

## PART C – Decision under Appeal

The decision under appeal is the Ministry of Social Development and Social Innovation (the “ministry”) reconsideration decision of July 6, 2015, which found that the appellant did not meet three of five statutory requirements of section 2 of the *Employment and Assistance for Persons With Disabilities Act* (“EAPWDA”) for designation as a person with disabilities (“PWD”). The ministry found that the appellant met the age requirement and that in the opinion of a medical practitioner the appellant’s impairment is likely to continue for at least two years. However, the ministry was not satisfied that:

- the evidence establishes that the appellant has a severe physical or mental impairment;
- the appellant’s daily living activities (“DLA”) are, in the opinion of a prescribed professional, directly and significantly restricted either continuously or periodically for extended periods; and that
- as a result of those restrictions, the appellant requires the significant help or supervision of another person, an assistive device, or the services of an assistance animal.

## PART D – Relevant Legislation

EAPWDA, section 2

*Employment and Assistance for Persons with Disabilities Regulation* (“EAPWDR”), section 2

## PART E – Summary of Facts

The information before the ministry at the time of reconsideration included the following:

- Operative and Procedural Documentation dated July 14, 2014 (“Operative Note”)
- The appellant’s PWD application form consisting of the appellant’s self-report form dated April 13, 2015 as dictated to his advocate (“SR”), a physician’s report (“PR”) completed by the appellant’s general practitioner dated April 13, 2015 (“PR”) and an assessor’s report completed by a social worker dated April 27, 2015 (“AR”)
- A second physician’s report dated June 4, 2015 (“PR2”)
- The appellant’s Request for Reconsideration dated June 5, 2015 requesting a ten-day extension because his social worker was out of town. The RFR notes that the appellant suffers from a severe disability and requires assistance with DLA’s
- Letter from a social worker dated June 9, 2015 (“Social Worker Letter”)

### Diagnoses

- The Operative Note indicates that the appellant underwent a radical cystoprostatectomy and ileal loop format on July 14, 2014 due to muscle invasive bladder cancer. The Operative Note indicates that the appellant’s sigmoid colon had significant diverticular disease that was inflammatory and associated with adhesions.
- In the PR the physician indicates that the appellant has small cell carcinoma of the bladder with cystectomy and partial colectomy and stoma. The physician indicates that he has seen the appellant two to ten times in the past ten months but did not indicate how long he has been the appellant’s general practitioner. The physician did not indicate the date of onset of the condition.
- In the AR, the social worker states that the appellant’s physical or mental impairments that impact his ability to manage DLA are: small cell carcinoma of bladder, anxiety, hernia, bladder removed-urostemy pouch, prostate removed, diverticulosis, gall stone, and T12 fracture in spine. The social worker indicates that he has known the appellant one week, seen him once in the past year, and that his first contact with the applicant was for the purposes of completing the AR which included reviewing medical records, surgical reports and completing a home assessment.
- The Social Worker Letter indicates that the physician reassessed the appellant and included the PR2 for the appellant’s RFR.
- In the PR2 the physician indicates that the appellant’s diagnoses include small cell carcinoma of the bladder with cystectomy, partial colectomy and stoma. The physician also diagnoses the appellant with a compound fracture in his back. The physician did not indicate the date of onset for either of the diagnoses.

### Physical Impairment

- In the Health History portion of the PR the physician commented that the appellant has severe carcinoma of the bladder with metastases. He provides further information but it is illegible. He also indicates that the appellant has a hernia although the two words preceding hernia are also illegible.
- In terms of physical functioning the physician reported in the PR that the appellant can walk 4+

blocks unaided, can climb 5+ stairs unaided and is limited to lifting 5 to 15 pounds. The physician indicates that the appellant has no limitations with respect to being seated.

