APPEAL #

PART C – Decision under Appeal

The decision under appeal is the Ministry of Social Development and Social Innovation (the ministry) reconsideration decision dated August 5, 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

APPEAL #

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 dated February 10, 2015, with no self-report completed by the appellant, a physician report (PR) dated March 10, 2015 completed by a psychiatrist who has known the appellant since May 2014, and an assessor report (AR) dated April 24, 2015 and completed by a physician who is a specialist in physical medicine and rehabilitation and who has known the appellant for 3 years.

The evidence also included the following documents:

1) First page of a multiple page letter dated December 20, 2012 from an orthopedic surgeon to the appellant's family physician;
2) First page of a multiple page Home Care Assessment and Care Plan for the appellant;
3) Letter dated January 2, 2014 from Work Safe BC to the appellant;
4) Letter dated February 14, 2014 from the appellant's family physician;
5) Outpatient Clinic Consultation Note by a physician dated August 12, 2014;
6) Medical Report- Employability dated March 10, 2015;
7) Page 9 of 28 pages of the PWD Application; and,
8) Request for Reconsideration dated July 21, 2015, which attached a handwritten statement by the appellant and referred to the documents listed above.

Diagnoses

In the PR, the appellant was diagnosed by the psychiatrist with chronic pain with an onset of December 2011 and depression with an onset of February 2012. Asked to describe the mental or physical impairments that impact the appellant's ability to manage daily living activities, the rehabilitation specialist wrote in the AR to "see patient's psychiatrist completed form for psychiatric input. Physically, patient suffers from chronic low back pain impairing daily function due to poor tolerance of standing, sitting, bending, pushing, pulling, walking. "

Physical Impairment

In the PR, the psychiatrist reported that:

- In terms of health history, the appellant was "involved in work-related accident in December 2011; injured several parts of his body, resulted in pain syndrome, not responding to treatment."
- The appellant does not require any prosthesis or aid for his impairment.
- In terms of functional skills, this section of the PR was left incomplete by the psychiatrist.
- In the additional comments, the appellant has a "poor prognosis."

In the AR, the rehabilitation specialist indicated:

- The appellant is assessed as taking significantly longer than typical with all aspects of mobility and physical ability, specifically walking indoors and walking outdoors, climbing stairs, standing, lifting and carrying and holding. The specialist wrote: "takes longer as unable to tolerate continuously due to low back pain" and "lifting and carrying limited by low back pain to less than or equal to 10 lbs."
- In the section of the AR relating to assistance provided, the rehabilitation specialist did not identify any of the listed devices as applying to the appellant and wrote: "None. Patient only requires pacing in order to accommodate his activity tolerance."

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

- He severely hurt his left shoulder and has been off work for over 4 years.
- He has been going to the doctor for over 3 years and there is constant pain which is chronic, with poor movement of his left shoulder and arm.
- He has chronic low back pain due to his pain syndrome, which occurred as a result of the work accident.

In the letter dated February 14, 2014, the appellant's family physician wrote:

- Since his work injury in December 2011, the appellant's back has not gotten better. A couple days later, the appellant started feeling pain in his left shoulder and is limited in his day-to-day activities.
- Because of his injury, the appellant cannot stand long hours as the muscle pain gets worse and he is unable to lift heavy objects.
- He is unable to work because of the pain in his lower back and he has been referred for physiotherapy on a day-to-day basis.

