

## PART C – Decision under Appeal

The decision under appeal is the Ministry of Social Development and Social Innovation (the ministry) reconsideration decision dated July 3, 2015 which found that the appellant did not meet three of the five statutory requirements of Section 2 of the *Employment and Assistance for Persons with Disabilities Act* for designation as a person with disabilities (PWD). The ministry found that the appellant met the age requirement and that his impairment is likely to continue for at least two years. However, the ministry was not satisfied the evidence establishes that:

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

## PART D – Relevant Legislation

*Employment and Assistance for Persons with Disabilities Act* (EAPWDA), Section 2

*Employment and Assistance for Persons with Disabilities Regulation* (EAPWDR), Section 2

## PART E – Summary of Facts

The evidence before the ministry at the time of the reconsideration decision included the Persons With Disabilities (PWD) Application comprised of the applicant information and self-report dated April 18, 2015, and a physician report (PR) dated April 27, 2015 completed by a general practitioner who has known the appellant since July 2010 and an assessor report (AR) dated May 6, 2015 and completed by a physician who is a specialist in hematology and who has known the appellant for 3 years.

The evidence also included the following documents:

- 1) Information sheet from the BC Cancer Agency regarding medications and the associated side effects and their management;
- 2) Print out with information regarding multiple myeloma from a website relating to leukemia; and,
- 3) Request for Reconsideration dated May 30, 2015, with attached statement by the appellant dated May 25, 2015.

### ***Diagnoses***

In the PR, the appellant was diagnosed by the general practitioner with multiple myeloma with an onset in 2009 and depression with an onset in 2007.

### ***Physical Impairment***

In the PR, the general practitioner reported that:

- In terms of health history, the appellant has “general body aches, weakness, bone pain...; symptoms severe enough thus unable to work; on chemotherapy.”
- The appellant does not require any prosthesis or aid for his impairment.
- In terms of functional skills, the appellant can walk 1 to 2 blocks unaided, climb 2 to 5 steps unaided, lift 5 to 15 lbs., and remain seated for 1 to 2 hours.
- In the additional comments, the appellant is under the care of the specialist in hematology (who completed the AR) and is on chemotherapy.

In the AR the hematologist indicated that:

- He has treated the appellant’s multiple myeloma with a medication, stem cell transplant, a blood transplant, chemo therapy and medication.
- The appellant is assessed as being independent with all aspects of mobility and physical ability, specifically with walking indoors and walking outdoors, climbing stairs, standing, lifting, and carrying and holding. The hematologist did not add any comments in this section.
- In the section of the AR relating to assistance provided, the hematologist has indicated “communication devices,” but there is no detail on any equipment or devices used by the appellant.
- In the additional information, reference is made to a website regarding leukemia.

In the appellant’s self-report, he wrote:

- His disability affects his life and his ability to take care of himself because of the (physical) symptoms he experiences, including: fever/neutropenia, muscle weakness/asthenia, hypokalemia, hyposphatemia, tiredness, abnormal bleeding, chest and other infections, arm pain with arm/leg swelling, difficulty in breathing/breathlessness, lightheadedness/dizziness, abnormal heart rhythm, loose/frequent bowel movements, bone pain, constipation, disease of the nerves, nausea, high blood pressure, dry mouth, swelling of

the skin, red rash across face and body.

- He has a risk of infection, risk of bruising or bleeding, fatigue, skin rash, constipation, diarrhea, increased energy and difficulty sleeping, heartburn and indigestion, blood sugar problem, swelling, increased appetite and weight gain, bone loss, high blood pressure, fever, neutropenia, muscle weakness, tiredness, asthenia, and bone pain.

