PART C – Decision under Appeal

The decision under appeal is the Ministry of Social Development and Social Innovation (the "ministry") reconsideration decision of August 5, 2015, which found that the appellant did not meet three of five statutory requirements of section 2 of the *Employment and Assistance for Persons With Disabilities Act* ("EAPWDA") for designation as a person with disabilities ("PWD"). The ministry found that the appellant met the age requirement and that in the opinion of a medical practitioner the appellant's impairment is likely to continue for at least two years. However, the ministry was not satisfied that:

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

PART D – Relevant Legislation

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

PART E – Summary of Facts

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

- Neuropsychological and Vocational Assessment dated May 28 and 29, 2013 completed by a psychologist (the "Assessment")
- The appellant's PWD application form consisting of the appellant's self-report form dated January 8, 2015 ("SR"), a physician's report ("PR") completed by the appellant's general practitioner (the "physician") on February 23, 2015, and an assessor's report ("AR") signed by the physician dated April 14, 2015 [ministry notes difference in handwriting from the PR but appears to have accepted information as from a prescribed professional].
- Form titled PWD Application Section1 – Applicant Information, undated with handwritten notes regarding the appellant's condition ("PWD Notes")
- The appellant's Request for Reconsideration dated July 15, 2015 with handwritten letter stating addressing the PWD criteria (the "RFR")

Diagnoses

- In the PR the physician (who had seen the appellant two to ten times in the past 12 months) reports that the appellant has a mild neurocognitive disorder, date of onset December 1997 and an anxiety disorder, date of onset not known. The physician comments that the diagnoses are as per the Assessment. The physician does not indicate how long he has known the appellant.
- In the AR, the physician indicates that he has known the appellant for four months and seen him two to 10 times in the last year. The physician reports that the appellant's physical or mental impairments that impact his ability to manage DLA are: mild neurological disorder, anxiety disorder, severe pain in left knee, mood disorder (depression) and heart arrhythmia.

Physical Impairment

- In the Health History portion of the PR the physician indicates to see the Assessment. He states that the appellant is 6'3" and weighs 135 pounds.
- In terms of physical functioning, the physician reported in the PR that the appellant can walk 4+ blocks unaided, can climb 5+ steps unaided, has no limitations with respect to lifting, and no limitations remaining seated.
- In the AR the physician reported that the appellant is independent with walking indoors and outdoors and climbing stairs, noting that the appellant has pain in his knees. The physician reports that he appellant is independent with carrying and holding, require periodic assistance with lifting (noting needs assistance), and continuous assistance with standing (noting that the appellant cannot stand for long periods of time).

The Assessment indicates that the appellant has jaw pain for which he has worn braces since January 2012 and some unspecified knee and leg pain for which he is not getting any treatment. The Assessment indicates that the appellant injured his knee in September 2011 when he lost control while riding an off-road motorcycle, as well as two subsequent incidents that affected his knee. The Assessment also indicates that the appellant has been in a number of other motor vehicle accidents over the years, including one roll-over accident.

In the SR the appellant reported that he was in a car accident as a young child resulting in blunt force trauma to his head, black eyes, a half bitten tongue and part of his colon removed. The appellant reports that he developed an irregular heart beat which is caused by anxiety or social anxiety that stops him from getting work.

In the RFR the appellant states that he has knee problems where some/most days he can barely walk. He reports that his irregular heart beat acts up alongside his anxiety and forces him to stop anything and everything he is doing, which has resulted in him losing various jobs.

Mental Impairment

- In the PR the physician reports that the appellant suffers from a mild neurocognitive disorder since December 1997, anxiety disorder, and a brain injury that has seemed to improve to capacity.
- In the PR the physician indicates that the appellant has difficulties with communication due to cognitive problems.
- In the PR the physician indicated that the appellant has significant deficits in three of twelve categories of cognitive and emotional function being executive, language and memory.
- In the AR the physician indicates that the appellant's ability to communicate with speaking, writing and hearing is satisfactory but that his reading is poor as he does not retain what he reads. The physician also comments that during panic attacks his hearing is impaired.
- For question 4 of section B, Mental or Physical Impairment, the physician indicates that the appellant's mental impairment has major impact to bodily functions, emotion, attention/concentration, memory, motivation, psychotic symptoms and other neuropsychological problems. The physician indicates that he has moderate impairment to consciousness, executive and language and minimal impact to impulse control, insight and judgment and motor activity. The physician comments that the appellant has 1/3 colon remaining and toileting takes significantly longer. He also indicates that depression causes lack of motivation to prepare meals and eat. He further indicates that the appellant is unable to concentrate for long periods of time, is easily confused during conversations, and reading directions or instructions, causing uncompleted tasks in school.