In the Outpatient Clinic Consultation Note dated August 12, 2014, the physician wrote:

- The appellant's ongoing diffuse low back pain radiating into the lower extremities, as well as left shoulder pain symptoms radiating into the left upper extremity, are likely secondary to a combination of mechanical low back pain as well as chronic myofascial pain symptoms involving those areas.
- The appellant's MRI did not show signs of any nerve root impingement to account for pain radiating into the lower extremities, nor does it account for the intermittent symptoms of weakness or parethesias at that level. These are likely referred symptoms from his lower back, coming from the myofascial pain at that level.
- The appellant's symptoms relate to a work accident which occurred December 2011. While symptoms involving low back strain typically improve over the course of weeks to months, the appellant's symptoms have not and he represents a small percentage of individuals with low back strain who go on to develop chronic pain symptoms involving that area and including a myofascial pain syndrome as well.
- Given the ongoing symptoms, with no significant improvement in the pain occurring despite ongoing treatment, it is likely that his symptoms will remain permanently.
- The appellant's MRI findings show no signs of disc herniation, nerve root impingement or spinal stenosis to explain his ongoing complaints.
- He has encouraged the appellant to continue in his exercise program of walking on a daily basis, and try to progressively increase the amount of time spent doing so.

In the Medical Report- Employability dated March 10, 2015, the psychiatrist indicated that:

- The appellant's primary medical condition is chronic pain.
- His overall medical condition is severe.
- His medical conditions are episodic in nature.
- Regarding the restrictions specific to the medical conditions, the psychiatrist wrote: "please ask his GP."

Mental Impairment

In the PR the psychiatrist reported:

- In terms of health history, the appellant "developed symptoms of depression and anxiety in

early part of 2012.
- There is no indication whether the appellant has any difficulty with communication.
- The appellant has significant deficits with cognitive and emotional function in the areas of consciousness, memory and emotional disturbance, with a comment added by the psychiatrist "sleep difficulty; obsessive rumination about pain; negative future outlook."
- It is unknown whether the appellant is restricted with social functioning, with the comment added by the psychiatrist that this is "affected by mental, physical and psychiatric difficulty."
- In the additional comments, the appellant has a "poor prognosis."

In the AR, the rehabilitation specialist reported that:
- The appellant has a good ability to communicate in all areas, specifically: speaking, reading, writing, and hearing.
- The section of the report designed to indicate the degree of impact to the appellant's cognitive and emotional functioning is not completed and the rehabilitation specialist wrote: "please see psychiatric input previously completed."
- With respect to social functioning, the appellant is independent in all aspects, and the rehabilitation specialist wrote: "from physical point of view, however, refer to psychiatric input for mental health effect on these areas."
- There is no indication of the appellant's social functioning with his immediate and extended social networks.

In the appellant's Request for Reconsideration, he wrote:
- He has limited interactions with the public and his family because of stress and depression.
- This is a result of his chronic low back pain.

In the Medical Report- Employability dated March 10, 2015, the psychiatrist indicated that:
- The appellant's secondary medical condition is depression.
- The appellant's overall medical condition is severe.
- Regarding the restrictions specific to the medical conditions, the psychiatrist wrote: "please ask his GP."

Daily Living Activities (DLA)

In the PR, the psychiatrist indicated that:
- The appellant has been prescribed medications that interfere with his ability to perform daily living activities, as they cause drowsiness. The psychiatrist noted that the appellant will need: "psychotropic medications for years; also need pain killer, please refer to his GP for this."
- The appellant is not restricted in his mobility inside the home and it is unknown whether he is restricted with mobility outside the home.
- The appellant is not restricted with management of medications, use of transportation, and management of finances.
- It is unknown whether the appellant is restricted with his personal self care, daily shopping and social functioning.
- The appellant is restricted in his meal preparation and his basic housework, but there is no indication whether this is on a continuous or periodic basis.
- Asked to describe the assistance that the appellant needs with DLA, the psychiatrist left this section incomplete.

