

PART C – Decision under Appeal

The decision under appeal is the Ministry of Social Development and Social Innovation (“Ministry”) reconsideration decision dated June 2, 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, 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. A PWD Designation Application (“PWD application”) comprised of the Applicant Information and self-report completed by the Appellant on February 27, 2015; two Physician Reports (“PR”), the original dated February 26, 2015 and a revised one dated May 25, 2015; and two Assessor Reports (“AR”), both dated February 26, 2015 [the Appellant clarified at the hearing that the second AR is a revised version from May 25, 2015]. These reports were completed by the Appellant’s family physician who has known the Appellant since 2006, and has seen him two to ten times in the past year.

The PWD application included the following information:

Diagnoses

In the PRs, the physician listed the following conditions:

- Attention Deficit Disorder, date of onset: question mark;
- OCD, date of onset: question mark;
- GAD (anxiety), date of onset: question mark;
- IBS, date of onset: question mark;
- Solitary rectal ulcer syndrome, date of onset: 1999; and
- Chronic [illegible] back pain, date of onset: 2004 (question mark).

In his self-report, the Appellant cited "high anxiety disorder, learning disability and fear" as set out in the application package. His impairments include physical: back, IBS and rectal ulcer; and mental: learning disability, stress, GAD anxiety, and ADD.

Severity of Impairment:

In the PRs, under Health History, when asked to indicate the severity of the medical conditions in relation to how they impair the person, the physician wrote, "Being followed by psychiatrist, known insomnia, ADD, GAD, and OCD - reasonably controlled on Dexepine and CipraleX - Known IBS and rectal ulcer - Chronic back pain interferes with lifting and sitting for lengths of time."

In the PRs, the physician check marked that the Appellant has not been prescribed any medications or treatments that interfere with his ability to perform DLA. As well, the physician checked that the Appellant does not require any prostheses or aids for his impairments.

In his self-report, the Appellant stated that that his disabilities impact his life very severely on a daily basis; he has struggled with disabilities all his life. He noted that the main impact is medications: taking the right amount at the right time, and needing timers, watches, and sticky notes to remind him.

Regarding his anxiety, he stated that he was too nervous to give the PWD package to the physician until he had it perfect, and the physician talked to him to help him get over his fear. He had to write several pages of notes two to three times for his doctor/counsellor visit, and he also discussed it with his psychiatrist a couple of times.

Functional Skills

In the PRs, the physician reported the following:

- The Appellant can walk four or more blocks unaided on a flat surface; climb five or more steps; lift fifteen to thirty five pounds; and remain seated for less than one hour.
In the May 25 PR, the physician added the following comments:
Walking: “on bad days with his bowels and his back he sometimes cannot go more than 1 block”.
Lifting: “on bad back day, he cannot lift at all”.
- When asked whether the Appellant has any difficulties with communication, the physician wrote, "ADD, GAD with phobias talking on phones, etc."
In the May 25 PR, the physician added the comment: “Socially is very restricted”.
- Regarding any significant deficits with cognitive or emotional function, the physician indicated deficits in the following areas: executive, memory, emotional disturbance, motivation, and attention/sustained concentration, with the comment, "anxious, poor short term memory, anxiety and disorganized".
- Under Additional Comments, the physician wrote, "He comes to appointments with lots of papers that seem disorganized with lists of everything but often seems anxious and disorganized”.

In the ARs, the physician provided the following information:

- He check marked “Good” for all areas of Ability to Communicate;
In the May 25 AR, the physician added the following comment:
Reading and Writing: “Pain and anxiety can interfere with this continuously”.
- He check marked independent for all areas of Mobility and Physical Ability except Lifting, where he commented, “limited”.
In the May 25 AR, the physician added the following comments:
Walking indoors and Walking outdoors: “Often restricted though: back pain and bowel habits”.
Lifting: “[illegible] bad back”
Carrying and holding: “Limited, cannot lift – back”.
Comments: “On days when his back is [illegible] sore or his bowels acting up, carrying groceries, etc. is very limited”.
- Under Cognitive and Emotional Functioning, the physician indicated No Impact on daily functioning for consciousness, insight/judgment, psychotic symptoms, neuropsychological problems (including learning disabilities), and other emotional/mental problems.
- Areas with an impact on daily functioning included:
 - Bodily functions, Minimal impact;
May 25 AR revision: The physician crossed out Minimal impact and check marked Moderate impact.
 - Emotion, Moderate impact;
May 25 AR revision: The physician crossed out Moderate impact and checked Major impact.
 - Impulse control, Minimal impact;
 - Attention/concentration, Moderate impact;

May 25 AR revision: The physician crossed out Moderate impact and checked Major impact.

- Executive function, Moderate impact;
 - Memory, Minimal impact;
 - Motivation, Minimal impact;
 - Motor activity, Minimal impact; and
 - Language, Minimal impact.
- Under Comments, the physician wrote, “All endeavors seem quite a challenge for him”.
In the May 25 AR, the physician added the following comments: “Some days are definitely worse than others. If he forgets to take his pills, things get very much worse.”

