosis of the L-spine apparent”;
- Disc spacing maintained throughout the L-spine;
- Osteophyte spur formation “at L3-4 and L4-5 levels indicating annular bulging of the discs here”; and
- “sclerotic degenerative change of the facets at L4-5 and L5-S1”.

2. A PWD application comprised of the Applicant Information and self-report completed by the Appellant on January 20, 2015, and a Physician Report (“PR”) and Assessor Report (“AR”), both dated February 11, 2015 and both completed by the Appellant’s family physician who has known the Appellant since 1995, and has seen him two to ten times in the past year.

The PWD application included the following information:

Diagnoses:

- In the PR, the Appellant was diagnosed with chronic degenerative back pain, onset unknown, “[illegible] years ago”.
- In his self-report, the Appellant stated that his back aches after fifteen minutes of standing in one spot; his feet are arthritic; and his knee cartilage is breaking down which throws out the alignment of his hip and wears it down to where the misalignment moves to his back and causes discomfort. He first injured his sciatic nerve (badly) in 1987, while doing a manual labour job, and aggravated it last year while he was on “work detail” in jail. He is also stricken with COPD.

Physical or Mental Impairment:

In the PR, under Health History, the Appellant’s physician wrote “impairs mobility, work and ADL”. The physician check marked “Yes”, the Appellant has been prescribed medication/treatment that interferes with his ability to perform DLA, with the comments, “uses T#3s as needed” and “unknown” regarding the duration of the medications/treatments”. The physician check marked “No” the Appellant does not require any prostheses or aids.

Functional Skills

In the PR, the Appellant was reported as able to walk four or more blocks on a flat surface, climb five or more stairs unaided, and sit for less than one hour with the comment, “back”. The physician wrote “unknown” regarding the Appellant’s limitations in lifting. He reported that the Appellant has no communication, cognitive, or emotional deficits. He did not provide any additional comments regarding the impact of the impairments on the Appellant’s daily functioning.

In the AR, the physician check marked “Good” for all areas of communication and crossed out the section on cognitive and emotional functioning with the notation “N/A” as no mental impairment was identified. Regarding *Mobility and Physical Ability*, the physician check marked that the Appellant is independent in all areas including walking indoors, walking outdoors, climbing stairs, standing, lifting, and carrying and holding but takes significantly longer when walking outdoors and climbing stairs. The physician entered question marks for “continuous assistance from another person or unable” for both lifting, and carrying and holding. The physician left the comments section blank.

In the PR, under Communication, and Cognitive and Emotional function, the physician check marked “no” with regard to any difficulties or deficits. In the AR, under Ability to Communicate, the physician check marked “good” for all areas including speaking, reading, writing, and hearing. Further, in the AR the physician crossed out the section pertaining to Social Functioning as no mental impairment was identified.

In his self-report, the Appellant reported that he cannot stand motionless for more than ten or fifteen minutes as his back becomes very uncomfortable. He cannot walk more than two kilometers without resting for a day to recover. His right sciatic nerve is aggravated by tasks that require bending over. Further, he has to be up for at least two and a half hours before he is able to leave the house if he is in good enough condition.

Daily Living Activities (DLA):

In the PR, the physician indicated that the Appellant has been prescribed medication/treatments that interfere with his ability to perform DLA with the comment, “uses T#3’s as needed”. In the AR, under *Daily Living Activities*, the physician check marked that the Appellant is independent in all areas of personal care, basic housekeeping, shopping, meals, pay rent and bills, medications, and transportation. No comments were provided under Additional Information regarding the Appellant’s impairment and its effect on DLA.

In his self-report, the Appellant reported restrictions in the following DLA:

- Personal care: bending over low countertops to brush his teeth aggravates his sciatic nerve;
- Basic housekeeping: bending over the sink to do dishes also aggravates his sciatic nerve and he “cannot do dishes bending over in that position for more than 15-20 minutes” without resting. Spreading his feet apart helps briefly.
- Shopping (errands): walking in winter weather to do errands was “brutal” and it took “a few days of self-physio and rest to recover”.

