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PART C – Decision under Appeal

The Ministry of Social Development and Social Innovation (the ministry) reconsideration decision dated 10 August 2015 determined that the appellant did not meet 3 of the 5 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 his impairment was likely to continue for at least 2 years. However, the ministry was not satisfied that

- the appellant had a severe mental or physical impairment and
- that the appellant's mental or physical impairment, in the opinion of a prescribed professional, directly and significantly restricted his daily living activities (DLA) either continuously or periodically for extended periods and
- that as a result of those restrictions, in the opinion of a prescribed professional, the appellant required help to perform DLA.

PART D – Relevant Legislation

EAPWDA, section 2
Employment and Assistance for Persons with Disabilities Regulation (EAPWDR), section 2

PART E – Summary of Facts

The following evidence was before the ministry at the time of reconsideration:

- A PWD Application – 3 page Applicant information (Self Report – SR) completed by the appellant and his advocate on 16 March 2015 indicated that:
    - The appellant suffers from severe asthma affecting his sleep, muscle spasms, arthritis affecting mostly his hands, feet, legs and lungs.
    - He is mostly impacted during the day as he can only take muscle relaxants at night but they affect his alertness the following day causing slow reaction.
    - He tries to do not any more than house chores and takes breaks in between when his muscles start to twitch and takes a bath to relax.
    - He gets help from family members and friends for his laundry, housework, taking out garbage, grocery shopping, meal preparation and reminders for appointments and taking medications.
    - Fatigue affects his concentration, memory, interest, motivation, difficulties staying on track focusing and following through.
- An 8 page Physician Report (PR) dated 9 April 2015 completed and signed by the appellant's physician, a general practitioner (GP), indicated the following:
    - Specific diagnoses: asthma (lifelong), inflammatory arthritis (RF+) and chronic lower back pain syndrome (onset 1995).
    - Health history: moderate asthma, constant lower back pain (acute or chronic) – 7/10 subjectively, limiting him even to walk, got worse over the year, can't do bending over or heavy lifting – can't do much lifting at all. Inflammatory arthritis: mostly knees, legs, hips, feet and hands affected – polyarthralgia, lots of morning stiffness – gets muscle spasms – that improve a little as day goes along. "He [the appellant] feels that the above affects his ADL's [DLA]".
    - The appellant was prescribed medication that interfered with his ability to perform DLA. The GP described what medication was prescribed and indicated the duration of the medication / treatments as unknown.
    - The appellant does not require any prostheses or aids for his impairment.
    - The impairment was likely to continue for 2 years or more from that date and the GP explained that asthma is lifelong while lower back pain and inflammatory arthritis are "guarded".
    - In terms of functional skills, the GP indicated that the appellant could walk 1 to 2 blocks unaided, he could climb 5 + steps unaided, he can do no lifting, he can remain seated less than 1 hour and has no difficulties with communication.
    - In terms of significant deficits with cognitive and emotional functions, the GP identified 3 areas: memory, emotional disturbance and attention or sustained concentration and commented that the appellant has short term memory problems, finds hard to concentrate and added "Depression secondary to all mentioned conditions".
    - The GP indicated that the appellant's impairments directly restrict his ability to perform DLA, in particular for:
        - personal self care (periodic);