In the appellant's Request for Reconsideration, he wrote:

- Multiple myeloma cancer tumour group means PWD because of the side effects of the drugs.
- He needs extra money to buy non-prescription drugs.
- The ministry should consider that web site referred to in the AR to see the treatment for multiple myeloma and the side effects of the medications and check his records at the hospitals and talk to his doctors to ask what treatment he had.
- Whenever he takes the drugs, he starts having dizziness, fever, vomiting, nausea, headache, heartburn, bleeding, muscle cramps, bone pains, swelling, tiredness, diarrhea, constipation, and trouble sleeping, etc.
- He asks how a person can do his DLA with all of these troubles. Most of the jobs are being done by his children.
- The doctors completing the reports did not go to his house to see how he is walking, climbing, and doing some jobs with the help of some other drugs which he has to purchase himself, like aspirin, anti-nausea, vomiting, headache, constipation, etc. and he does not have sufficient money to purchase these non-prescription drugs, pay his rent (\$600) and purchase food, etc.

### ***Mental Impairment***

In the PR, the general practitioner reported:

- In terms of health history, the appellant has "...depression, poor concentration; symptoms severe enough thus unable to work."
- The appellant has no difficulty with communication.
- The appellant has significant deficits with cognitive and emotional function in 3 of the 11 listed areas, specifically: emotional disturbance, motivation, and attention or sustained concentration, with no comments added by the general practitioner.

In the AR, the hematologist indicated that:

- The appellant has a satisfactory ability to communicate in all areas, with speaking, reading, writing, and hearing.
- There is one major impact to the appellant's cognitive and emotional functioning in emotion and moderate impacts in the areas of memory, motivation, motor activity, and psychotic symptoms. There are minimal or no impacts assessed for the remaining 9 areas of functioning. The hematologist did not provide any other comments.
- With respect to social functioning, the appellant is independent in all aspects, specifically: with making appropriate social decisions, developing and maintaining relationships, interacting appropriately with others, dealing appropriately with unexpected demands, and securing assistance from others.
- The appellant has good functioning in both his immediate and extended social networks, with no further comment added by the hematologist.

In the appellant's self-report, he wrote:

- His disability affects his life and his ability to take care of himself because of the (mental) symptoms he experiences, specifically depression and confusion.

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

In the PR, the general practitioner indicated that:

- The appellant has been prescribed medications that interfere with his ability to perform daily living activities as he has "nausea/vomiting/dizziness/weakness, malaise" and the anticipated duration of the treatment is "unknown at this time."
- The appellant is not restricted in most of the listed DLA, specifically: personal self care, meal preparation, management of medications, mobility inside and outside the home, use of transportation, management of finances and social functioning.
- The appellant is continuously restricted with the DLA of basic housework and daily shopping.
- There are no comments provided regarding the degree of restriction or the assistance needed with DLA.

In the AR, the hematologist reported that:

- The appellant is independent with moving about indoors and outdoors, with no further comments provided.
- The appellant is independent with all of the listed tasks of several DLA, specifically: personal care, paying rent and bills, medications, transportation and social functioning.
- The appellant needs periodic assistance with all tasks of basic housekeeping, with a comment "hip pain."
- The appellant requires periodic assistance with some tasks of the DLA shopping, with going to and from stores, making appropriate choices and carrying purchases home and a comment "hip pain." He is independent with reading prices and labels and paying for purchases.
- The appellant requires periodic assistance with most tasks of the DLA meals, and is independent with safe storage of food. No description or explanation is given by the hematologist.

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

In the AR, the hematologist reported that, with respect to the assistance provided by other people, the appellant's family provides that assistance. For help required where none is available, the hematologist wrote that multiple myeloma was treated with a medication. In the section of the AR for identifying assistance provided through the use of assistive devices, the hematologist indicated communication devices but did provide details of any equipment or devices used by the appellant.

### ***Appellant's additional information***

In his Notice of Appeal dated July 20, 2015, the appellant wrote that he thinks when there is a problem, there is a way, so they should solve the problem and not reject it..

At the hearing, the appellant stated that:

- He has his children but no other family or friends in Canada. After he came to Canada, he worked hard and had accomplished a lot within 2 months in the country.
- In 2007, he had a problem with his family when his wife left with the children and he did not know where they were for 20 days. She filed for divorce and he gave everything to his wife and children. He lost his job and developed depression. He has not told his family about his

condition.