In the Supplemental Medical Opinion, the physician reported that the Appellant’s DLA are continuously restricted due to “pain with walking”; he is severely restricted in moving about indoors and outdoors; and his ambulation is significantly restricted due to back pain.

In an Appeal Guide – Daily Living Activities Checklist, the Appellant was asked to list the activities he cannot do on his worst days without help, and to include activities that he can do but that take much longer to do than they would for most people. The Appellant provided the following self-report:

Under personal care:

- Getting in and out of the bath tub: “have a hard time sitting up after lowering horizontally”;
- Reaching out to wash my body all over: “when showering can’t reach my feet”;
- Shaving: “hard on back arching over sink”;
- Brushing my teeth: “have to place one arm on sink for support”;
- Remembering, or having the energy/motivation to bathe everyday: “shower once a week”; and
- Anything else you can think of: “hard putting on socks/shoes”.

Under preparing meals:

- Standing at the sink and stove: “can’t do dishes, sink too low, spread legs to lower myself, or back gets pain. Have to sit down after short time standing at stove”; and
- Remembering I have food on the stove or in the oven: “Sometimes”.

Under taking medications:

- Anything else you can think of: “Forgetful, I have a daily pill case”.

Under housework:

- Cleaning the bathtub: “intense pain in back afterwards”
- Making beds: “hard on back”;
- Cleaning the toilet: “hard to bend over”; and
- Anything else you can think of: “can’t sweep floor, hurts back”.

Under shopping:

- Walking around stores: “walking pattern has changed dramatically, walk with hobble”;
- Carrying groceries to the bus or car: “after walking home with backpack have to rest my back for a day (min.)”; and
- Anything else you can think of: “can’t walk uphill”;

Under moving around inside the home:

- Going up or down stairs or ramps: “slow going”;
- Opening and closing drawers: “bottom drawers hard on back”;
- Getting into and out of bed: “barely get out of bed, very stiff/sore”;
- Bending to pick up things from the floor: “spread legs to do so”; and
- Kneeling and getting up from the kneeling position: “hard to do”.

Under moving around outside the house:

- Going up or down stairs or ramps: “slow – exhausting”; and
- Going out without being anxious or scared: “feel vulnerable”.

Under using transportation:

- Standing at the bus stop: “hard to bend over for few minutes for rest of back”; and
- Going up or down stairs or ramps: “slowly”;

Under eating:

- Anything else you can think of: “pass on meals, not up to cooking. Sometimes no food to cook”.

Under communication:

- Understanding what people say to me: “sometimes”; and
- Understanding most things in writing: “sometimes”;

Under “Put a mark beside the things you need in this list”:

- Cane(s);
- Raised toilet seat; and
- Grab bars (not checked, with the comment “I have grab bars”).

Need for Help:

- In the PR, the physician check marked “No” regarding any prostheses or aids required for the Appellant’s impairment.
- In the AR, the physician indicated that the Appellant lives alone, and wrote that he “has no friends or family to help - does it himself”. The physician left blank the section for assistance provided through the use of assistive devices. The physician check marked “No” the Appellant does not have an assistance animal.

Appellant’s additional evidence

Subsequent to the reconsideration decision, the Appellant filed his Notice of Appeal dated June 29, 2015, to which he attached the following documents:

1. A prescription pad note from his family physician dated July 2, 2015 in which the physician wrote that the Appellant “needs a cane to ambulate and has COPD, diagnosed in 2009 and uses around 4-10 T#3s per day for back pain”.
2. A prescription from the physician dated July 2, 2015 for a “cane for ambulation”.
3. At the hearing, the Appellant submitted a Medical Equipment Request and Justification form (“justification form”) signed by the Appellant’s physician on July 7, 2015. Under Diagnosis, the physician described the Appellant’s medical condition as “disk disease and chronic back and hip pain”. In response to “what type of medical equipment is recommended”, the physician wrote, “walking cane”.
4. In his oral testimony, the Appellant confirmed that he got a prescription for a cane in July 2015 and he was not using a cane at the time of the reconsideration although he has used a walking stick in the past. His COPD was diagnosed in 2009 but his physician did not list it the PWD application; however, the Appellant noted it in his self-report. He uses three inhalers for his COPD.