        - meal preparation (periodic);
        - basic housework (continuous);
        - daily shopping (continuous);
        - mobility inside and outside the home (continuous) and
        - social functioning (continuous).
        - There is no impact on management of medications, use of transportation and management of finances.
        - Where periodic, the GP explains that it depends on muscle and joint & back pain on a particular day, including shortness of breath related to asthma.
        - In terms of impacts on social functioning, the GP indicated that it was related to depressive symptoms, as the appellant prefers to stay at home and isolate himself. In terms of the degree of restriction, the GP indicated that they were mostly moderate going to extreme periodically.
        - In terms of whether the appellant needs assistance for his DLA the GP did not provide any comment.
    - The appellant had been the GP's patient for 3 months and the GP had seen him 2 to 10 times during that time.
- An 11 page Assessor Report (AR) dated 19 March 2015, completed and signed by a registered nurse (RN) indicated the following:
    - The appellant lived with family, friends or caregiver.
    - In terms of physical or mental impairments that impact the appellant DLA, she indicated "Back pain chronic – has disc herniation in back – no longer able to lift – numbness & pain in right foot – limits mobility – also has left knee & leg pain causes him to limp – states he gets very short of breath with activity due to asthma – states that asthma is much worse in spring & fall – summer time [avoids?] to go outside – periodic numbness and pain to left hand.
    - The appellant's speaking, writing and hearing abilities are good but his reading ability is poor. The RN comments that recent visual changes made it difficult reading and he gets his wife to read anything that is important.
    - In terms of mobility and physical ability, he is independent walking indoors and outdoors but in this case it takes significantly longer than typical with the comment "restricted", he needs to stop after walking one block, to rest as he is short of breath & because of knee and foot pain – he no longer goes for walks). He is also independent climbing stairs but must use an "assistive device" (he uses hand rails and can climb about 8 steps before he needs to stop to rest) and takes significantly longer than typical with the comments that he can stand for about 10 minutes, moving constantly to get a comfortable position, looking for something or someone to lean on. He needs periodic assistance from another person for lifting (comment: can lift about 15 lbs) and carrying & holding (can carry 15 lbs for 50 feet and then he gets short of breath and his back hurts – needs help to lift heavier things but tries to do as much as he can, working short periods then resting).
    - In terms of cognitive and emotional functioning, the RN identified 4 areas with moderate impact:
        - bodily functions,
        - consciousness,
        - attention/concentration and

    - motivation;
- 3 areas with minimal impact:
    - emotion,
    - executive and
    - memory;
- 7 areas with no impact:
    - impulse control,
    - insight & judgment,
    - motor activity, language,
    - psychotic symptoms,
    - other neuropsychological problems and
    - other emotional or mental problems.
- The RN also commented that the appellant's sleep is disturbed by back pain but he can sleep 6 hours with assistance from medications; he feels drowsy the day after taking medication and does take them 5 to 7 days per week and as a result he has a foggy head, difficulty with clearing his thoughts, processing information is slow, gets forgetful, not always able to follow through with tasks, stress, history of depression, no longer able to do work (move furniture) or walk dogs or play with them. He indicated that pain affected his ability to focus, concentrate, remember recent events & things he is supposed to do and he often has difficulties controlling his pain. In terms of executive planning, he often has to rely on friends to help him organize and carry out plans due to pain & medications. In terms of motivation, it affects his desire to do things because of pain and he is no longer able to play hockey and do other sports.
- In terms of DLA, the appellant is independent in the following areas:
    - Personal care:
        - dressing: takes significantly longer (comment: difficulties putting on socks and shoes due to back problems with bending),
        - grooming,
        - bathing,
        - toileting,
        - feeding self, regulate diet
        - but for transfers in and out of bed or chair, there is no indication whether he is independent but the comments indicate that he has developed a method to reduce pain and that it takes him 5 to 10 minutes;
    - Shopping (general comment to the effect that the appellant does not go shopping because of his pain and he is antisocial as he does not like to be around people and usually waits in the car – if he goes in a store, it will only be for a short time):
        - reading prices and labels,
        - making appropriate choices,
        - paying for purchases;
    - Meals: safe storage of food;
    - Pay rent and bills;
    - Medications;
    - Social functioning.
- The appellant needs periodic assistance for DLA from another person in the following