- At this time, testing revealed he had problems with his thyroid because he had no energy.
- Since he could not work, he started receiving income assistance in 2008.
- In 2009, he had some problems and when through testing and discovered that he has multiple myeloma. He went to several hospitals and had many scans checking his body. He does not know which hospitals to request records from and he expected that the ministry would conduct an investigation and find his health records.
- Discovering he had multiple myeloma made his depression worse.
- A blood test revealed that he needed a transplant and he went through a stem cell transplant in 2013/2014. After the procedure, they had a difficult time taking the tube out of his neck.
- He has fallen down and broken his hand and some ribs in his chest.
- His blood is being checked every month. The hematologist recently changed his medication. The medications cause him many problems such as fever, nausea and vomiting, tiredness, bone pain, and shortness of breath.
- He takes his medications for 21 days per month and then has one week off before he starts treatment again. He only gets a couple days per month when he feels okay.
- When he is taking his medications, he cannot sit, stand or walk. His fever sometimes goes too high and he has to go to the hospital.
- There is no cure for multiple myeloma and he will just be fighting for the rest of his life. He is not sure how long he can take this medication. He feels dizzy and when he smells food he has vomiting.
- It is very difficult for him to collect information for the ministry when he cannot move or go outside when he is taking his medications. His children can only help him when they are not at school.
- He cannot go out to buy anything. Sometimes his son will help him but he works 12 hours per day and does not have much time to help. His wife no longer helps him.
- He knows other disability recipients who are walking, climbing, and driving and they seem to be fine while he is struggling. Some have PWD for depression alone while he has depression plus multiple myeloma. He does not take medication for his depression and he has been told he needs to talk about his problems and not review the problems from the past.
- When his blood cells go down, he cannot touch anything because of the high risk of infection.
- The money he receives from the ministry is not enough because he needs to buy non-prescription drugs like aspirin and sleeping medications. He pays \$600 per month just for rent. He hopes the ministry can help him get a priority place with BC Housing to help with his expenses.
- The focus is on how much he can walk or climb stairs but he has to do these things, even if it takes him an hour to walk 1 to 2 blocks. He has to walk to the bus but it is very difficult. He makes it up the stairs with the help of aspirin.
- He has a problem with sitting, sleeping and bleeding sometimes.
- It took 4 weeks for the doctor to fill out the forms. He met with his doctor, who asked some questions, and then he filled out the form later.

At the hearing, the appellant's daughter stated that:

- The first time she remembers her father was taken to the hospital, her mother called her and told her to come right away, that he could go into a coma. They put needles in him at the hospital.
- A couple of weeks later, her father fell to the ground and she called her mother who took care

of her dad for a while.

- There is something wrong with his blood. At one point they put a tube in his neck and it got stuck half way through the procedure and that was scary. He is still doing chemotherapy.
- Her father always feels like he needs to vomit, and he is dizzy. His bones are sensitive.
- She cleans his house and tries to cook. Her brother helps their father with grocery shopping.
- Her father is living alone so she tries to help at least once per week for sure.

***Admissibility of Additional Information***

The ministry did not raise an objection to admitting the to the oral testimony on the appellant's behalf. The panel considered the oral testimony information that corroborates the extent of the appellant's impairment as diagnosed in the PWD application, which was before the ministry at reconsideration. Therefore, the panel admitted this additional information as being in support of information and records that were before the ministry at the time of the reconsideration, in accordance with Section 22(4)(b) of the *Employment and Assistance Act*.

The ministry relied on its reconsideration decision as summarized at the hearing and did not provide any additional evidence.

## PART F – Reasons for Panel Decision

The issue on appeal is whether the ministry's reconsideration decision, which found that the appellant is not eligible for designation as a person with disabilities (PWD), was reasonably supported by the evidence or was a reasonable application of the applicable enactment in the circumstances of the appellant. The ministry found that the evidence does not establish that the appellant has a severe mental or physical impairment and that his daily living activities (DLA) are, in the opinion of a prescribed professional, directly and significantly restricted either continuously or periodically for extended periods. Also, as a result of those restrictions, it could not be determined that the appellant requires the significant help or supervision of another person, the use of an assistive device, or the services of an assistance animal to perform DLA.