His DLA cause him pain every day: walking, sitting, and standing are a challenge and his condition has worsened over time. He sees his chiropractor regularly and the CT scan report from May 13, 2015 is an update to the report for the CT scan he had on July 30, 2014, indicating that his back condition has gotten worse.

The Ministry did not have any objections to admitting the additional evidence. The panel finds that the information regarding the cane [physician’s prescriptions, justification form, and oral testimony] is admissible because even though the Appellant did not have a prescription for a cane at reconsideration, he reported in the Appeal Guide – Daily Living Activities Checklist that he needs a cane, and the need for a cane substantiates that the Appellant has back problems, a diagnosis that was before the Ministry at the reconsideration. The panel therefore admits the information under section 22(4)(b) of the *Employment and Assistance Act* (EAA) as evidence in support of the information and records that were before the Ministry at the time the decision being appealed was made.

Regarding the diagnosis of COPD and the Appellant's use of "4-10 T#3s per day for back pain", the panel finds that this information corroborates the information in the reconsideration decision. The Appellant stated in his self-report that he has COPD, and his physician indicated that he takes Tylenol-3 medication. The panel therefore admits the statements under section 22(4)(b) of the EAA as evidence in support of the information and records that were before the Ministry at the time the decision being appealed was made.

The Ministry relied on and re-affirmed its reconsideration decision and did not present any new evidence. Both the Ministry and the Appellant presented their arguments which will be summarized in the next section, Part F – Reasons for Panel Decision. The Appellant attended the hearing with two advocates from a community organization. One of them spoke on his behalf at the hearing.

PART F – Reasons for Panel Decision

The issue in this appeal is whether the Ministry's reconsideration decision of June 15, 2015, which found that the Appellant is not eligible for PWD designation, was reasonably supported by the evidence or was a reasonable application of the applicable enactment in the circumstances of the Appellant. Based on the information provided in the PWD application, the Ministry was not satisfied that the following criteria in EAPWDA section 2(2) were met: the Appellant has a severe physical or mental impairment; and the impairment, in the opinion of a prescribed professional, directly and significantly restricts the Appellant's ability to perform DLA either continuously or periodically for extended periods; and, as a result of these restrictions, the Appellant requires help to perform those activities.

The eligibility criteria for PWD designation are set out in section 2(2) of the EAPWDA as follows:

- (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.

The "daily living activities" referred to in EAPWDA section 2(2)(b) are defined in section 2 of the EAPWDR as:

Definitions for Act

- 2(1)** For the purposes of the Act and this regulation, "**daily living activities**" ,
- (a) in relation to a person who has a severe physical impairment or a severe mental impairment, means the following activities:
 - (i) prepare own meals;
 - (ii) manage personal finances;
 - (iii) shop for personal needs;
 - (iv) use public or personal transportation facilities;
 - (v) perform housework to maintain the person's place of residence in acceptable sanitary condition;
 - (vi) move about indoors and outdoors;
 - (vii) perform personal hygiene and self-care;
 - (viii) manage personal medication, and
 - (b) in relation to a person who has a severe mental impairment, includes the following activities:

- (i) make decisions about personal activities, care or finances;
- (ii) relate to, communicate or interact with others effectively.

Severe mental or physical impairment

Appellant's position

The Appellant argued that he has a severe physical impairment that impairs his physical function and his ability to perform DLA. He stated that if he does anything, it aggravates his condition and even walking to the hearing room or going up steps causes him to experience pain "right now". He is worn out from too much hard labour and hopes that people will understand his situation so that they don't put him in a category he should not be in. He is hoping he does not fall through the cracks and end up homeless as that would be devastating to his condition.