areas:
    - Basic housekeeping and laundry and it takes significantly longer (comment that he gets help from friends as otherwise it would not be completed as he can only work for short periods at a time);
    - Carrying purchases home;
    - Meals: meal planning, food preparation and cooking (comment: he and his girl friend plan meals together and help each other – he can only stand for 2 to 5 minutes at the sink and sitting down is also difficult because of back pain);
  - The appellant needs continuous assistance from another person for going to and from stores.
  - In terms of transportation, the RN indicated that it takes significantly longer for him to get in and out of a vehicle with the comment that he has to be careful because of pain and moves slowly and often use the frame of the car to assist him. He does not use public transit.
  - There is no additional comment in terms of assistance required or any safety issues with respect to DLA.
  - The appellant's functioning is good in terms of immediate social network but marginal in terms of extended social network with the comment that he avoids social situations due to pain and because he is more comfortable at home and is socially isolated.
  - In terms of whether the appellant requires help to maintain him in the community or safety issues, the RN provided no comment.
  - The RN indicated that the appellant had help from friends and family and he is not using any assistive device.
  - The RN indicated that a cane would be helpful to walk with especially when left leg causes him to limp or his right foot is in pain.
  - The appellant does not have an assistance animal.
  - In "Additional Information" the RN wrote that he had back pain and numbness in foot for years and more recently knee and leg pain and was referred to specialists but it had not yet occurred and meanwhile he does not know the diagnosis for pain causing mobility limitations. He had not had any recent respiratory assessment but managed with a puffer. His symptoms are progressing and he has become more withdrawn socially and is increasingly in need of help from family and friends for DLA. He stated he recently developed swallowing difficulties while eating, choking, which causes more anxiety, short breath and which has not yet been investigated. He suffers from daily headaches and reduces stress and tension with medication, including when he goes to bed. He gets nauseated on a daily basis for at least an hour and it may last all day if he is unable to take his medication.
  - The RN's sources of information were:
    - Office interview with the appellant;
    - File/chart information and referral letter;
  - This was the first contact the RN had with the appellant and she saw him once for disability assessment.
- Along with the AR were a series of medical reports:
  - A 4-page report titled "GRB Spiro 1" (lung function test results) dated 11 February 2011 by a physician indicating: moderate degree - obstructive disease – significant response to bronchodilators.

- 3 letters from the appellant's previous physician dated at the end of January 2014 referring his case to a neurosurgeon and a specialist for persistent numbness left heel and tingling burning in right ankle and foot.
- Report of a CT Spine lumbar without contrast dated 10 January 2014.
- Diagnostic radiography of the lumbar spine collected on 2 March 2015 and reported on 5 March 2015.

In his request for reconsideration dated 10 July 2015, the appellant reiterates and adopts the SR, PR and the AR.

At the hearing no additional evidence was provided by the parties.

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PART F – Reasons for Panel Decision

The issue under appeal is whether the ministry's determination that the appellant has not met all of the eligibility criteria for designation as a PWD because it was not satisfied that

- the appellant had a severe mental or physical impairment and
- that the appellant's mental or physical impairment, in the opinion of a prescribed professional, directly and significantly restricted his DLA either continuously or periodically for extended periods and
- that as a result of those restrictions, in the opinion of a prescribed professional, the appellant required help to perform DLA

was either a reasonable application of the legislation or reasonably supported by the evidence. The ministry determined that the age requirement and that his impairment was likely to continue for at least 2 years had been met.

The criteria for being designated as a person with disabilities are set out in s. 2 of the EAPWDA and s. 2 of the EAPWDR. Section 2 of the EAPWDA states:

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;
"health professional" repealed
"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 of the EAPWDR provides further clarification:
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.

Severity of impairment:

The panel notes that the legislation clearly provides that the determination of severity of impairment is at the discretion of the minister, taking into account all of the evidence including that of the appellant. A diagnosis of a serious medical condition or conditions does not in itself determine PWD eligibility or establish a severe impairment. While the legislation does not define "impairment", the ministry's PR and AR form define "impairment" as a "loss or abnormality of psychological, anatomical or physiological structure or functioning causing a restriction in the ability to function independently, effectively, appropriately or for a reasonable duration." While this is not a legislative definition, and is therefore not binding on the panel, in the panel's opinion, it reflects the legislative intent and provides an appropriate analytical framework for assessing the degree of impairment resulting from a medical condition.

The panel takes into account the evidence at reconsideration, including the appellant's SR and the prescribed professionals' PR and AR and notes that no additional evidence was provided on appeal. In terms of PR, the panel notes the appellant's family doctor had retired and a new doctor took over and completed the PR having known the appellant for only 3 months and having seen him 2 to 10 times. When the assessor completed the AR, it was the first and only time she had met the appellant and had no previous experience with him – the panel notes that the first page of the AR form specifically mentions "This section should be completed by a prescribed professional having a history of contact and recent experience with the applicant." The panel notes that some information provided

by the prescribed professionals appeared to reflect the patient's opinion rather than the opinion of the prescribed professional.