Daily Living Activities (DLA):

- In the AR, the physician check marked that the Appellant is independent in all areas of personal care, basic housekeeping, shopping, meals, and transportation. He takes significantly longer than typical in three areas: Dressing, with the comment, “trouble with socks/shoes due to back pain”; toileting, and basic housekeeping.
In the May 25 AR revision, the physician added the following information:
Dressing: “and tying shoes”;
Grooming: “shaving”;
Bathing: “needs chair and sits in shower”;
Toileting: “often is incontinent of stool and frequent BMs”
Laundry: The physician added a check mark for “Takes significantly longer”;
Laundry and Basic Housekeeping: The physician commented: “Patient has friends come and help with chores”;
Going to and from stores: “Limited if IBS or back is worse”;
Making appropriate choices: “Limited also if anxiety is bad”;
Paying for purchases and Carrying purchases home: “Limited if back is bad”;
• Under Additional Comments, the physician wrote, “is independent in all of the above but more difficult than the average person”.
In the May 25 AR revision, the physician commented further: “And if back, bowels or anxiety very bad, he avoids these things on these days or gets friend’s help”.
• For the DLA of Pay Rent and Bills, the physician check marked that the Appellant takes significantly longer in all areas of this DLA, with the comment, “just a lot more work for him”.
In the May 25 AR revision, the physician further wrote: “makes mistakes often”;
• For the DLA Medications, the physician check marked that the Appellant is independent in filling and safe handling of prescriptions. He takes significantly longer taking medications as directed, and for all three areas of this DLA: filling prescriptions, taking as directed, and safe handling/storage, the physician commented, “has to make reminders”.
In the May 25 AR revision, the physician further commented: “misses meds sometimes”.
Also in the AR revision, the physician added additional comments for the DLA on this page: “Patient is often disorganized, makes mistakes, and takes a lot more time to accomplish his [illegible]”.
• For the DLA of Social functioning, the physician check marked that the Appellant is independent in appropriate social decisions, developing and maintaining relationships, interacting appropriately with others, and dealing appropriately with unexpected demands.

For all of these areas as well as “able to secure assistance from others”, the physician commented, “has difficulty with social situations and relationships”.

In the May 25 AR revision, the physician added: “Will avoid most social interaction”.

- The physician further reported that due to his mental impairment, the Appellant has marginal functioning in both his immediate and extended social networks.

Need for Help:

- In the PRs, the physician check marked “No” regarding any prostheses or aids required for the Appellant’s impairment.
- In the ARs, the physician indicated it is “unknown” whether the Appellant requires help. There are “no safety risks”; the Appellant is “doing it all himself”; and it is “unknown” what assistance would be necessary if help is required but there is none available.

In the May 25 AR revision, the physician added: “Friends on bad days where friends are available”.

- In the original AR, the physician did not fill in the section on “Assistance provided through the use of Assistive Devices”, and in both ARs he check marked “No”, the Appellant does not have an assistance animal.

In the May 25 AR revision, the physician checked: the Appellant uses “Braces” to help compensate for his impairment, with the comment, “wears back brace every day”.

2. In the Appellant’s Request for Reconsideration dated April 28, 2015, he attached two hand-written submissions: Seven pages with first page heading “Physical Disability”; and six pages with the heading “PWD – Added Notes”. The Appellant explained that he was initially unsure of the PWD process and after getting clarification from the Ministry on what was needed, he submitted additional information (self-reports and letters/ reports from professionals) for the reconsideration.

In the two additional self-reports, he outlined his physical and mental disabilities and their impacts:

Chronic back pain with the following impacts when “back is out”:

- Causes headaches and vision problems when the pain shoots to his neck;
- “24/7 pain” and his fingers can go numb;
- Hard to bend over, tie shoes (he wears sandals even in winter), sit for more than twenty minutes without discomfort, and he cannot lift anything. He can “end up on the floor for hours over days”.
- Needs a cushion in the car, and wears a back support brace to vacuum. Sometimes he has to vacuum on his knees.
- Puts showers on hold for two or three days, uses a folding chair by the tub, or showers in a seated position.
- His back brace and pain killers can help him cope and get the bare minimum done. He can “need the brace to walk even one block”.
- Sometimes the pain is so bad that he cannot shave or can only partially shave, and he needs help finishing his haircuts.
- He needs help sometimes and tries to get friends to assist because he cannot do laundry, housework, or dishes.
- When his back is “full out”, it impacts his mood and he experiences mood swings. He can talk loud without knowing it and when he leans forward to relieve his pain, people sometimes think

he is being aggressive. It causes huge social rifts with family and friends and he has not spoken to the majority of his family for over two years.

- Insomnia: He sleeps two-four hours, and on bad days, one-two hours as the pain wakes him up. Sometimes he sleeps on the floor or needs a shower in the middle of the night, heat pads or a small floor mat. Other times, he sleeps too much (several days at a time) which also aggravates his back.

IBS and rectal ulcer

- Stomach cramps and abdominal pain “can come out of nowhere”.
- Can cause “bloating...poo blood, poo slime, sharp pains and fear of another colonoscopy”. When a bout happens, he needs to be near a bathroom, feels sweaty and dizzy and may have “accident in pants”.
- He tries to eat to mitigate the problem but “costs extra money” and he fears he will develop colon cancer. His weight can fluctuate five to thirty pounds in days or weeks.