The Advocate highlighted the evidence they believe is indicative of a severe impairment, arguing that the Ministry overlooked it:

- The physician stated that the Appellant's condition "impairs mobility, work, and ADL" but the Ministry focused on "work" only, noting that the PWD application does not assess employability. The Advocate argued that there is no evidence that the physician was assessing work or vocational ability.
- The Ministry stated that the Appellant's physician did not indicate how often the pain medication is required; however, the additional evidence clearly states that he takes Tylenol-3 four to ten times per day. As well, his condition has worsened to the degree that he has now been prescribed a cane.
- The Appellant reported in the Appeal Guide – Daily Living Activities Checklist that he has a grab bar but the Ministry did not indicate that they considered this. The Appellant has made many notes on the checklist for how his DLA are affected.
- The Ministry stated there were no x-rays or specialist reports but there is the May 13, 2015 report from the Appellant's chiropractor, as well as the May 13, 2015 report from the radiologist that reveals there is a change to the Appellant's condition - in that it is getting worse.
- In the Supplemental Medical Opinion, the physician circled that DLA are continuously restricted (due to back pain) and he check marked "yes" for severe impairment. The physician was "more clear" in the reconsideration submission that the Appellant is affected continuously.
- Also, in the Supplemental Medical Opinion, the physician circled that the Appellant does not require help, but this was because no help is available (as stated in the AR), not because no help is required. In fact, the physician indicated that the Appellant requires help two-three times per week.

Ministry's position

The Ministry was not satisfied that the physician's information and Appellant's self-reports, collectively, establish a severe physical impairment. The Ministry argued that the level of capability reported by the physician in the PR [the Appellant is able to walk four or more blocks, etc.] is not indicative of a severe impairment. The Ministry noted that the physician provided no comments regarding severity, other than "impairs mobility, work and ADL" and that the PWD application is not intended to assess employability.

The Ministry argued that the physician's lack of information on how often the Appellant requires medication, and his indication that the Appellant requires no aids, runs contrary to the finding of a severe impairment. The Ministry argued that the Appellant would at least be reported to benefit from a cane or bathroom grab bar if his degenerative back pain was considered severe. Further, the physician reported that the Appellant is independent in every category of DLA, and he did not provide medical test results or mention any specialist referrals.

At the hearing, the Ministry argued that while some restrictions are shown, severity is not established because the Appellant is still able to walk four or more blocks, climb five or more steps, and remain seated, albeit for a limited time span. While he now has a cane, the Ministry argued that the prescription for the cane is "for ambulation" and the physician did not indicate whether the cane increases or decreases the Appellant's ability to perform DLA or makes them significantly easier to complete.

Regarding a severe mental impairment, the Ministry submitted that no mental impairment is indicated by the information provided. It argued that the Appellant's PWD application relates solely to physical impairments as the physician reported no significant deficits in the areas of cognitive and emotional functioning.

Panel decision:

The diagnosis of a serious medical condition does not in itself determine PWD eligibility or provide evidence of a severe impairment. To satisfy the requirements in section 2(2) of the EAPWDA, evidence of how, and the extent to which, a medical condition restricts daily functioning must be considered. This includes the evidence from the Appellant and from a prescribed professional regarding the nature of the impairment and its impact on the Appellant's ability to manage the DLA listed in section 2(1) of the EAPWDR. However, section 2(2)(b) of the EAPWDA clearly sets out that the fundamental basis for the analysis of restrictions is the evidence from a prescribed professional - in this case, the Appellant's physician.

Severe mental Impairment.

The physician has not diagnosed the Appellant with a mental impairment and has not indicated the Appellant has any deficits with cognitive or emotional function. In the AR, the physician indicated that cognitive and emotional functions are "N/A", as was social functioning. The physician indicated that the Appellant has a good ability to communicate, and is independent in all areas of personal care, pay rent and bills, and medications.