The Assessment indicates that the appellant was in a serious motor vehicle accident as a toddler resulting in head injury and learning difficulties. The Assessment indicates that the appellant has borderline to low average expressive language and verbal reasoning abilities indicating a need for modified academic programming. The psychologist indicates that the appellant's visual-spatial perception and basic attention abilities were intact but he had clear deficits in processing speed and measures of complex sustained and divided attention and difficulty with remembering information. The Assessment indicates he has mild neurocognitive disorder, mild depressive symptoms, and high levels of anxiety.

In the SR the appellant states that he underwent the Assessment which revealed he had brain damage that has caused him learning problems and memory difficulties. He reports anxiety, social anxiety, and depression.

In the RFR the appellant states that he has depression and anxiety that makes anything he is doing

difficult such as getting out of bed or eating. He states that his brain damage makes him forget everything and he often does not remember what he did the day before. He is unable to retain anything he has been taught or told.

DLA

- In the PR the physician indicated that the appellant has not been prescribed medication or treatment that interferes with his ability to perform DLA.
- In the PR the physician reported that the appellant's impairment does not directly restrict his ability to perform DLA.
- In the AR, for aspects of personal care, the physician reports that the appellant is independent with dressing, requires periodic assistance with regulating diet, continuous assistance with feeding self, noting depression causes lack of motivation. The physician also indicates that the appellant takes significantly longer with grooming, bathing, toileting, and transfers in and out of the bed. For basic housekeeping the physician indicates that the appellant takes significantly longer than typical to perform laundry and basic housekeeping, noting that he requires periodic assistance with housekeeping. For shopping, the physician indicates that the appellant is independent with reading prices and labels and carrying purchases home, requires periodic assistance paying for purchases and continuous assistance with going to and from stores and making appropriate choices. For meals the physician indicates that the appellant is independent with safe storage of food, requires periodic assistance with meal planning and continuous assistance with food preparation and cooking. The physician indicates that the appellant is independent with banking and budgeting but requires periodic assistance with paying rent and bills. The physician indicates that the appellant requires continuous assistance from another person with filling/refilling prescriptions and taking medications as directed. The physician indicates that the appellant is independent with using transit schedules and arranging transportation but requires periodic assistance with getting in and out of a vehicle.
- In the PR the physician does not indicate that the appellant's social functioning is restricted. In the AR the physician indicates that the appellant is independent with appropriate social decisions and interacting appropriately with others, but requires continuous support/supervision with developing and maintaining relationships (due to depression), dealing appropriately with unexpected demands, and securing assistance from others (lacks confidence to ask for assistance). The physician indicates that the appellant has very disrupted functioning with his immediate and extended social networks.

The Assessment indicates that the appellant was struggling with school, was not taking any medications, responded appropriately to questions and described himself as independent in all personal and homecare needs. The Assessment indicates that the appellant noted that he has shopped, cooked and cleaned for himself and made his own way to school since Grade 8. The Assessment notes that the appellant reported significant emotional distress, including at least mild depressive symptoms and high levels of anxiety. The Assessment makes recommendations regarding the appellant's future options indicating that he would be best suited to on the job training or skill-based, focused programming.

In the SR the appellant stated that his brain damage causes him difficulty with memory, learning, and then he becomes overwhelmed and wants to run away. He states that his irregular heart beat caused by anxiety or social anxiety is the main part that stops him from getting work unless the job is very relaxed, which most jobs are not. He states that his depression makes it hard for him to get out of

bed or leave the room and leads to not eating and loss of sleep.