- In the AR the social worker reported that the appellant independently manages walking indoors and outdoors, climbing stairs and standing, but requires continuous assistance with lifting and carrying holiday with an explanation provided of hernia and T12 spine fracture. Under comments, the social worker explains that the appellant has a urostomy pouch, hernia and an old T12 spinal fracture that significantly impacts his ability to lift, carry and hold, with assistance provided by his room mate.
- The Social Worker Letter indicates that the appellant has a compression fracture in his back that severely limits the time that the appellant can remain seated due to chronic pain with discomfort after approximately 5 minutes of driving. He indicates that the appellant's condition affects his ability to drive and has an impact on almost every aspect of his life. He also indicates that the appellant suffers from a hernia, small cell carcinoma, and has a stoma bag.
- In the PR2 the physician indicates that it is unknown how far the appellant can walk unaided on flat surface, the he can climb 5+ steps unaided, that his lifting is limited to 5 to 15 pounds and that he can remain seated less than one hour. In the Health History portion of the PR2 the physician indicates that the appellant has bladder cancer and metastases, compression fracture in his back, stoma, and hernia.

In the SR, as dictated to the appellant's advocate, the appellant states that he has diverticulosis, urostomy, bladder and prostate cancer (both have been removed), gallstone, and pelvic hernia (awaiting surgery). The appellant states that he:

- has poor English writing skills
- has disrupted sleep due to anxiety and worry over his major health issues and extreme financial problems
- has poor motivation and low social interest
- is unable to lift more than ten pounds due to his hernia
- avoids bending over as that causes stress on his urostomy
- has pain in his kidney area and having a seat belt riding on his stoma restricts driving
- avoids walking as he needs frequent access to a bathroom
- has to move around after 30 minutes of sitting

### Mental Impairment

- In the PR the physician indicates that the appellant has significant deficits with cognitive or emotional function in the area of emotional disturbance noting that diagnosis and treatment have changed the appellant's life. The physician indicates that the appellant does not have any difficulties with communication other than a lack of fluency in English.
- In the AR the social worker indicates that the appellant's ability to communicate with speaking and hearing is good but reading and writing is poor.
- In the AR, for question 4 of section B, Mental or Physical Impairment, the social worker states that the appellant has major impact to bodily functions and motivation and moderate impact to consciousness, emotion and attention/concentration. He has no impact to the remaining areas of impulse control, insight and judgment, executive, memory, motor activity, language, psychotic symptoms, other neuropsychological problems or other emotional or mental problems. The social worker comments that the appellant has disrupted sleep due to urostomy bag, rumination/anxiety, which impacts his attention, concentration and

consciousness. He comments that the appellant has anxiety and moderate depression due to loss of ability and that his motivation is severely impacted by loss of function and pain.

- In the PR2 the physician again indicates that the appellant has significant deficits with cognitive and emotional function in the area of emotional disturbance. The physician comments that the diagnosis and treatment has changed the appellant's life. He also indicates that it is difficult for the appellant now that he cannot work.

In the SR the appellant reports that he has anxiety and worry over his major health issues and extreme financial problems and low social interest.