In the AR, the rehabilitation specialist reported that:

- The appellant takes significantly longer than typical with walking indoors and with walking outdoors, with a note: "takes longer as unable to tolerate continuously due to low back pain."
- The appellant is independent with all of the listed tasks of the DLA pay rent and bills (including banking and budgeting) and the DLA medications (filling/refilling prescriptions, taking as directed, safe handling and storage).
- The appellant is independent with tasks of the personal care DLA (feeding self, regulate diet), the meals DLA (meal planning, safe storage of food), several tasks of the DLA shopping (reading prices and labels, making appropriate choices, paying for purchases), and a task of the transportation DLA (using transit schedules and arranging transportation).
- The appellant takes significantly longer than typical with most tasks of the personal care DLA (dressing, grooming, bathing, toileting, transfers in/out of bed and on/off chair), the DLA housekeeping (including laundry) and with tasks of the DLA shopping (going to and from stores and carrying purchases home), with the comment: "as per previous section, patient requires frequent rest periods when performing these tasks due to increased low back pain limiting standing, sitting, walking tolerance."
- The appellant also takes significantly longer than typical with tasks of the DLA meals (food preparation and cooking), and the DLA transportation (getting in and out of a vehicle and using public transit), with the comment: "standing, sitting, walking tolerance limited by low back pain, thus these activities take longer than normal."

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

- He has constant pain and his body aches when he tries to do normal activity such as cooking or cleaning.
- He has to live with a friend so they can support and help each other on daily activities since he no longer has assistance and cannot do much on his own.

Need for Help

In the AR, the rehabilitation specialist reported that, with respect to the assistance provided by other people, none of the listed categories are identified as applying to the appellant. In the section of the AR for identifying assistance provided through the use of assistive devices, the rehabilitation specialist did not identify any of the listed items as being applicable to the appellant. Asked to provide details on any equipment or devices used by the appellant, the rehabilitation specialist wrote: "none; patient only requires pacing in order to accommodate his activity tolerance."

Appellant's additional information

In his Notice of Appeal dated August 14, 2015, the appellant wrote:

- He is still having back pain, shoulder and (illegible).
- He believes it will be present for the rest of his life.
- He has to live with a friend so his friend can help him with daily activities because he no longer has assistance and he cannot do much on his own.

At the hearing, the appellant stated that:

- He was working and had an accident several years ago. At first, he was taken care of by Work Safe. Then, because of his pain he could not go to the programs that Work Safe wanted him to go to. Before he had surgery, he was able to attend the programs but after the surgery he had no energy to move around.

- When Work Safe asked him to do physiotherapy, he did it 5 days per week.
- After taking 3 to 4 different medications every day, it has affected his memory.
- He has been referred to a Cross-Cultural Psychiatry program with an appointment scheduled for November 18, 2015 and
- He has been given a prescription for two new anti-depression medications.
- He had surgery 2 years ago, in 2013, to his shoulder.
- At the time of his accident, he had pain in his shoulder and back and he got treatment but then, after the surgery, his shoulder was much more painful. Someone had to care for him for 6 months.
- At that time, he requested that Work Safe have an MRI done on his back but they refused. He spoke to a specialist who agreed to do an MRI. The result was that he has a similar problem with his back as the problem with his shoulder.
- He has been following the treatment but he feels that his memory is not as good as it was before.
- He has worked all his life. He has been divorced for many years and his children are grown. He is living with a room-mate who helps him with cooking every day.
- He is not able to use his left arm, which causes difficulty to do things. His back is also in pain and he cannot sit for a long time. He has to lie down.
- He faces many difficulties with his daily living activities. He wants to work, but he is not able to because of his body and also because of problems with his memory.
- His doctor has given him prescriptions for medications but he does not have any money to buy them.
- He is very forgetful and this is interfering with his daily living activities.
- He is currently receiving regular income assistance.
- He told the doctors many things about his problems, such as changing his clothes since he cannot lift his arm. He cannot read or speak English fluently so he was not sure how the reports had been filled out. It seems that the reports are not complete, or do not show what he told the doctors. He does need assistance.
- He needs support in the shower. He has a bar to hold onto. He has a brace for his back.
- Someone from community services will help him install a bar in the bathtub. He needs an item to help him wash his back. He will get a “cart” to help him walk around.