In the RFR the appellant states that his knee problems restrict him from standing for long periods of time or lifting heavy objects, his irregular heart beat prevents him from doing strenuous things, his anxiety and irregular heart beat combine and he finds himself freaking out, becoming very overwhelmed, hyperventilating, and almost passing out.

Help

- In the PR the physician reports that the appellant does not require any prosthesis or aids for his impairment.
- In the AR the physician indicates that appellant would benefit from a cane to provide stability and assistance with walking. The physician did not describe any other assistance that may be necessary. The appellant does not have an assistance animal.

The Assessment indicates that the appellant would benefit from counseling.

In the RFR the appellant states that he needs a cane for his knee problems as trying to get anywhere such as work or grocery stores is impossible due to his knees.

Additional information provided

In his Notice of Appeal the appellant states that he disagrees with the reconsideration decision because no one knows him like himself and the fact that his impairments effect his DLA to the point where he cannot get a job or get assistance to survive is a good enough reason to disagree with the decision.

At the hearing the appellant provided oral evidence indicating that with respect to the AR, he had dropped off the form at the physician's and then returned to pick it up at a later date. He understood that the physician completed part of the AR and that his assistant completed part of the AR which is why the handwriting is different than the PR. The appellant stated that he currently lives with a family and he is not responsible for any household tasks but his room. He states that he is basically in his room "24/7" and that food is brought to him. He states that his heart arrhythmia stops him from getting a job and he is basically in his room 24/7. He states that if he has to go out he will arrange his schedule around his friend's so that he can get a ride.

Admissibility of New Information

The ministry did not object to the admissibility of the oral testimony.

The panel has admitted the appellant's oral testimony and information in his Notice of Appeal as it is evidence in support of information and records that were before the ministry at the time of reconsideration, in accordance with section 22(4) of the *Employment and Assistance Act.* In particular, the new information substantiates the information at reconsideration respecting the appellant's impairments, ability to perform DLA, and help needed.

PART F – Reasons for Panel Decision

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

The relevant legislation is as follows:

EAPWDA:

2 (1) In this section:

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

"daily living activity" has the prescribed meaning;

"prescribed professional" has the prescribed meaning.

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

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

(b) in the opinion of a prescribed professional

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

(A) continuously, or

(B) periodically for extended periods, and

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

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

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

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

(i) an assistive device,

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

(iii) the services of an assistance animal.

EAPWDR section 2(1):

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

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

(i) prepare own meals;

(ii) manage personal finances;

(iii) shop for personal needs;

(iv) use public or personal transportation facilities;

(v) perform housework to maintain the person's place of residence in acceptable sanitary condition;

(vi) move about indoors and outdoors;

(vii) perform personal hygiene and self care;

(viii) manage personal medication, and

(b) in relation to a person who has a severe mental impairment, includes the following activities:

(i) make decisions about personal activities, care or finances;

(ii) relate to, communicate or interact with others effectively.

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Severe Physical Impairment

The appellant's position is that he has severe knee pain and that he can barely walk. In addition he has an irregular heart beat that acts up a long side of his anxiety and forces him to stop anything he is doing. The appellant's position is that the information provided by the physician, the Assessment and himself confirm that he has a severe physical impairment.

The ministry's position is that the assessment provided by the physician in the PR and AR do not indicate that the appellant has a severe physical impairment. The ministry notes that in the PR, the physician does not provide a diagnosis of knee pain and indicates that the appellant is able to walk 4+ blocks unaided on a flat surface, climb 5+ stairs and has no limitations with lifting or remaining seated. Yet in the AR, the physician indicates that although the appellant is independent with walking indoors, walking outdoors and climbing stairs, he takes significantly longer because of knee pain.

The ministry notes that in the PR the physician indicates that the appellant has no limitations with lifting yet in the AR the physician indicates that the appellant requires periodic assistance with lifting. The ministry also states that the physician does not provide any information to indicate how much longer it takes the appellant with his activities and the frequency and duration of the periodic assistance require is not described.

Panel Decision:

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

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

The physician does not include a diagnosis of any physical impairment in the PR yet in the AR reports that the appellant has severe pain in his left knee. In the PR the physician indicates that the appellant is able to walk 4+ blocks unaided, climb 5+ stairs; and has no limitations with lifting or remaining seated. In the AR however, the same physician reports that the appellant is independent with walking indoors; walking outdoors and climbing stairs but that he takes significantly longer because of pain in his knees. The physician in the AR indicates that the appellant is independent with carrying and holding and requires periodic assistance with lifting, and continuous assistance with standing.