Mental Health and cognitive issues

- His learning disability makes it hard to write and his thoughts and words do not directly connect. He reads with his finger on the paper and he uses speech software for long documents.
- His stress and anxiety (GAD) impact what people will think of him and makes it hard to do paperwork, apply for jobs, and sleep well. He has bad nightmares and restless sleeps. He is scared of forgetting his medications and riding in the passenger seat of cars. He is overwhelmed when he has a lot of paperwork, and when he fears that people are putting pressure on him he can go a “day or three without leaving the house or showering”.
- His ADD causes him to lose track of time and he will forget to take his meds if he does not have a watch. He has to set his pills out for five days at a time and he can then forget he has taken them. If he loses track with one medication, it will affect his other ones and he is always scared he will “over-take a dose or forget”.
- ADD causes every task to be exhausting and he lost his wallet so many times and missed appointments, both of which cost him “huge \$\$\$”.
- His bad short term memory can cause him to duplicate things. It can be as severe as forgetting to pay his rent and without his supportive landlord he would be evicted. It impacts him every day and he has to park in the same spot or he can lose his car.
- Budgeting and personal finances are hard and it takes him longer to gain focus. He needs sticky notes for reminders, and a beeper for his keys.
- It is very hard to fill out paper work and navigate telephone menu systems. He has to hang up and call several times to figure out the options, and things usually take him one and a half times longer than normal as indicated in his psychologist’s report.
- Socially, he cannot keep a friend or family and his very low self-esteem can cause depression.
- Sometimes friends will pick up groceries if his anxiety is too high in stores, plus he is scared he cannot control his bowels if he has a “bout”.

3. In its reconsideration decision and at the hearing, the Ministry noted it had the following documents for the reconsideration. The Appellant filed these documents for the appeal as physical copies were not in the reconsideration record.

- (a)** A letter from the Appellant's chiropractor dated May 13, 2015 who sees him on an ongoing basis for chronic back pain resulting from a motor vehicle accident, and recommends an adjustment every two weeks for pain management and to maintain range of motion in his spine.
- (b)** A letter from the Appellant's psychiatrist (the Ministry, in error, attributed the letter to his physician) addressed to the family physician, dated February 20, 2015 that reported a follow-up visit with the Appellant. The Appellant was "doing well" at the present; he said his anxiety had improved significantly since the last visit. The psychiatrist noted that the Appellant engaged in casual employment, which is often limited by his "bad back". The Appellant also participates in physical fitness activities and takes five medications for his conditions.
- (c)** Undated information from a community mental health nurse who reported that the Appellant had an initial intake with a mental health service provider in March 2014, and has been accessing clinical services approximately once a month. The nurse stated that the Appellant requires PWD financial support "to assist with his ongoing goals of wellness and a self-directed life".
- (d)** A consultation report from a psychiatrist dated January 30, 2013 in which reported issues included depression, coping strategies, lack of family support, concentration problems, insomnia, low self-esteem, guilt, anxiety, Irritable Bowel Syndrome (IBS/Crohns/Celiac), and back pain. The Appellant was previously suicidal but had some improvement in his mood at the time of the assessment. The psychiatrist diagnosed Adjustment Disorder, GAD, and ADHD and noted depression with free-floating anxiety, IBS, and psychological stressors including relationships and finances. The report noted the Appellant's GAF score (General Assessment of Functions) to be "+/- 50" [the panel notes that this is out of a scale of 75 for degree of impairment]. Medication for anxiety was prescribed.
- (e)** A psycho-educational/vocational report from September 24, 2007, prepared by a registered psychologist who assessed the Appellant to determine whether he has a learning disability, and to recommend any program accommodations/ modifications for post-secondary education. The Appellant was diagnosed with learning disabilities in Grade four and received learning assistance and technological supports. He obtained his high school diploma, completed post-secondary education, and worked in his profession on and off for ten years. As a young adult, he was in a car accident with injuries that included compressed vertebrae. He has difficulties with spatial relations and memory and meets the diagnostic criteria for ADHD (Inattentive type). He was also found to have Learning Disability (Not otherwise specified). He would benefit from program modifications including extra time for exams ("at least 1.5 -2 times the allotted time"). The Appellant's problems with attention and concentration can add difficulties to his daily life and potential employment.

Appellant's additional evidence

1. Notice of Appeal submissions: Subsequent to the reconsideration decision, the Appellant filed his Notice of Appeal dated June 15, 2015, in which he stated his argument for needing PWD assistance. His physician stamped and signed the bottom of the appeal notice. Attached, were six pages consisting of passages from the reconsideration decision, and hand written notations (from the Appellant and his advocate) indicating which sections of the decision they take issue with. The panel will address the Appellant's arguments in the next section – Part F, Reasons for Panel Decision. Also attached was an eight page hand-written submission in which the Appellant reiterated the evidence in his self-reports and added the following information:

- He has three back braces that he wears 90% of the time when he is awake, and also when sleeping if the pain is really bad.
- He has a walker for the bed side to "aid (himself) up".
- He uses a stool for the toilet to change the degree of his legs and lower his back to

relieve severe pain. He has passed red blood and mucous up to ten times per day and has had four colonoscopies and a few endoscopies.