The ministry relied on the reconsideration decision, as summarized at the hearing. At the hearing, the ministry emphasized that the Medical Report- Employability dated March 10, 2015 relates to the ability of the appellant’s to maintain employment, which is not an eligibility criteria for the PWD designation. The ministry also pointed out that the information about the appellant’s need for or use of assistive devices was not provided to the ministry at the time of reconsideration.

Admissibility of Additional Information

The panel considered most of the appellant’s oral testimony as 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 panel did not admit the information provided by the appellant regarding his need for or use of assistive devices as this was not information before the ministry at reconsideration and does not tend to substantiate information before the ministry at that time.

APPEAL #

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 the chronic pain in his low back and shoulder. The appellant argued that he cannot lift his left arm because of pain in his shoulder, cannot lift heavy things, and has difficulty moving around and cannot stand for long periods due to pain in his back.

The ministry's position is that there is insufficient evidence to establish that the appellant has a severe physical impairment. The ministry argued that the psychiatrist did not provide information in the PR regarding the appellant's functional skill limitations, and the rehabilitation specialist referred only to chronic pain in the appellant's low back and not his shoulder. The ministry argued that the rehabilitation specialist indicated that the appellant takes significantly longer with all aspects of mobility and physical ability, but does not indicate how much longer, and there is no reported need for assistance or the use of an assistive device.

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 psychiatrist and the rehabilitation specialist.

In the PR, the psychiatrist, who has known the appellant for less than a year, diagnosed the appellant with chronic pain with an onset of December 2011 and explained that the appellant was "involved in work-related accident in December 2011; injured several parts of his body, resulted in pain syndrome, not responding to treatment." The psychiatrist reported in the PR that the appellant does not require an aid for his physical impairment and did not complete an assessment of the appellant's functional skills limitations. Although the psychiatrist wrote that the appellant has a poor prognosis, it is not clear if this relates primarily to his physical or to his mental impairments. In the Medical Report-Employability dated March 10, 2015, the psychiatrist indicated that the appellant's primary medical condition is chronic pain, that his overall medical condition is severe, and to "ask his GP" about any associated restrictions to his functioning.

In the Outpatient Clinic Consultation Note dated August 12, 2014, the physician wrote that the appellant's ongoing diffuse low back pain and his left shoulder pain symptoms are likely secondary to a combination of mechanical low back pain as well as chronic myofascial pain symptoms involving those areas. The physician wrote that an MRI did not show signs of any nerve root impingement to account for pain radiating into the lower extremities, nor does it account for the intermittent symptoms of weakness or parethesias at that level. The appellant's MRI findings also show no signs of disc herniation or spinal stenosis to explain the appellant's ongoing complaints. The physician wrote that while symptoms involving low back strain typically improve over the course of weeks to months, the appellant's symptoms have not and he represents a small percentage of individuals with low back strain who go on to develop chronic pain symptoms involving that area and including a myofascial pain syndrome as well. The physician wrote that he has encouraged the appellant to continue in his exercise program of walking on a daily basis.

The AR was completed in April 2015 by a physician who is a specialist in rehabilitation medicine and he has known the appellant for 3 years, or since 2012. Asked to describe the mental or physical impairments that impact the appellant's ability to manage daily living activities, the rehabilitation specialist wrote "physically, patient suffers from chronic low back pain impairing daily function due to poor tolerance of standing, sitting, bending, pushing, pulling, walking." The appellant is assessed as taking significantly longer than typical with all aspects of mobility and physical ability, specifically walking indoors and walking outdoors, climbing stairs, standing, lifting and carrying and holding. The specialist wrote: "takes longer as unable to tolerate continuously due to low back pain" and "lifting and carrying limited by low back pain to less than or equal to 10 lbs." In the section of the AR relating to assistance provided, the rehabilitation specialist did not identify any of the listed devices as applying to the appellant and wrote: "None; patient only requires pacing in order to accommodate his activity tolerance."