### DLA

- In the PR the physician indicates that the appellant's impairment does not directly restrict the appellant's ability to perform DLA. The physician did not provide any additional comments.
- The physician indicates that the appellant has not been prescribed any medication and/or treatments that interfere with his ability to perform DLA.
- In Section F of the PR, Additional Comments, the physician notes that the appellant is limited to do work, especially what he was trained in.
- In the AR the social worker indicates that the appellant is independent with all aspects of personal care, but notes that it takes the appellant significantly longer with dressing, bathing and toileting (approximately three times longer due to urostomy bag, hernia and back issues).
- The AR indicates that the appellant requires periodic assistance with laundry and basic housekeeping as his hernia and urostomy bag combined with his T12 fracture make bending, lifting and carrying difficult.
- The AR indicates that the appellant is independent with most DLA of shopping (going to and from stores, reading prices and labels, making appropriate choices and paying for purchases), but requires continuous assistance with carrying purchases home as his hernia and T12 fracture make lifting, carrying and bending difficult. The social worker notes that the appellant requires assistance from others with housekeeping and laundry as well as carrying purchases home with assistance provided by his roommate.
- The AR indicates that the appellant is independent with all aspects of meals, paying rent and bills, medications and transportation but takes significantly longer with getting in and out of a vehicle due to his hernia, stoma and urostomy bag.
- The AR indicates that the appellant is independent with 4 of 5 aspects of social functioning (making appropriate social decisions, interacting appropriately with others, dealing appropriately with unexpected demands and securing assistance from others) but that he requires periodic support with developing and maintaining relationships, explaining that the appellant is socially isolated due to loss of previous abilities.
- The AR indicates that the appellant has marginal functioning with respect to his immediate and extended social networks as he is socially isolated.
- In the PR2 the physician indicates that the appellant's impairment directly restricts the appellant's ability to perform DLA. The physician notes that the appellant requires continuous assistance with meal preparation, basic housework, daily shopping and use of transportation. He also indicates that the DLA of social functioning is restricted but has not checked off whether that restriction is continuous or periodic. The physician has provided an explanation regarding social functioning but the wording is not legible. The physician reports that the appellant's DLA of personal self care, management of medications, mobility inside and outside the home and management of finances are not restricted.

- The Social Worker Letter indicates that in the PR2 the physician now indicates that the appellant requires assistance with DLA, being continuous assistance with basic housework and daily shopping due to chronic back pain and limited ability to lift or carry weight. The social worker also indicates that the appellant struggles with the use of transportation due to his inability to remain seated without severe pain.

In the SR, the appellant states that he is unable to do yard work or housework, that he is only able to complete minimal shopping and relies on the shopping cart for support and to hold purchases. He states that he relies on daily assistance from his roommate for assistance with laundry, meals and housework due to his physical limitations. He states that managing his urostomy is very difficult and makes having a bath or shower impossible and that he has to do everything slowly to prevent his urostomy bag from bursting. He states that he cannot lift more than 10 pounds due to his hernia. He also states that his social life has changed drastically, he has low social interest, has low motivation and wishes he could just keep sleeping.

#### Help

- In the PR the physician does not indicate that the appellant requires assistance with DLA.
- In the AR, the social worker indicates that the appellant requires assistance with housekeeping, laundry and carrying purchases home, provided by his roommate.
- In the PR2 the physician indicates that the appellant requires assistance with housework. There are two words before the word housework that are not legible.

In the SR the appellant states that he required assistance from an advocate to apply for income assistance and this appeal, that he has major financial problems and has had no income for over three months, that he needs assistance with nutrition, and depends on his room mate to assist with laundry, meals and housework on a daily basis.

#### **Additional information provided**

In his Notice of Appeal the appellant states that he disagreed with the reconsideration decision because it did not take into account the PR2 or the impacts of his compound back fracture.

At the hearing the appellant provided oral evidence indicating that when he fractured his back approximately two or three years ago it was painful but he went back to work after 10 weeks. The pain continued and his physician thought he might have a kidney stone so he went for an ultrasound and his bladder cancer was discovered. He had surgery to remove the bladder cancer and his prognosis was improving but he had ongoing low back pain, which is continuing from his previous back fracture. The appellant stated that he cannot sit, he has a hard time driving, has a hard time standing to peel potatoes and that he needs help with everything. He states that he used to chop wood and perform other tasks for his landlord to reduce his rent but he is no longer able to do those small jobs.

The appellant stated that he went for a CT Scan of his pelvis and the report dated May 5, 2015 indicates that he has a T12 vertebral fracture. The appellant states that he submitted the CT Scan with Pelvis & Contrast report to the ministry and he thought that it would be part of the Appeal Record. The appellant read the report, which indicated that he has a small para-aortic lymph node that has decreased in size from the previous exam. The report also states that no gross metastatic

disease is identifiable. He also stated that he went for a Bone Scan approximately one month ago but has not yet received the results of that test. The appellant confirmed that he is not taking any medications for his back pain and that there have not been any discussions regarding back surgery raised by his physician.