The criteria for being designated as a person with disabilities (PWD) are set out in Section 2 of the EAPWDA as follows:

### Persons with disabilities

2 (1) In this section:

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

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

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

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

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

(b) in the opinion of a prescribed professional

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

(A) continuously, or

(B) periodically for extended periods, and

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

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

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

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

(i) an assistive device,

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

(iii) the services of an assistance animal.

(4) The minister may rescind a designation under subsection (2).

Section 2(1) and (2) of the EAPWDR provide definitions of DLA and prescribed professionals as follows:

### Definitions for Act

2 (1) For the purposes of the Act and this regulation, "**daily living activities**" ,

(a) in relation to a person who has a severe physical impairment or a severe mental impairment, means the following activities:

(i) prepare own meals;

(ii) manage personal finances;

- (iii) shop for personal needs;
  - (iv) use public or personal transportation facilities;
  - (v) perform housework to maintain the person's place of residence in acceptable sanitary condition;
  - (vi) move about indoors and outdoors;
  - (vii) perform personal hygiene and self care;
  - (viii) manage personal medication, and
- (b) in relation to a person who has a severe mental impairment, includes the following activities:
- (i) make decisions about personal activities, care or finances;
  - (ii) relate to, communicate or interact with others effectively.
- (2) For the purposes of the Act, "prescribed professional" means a person who is
- (a) authorized under an enactment to practise the profession of
    - (i) medical practitioner,
    - (ii) registered psychologist,
    - (iii) registered nurse or registered psychiatric nurse,
    - (iv) occupational therapist,
    - (v) physical therapist,
    - (vi) social worker,
    - (vii) chiropractor, or
    - (viii) nurse practitioner, or
  - (b) acting in the course of the person's employment as a school psychologist by
    - (i) an authority, as that term is defined in section 1 (1) of the Independent School Act, or
    - (ii) a board or a francophone education authority, as those terms are defined in section 1 (1) of the School Act, if qualifications in psychology are a condition of such employment.

### **Severe Physical Impairment**

The appellant's position is that a severe physical impairment is established by his inability to function normally due to the many serious side effects of his treatment for multiple myeloma. The appellant argued that although he can walk 1 to 2 blocks and climb a few stairs, it is with great difficulty and it takes him a long time. The appellant argued that when he is taking his medications for 21 days of the month, he cannot sit, stand or walk and his fever sometimes goes too high and he has to go to the hospital.

The ministry's position is that while the ministry acknowledged that the appellant has a physical impairment, the evidence does not demonstrate a severe physical impairment. The ministry argued that the general information provided at the website and by the appellant regarding multiple myeloma and the side effects of the medication does not describe how the side effects are impacting the appellant's physical or mental functioning.

### ***Panel Decision***

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



To assess the severity of an impairment the ministry must consider the nature of the impairment and the extent of its impact on daily functioning as evidenced by functional skill limitations and the degree to which the ability to perform DLA is restricted. In making its determination the ministry must consider all the relevant evidence, including that of the appellant. However, the legislation is clear that the fundamental basis for the analysis is the evidence from a “prescribed professional” – in this case, the general practitioner and his hematologist.

The general practitioner, who has known the appellant for approximately 5 years, diagnosed the appellant with multiple myeloma with an onset in 2009. The general practitioner wrote that the appellant has “general body aches, weakness, bone pain” and he is on chemotherapy. The general practitioner reported that the appellant does not require any prosthesis or aid for his impairment. In terms of functional skills, the appellant can walk 1 to 2 blocks unaided, climb 2 to 5 steps unaided, lift 5 to 15 lbs., and remain seated for 1 to 2 hours. The general practitioner reported in the PR that the appellant is unable to work. As for searching for work and/or working, the panel finds that employability is not a criterion in section 2(2) of the EAPWDA nor is it listed among the prescribed daily living activities in section 2 of the EAPWDR. In the additional comments, the general practitioner noted that the appellant is under the care of the hematologist who completed the AR.