Severe physical impairment:

The appellant argued that the evidence showed that he suffered from a severe physical impairment given the GP's diagnoses, the fact that he was severely limited in his daily activities and needed help accordingly. He also argued that the ministry's decision was unreasonable as based on criteria that were not legislated, for instance how much longer than a typical person would take to perform a task, the frequency and duration of the assistance needed and the frequency and duration or the restrictions to the appellant's overall level of functioning.

The ministry argued that the medical evidence fell short from demonstrating a severe physical impairment but rather was consistent with a moderate impairment. The ministry also indicated that the questionnaires were designed to ensure the ministry would get enough information to assess the severity of the impairments and the significant restrictions caused on DLA since each person is different and the impacts of any impairment vary between individuals. This information is necessary to make a proper assessment and in the present case, the ministry argued that there were many contradictions between the 3 reports and that there was not enough information to determine a severe physical impairment.

Panel decision:

The panel noted a number of inconsistencies between the reports presented at reconsideration. For instance, the PR indicated that the appellant was unable to lift anything ("can't do much lifting at all") while the AR indicated that the appellant could "lift about 15 lbs and carry it for 50 feet – states gets SOB [short of breath] & back hurts – states he needs to get help to lift more heavier items – but tries to do as much as he can working short periods then resting." As well, in his request for reconsideration, the appellant adopted the GP's opinion that he is able to walk 1 to 2 blocks and climb 5+ stairs unaided while the AR stated that the appellant "uses hand rails can climb about 8 steps then needs to stop to rest" and that it takes significantly longer than typical for climbing stairs and walking outdoors but did not indicate what was meant by "significantly longer".

The GP described the appellant's asthma as "moderate" and in terms of lower back pain and inflammatory arthritis, his opinion was "guarded" as to the estimated duration of the impairment and whether there are remedial treatments that may resolve or minimize the impairment. Other inconsistencies are found in terms of impact on DLA, the GP wrote "He [the appellant] feels that the above affects his ADL's [DLA]" suggesting that this reflects more the appellant's opinion than the GP's. Yet, when asked to describe the impact of impairments on the appellant's DLA the GP indicated that they were continuous for 6 of the listed activities and periodic for 2 more while, on the other hand, the AR indicated only 1 area of DLA (going to and from stores) that was continuously impacted. When asked to describe the degree of restriction, the GP wrote "mostly moderate going to extreme periodically" which suggests to the panel that it is generally moderate but that at some times they can become extreme but the GP did not indicate when or at what frequency those extremes happen.

The panel finds that given the evidence and its inconsistencies, the ministry reasonably determined the limitations on the appellant's physical functioning showed a moderate rather than severe physical impairment and that the ministry reasonably determined the appellant did not establish a severe physical impairment.

Severe mental impairment:

The appellant provided the same arguments as for physical impairment to support his position that the ministry was unreasonable in determining he had not established a severe mental impairment.

The ministry argued that the depression suffered by the appellant was secondary to his other ailments and that no diagnosis of mental impairment had been provided by the medical practitioner.

Panel decision:

The panel notes that the GP did not diagnose any mental illness but referred to significant deficits with cognitive and emotional functions for memory, emotional disturbance and attention or sustained concentration but specified that "depression secondary to all mentioned conditions".

S. 2(1)(b) of the EAPWDR prescribes two DLA that are specific to mental impairment: making decisions about personal activities, care or finances (decision-making) and relating to, communicating or interacting with others effectively (social functioning). According to the GP, one of those, management of finances, is not restricted at all while the other, social functioning, is restricted continuously but the GP notes that it is related to depressive symptoms – "prefers to stay at home and isolate himself". However, the AR indicates that the appellant is independent in decision-making about personal care, making appropriate choices, paying for purchases, all financial activities, medications and social functioning except for a marginal functioning for extended social networks where she indicated that the appellant avoided "social situations due to pain & more comfortable at home – socially isolated". The wording in these 2 reports seems to suggest that it is the appellant who prefers to stay home and isolate himself rather than a result of a specific impairment since he can still go to stores and buy movies if he wants to, as he mentioned to the RN.

In terms of other areas of cognitive and emotional functioning, the AR mentioned at the most a moderate impact on bodily functions (circles "sleep disturbances" as emphasis), consciousness, attention/concentration and motivation. All the other areas have a minimal impact (3: emotion, executive and memory) or no impact (7: impulse control, insight & judgment, motor activity, language, psychotic symptoms, other neuropsychological problems and other emotional or mental problems).