The appellant stated that with respect to his functional skills he can walk but is not able to walk very far on his own, he can climb stairs unaided but he cannot sit for 5 minutes. He states that he often wakes up at 2 am and tosses and turns in bed until 7 am. His life is full of stress and that his decreased sleep causes increased anxiety, depression and low motivation. He states that he gets up and squirms all day due to his pain.

He states that he has been using his credit card to pay for his car insurance as he wants to remain independent but he is using one credit card to pay another and does not think he can continue to do that for very long. His urostomy bag is temporarily paid for but if he has to pay for it himself it is \$100, which he cannot afford. His roommate helps him eat properly.

The appellant confirmed that in the PR, the rectangular boxes around the functional skills related to lifting and seating and the physician's opinion with respect to DLA including meal preparation, basic housework and daily shopping and the question marks beside the rectangular boxes were notes made by the social worker. The appellant confirms that after the social worker reviewed the PR and made these notes, the appellant returned to his physician, discussed his PWD application with his physician and then his physician completed the PR2.

### **Admissibility of New Information**

The ministry representative confirmed that the ministry had a copy of the CT Scan with Pelvis & Contrast report and confirmed the report findings as read by the appellant. The ministry representative did not object to the admissibility of the new information. The panel has admitted the appellant's oral testimony including the description of the CT Scan with Pelvis & Contrast report information into evidence as it is in support of information and records that were before the ministry at the time of reconsideration, in accordance with section 22(4) of the *Employment and Assistance Act*. In particular, the new information supports the information provided from the appellant regarding his medical impairments, functional limitations, information regarding the PR and PR2, his ability to perform DLA and assistance needed.

## PART F – Reasons for Panel Decision

The issue on this appeal is whether the ministry's decision to deny the appellant designation as a PWD was reasonably supported by the evidence or was a reasonable application of the applicable enactment in the circumstances of the appellant. In particular, was the ministry reasonable in determining that the appellant does not have a severe physical or mental impairment, that in the opinion of a prescribed professional the appellant's impairments do not directly and significantly restrict him from performing DLA either continuously or periodically for extended periods, and that as a result of those restrictions the appellant does not require help to perform DLA?

The relevant legislation is as follows:

### EAPWDA:

2 (1) In this section:

**"assistive device"** means a device designed to enable a person to perform a daily living activity that, because of a severe mental or physical impairment, the person is unable to perform;

**"daily living activity"** has the prescribed meaning;

**"prescribed professional"** has the prescribed meaning.

(2) The minister may designate a person who has reached 18 years of age as a person with disabilities for the purposes of this Act if the minister is satisfied that the person has a severe mental or physical impairment that

(a) in the opinion of a medical practitioner is likely to continue for at least 2 years, and

(b) in the opinion of a prescribed professional

(i) directly and significantly restricts the person's ability to perform daily living activities either

(A) continuously, or

(B) periodically for extended periods, and

(ii) as a result of those restrictions, the person requires help to perform those activities.

(3) For the purposes of subsection (2),

(a) a person who has a severe mental impairment includes a person with a mental disorder, and

(b) a person requires help in relation to a daily living activity if, in order to perform it, the person requires

(i) an assistive device,

(ii) the significant help or supervision of another person, or

(iii) the services of an assistance animal.

**EAPWDR section 2(1):**

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.

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**Severe Physical Impairment**

The appellant's position is that he has several physical impairments including compound back fracture, diverticulosis, urostomy, hernia, and gallstone that cause him pain, difficulty with bending, make bathing and showering impossible, and necessitate daily assistance from his room mate. The appellant's position is that the reconsideration decision does not take into account his compound back fracture diagnoses as confirmed by his physician on the PR2.