While the rehabilitation specialist did not refer to the appellant's shoulder injury, his family doctor wrote in his letter dated February 14, 2014 that the appellant had a back injury followed by shoulder pain and that the appellant cannot stand long hours as the muscle pain gets worse and he is unable to lift heavy objects. At the hearing, the appellant stated that he is not able to use his left arm, which

makes it difficult to do things and he cannot sit for a long time due to back pain and has to lie down. The appellant stated that he wants to work, but he is not able to because of his body. The appellant's family doctor also wrote that the appellant is unable to work because of the pain in his lower back and he has been referred for physiotherapy on a day-to-day basis. The panel finds that the ministry reasonably considered 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.

Given the assessment of independent mobility and physical ability, for which the appellant takes an unspecified amount of time longer but does not require the assistance of a person or device, as well as the emphasis on the appellant's inability to work, 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's position is that a severe mental impairment is established by his depression and the impact that this condition and the medications have had on his memory. In his Request for Reconsideration, the appellant argued that he has limited interactions with the public and his family because of stress and depression, and this is a result of his chronic low back pain. The appellant argued that the PR and the AR are not complete, or do not show what he told the doctors since he does need assistance.

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 the psychiatrist reported that it is unknown whether the appellant's social functioning is restricted and provided little narrative to describe any other impacts from his depression.

Panel Decision

The psychiatrist diagnosed the appellant with depression with an onset of February 2012 and reported that the appellant "developed symptoms of depression and anxiety in early part of 2012." The psychiatrist reported that the appellant has significant deficits with cognitive and emotional function in the areas of consciousness, memory and emotional disturbance, with a comment added by the psychiatrist "sleep difficulty; obsessive rumination about pain; negative future outlook." In terms of the impacts to the appellant's daily cognitive and emotional functioning, the section of the AR designed to indicate the degree of impact is not completed by the rehabilitation specialist and he wrote: "please see psychiatric input previously completed." At the hearing, the appellant emphasized the effect that the medications which he has been taking for years are now having on his memory and that he has become very forgetful. Given an opportunity to provide additional comments in the PR, the psychiatrist wrote only that his medications cause "drowsiness" and that there is a "poor prognosis," with no further detail regarding the impacts to the appellant's memory or other areas of cognitive and emotional functioning.

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), there is very little evidence of impacts to either. As the AR was completed by a physician who is a specialist in rehabilitation medicine, when asked to describe the mental or physical impairments that impact the appellant's ability to manage daily living activities, he indicated to "see patient's psychiatrist completed form for psychiatric input" and "physically, patient suffers from chronic low back pain impairing daily function due to poor tolerance of standing, sitting,

bending, pushing, pulling, walking." From this perspective, the rehabilitation specialist assessed all decision-making components of DLA as independent, specifically personal care (regulate diet), shopping (making appropriate choices and pay for purchases), meals (meal planning and 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 rehabilitation specialist also reported in the AR that the appellant is independent with making appropriate social decisions and commented "from physical point of view, however, refer to psychiatric input for mental health effect on these areas."

Regarding the DLA of social functioning, the psychiatrist indicated in the PR that it is unknown whether the appellant is restricted with social functioning, with the comment added that this is "affected by mental, physical and psychiatric difficulty." While the appellant argued that he has limited interactions with the public and his family because of stress and depression, the rehabilitation specialist reported in the AR that the appellant is independent in all aspects of social functioning, including developing and maintaining relationships and interacting appropriately with others, and there is no indication of any impacts to the appellant's immediate or extended social networks. The psychiatrist did not indicate whether the appellant has any difficulty with communication and the rehabilitation specialist reported that the appellant has a good ability to communicate in all areas.

Given the lack of evidence of significant impacts to the appellant's cognitive and emotional functioning as well as the evidence from the prescribed professionals of the appellant's 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 room-mate, as well as several assistive devices.