In his SR, the appellant indicated that part of his mental issues stems from having to take medication at bed time to control the pain and allow him to sleep and that the next day he feels that he is not as alert but a bit slow in his reaction. Later in the SR, in a different handwriting, he mentioned he felt tired due to poor sleep quality and that fatigue affects concentration, memory, interest and motivation, difficulties staying on track, focusing and following through. The panel notes it is not clear whether the medication helps him sleep but makes him "less alert" or whether it is poor sleep and the consequential fatigue that impact on his cognitive and emotional functioning – this seems somewhat contradictory and is not confirmed by the GP in the PR as he does not mention any specific impacts

of his medications on his DLA other than saying that it had an impact and the GP did not mention sleep issues.

In the documents provided, there is a suggestion that the appellant would consult with a neurosurgeon for numbness in left heel and tingling burning in right ankle and foot but no evidence was provided as to whether an appointment took place or a diagnosis was made.

The panel finds that given the evidence provided and the inconsistencies between the reports (SR, PR and AR), the ministry reasonably determined there was not enough information to confirm the appellant had a severe mental impairment.

Daily living activities:

The appellant argued that most of his DLA are significantly impacted by his severe impairments and that he needs periodic or continuous assistance from friends and family for the majority of his DLA. The appellant argued that if 2 or more activities are significantly impacted, the criterion was met which he submitted was the case here.

The ministry argued that there were many contradictions between the SR, the PR and the AR in terms of DLA, that the frequency and duration of the periodic assistance required was not described and that the frequency and duration of the periods when the appellant needs such assistance could not be determined based on the information provided.

Panel decision:

In order to determine the reasonableness of the ministry determination, the panel will review each of the categories of DLA that are listed in the legislation (s. 2 (2) of the EAPWDR). As the legislation requires that the restriction is both significant and either continuous or periodic for extended periods it is reasonable for the ministry to rely on information as to frequency and duration.

Prepare own meals:
According to the GP, this activity is periodically restricted, depending on the pain suffered by the appellant on any given day. According to the RN, the appellant also needs periodic assistance but that meals are planned jointly with his girl friend and they help each other out. In his SR the appellant indicated that he tries not to do more than house chores with breaks in between. There is no indication as to how often help is provided or needed.

Manage personal finances:
According to the GP this activity is not restricted and the AR indicates that he is independent.

Shop for personal needs:
The PR indicates that he is continuously restricted - mostly moderately - but there is no indication as to what assistance would be required. The AR indicates that he is independent for reading prices and labels, making appropriate choices and paying for purchases but needs continuous assistance going to and from stores but yet, this is due to pain in his knee and he prefers to stay in the car because he does not like to be around people but will occasionally go in a store – for instance to get a movie –

but only for a short period. He needs periodic help to carry purchases home but there is no further detail making it difficult to assess how much help is required, by whom and how often.

Use public or personal transportation facilities:
The GP indicated no restriction while the RN mentioned that he had to be careful getting in and out of a vehicle because of pain and she also indicated he did not use public transit but did not mention the reason or whether he *could* not use it and the panel infers that it is because of his own choices.

Perform housework to maintain the person's place of residence in acceptable sanitary condition:
The GP stated he was continuously, moderately mostly, restricted in terms of basic housework while the RN indicated he needed periodic assistance from another person or it took him significantly longer than typical, specifying that friends help him as otherwise it would not be completed since he can work only for short periods of time. However, in his SR the appellant indicated he did his house chores with breaks in between, when he can feel the muscles starting to twitch he stops and takes a bath to relax. That he takes longer to do those chores, the panel has no doubt but how much longer it takes, how much help is required, by whom and how often is not specified.

Move about indoors and outdoors:
The GP indicated the appellant could walk 1 to 2 blocks and climb 5+ stairs unaided, which is confirmed by the appellant in his request for reconsideration. The RN indicated that the appellant was independent walking indoors and also independent walking outdoors and climbing stairs but that it took him significantly longer – she explains he has to stop when he feels pain to the extent he no longer goes for walks and that he uses handrails and climbs up to 8 steps and then stops to rest. There is quite a contradiction between the RN on the one hand and the GP and the appellant's own statement on the other hand.