The ministry's position, as set out in its reconsideration decision, is that it does not have a clear picture of the appellant's physical limitations. The ministry reviewed the Operative Note and the PR, noting that the physician diagnosed severe carcinoma of the bladder with metastases and a hernia. The ministry notes that the physician indicates that in terms of physical functioning, the physician indicates that the appellant can walk 4+ blocks, climb 5+ steps, lift 5 to 15 pounds and has no limitations with respect to remaining seated. The ministry also notes that the social worker indicates that the appellant can independently walk indoors, walk outdoors, climb stairs, and stand. The ministry acknowledges that the social worker indicates that the appellant requires continuous assistance with lifting, carrying and holding and that the appellant's old T12 back fracture significantly impacts his ability to lift, carry and hold.

However, the ministry notes that although the appellant has a hernia and a urostomy pouch, the physician indicated that the appellant could lift 5 to 15 pounds so the ministry is unclear why the appellant requires continuous assistance with lifting. The ministry also states that the appellant's physician has not confirmed the appellant's diagnosis of a back fracture so they are unable to use this diagnosis when assessing the appellant's physical ability. The ministry's position is that the appellant has a significant physical impairment but that the information provided by the physician and

assessor is not sufficient to confirm that the appellant has a severe physical impairment.

At the hearing the ministry representative, who was not the reconsideration officer who prepared the reconsideration decision, confirmed that the PR2 was received by the ministry and does confirm the appellant's diagnosis of a compound back fracture. The ministry representative was unable to confirm whether the ministry considered the PR2 and why the reconsideration decision does not refer to the PR2.

Panel Decision:

A diagnosis of a serious medical condition does not in itself determine PWD eligibility or establish a severe impairment. An "impairment" is a medical condition that results in restrictions to a person's ability to function independently or effectively.

To assess the severity of an impairment one must consider the nature of the impairment and the extent of its impact on daily functioning as evidenced by functional skill limitations and the degree to which performing DLA is restricted. The legislation makes it clear that the determination of severity is at the discretion of the minister, taking into account all of the evidence. However, the legislation is also clear that the fundamental basis for the analysis is the evidence from a prescribed professional.

While the physician indicates that the appellant is unable to work, in determining eligibility for PWD designation the legislation an applicant's employability is not a criterion.

The panel finds that in the PR, the physician diagnosed the appellant with small cell carcinoma of the bladder, cystectomy, partial colectomy and stoma and has difficulties managing his urostomy. In the PR2 the physician confirms the appellant's diagnosis of a compound back fracture. Although the reconsideration decision states that the ministry cannot use the diagnosis of the T12 back fracture as reported by the social worker because the physician has not confirmed the diagnosis, the PR2 confirms, in both the Diagnoses portion and the Health History portion, that the appellant has a compound back fracture. It is unclear to the panel why the reconsideration decision does not address the PR2 but the panel concludes that the reconsideration decision was prepared without any consideration of the PR2. However, as the PR2 was part of the ministry's record at the time of reconsideration, the panel will consider the PR2 in determining that the Ministry's decision was reasonable.

In the PR the physician indicates that the appellant can walk 4+ blocks unaided but in the PR2 the physician indicates that the appellant's ability to walk unaided on a flat surface is unknown. In both the PR and the PR2 the physician indicates that the appellant can walk 5+ steps and can lift 5 to 15 pounds. In the PR the physician indicated that the appellant had no limitations with remaining seated and in the PR2 the physician indicates that the appellant can remain seated for less than one hour. The physician has not provided any explanation as to why the information is different in the PR as compared to the PR2.