At the hearing, the appellant stated that he may be able to walk 1 to blocks or climb a few stairs but it is very difficult, takes him a long time, and he only does this because he has to and he takes aspirin to help him. Further, he stated that when he is taking his medications, for 21 days of the month, he cannot sit, stand or walk. However, in the AR the hematologist assessed the appellant as independent with all aspects of mobility and physical ability, specifically with walking indoors and walking outdoors, climbing stairs, standing, lifting, and carrying and holding. The hematologist did not add any comments in this section. In the section of the AR relating to assistance provided, the hematologist has indicated “communication devices,” but there is no detail on any equipment or devices used by the appellant, and the appellant did not mention an assistive device.

As the information at the website and in the print outs regarding multiple myeloma and the side effects of the treatment is general and not specific to the appellant and does not describe the associated impacts to his physical or mental functioning, the panel finds that the ministry reasonably determined that the information is not instrumental in determining the appellant’s eligibility. The appellant described the side effects that he experiences from the medications in his self-report and Request for Reconsideration and also at the hearing; however, the appellant’s physical functioning has been assessed by the medical professionals to be independent and within a moderate range in functional skills. Also, as discussed in more detail in these reasons for decision under the heading “Restrictions in the Ability to Perform DLA”, the limitations to the appellant’s physical functioning have not translated into significant restrictions to his ability to manage DLA.

Given the assessment by the medical professionals of the appellant’s independent mobility and physical abilities and moderate level of functional skills, the panel finds that the ministry reasonably determined that there is not sufficient evidence to establish that the appellant has a severe physical impairment under Section 2(2) of the EAPWDA.

### **Severe Mental Impairment**

The appellant did not directly advance a position that he has a severe mental impairment, although he stated that he has had depression since 2007 and his diagnosis with multiple myeloma in 2009 made his depression worse.

The ministry's position is that there is insufficient evidence to establish that the appellant has a severe mental impairment as required by Section 2(2) of the EAPWDA. The ministry argued that while the general practitioner reported that there are significant deficits in some areas of the appellant's cognitive and emotional functioning, the impacts are assessed as minimal to moderate.

*Panel Decision*

The general practitioner diagnosed the appellant with depression with an onset of 2007 and reported that he has "...poor concentration; symptoms severe enough thus unable to work." The general practitioner reported significant deficits with cognitive and emotional function in 3 of the 11 listed areas, specifically: emotional disturbance, motivation, and attention or sustained concentration, with no comments added. The appellant wrote in his self-report that he experiences depression and confusion and, at hearing, that his depression became worse after the diagnosis of multiple myeloma. The appellant stated that he is not currently being treated for depression. In the AR, the hematologist reported that there is one major impact to the appellant's cognitive and emotional functioning in emotion and moderate impacts in the areas of memory, motivation, motor activity, and psychotic symptoms. There are minimal or no impacts assessed for the remaining 9 areas of functioning and the hematologist did not provide any other comments.

Considering the two DLA that are specific to mental impairment – make decisions about personal activities, care or finances (decision making), and relate to, communicate or interact with others effectively (social functioning), the evidence indicates that the appellant is independent with both. With respect to decision making, the hematologist reported in the AR that the appellant is independent with the decision-making components of the DLA of personal care (regulate diet), part of daily shopping (pay for purchases) and meals (safe storage of food), managing his finances (budgeting and paying rent and bills), managing medications (taking as directed and safe handling and storage), and transportation (using transit schedules and arranging transportation). The hematologist also reported in the AR that the appellant is independent with making appropriate social decisions. While the hematologist reported that the appellant requires periodic assistance from another person with making appropriate choices when shopping and with meal planning, he did not provide a description or explanation that would allow the ministry to determine that the periodic assistance is required for extended periods of time.

Regarding the DLA of social functioning, the appellant is assessed in the AR as independent in all areas and specifically with developing and maintaining relationships, interacting appropriately with others and securing assistance from others. He is assessed as having good functioning in both his immediate and extended social networks. The general practitioner reported in the PR that the appellant has no difficulty with communication and, in the AR, the hematologist indicated that the appellant has a satisfactory ability to communicate in all areas.

Given the assessment of mostly mild to moderate impacts to the appellant's cognitive and emotional functioning and his independent social functioning, the panel finds that the ministry reasonably determined that a severe mental impairment was not established under Section 2(2) of the EAPWDA.