- He has made a wooden stool that can be used for putting on socks and shoes.
- He cannot sit on certain chairs or couches due to “severe shooting pain up spine or I’ll lock up”.
- He has a spinal strap from a physiotherapist that he uses to unlock his back while lying on the floor.
- His world revolves around his watch, alarms, and clocks.

2. Letter from the Appellant to the tribunal dated June 30, 2015 (faxed to the tribunal office on July 20): At a July 20 appointment with the physician (the first available appointment due to holidays), the Appellant presented a typed letter in which he stated that he and the physician reviewed the Ministry’s rejection together. The physician signed the bottom of the letter on July 20, 2015 and added a comment: “I have read the above and concur. I do so because (the Appellant) is incapable of holding down full time work due to his disabilities”.

3. Two days prior to the hearing, the Appellant faxed a sixty-six page submission to the tribunal office. Most of the submission consisted of self-reports, the revised PR and AR, and the reports/letters from various professionals that were noted by the Ministry in its reconsideration decision. At the hearing, the Ministry confirmed that all of the submissions were before the Ministry at reconsideration except for a two page fax cover sheet containing a hand-written statement from the Appellant to the tribunal, with a copy of a prescription pad note from the Appellant’s physician on the second page:

(a) Appellant’s submission, August 10, 2015: The Appellant explained that he had obtained additional information from his physician to address why the original PR and AR “did not address main points”. The Appellant stated that the physician said yes, he meets all five of the PWD criteria.

(b) Physician prescription note, August 10, 2015: The physician wrote that the Appellant has multiple physical and psychological disabilities “that greatly and severely impact his daily activities of living and it is necessary that he has frequent help from friends, organizations and professionals to cope with his daily activities”.

Testimony at the hearing

The Appellant reviewed the materials in the reconsideration and appeal records, presented his argument (which the panel will address in Part F – Reasons for panel decision), and added the following information:

- He has “periodic back symptoms” and his back was out for six weeks in September 2014, with a fracture and bad pain which left him “lying on the floor”, unable to sit or lift at all. His physician and his trainer helped get him back to the gym, which helped but then his back went out for six days when he injured himself at the gym. He reported that his back can go out for one month at a time.
- After the PWD rejection, he called the Ministry 1-800 number and had a one hour conversation with a worker to discuss what information was needed for PWD designation. He went back to his doctor and his psychiatrist to get more documentation after he was declined the second time (at reconsideration). When asked how often he sees his psychiatrist, the Appellant explained that it is normally every three months, but it was every three weeks during the PWD

application, and then once or twice a week after the rejection when they were adjusting and monitoring his medications.

- When re-doing the PR and AR, the physician did not feel comfortable writing over his own work, so he added comments to the old forms “to change lifting to zero pounds” when the Appellant’s back is out. The Appellant added that he can climb “zero steps” when his back is out as well. For remaining seated less than one hour, the Appellant explained that it means “five-ten minutes”.
- The physician did not know the extent of the Appellant’s restrictions the first time he filled out the PR and AR as the Appellant did not provide complete information. The Appellant said he was overwhelmed and confused by the process and embarrassed to tell his physician everything for fear of people judging him. His physician explained the importance of being thorough and honest about his limitations for the reconsideration.
- In response to a question on how often his friends help him out, the Appellant explained that when his back was out last fall, a friend came over once a week. He has a good friend he can call to do laundry/housework (but they are not always available) and a friend who is a hairdresser will do a shave for him if his back locks when he is half shaven. In addition, if his anxiety acts up when he is in a store, he will phone a friend to help him get groceries but leave the store if the friend is not available. He does not want to rely on friends too much but he does use them when he needs to. If his physician did not help him read things he would get too overwhelmed and be unable to complete the PWD application process. He manages with support from “his team” (friends and professionals); for example, his pharmacist will call to remind him to refill his prescriptions, and his landlord will help remind him about rent. His advocate helped him with his appeal.
- His communication and relationship difficulties include changing his phone number so that estranged family will not find him or taking his phone off the hook for two-three days.

At the hearing, the Ministry reviewed the reconsideration decision and did not adduce additional evidence. In response to questions, the Ministry confirmed that in making the decision it considered all of the documents and information that was before it at reconsideration, including the revised PR and AR. The Ministry did not have any objections to any of the Appellant’s additional information.

The panel admits the Appellant’s Notice of Appeal submissions; the July 20, 2015 letter with physician’s statement (regarding employability) on the last page; the Appellant’s submission and physician’s prescription note of August 10, 2015; and all of the oral testimony, under section 22(4)(b) of the *Employment and Assistance Act* as information that is in support of the information and records that were before the Ministry at the time the decision being appealed was made. The Notice of Appeal submissions expand on the Appellant’s information about his bowel condition and aids for his back and memory, all of which were before the Ministry at reconsideration. The July 20, 2015 letter corroborates the physician’s position on the Appellant’s employability which was also before the Ministry at the reconsideration.