The panel notes that the Appellant indicated in the Appeal Guide – Daily Activities Checklist, that he does have some cognitive and emotional deficits. He indicated that he is sometimes forgetful with DLA that involve paying bills and that he has difficulties in most areas of communication. The panel notes that there is no information from a "prescribed professional" to substantiate these self-reported mental restrictions, as required by EAPWDA section 2(2)(b). As there is insufficient evidence of a mental impairment, the panel finds that the Ministry reasonably determined that the Appellant does not have a severe mental impairment as set out in EAPWDA section 2(2).

Severe physical Impairment:

With respect to the Appellant's physical functional limitations, the Appellant's evidence was that he has difficulty walking, sitting up from a low position, and doing tasks that require bending. He walks with a hobble, is very stiff and sore when he gets out of bed, and due to pain, he has to rest for a day after walking home with a back pack. The Appellant noted that he does have grab bars, and his physician indicated that he requires four to ten Tylenol-3 per day for pain. He provided specialist reports that confirm reduced function in his back, and he requires help but none is available.

By contrast, the physician reported in the PR that although back pain impairs the Appellant's mobility and DLA, he can walk four or more blocks, and climb five or more steps. He is, however, significantly limited in remaining seated, i.e., "less than one hour", at the most severe end of the scale in the PR. Similarly, in the AR, the physician indicated that the Appellant is independent in all areas of Mobility and Physical Ability; however, he takes significantly longer walking outdoors and climbing stairs. The Physician did not indicate how much longer.

The panel notes that there are inconsistencies between the physician's evidence in the PR and AR versus the Supplemental Medical Opinion which the physician filled out for the reconsideration. In the Opinion document, the physician reported that the Appellant is "continuously restricted" with walking, due to pain, and that he has a "severe" physical impairment due to pain in his back and hips. The physician did not elaborate on why the impact worsened between the PR and AR [February 11, 2015] where the Appellant was reported as independent in his functional skills and DLA, and the Supplemental Medical Opinion [May 7, 2015] where he is now "continuously restricted."

Regarding the specialist reports, the chiropractor reported only that the Appellant is precluded "from work", and the radiologist reported bulging discs and "sclerotic degenerative change" but did not report on functional abilities or DLA. Similarly, the original CT exam report from July 2014 indicated a history of "persistent worsening symptoms of right-sided sciatica"; however, the focus of this report as well, is the Appellant's diagnosis, not the impact of his condition on his physical functioning and DLA. Even where the condition is reported to be chronic or worsening, the entire picture of its severity is missing without consistent information from a prescribed professional regarding impaired physical functioning and corresponding restrictions in the Appellant's ability to perform his DLA.

The panel therefore finds that the Ministry reasonably determined that the information provided by the Appellant's physician is not sufficient to confirm a severe physical impairment. While the Appellant has some restrictions in his physical functioning and DLA, the panel notes that he is nevertheless reported as independent in all of the physical functions and DLA listed in the PWD application despite having limitations with remaining seated, and taking longer when he walks or climbs stairs.

Further, other than the Appellant's evidence that he uses grab bars and was recently prescribed a cane, there is no information regarding any need for an assistive device, assistance animal or significant help from other persons. The evidence was that the Appellant is able to handle his DLA independently even though he could benefit from assistance which he does not presently have.

The panel finds that the Ministry reasonably concluded that there is insufficient information to establish a severe physical impairment. As the Appellant is independent in all of his physical functions and physical DLA, the panel finds that the Ministry was reasonably not satisfied that he has a severe physical impairment pursuant to EAPWDA section 2(2).