The appellant states that he discussed the PWD application with the physician before the physician prepared the PR2 but the PR2 is not consistent with the information provided by the appellant with respect to his ability to walk or remain seated. In particular, the appellant states that he can walk around his home, but is unable to walk for any length of time, whereas the physician indicates that

the appellant's ability to walk unaided is unknown. The appellant states that he can only sit for 5 or 10 minutes whereas the physician indicates that the appellant can remain seated less than one hour. The AR indicates that the appellant is independent with walking indoors, walking outdoors, climbing stairs and standing. Between the PR, PR2, AR and the appellant's evidence there are four different pieces of information regarding the appellant's functional abilities. Despite the appellant's information that he discussed these items with the physician, all of the information provided, when considered together, remains inconsistent and unclear.

The AR indicates that the appellant requires continuous assistance with lifting and carrying and holding due to his urostomy pouch, hernia and T12 back fracture. However, the PR and the PR2 both indicate that the appellant can lift 5 to 15 pounds and there is no further explanation to clarify the differences in these reports. In addition for DLA the AR indicates that the appellant only requires periodic assistance with basic housekeeping and continuous assistance carrying purchases home, and that he takes significantly longer with DLA of dressing, bathing and toileting but otherwise he is independent with most aspects of DLA.

The panel finds that the functional limitations as reported by the physician are more in keeping with a moderate impairment than a severe impairment, particularly taking into account that the appellant is not taking any medications for his back pain and is not awaiting for or being investigated for the possibility of back surgery.

Based on the above, despite the fact that the ministry did not appear to consider the PR2 at reconsideration, the panel has concluded that the ministry reasonably determined that the evidence falls short of establishing that the appellant has a severe physical impairment as contemplated by the legislation.

### **Severe Mental Impairment**

The appellant's position is that his pain, impairments, and financial difficulties cause him to have sleep disruption, anxiety, depression, stress, low mood, social isolation, and impacts to his cognitive and emotional functioning in the areas of motivation and emotional disturbance.

The ministry's position is that although the social worker indicates that the appellant struggles with anxiety and worry and they acknowledge that the appellant's physical diagnosis and subsequent surgery would impact the appellant's cognitive and emotional functioning, the appellant's physician did not diagnose the appellant with a mental impairment. In addition, the ministry states that the physician did not report any difficulties with communication and the assessor indicates that the appellant's ability to speak and hear is good, and that while his ability to read and write is poor, no explanation for this limitation is provided.

The reconsideration decision also notes that although the assessor reports that the appellant has anxiety, moderate depression due to loss of ability and that his consciousness, attention and concentration were all impacted because of disturbed sleep and that motivation is severely impacted by loss of function and pain, the assessor indicates that the appellant's impairments have a major impact in the areas of bodily functions and emotions but that the remaining 12 out of 14 assessed areas of cognitive and emotional functioning have moderate, minimal, or no impact.

The reconsideration decision also states that although the PWD application states that “test results and other reports or finding may be used here where appropriate” but no recent medical reports or psychiatric consultations were included or referenced in the PWD application that would confirm the severity of the appellant’s mental impairments.

The reconsideration decision also states that it would be reasonable to assume that the level of impact that the appellant’s impairments have on his cognitive and emotional functioning would be further reflected in his ability to manage his social functioning but the assessor indicates that the appellant can independently manage the majority of his social functioning with periodic support/supervision required for developing and maintaining relationships.

The ministry’s position is that the information provided is not sufficient to establish that the appellant has a severe mental impairment.

Panel Decision:

In the PR and the PR2, the physician did not diagnosis the appellant with a mental impairment. The physician also indicates that there is a significant deficit to only one aspect of the appellant’s cognitive and emotional function, being emotional disturbance with the explanation that diagnosis and treatment has changed his life.

While the assessor indicates that the appellant has major impact to bodily functions and motivation, he reports moderate impact to consciousness, emotion, and attention/concentration and no impact to the remaining listed areas being impulse control, insight and judgment, executive, memory, motor activity, language, psychotic symptoms, other neuropsychological problems and other emotional or mental problems. While the assessor indicates that the appellant has anxiety and moderate depression, the physician does not confirm these diagnoses.