The oral testimony substantiates the Appellant’s information about his back condition, need for help, and communication and social difficulties, adding greater detail to the information that was before the Ministry at reconsideration. Further, both the Appellant’s and Ministry’s oral statements and the Appellant’s submission of August 10, 2015 corroborate that additional documents were filed for the reconsideration.

Regarding the August 10, 2015 prescription note from the physician, the panel was satisfied that the information is in support of the revised PR and AR that were before the Ministry at reconsideration where the physician reported an increased impact for some DLA.

Procedural matters

The Appellant attended the hearing with his advocate. The hearing was previously adjourned on two occasions: Originally scheduled for July 7, 2015 and rescheduled for July 22, 2015 after the tribunal chair granted an adjournment to accommodate the advocate's availability. The panel granted an adjournment at the hearing on July 22, 2015 so that the Appellant could obtain copies of documents that were not printed in the reconsideration record.

PART F – Reasons for Panel Decision

The issue in this appeal is whether the Ministry's reconsideration decision of June 2, 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 mental or physical 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(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 his mental and physical impairments are severe because he has the full support of his physician, psychiatrist, nurse and crew, chiropractor who knows about the fracture in his spine, and the Ministry worker at the 1-800 number who all confirmed that he meets the eligibility criterion for severity. His physician stamped and signed the Notice of Appeal, agreeing that the Appellant's impairments are severe, and provided a prescription note on August 10, 2015, to further confirm multiple disabilities that severely impact his daily functioning and necessitate "frequent help" from friends and professionals. The Appellant argued that the Ministry made "a big, rushed decision with no clear way to dispute it" as he was left in the dark about what material the Ministry relied on; however, if the evidence provided is looked at in more depth and at a slower pace, it is clear that he meets all of the criteria for PWD designation.

Severe mental impairment: The Appellant argued that his psychological conditions are severe because they cause him significant problems with communication, organization, social functioning, and memory and he would not be able to manage his medications, pay rent, do paperwork, or make purchases from stores when his anxiety acts up, without assistance from his physician and others. He argued that his professionals have provided sufficient information as has the Appellant in his self-reports which he wrote very honestly; however, the Ministry discounted information that swayed things in his favour.

The Advocate added that the Ministry reported the information from professionals inaccurately (with factual mix up's and grammatical errors); listed some reports from professionals without indicating whether the report is for or against the Appellant's case; and singled out portions of reports where the professionals indicated the Appellant was "doing well" or "his anxiety is way better" to reject his PWD application, even though a "good day" does not mean he is functioning at full capacity overall. The Advocate argued that instead of considering all of the information transparently and in context, the Ministry swiftly concluded that it did not have enough information to confirm a severe mental impairment. The Advocate argued that the legality of the reconsideration decision is put into question when documents are not referred to correctly. Further, many documents were not sent to the tribunal until the Appellant obtained them after an adjournment.

The Advocate asserted that the physician's information indicates enough moderate and major impacts to confirm that the Appellant's mental impairments are severe and the physician further confirmed severity when he signed the Notice of Appeal, and in the prescription note of August 10, 2015. The Advocate further argued that the psycho-educational/vocational report from the psychologist indicates a lengthy history of problems with attention, concentration, organization and memory, and the psychologist did indicate (in page 14 of the report, item 'h.')

that the Appellant needs "1.5-2 times the allotted time" for activities.

Severe physical impairment: The Appellant argued that his chiropractor's letter supports the severity of his back problem because frequent adjustments (every two weeks) for pain and to maintain a range of motion were recommended. He has "periodic" back symptoms and his IBS symptoms can

come on suddenly and are severe because they can cause bleeding as well as accidents (incontinence), which he can sometimes control by anticipating when it is going to happen. He has back pain all the time and when his back is bad (the flare ups can last for a month at a time and incapacitate him for six days) he cannot lift or climb steps at all (or perform any DLA according to his advocate) and friends help him with household chores when they are available. When friends are not available, he is very limited in what he can do; he emphasized that he has to “vacuum on his knees” for example, use stools, chairs or other props to move within the home, and take Tylenol-3 on a daily basis (at night) for pain. He also needs to wear three back braces in order to function and his back can lock up in the middle of grooming activities. The Appellant submitted that when his physician reported (in the revised PR) that he “sometimes” cannot walk more than one block, it really means “periodically” and that remaining seated “less than 1 hour” means “five-ten minutes”.

Ministry’s position

The Ministry argued that there was not enough information to confirm that the Appellant has a severe mental or physical impairment. The Ministry noted that it considered the Appellant’s information (self-reports and reports from professionals) in conjunction with the PR and AR.

Severe mental impairment: The Ministry acknowledged that the Appellant has a mental impairment but argued that because the Appellant was reported as independent in the majority of his DLA including Social functioning, the Ministry did not have enough information from the Appellant’s physician to confirm that the impairment is severe.