The information provided by the physician in the PR and AR is inconsistent and there is no further information provided by the physician to explain the inconsistencies. For example, the PR indicates that the appellant has no limitations with lifting yet in the AR he indicates that the appellant requires periodic assistance.

The panel notes that the PR is dated February 23, 2015 and the AR is dated April 14, 2015 but the physician does not provide any further information to explain the differences in the appellant's knee condition between the time the PR and the AR were completed or what changed between the time the PR and AR were completed. The panel also notes that although the physician signed both the PR and the AR the appellant's evidence is that the physician completed part of the AR and the physician's assistant completed part of the AR, which is why there is different handwriting. However, the physician did not provide any further information explaining what part he completed versus what part of the AR his assistant completed.

Although the appellant describes his knee pain as severely limiting his DLA, medical evidence provided in the PR and the AR does not provide a clear picture of the appellant's physical impairment. The panel finds that the evidence does not establish that the appellant has a severe physical impairment.

The panel has concluded that while the appellant's functioning is impacted by his physical impairments, the ministry reasonably determined that the evidence falls short of establishing that he has a severe physical impairment as contemplated by the legislation.

Severe Mental Impairment

The appellant's position is that his brain damage, learning difficulties, memory problems, depression and anxiety establish that he has a severe mental impairment as his impairments make it impossible for him to learn, retain information, and maintain jobs. The appellant's position is that his depression causes him to stay in his room much of the time which also leads to not eating.

The ministry's position is that the information provided does not establish that the appellant has a severe mental impairment. The ministry notes that in the PR, the physician indicates that the appellant has significant deficits in the areas of executive, language and memory, and in the AR the physician indicates that these deficits impact the appellant's emotional and cognitive functioning as follows: 5 major impacts in the areas of bodily function, emotion, attention/concentration, memory and motivation; 3 moderate impacts in the areas of consciousness, executive and language; and 3 minimal impacts in the areas of impulse control, insight and judgment, and motor activity.

The ministry notes that in the PR the physician indicates that the appellant has difficulties with communication and the cause is cognitive. In the AR, the physician notes that the appellant's level of ability with speaking, writing and hearing are satisfactory, except during panic attacks when his hearing is impaired, and that his reading is poor as he does not retain what he reads.

In the PR the physician indicates that the appellant's impairment does not restrict his ability to perform DLA which includes social functioning but in the AR the physician indicates that the appellant requires continuous support/supervision with developing and maintaining relationships; dealing appropriately with unexpected demands, and securing assistance with others. The ministry notes that the AR indicates that the appellant is independent in making social decisions and interacting appropriately with others. The AR indicates that the appellant has very disrupted functioning with his immediate and extended social networks but there is no information to indicate what help the appellant needs to maintain himself in the community. The ministry's position is that with the information provided in the PR and the Assessment, it is unclear why the AR indicates the amount of major impacts with the appellant's emotional and cognitive functioning.

Panel Decision:

In the PR, the physician makes a diagnosis of mild neurocognitive disorder and anxiety disorder, commenting that the diagnosis is as per the Assessment. The Assessment indicates that the appellant has mild neurocognitive disorder, mild depressive symptoms, high levels of anxiety, and has difficulties with learning and retaining information.

The appellant reports that his anxiety and depression are quite disabling but the evidence of the physician in the PR and the AR is inconsistent and does not provide a clear picture of the appellant's mental impairment and the physician has not provided any further information to explain the inconsistencies in the information provided.

For example, although the PR indicates that the appellant has difficulties with communication due to cognitive causes and significant deficits with cognitive and emotional function in the areas of executive, language and memory, he indicates that the appellant's impairment does not directly restrict the appellant's ability to perform DLA. In the PR, the physician does not provide any further comments regarding any impact to the appellant's social functioning.