As there is no diagnosis of mental impairment by a physician and only one impact to cognitive and emotional functioning being emotional disturbance, and no further information or explanation from the physician with respect to the assessor’s reports of anxiety, depression and other mental impairment, despite conducting a more thorough assessment and providing the PR2, the panel finds that the ministry reasonably determined that the information provided does not demonstrate a severe mental impairment.

**Significant Restrictions to DLA**

The appellant’s position is that he has a severe physical and mental impairment that directly restricts his ability to manage his DLA. The appellant’s position is that he has pain that impacts his ability to perform housework, yard work, personal care, pain in his kidney from the seatbelt that limits driving and managing his urostomy pouch is extremely difficult and makes bathing and showering impossible. The appellant’s position is that he cannot remain seated for 5 minutes and avoids walking because he has to have access to a bathroom.

The ministry’s position is that the physician does not indicate that the appellant has been prescribed any medications and/or treatments that would interfere with his ability to perform DLA. The ministry also notes that the physician indicates that the appellant can independently manage the following

DLA: personal care, meal preparation, management of medications, basic housework, daily shopping, mobility inside and outside the home, use of transportation, and finances. The ministry notes that the assessor largely agrees with the physician but notes that dressing and bathing takes three times longer, that he uses an urostomy bag for toileting and that getting in and out of a vehicle take significantly longer. The assessor also indicates that the appellant requires periodic assistance with laundry and basic housekeeping.

The ministry also states that while the assessor reports that the appellant's hernia, urostomy combined with T12 fracture makes bending, lifting and carrying difficult but the frequency and duration of the assistance required has not been identified and the physician has not confirmed the T12 fracture diagnosis.

The ministry states that they reviewed all of the information provided but finds that there is not enough evidence to establish that the appellant's impairments directly and significantly restricts his DLA continuously or periodically for extended periods, so the legislative criterion has not been met.

Panel Decision:

The legislation – s. 2(2)(b)(i) of the EAPWDA – requires that in the opinion of a prescribed professional, a severe mental or physical impairment directly and significantly restricts the appellant's ability to perform DLA either continuously or periodically for extended periods. The term "directly" means that there must be a causal link between the severe impairment and the restriction. The direct restriction must also be significant. Finally, there is a component related to time or duration. The direct and significant restriction may be either continuous or periodic. If it is periodic it must be for extended periods. Inherently, any analysis of periodicity must also include consideration of the frequency. All other things being equal, a restriction that only arises once a year is less likely to be significant than one, which occurs several times a week. Accordingly, in circumstances where the evidence indicates that a restriction arises periodically, it is appropriate for the ministry to require evidence of the duration and frequency of the restriction in order to be "satisfied" that this legislative criterion is met.

In the appellant's circumstances, the PR indicates that the appellant's impairment does not directly restrict the appellant's ability to perform DLA. In the PR2, the physician indicates that the appellant has continuous restrictions with respect to the DLA of meal preparation, basic housework, daily shopping and use of transportation, but did not provide any further explanation as to the difference between the PR and the PR2 such as whether there was a change in the appellant's circumstances between the time he completed the PR and PR2 or whether the new information provided was from his discussions with the appellant. In the PR2 the physician indicates that the appellant's social functioning is restricted but he does not provide any further information indicating whether the restriction is periodic or continuous. The physician provides an explanation but the writing is illegible.

While the assessor indicates that the appellant takes significantly longer (3 times) with dressing, bathing, toileting and getting in and out of a vehicle, requires continuous assistance with carrying purchases home, and periodic assistance with laundry and basic housekeeping, the assessor also indicates that the appellant is independent with the remaining DLA of grooming, feeding self, regulating diet, transfers (in/out of bed), transfers (on/off bed), going to and from stores, reading prices and labels, making appropriate choices, paying for purchases, meal planning, food

preparation, cooking, safe storage of food, banking, budgeting, paying rent and bills, filling/refilling prescriptions, taking prescriptions as directed, safe handling and storage of medications, using public transit and using transit schedules.