Restrictions in the ability to perform DLA:*Appellant's position*

The Appellant argued that he is restricted from performing DLA due to back pain. He has difficulty with personal care and housekeeping tasks that involve bending over a low counter [for example, he "cannot do dishes"] as these aggravate his sciatic nerve. Walking in cold weather to do errands was "brutal" and he walks with a hobble and cannot walk uphill. His advocate argued that the physician provided a clearer picture of the Appellant's restrictions in the Supplemental Medical Opinion, indicating that DLA are continuously restricted due to pain.

Ministry's position

The Ministry argued that the physician's lack of narrative regarding the Appellant's restrictions, and information that the Appellant is independent in every category of DLA, does not satisfy the requirement of DLA being significantly restricted continuously or for extended periods. The Ministry noted that although the Appellant takes significantly longer in walking outdoors and climbing stairs, he did not indicate how much longer it takes the Appellant. Further, the Ministry was not satisfied that the Appellant's self-reports of his limitations in the original PWD application and information he provided for the reconsideration, coincided with the physician's assessment. At the hearing, the Ministry argued that although there was evidence of some restrictions to DLA, the information overall is "lacking a particular connection between DLA and his impairment."

Panel decision

Section 2(2)(b)(i) of the *EAPWDA* requires that the Ministry is satisfied that in the opinion of a prescribed professional an applicant's severe impairment directly and significantly restricts his DLA, continuously or periodically for extended periods. In this case, the Appellant's physician is the prescribed professional. DLA are defined in section 2(1) of the *EAPWDR* and are also listed in the AR and, with additional details, in the PR. Therefore, a prescribed professional completing these forms has the opportunity to indicate which, if any, DLA are significantly restricted by the Appellant's impairments either continuously or periodically for extended periods.

In the AR, the physician indicated that the Appellant can perform all DLA independently and although he reported in the Supplemental Medical Opinion that the Appellant's DLA are now continuously restricted due to pain, he did not elaborate on what the specific restrictions are for each DLA. In the PR, the physician reported that the Appellant's Tylenol-3 medication interferes with his DLA but he did not indicate what the side effects are or how they limit the Appellant's ability to perform his DLA. Further, the evidence of both the physician and the Appellant was that the Appellant performs his DLA independently because he does not have any help.

Given that the physician's information in the PWD application indicated that the Appellant is independent with respect to all DLA, and that no explanation was provided in the Supplemental Medical Opinion regarding how the Appellant's pain and restrictions with walking cause his DLA to be "continuously restricted", or to what degree he experiences restrictions, the panel finds that the Ministry reasonably determined that there was not enough evidence to establish that the Appellant's impairments significantly restrict his ability to manage DLA either continuously or periodically for extended periods as required under section 2(2)(b)(i) of the *EAPWDA*.

Help to perform DLA:*Appellant's position*

The Appellant's position is that he needs help to perform his DLA but he "does it himself" because no help is available. He uses grab bars, needs a cane, and now has a prescription for a cane.

Ministry's position

The Ministry's position is that because it has not been established that DLA are significantly restricted, it cannot be determined that the Appellant requires significant help from other persons. The Ministry noted that no assistive devices are required. At the hearing, the Ministry argued that although the Appellant now has a prescription for a cane, there is no information on how the cane will assist him with his DLA.

Panel decision

Section 2(2)(b)(ii) of the EAPWDA requires that, as a result of direct and significant restrictions in the ability to perform DLA, a person requires help to perform those activities. Help is defined in subsection (3) as the requirement for an assistive device, the significant help or supervision of another person, or the services of an assistance animal in order to perform a DLA. In the AR, the physician indicated that the Appellant does not require help with DLA. In the Supplemental Medical Opinion, the physician indicated that the Appellant requires help two to three times per week but does his DLA independently despite pain. Although the Appellant reported that he uses grab bars, the physician did not indicate a need for any assistive devices, and the physician indicated that the Appellant does not have an Assistance Animal.

On the basis of the above noted evidence, 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 EAPWDA section 2(2) was reasonably supported by the evidence. The panel confirms the reconsideration decision.