Severe physical impairment: The Ministry acknowledged that “chronic back pain interferes with lifting and sitting for lengths of time” but argued that the information provided does not confirm a severe impairment because the physician reported that the Appellant can perform most physical functions independently (walking, climbing stairs, carrying and holding), although on “bad days” with his back and bowel problems he sometimes cannot walk more than one block or lift at all. While the Ministry noted that the Appellant uses a back brace and acknowledged that his physical abilities are “impacted by (his) bad back at times”, the Ministry argued that the evidence was insufficient because the physician did not indicate how often the Appellant has bad days and the Ministry could not confirm how often the Appellant is impaired.

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, chiropractor, psychiatrist, registered psychologist, and mental health nurse.

Severe mental impairment

The panel notes the evidence of the prescribed professionals who assessed the Appellant's mental impairments. The Ministry referred to the professionals' reports in the reconsideration decision:

- The psychiatrist's follow up letter of February 20, 2015 that noted a significant improvement in the Appellant's conditions as he was benefitting from medications and support.
- The mental health nurse's information that the Appellant has been accessing community services and requires PWD support "to assist with his ongoing goals of wellness and a self-directed life".
- The psychiatrist's report that noted the Appellant's concentration problems due to ADHD and anxiety, and lack of family support and relationship stressors. The Appellant was previously suicidal but his mood had stabilized at the time of the assessment. The report noted the Appellant's GAF score (General Assessment of Functions) as 50 [out of a scale of 75 for degree of impairment].
[The panel notes that while the Ministry cited the date and title of the report, it did not refer to any of the content].
- The registered psychologist's psycho/educational/vocational report that indicated the Appellant has difficulty with spatial relations and memory due to ADHD and learning disabilities; he would benefit from program modifications in an educational setting such as "1.5 to 2 times" more time for exams, and his problems with attention and concentration can add difficulties to his daily life.
[The panel notes that while the Ministry cited the date and title of the report, it did not refer to any of the content].
- The physician's information in the PR and AR regarding the Appellant's mental impairments, including difficulties with communication due to his ADHD, anxiety, and phobia of talking on phones, and "very restricted socially" (PR). He also has significant deficits in five of twelve areas of cognitive and emotional function due to his anxiety, poor short term memory and disorganization (PR). Although his ability to communicate is good, anxiety "can interfere with this continuously" (AR). His mental impairments impact his daily cognitive and emotional functioning moderately or severely in four of fourteen areas including bodily functions, emotion, attention/concentration, and executive function and "all endeavors seem quite a challenge for him" with some days definitely worse than others, especially if he forgets his medications (AR).
- The physician's information regarding DLA was that the Appellant is independent in all areas of all DLA except Pay rent and bills where the physician check marked that the Appellant takes significantly longer because he makes mistakes often. He also takes significantly longer with filling prescriptions and taking medications due to forgetting; he misses meds "sometimes". Although the Appellant is independent in making appropriate choices in stores and paying for purchases, these are limited if his anxiety is bad. Further, although he is independent in social functioning, it is difficult for him and he avoids social interaction. He has marginal functioning with his social networks.
- In addition to the evidence noted by the Ministry, the physician added, in the August 10, 2015 prescription note, that the Appellant's psychological disabilities "severely" impact his DLA and he requires "frequent help" to cope with his daily activities.

Regarding the Ministry's determination that the information from the physician was insufficient to confirm a severe mental impairment because the Appellant is independent in his DLA, the panel

acknowledges the Appellant's argument that in order to determine severity, all of the information must be considered in the context of the Appellant's history and overall difficulties, so that it does not get clouded by the Appellant's reports of improvement when he is at any particular appointment. The panel further notes, that the physician's assessments took place in the context of an evolving process as the Appellant became more comfortable communicating about his impairments without the fear of being judged.

For example, the revised PR and AR added more information about the Appellant's restrictions and need for help due to his ADHD and anxiety. Although he was reported in both reports as independent in cognitive/social/emotional functioning and DLA, and for some tasks his anxiety impacted him only "sometimes", the physician, in the revised reports, also noted that anxiety can interfere with his communication "continuously" and that he is "often" disorganized and "makes mistakes often". Further, in the August 10, 2015 prescription note, a culmination of at least three meetings with the Appellant for the purpose of assessing PWD, the physician went as far as to revise his assessment and indicate that the Appellant's mental impairments severely impact his DLA to the point of needing "frequent help" from professionals and others in order to cope.

While the psychiatrist and registered psychologist assessed the Appellant's mental impairment with DSM and psychometric criteria rather than PWD criteria, their assessments, while clearly not as relevant as the PWD reports, do not automatically rule out a finding of a severe mental impairment. Their evidence was that the Appellant has a combination of long-standing psychiatric and psychological diagnoses that cause problems with concentration, attention, and memory. He required program modifications in educational settings (where attention skills are obviously required) since at least Grade four. The Appellant was further reported as previously suicidal with a low assessment of functions (GAF) score, and his improvements were attributed to treatment and support for his conditions.

Taking into account all of the evidence from the professionals in conjunction with the Appellant's detailed self-reports [which provide extensive examples of the impacts of mental impairments on the Appellant's functioning and are not inconsistent with the physician's information], the panel finds that the Ministry was not reasonable in finding that there was not enough information to confirm a severe mental impairment pursuant to EAPWDA section 2(2).