The panel finds that the information provided in the PR2 is somewhat more consistent with the AR than the information provided in the PR, but the panel finds that there are significant inconsistencies between the PR, AR and PR2, and that the information provided does not provide a clear picture of the appellant's DLA. For example, although the PR2 indicates that the appellant is restricted with respect to meal preparation and requires continuous assistance, the AR indicates that the appellant is independent with all aspects of DLA of meals and the appellant indicates that while he has some difficulties he does make his meals. Although the AR indicates that the appellant takes three times longer with tasks of dressing, bathing and toileting, the assessor indicates that the appellant is independent with those aspects of the DLA of personal care and the physician in the PR2 indicates that the appellant's DLA of personal care is not restricted. In the PR2 the physician reports that the appellant requires continuous assistance with basic housework, whereas in the AR the assessor indicates that the appellant requires periodic assistance. In addition, the assessor does not provide a description of the amount of assistance required.

Although a restriction is continuous it does not necessarily meet the legislative test of being a direct and significant restriction. While the appellant experiences pain and does have some limitations with sitting and standing, they are not sufficient to unduly limit him from driving, cooking his own meals, getting out and going shopping or restricting him from being largely independent in his other DLAs.

Even though the ministry did not appear to consider the PR2, the panel finds that the information provided does not demonstrate that the appellant satisfies the legislative criteria, namely that he has a severe impairment which directly and significantly restricts the appellant's ability to perform DLA either continuously or periodically for extended periods.

### **Help with DLA**

The appellant's position is that he requires financial assistance, assistance with basic housework, laundry, lifting and carrying purchases home as provided by his roommate. He states that his urostomy bag is currently paid for but that is temporary and will cost \$100, which he cannot afford.

The ministry's position is that both the physician and assessor indicate that the appellant requires an urostomy device. However, as it has not been established that DLA are significantly restricted, it cannot be determined that significant help is required from other persons. The reconsideration decision also indicates that although the assessor reports that the appellant's dog warns him about the onset of his grand mal seizures, there has been no confirmation that the appellant's pet is a registered assistance animal.

### **Panel Decision**

The panel finds that the reference in the reconsideration decision to the appellant having a pet that warns him about the onset of his grand mal seizures was made in error as there is no such information in the AR and the appellant confirmed that he does not have grand mal seizures or a pet that warns him about the onset of any such seizures.

Both the physician and assessor confirm that the appellant requires an urostomy bag, and the AR explains that the assistive device is required as the appellant's bladder and prostate were removed. In the PR the physician does not provide any information regarding any other assistance needed but in the PR2 the physician indicates that the appellant requires assistance with some housework although he has not provided any further information explaining why his opinion has changed between the PR and the PR2. Although the assessor indicates that the appellant needs assistance with basic housework, laundry, lifting, carrying purchases home and that he receives assistance from his friends there is no information about the frequency or duration of assistance needed or provided.

A finding that a severe impairment directly and significantly restricts a person's ability to manage his DLA either continuously or periodically for an extended period is a precondition to a person requiring "help" as defined by section 2(3)(b) of the EAPWDA. For the reasons provided above, the necessary precondition has not been satisfied in this case.

Accordingly, even though the panel finds that the ministry did not consider the PR2, the panel finds that the ministry reasonably concluded it could not be determined that the appellant requires help with DLA as defined by section 2(3)(b) of the EAPWDA.

### **Conclusion**

Having reviewed and considered all of the evidence and the relevant legislation, the panel finds that the ministry's decision finding the appellant ineligible for PWD designation is a reasonable application of the legislation in the circumstances of the appellant. The panel therefore confirms the ministry's decision.