Perform personal hygiene and self care:
The GP indicated he was periodically restricted without more specific details. The AR on the other hand indicated he was independent for the majority of those activities excepted that he needed significantly more time to dress, particularly socks and shoes. Transfers in and out of bed or on / off a chair take longer – 5 to 10 minutes – and he developed a method to reduce pain. This is another example of inconsistencies between the prescribed professionals' reports.

Manage personal medication:
The GP indicated no restriction and the RN indicated he was independent.

Make decisions about personal activities, care or finances:
No restrictions according to the GP and independent according to the RN.

Relate to, communicate or interact with others effectively:
The GP mentioned continuous restriction but he then wrote that the appellant "prefers to stay at home and isolate himself" which suggests it's a personal choice of the appellant. The RN indicated he was independent in all the social functioning areas other than interaction with his extended social network that is marginal but she wrote that he "avoids social situations due to pain & more comfortable at home, socially isolated", again suggesting more of a choice by the appellant than a direct impact from an impairment.

Given that the appellant himself suggested in his SR that he does most of his house chores albeit more slowly and given the numerous contradictions between the reports provided to the ministry and given that the evidence is not consistent in most DLA, the panel finds that the ministry reasonably determined the level of impairment as moderate and that there was not enough information to establish that the appellant's impairments directly and significantly restricted DLA continuously or periodically for extended periods.

As a result of those restrictions, help required to perform DLA:

The appellant argued that the evidence indicated a need for significant help with a large number of DLA and that a cane and handrails qualified as assistive devices to help compensate for his impairment. In response to the ministry's argument that handrails were not an assistive device, the appellant's advocate referred to the RN's comment in the AR: "Stairs - uses handrails can climb about 8 steps then needs to stop to rest".

The ministry argued that since DLA are not significantly restricted, it cannot be determined that significant help from other persons is required. In terms of assistive devices, the ministry argued that the use of simple assistive devices like canes do not establish the existence of a severe impairment that significantly restricts the ability to manage DLA. The ministry further argued that a handrail is not an assistive device and is not included in the list of equipment in the section "Assistance provided through the use of Assistive Devices" of the PWD application form.

Panel decision:

When asked what help is required, the GP left that section blank and did not provide any further comment. The RN mentions some help that the appellant is getting from family and friends but when specifically asked what help was required, she also left those questions unanswered. Likewise for assistive devices: the GP left that box blank and the RN did not mention any equipment or devices used by the appellant but indicated that a cane would be helpful to walk with, especially when left leg cause him to limp and right foot pain. It appears reasonable to the panel to take this more as a suggestion that at times a cane would make life easier for the appellant rather than as a requirement.

Further, the panel notes that the definition of "assistive device" at s. 2 (1) of the EAPWDR does not make a handrail an assistive device since handrails are not *designed* to enable a person to perform a DLA that because of a severe mental or physical impairment, the person is unable to perform: handrails are common to most buildings where there are stairs. As well, the panel notes that in his SR, the appellant mentioned that stairs are difficult and he gets out of breath after climbing a "flight of stairs" but he did not mention having to use handrails and in his request for reconsideration, he adopted the GP's opinion that he can climb 5+ stairs *unaided*.

Given the panel's finding that the ministry reasonably determined that direct and significant restrictions in the appellant's ability to perform DLA have not been established, the panel further finds that the ministry's conclusion that it cannot be determined that the appellant requires help to perform DLA as a result of those restrictions was reasonable.

Conclusion:

The panel acknowledges the appellant's difficulties caused by his medical condition and that it does have an impact on his daily functioning. However, based on the above analysis and evidence, the panel comes to the conclusion that the ministry reasonably determined that the appellant does not have a severe physical or mental impairment and that a prescribed professional did not establish that an impairment directly and significantly restricted his ability to perform DLA either continuously or periodically for extended periods and that, as a result of those restrictions he requires help to perform those activities under s. 2(2) of the EAPWDA. Consequently, the panel finds the ministry's decision was reasonably supported by the evidence and is a reasonable application of the applicable enactment in the circumstances of the appellant and confirms the decision.