Severe physical Impairment:

The panel notes the evidence of the prescribed professionals who assessed the Appellant's physical impairments. The Ministry also referred to this information in the reconsideration decision:

- The chiropractor's recommendation for treatment every two weeks for pain and mobility maintenance;
- The psychiatrist's information that the Appellant's employment is often limited by his "bad back". The physician [in the additional information submitted on appeal - Appellant's letter of June 30, 2015] also indicated that the Appellant is restricted in employment due to his disabilities;
- The physician's information In the PR and AR that chronic back pain interferes with physical functions [lifting, sitting for lengths of time, and on "bad days" the Appellant cannot lift at all and his walking is "often restricted"] The physician further noted restrictions in physical DLA due to the Appellant's back and bowel conditions. At the same time, in the AR, the physician

check marked that the Appellant is independent in all of his physical DLA.

- In addition to the evidence noted by the Ministry, in the August 10, 2015 prescription note, the physician indicated that the Appellant's physical disabilities "severely" impact his DLA.

Regarding the Ministry's determination that the information from the physician and chiropractor was insufficient to confirm a severe physical impairment because there was no information on the frequency or duration of the Appellant's back or bowel episodes, or information on how much longer the Appellant takes to do his DLA, the panel finds that the Ministry reasonably determined that such information was necessary in order to confirm the extent of the Appellant's impairments.

Regarding the above evidence, the panel assigns little weight to the information regarding restrictions in employment because employability is not a criterion for PWD designation under the legislation. The panel further assigns low weight to the chiropractor's evidence because although the chiropractor recommended treatment every two weeks, she did not provide any information on the frequency or duration of the Appellant's flare up's, and while she mentioned that the treatment is for pain and to maintain mobility she did not provide information on how the Appellant's functions or DLA are restricted.

Regarding the physician's information on severity, the physician indicated severe impacts in his note of August 10, 2015; acknowledged the Appellant's back brace and need for assistance from friends in the revised AR; and signed the Notice of Appeal in which the Appellant described the chairs, and other props he needs for mobility. The physician reported limitations in three areas of physical function in the PR (walking, lifting, and sitting for a length of time) and restrictions with four physical DLA in the AR (Mobility/physical ability, Personal Care, Basic Housekeeping, and Shopping). Nevertheless, the physician's information is in the context of an episodic condition; for example, "bad days with his bowels and back" as noted in the revised PR and the frequency and duration of episodes and information on how much longer the Appellant's DLA take him to complete were not described in either the original or revised PR and AR. Further, in the revised reports, despite adding comments about the impact of the Appellant's conditions on "bad days" the physician did not change the check marks and has still assessed the Appellant as independent in all physical DLA even where he takes significantly longer to perform an activity.

Regarding the Appellant's self-reported information and oral testimony on his physical impairments, the panel acknowledges that he has provided a large amount of detail about a degree of impairment that the Appellant describes as severe (with pain all the time) and periodic, restricting his DLA almost completely when his back is especially bad or "locks up". However, although the Appellant described "bad back" episodes that can last from six days to one month, and reported at least two such episodes within the past year, the panel cannot assign substantial weight to the information. This is because, as noted by the Ministry, the Appellant's information is looked at in conjunction with reports from professionals and neither the physician nor the chiropractor [who are in the best position to provide information about the Appellant's physical impairments] have commented on the frequency or duration of his episodes or on how much longer he takes to do his restricted DLA.

As the panel noted above, the Ministry was reasonable to rely on information about frequency and duration from a prescribed professional, and given that the evidence from the professionals lacks that pertinent detail, the panel finds that the Ministry reasonably determined that the information provided does not confirm a severe physical impairment under EAPWDA section 2(2).

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

The Appellant argued that his mental and physical impairments restrict his ability to perform DLA continuously for tasks involving organization and memory (such as paying rent and bills) and periodically when his back, bowels, or anxiety are bad. He argued that the information from his physician that his medications do not interfere with his DLA is incorrect because if he misses a dose he can take a "bad skid", and when he takes Tylenol-3 for his back pain it can cause him to sleep for days. The Advocate expressed concern that the Ministry made its decision without indicating how many DLA need to be restricted in order to confirm the legislative criteria and without explaining whether restrictions to all DLA are weighted equally.

Ministry's position

The Ministry argued that there was not enough evidence to establish that the Appellant's impairments directly and significantly restrict his DLA continuously or periodically for extended periods. The Ministry noted that the physician reported that the Appellant's medications do not interfere with his DLA, and that although he takes significantly longer to manage some DLA, he can independently manage most tasks. Although the physician indicated that the Appellant requires continuous assistance with taking medications as directed, the Ministry argued that the psychiatrist's information that the Appellant has been taking a medication at night and his anxiety is much improved does not confirm why he needs continuous assistance with medications. The Ministry also argued that although the physician indicated that the Appellant requires continuous assistance with paying rent and bills, the physician's comment that it is more work for the Appellant because he makes mistakes often does not explain why he requires continuous assistance.