**Restrictions in the ability to perform DLA**

The appellant's position is that his physical and mental impairments directly and significantly restrict his ability to perform DLA on an ongoing basis to the point that he requires the significant assistance of another person, specifically his adult children.

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

*Panel Decision*

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

In the appellant's circumstances, the general practitioner reported that the appellant has been prescribed medications that interfere with his ability to perform daily living activities as he has "nausea/vomiting/dizziness/weakness, malaise." The general practitioner reported that the appellant is not restricted in most of the listed DLA, specifically: personal self care, meal preparation, management of medications, mobility inside and outside the home, use of transportation, management of finances and social functioning. In the AR, the hematologist also reported that the appellant is independent with moving about indoors and outdoors and with personal care, paying rent and bills, medications, transportation and social functioning.

In the PR, the general practitioner reported that the appellant is continuously restricted with the DLA of basic housework and daily shopping. There are no comments provided regarding the degree of restriction or the assistance needed with DLA. In the AR, the hematologist also indicated that the appellant requires periodic assistance with all tasks of basic housekeeping, with a comment "hip pain." The hematologist reported that the appellant requires periodic assistance with some tasks of the DLA shopping, with going to and from stores, making appropriate choices and carrying purchases home and a comment "hip pain." The appellant remains independent with reading prices and labels and paying for purchases. Although the general practitioner reported that the appellant is not restricted with the meals DLA, the hematologist indicated that the appellant requires periodic assistance with most tasks of the DLA meals, and is independent with safe storage of food. For those tasks requiring periodic assistance (meal planning, food preparation, and cooking), the hematologist has not provided a description or explanation, and the panel finds that the ministry reasonably determined that the evidence does not establish that the periodic assistance is required for extended periods of time.

At the hearing, the appellant stated that his son helps him with grocery shopping but he is also busy with his work and does not have that much time. The appellant stated that his daughters help him when they are not in school. At the hearing, one of the appellant's daughters stated that she cleans the appellant's house and tries to cook, and that her brother helps their father with grocery shopping. She stated that she recently finished summer school and is able to help more. Her father is living alone so she tries to help at least once per week. The appellant stated that he suffers many serious

side effects from his treatment for multiple myeloma for 21 days out of a month and he only has a few days per month when he is feeling okay. However, the general practitioner reported in the PR that while the appellant's medical condition will continue for two years or more, the anticipated duration of the treatment is "unknown at this time." Neither the general practitioner nor the hematologist confirms that the appellant requires periodic assistance that extends every day for most of each month.

As previously discussed, the evidence does not clearly indicate that the appellant is significantly restricted in either DLA specific to mental impairment, namely decision making or social functioning. Considering the evidence of the prescribed professionals, the general practitioner and the hematologist, the panel finds that the ministry was reasonable to conclude that the evidence is insufficient to show that the appellant's overall ability to perform his DLA is significantly restricted either continuously or periodically for extended periods, pursuant to Section 2(2)(b)(i) of the EAPWDA.

### **Help to perform DLA**

The appellant's position is that his physical impairment significantly restricts his daily living functions to a severe enough extent that significant assistance is required from his adult children.

The ministry's position is that because it has not been established that DLA are significantly restricted, it cannot be determined that significant help is required.

### **Panel Decision**

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

The panel finds that the evidence of the appellant's hematologist, as one of the prescribed professionals, is that the appellant receives assistance from his family. In the section of the AR for identifying assistance provided through the use of assistive devices, the hematologist indicated communication devices but did provide details of any equipment or devices used by the appellant. The panel finds that the ministry reasonably determined that as direct and significant restrictions in the appellant's ability to perform DLA have not been established, it cannot be determined that the appellant requires help to perform DLA as a result of those restrictions, as defined by section 2(3)(b) of the EAPWDA.

### **Conclusion**

Having reviewed and considered all of the evidence and relevant legislation, the panel finds that the ministry's reconsideration decision which determined that the appellant was not eligible for PWD designation pursuant to Section 2(2) of the EAPWDA was reasonably supported by the evidence, and therefore confirms the decision.