The ministry's position is that the information from the prescribed professional 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 the rehabilitation specialist does not identify any areas of DLA where the appellant requires either periodic or continuous assistance and, while he indentifies areas that take the appellant significantly longer, he does not explain how much longer any of the tasks take the appellant.

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 psychiatrist and the rehabilitation specialist are the 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 psychiatrist reported that the appellant has been prescribed medications that interfere with his ability to perform DLA as they cause drowsiness. The psychiatrist

noted that the appellant will need: “psychotropic medications for years; also need pain killer, please refer to his GP for this.” The psychiatrist indicated that the appellant is not restricted in his mobility inside the home and it is unknown whether he is restricted with mobility outside the home. In the AR, the rehabilitation specialist reported that the appellant takes significantly longer than typical with walking indoors and with walking outdoors, with a comment: “takes longer as unable to tolerate continuously due to low back pain,” with no indication of how much longer it takes the appellant.

The psychiatrist reported that the appellant is not restricted with the DLA management of medications, management of finances, and use of transportation. The rehabilitation specialist also assessed the appellant as independent with all of the listed tasks of the DLA medications and pay rent and bills (including banking and budgeting). The rehabilitation specialist indicated that the appellant takes significantly longer than typical with the physical tasks of the DLA transportation (getting in and out of a vehicle and using public transit), with the comment: “standing, sitting, walking tolerance limited by low back pain, thus these activities take longer than normal,” with no detail of how much longer it takes the appellant.

The psychiatrist reported in the PR that it is unknown whether the appellant is restricted with his personal self care and daily shopping DLA. In the AR, the rehabilitation specialist indicated that the appellant takes significantly longer than typical with the physical tasks of the personal care DLA (dressing, grooming, bathing, toileting, transfers in/out of bed and on/off chair), and the shopping DLA (going to and from stores and carrying purchases home), with the comment: “as per previous section, patient requires frequent rest periods when performing these tasks due to increased low back pain limiting standing, sitting, walking tolerance,” with no further explanation of how much longer it takes the appellant. At the hearing, the appellant stated that he told the doctors many things about his problems, such as difficulty changing his clothes since he cannot lift his left arm. The appellant stated that believes that the PR and the AR are not complete, or do not show what he told the doctors since he does need assistance. However, in the AR, when asked to provide details of any equipment or devices used by the appellant, the rehabilitation specialist wrote: “none; patient only requires pacing in order to accommodate his activity tolerance.”

In the PR, the psychiatrist reported that the appellant is restricted in his meal preparation and his basic housework, but there is no indication whether this is on a continuous or periodic basis. The rehabilitation specialist reported in the AR that the appellant also takes significantly longer than typical with the physical tasks of the DLA meals (food preparation and cooking), and the DLA housekeeping (including laundry), with no indication provided as to how much longer it takes the appellant. In his Request for Reconsideration, the appellant argued that he has constant pain and his body aches when he tries to do normal activity such as cooking or cleaning. He wrote that he has to live with a friend so they can support and help each other on daily activities. At the hearing, the appellant stated that he faces many difficulties with his DLA and he wants to work, but he is not able to because of his body and also because of problems with his memory. As previously mentioned, 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. Also, 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 psychiatrist and the rehabilitation specialist as the prescribed professionals, the panel finds that the ministry was reasonable to conclude that the tasks of DLA are performed by the appellant independently, although they take him an unspecified amount of time

longer, and 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 and mental impairments significantly restrict his daily living functions to a severe enough extent that significant assistance is required from his room-mate and several assistive devices.

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. The ministry argued that no assistive devices are required by the appellant.

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.

Asked in the PR to describe the assistance that the appellant needs with DLA, the psychiatrist left this section incomplete. The panel finds that the evidence of the rehabilitation specialist is that no assistance is required by the appellant by other people or by an assistive device. The rehabilitation specialist specifically wrote that the appellant "only requires pacing in order to accommodate his activity tolerance."

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 majority of 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.