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 DLA, continuously or periodically for extended periods. In this case, the Appellant's physician is the prescribed professional as he assessed the Appellant's DLA for the purpose of the application. 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 Appellant's circumstances, the panel notes the following restrictions as reported by the physician:

AR:

- The Appellant was reported independent in all areas of all DLA except Pay rent and bills for which the physician noted that the Appellant takes significantly longer than typical because he often makes mistakes.
- For Personal care, he takes significantly longer with dressing and toileting and needs a chair for bathing.
- He takes significantly longer with Basic housekeeping, gets helps from friends for housework, and is limited in shopping when his back, IBS, or anxiety are bad.

- Although the Appellant is independent in all of the above DLA, they are more difficult for him than for the average person and on bad days he avoids things or gets friends to help.
- He takes significantly longer for all areas of Pay rent and bills as well as most areas of Medications as he often makes mistakes and needs reminders. He misses medications sometimes.
- Although he is independent in all areas of Social functioning, he has difficulty with social situations and relationships (including marginal functioning in his social networks) and he avoids most social interaction.
- He wears a back brace every day to help compensate for his impairment.

August 10, 2015 prescription note:

- DLA are greatly and severely impacted by the Appellant's impairments and he needs frequent help from friends and professionals in order to cope.

The panel finds that the Ministry's assessment of the evidence was reasonable and that the Ministry reasonably concluded that the physician's information was not sufficient to confirm that the Appellant's DLA are significantly restricted either continuously or periodically for extended periods. While the physician reported that DLA are more difficult for the Appellant than the average person, he did not provide information on how much longer the Appellant takes to complete his DLA, nor did he provide information on how many days the Appellant is restricted in his daily activities when his back or other conditions are acting up.

While the Appellant's self-reports painted a more severe picture of his restrictions, citing numerous examples of how his DLA are impaired, the information is not corroborated by the physician as the physician did not offer anywhere near that level of detail in the AR or additional documents. Nevertheless, it was reasonable for the Ministry to rely on the physician's information in making a decision about DLA. For example, for the DLA of Basic housekeeping, the physician did not note any restrictions with vacuuming except that housework takes significantly longer, yet the Appellant reported that when his back is acting up, he may need to vacuum on his knees. Further, it was the Appellant, not the physician who reported that DLA can be restricted for six days at a time when the Appellant's back is out. In terms of Social functioning as well, it was the Appellant who provided examples of how his social networks are impaired, including estrangement from family due to his inability to maintain relationships. The physician stated only that he has difficulties in general.

While the physician reported, in his additional assessment of August 10, 2015, that DLA are severely impacted, there is still no narrative describing the specific level of impairment in specific DLA, yet it is reasonable for the Ministry to require a greater level of detail in order to have a complete picture of how DLA are significantly restricted continuously or periodically for extended periods. The physician provided the strongest evidence for significant restrictions (for an extended period) for the DLA of Pay rent and bills and Medications noting that the Appellant often makes mistakes and requires continuous help.

However, as noted by the Ministry, the physician, other than saying that the Appellant needs reminders, did not provide any information about how the Appellant is managing to take his sleeping medication (Cipralext) at night, or his other medications for that matter, consistently enough to effect improvement in his condition. The Appellant described how his world revolves around timers and how his pharmacist and landlord support him in these DLA, but again, the physician has not provided that depth of information and the information the physician has provided is too sparse to confirm the legislative criteria, especially when the physician check marked that the Appellant is independent

across the board with his DLA. Given the lack of detail from the physician, the panel finds that the Ministry reasonably determined that the criteria in EAPWDA section 2(2)(b)(i) were not met.

Help to perform DLA:

Appellant's position

The Appellant argued that he does require help with his DLA and he asks for help from friends and professionals when he needs it. He noted that friends are not always available and when that is the case he avoids DLA or leaves tasks partially done. He reported that a friend assisted him with housework once a week when his back was out for six weeks last fall, and that if it weren't for his "team", he would not be able to manage his medications, he would be evicted from his residence, and he would not be able to be able to apply for PWD.

Ministry's position

The Ministry argued 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 acknowledged that the physician, in the AR, indicated the Appellant requires a back brace. The Ministry noted that he 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 revised AR, the physician noted that friends help the Appellant with chores and assist him on his bad days when friends are available. The physician's comments that the Appellant comes to appointments anxious and disorganized with a lot of unorganized papers and lists (PR), and that he often makes mistakes with DLA involving documentation (AR) also suggest a need for help. Further, the physician's August 10, 2015 prescription note indicated that the Appellant frequently needs help in order to cope. Despite evidence in support of a need for significant help or supervision, the panel finds that the Ministry reasonably found that it cannot be determined that the Appellant requires significant help when there was not enough information from the physician to confirm that DLA are significantly restricted either continuously or periodically for extended periods. Accordingly, the panel finds that the Ministry reasonably determined that the criteria in EAPWDA section 2(2)(b)(ii) were not met.

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) because the information provided does not confirm all five of the legislated criteria, was reasonably supported by the evidence. The panel confirms the reconsideration decision.