In the AR however, the same physician notes the appellant's mood disorder (depression) and indicates that the appellant's ability to communicate with speaking, writing and hearing is satisfactory, except he has impaired hearing during panic attacks and that his reading is poor as he does not retain what he reads. In the AR, the physician reports that the appellant has impacts to his cognitive and emotional functioning with major impacts to bodily functions, emotion, attention/concentration,

memory, motivation, psychotic symptoms and other neuropsychological problems. The AR indicates that the appellant has moderate impact to the areas of consciousness, executive and language and minimal impact to impulse control, insight and judgment and motor activity.

In the AR, the physician provides additional comments that the appellant has 1/3 of his colon remaining so toileting takes significantly longer, but the physician does not explain how this is a result of a mental impairment and appears to relate more to his physical impairment. The physician in the AR also comments that the appellant's depression causes lack of motivation to prepare meals and eat and that the appellant is unable to concentrate for long periods of time, is easily confused during conversations, reading or getting instructions, causing uncompleted tasks in school.

In the PR the physician reports no significant deficits to the areas of consciousness, attention or sustained concentration, motivation, emotion or psychotic symptoms, yet in the AR he reports moderate impact to consciousness and major impact to attention/concentration, emotion, motivation and psychotic symptoms. In the PR the physician reports no impact to impulse control but in the AR he reports minimal impact.

In the AR the physician indicates that the appellant is independent with making appropriate social decisions and interacting appropriately with others but requires continuous support to develop and maintain relationships (due to his depression and anxiety), dealing appropriately with unexpected demands and securing assistance from others (as he lacks confidence to ask for assistance). The AR indicates that the appellant has very disrupted functioning with respect to his immediate and extended social networks.

The physician has not provided any further information to explain the inconsistencies between the PR and the AR. As the fundamental basis for the analysis is the evidence from a prescribed professional, the panel finds that the ministry was reasonable in determining that the information provided in the PR and AR is not sufficient to demonstrate that the appellant has a severe mental impairment.

The panel also notes that although the appellant's evidence and the information in the Assessment indicate that the appellant's impairments interfere with his ability to learn new information, impact his schooling and ability to hold down jobs, employability is not a criterion for designation as PWD.

Significant Restrictions to DLA

The appellant's position is that the evidence establishes that his knee problems restrict him from standing for long periods or lifting heavy objects. The appellant states that his irregular heart beat and anxiety result in him being so overwhelmed that he cannot do anything and his depression results in lack of motivation to prepare meals, eat, or go out. The appellant states that he pretty much lives in his room "24/7" and relies on the people he lives with to bring him meals.

The ministry's position is that in the PR the physician indicates that the appellant's impairment does not restrict his ability to perform DLA but in the AR the physician indicates that the appellant requires continuous assistance with feeding self (depression causing lack of motivation); going to and from stores; making appropriate choices when shopping; food preparation, cooking; filling/refilling prescriptions and taking medications as described. The AR indicates that the appellant requires

periodic assistance with regulating diet; basic housekeeping; paying for purchases, meal planning; paying rent and bills; and getting in and out of a vehicle. The ministry notes that the AR indicates it takes the appellant significantly longer than typical with grooming; bathing; toileting, transfers in and out of bed; transfers on and off a chair; laundry and basic housekeeping but that the physician has not provided any information on how much longer it takes. The ministry notes that the AR indicates that all other aspects of DLA are managed independently including dressing; reading prices and labels when shopping; carrying purchases home; safely storing food; budgeting; and using transit schedules and arranging transportation.

The ministry acknowledges that the appellant has certain limitations resulting from poor memory and depression but the frequency and duration of these periods are not described in order to determine if they represent a significant restriction to the appellant's overall level of functioning. The ministry finds that the information provided does not establish that a severe impairment significantly restricts DLA continuously or periodically for extended periods as required by the legislative criteria.

Panel Decision:

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

As with the other sections of the PWD application the panel notes that there are considerable inconsistencies between the information provided by the physician in the PR and the AR. In the PR the physician indicates that the appellant's impairment does not directly restrict his ability to perform DLA but in the AR the physician indicates that the appellant requires continuous assistance with feeding self (due to depression causing lack of motivation), going to and from stores, making appropriate choices, food preparation, cooking, filling/refilling prescriptions, and taking prescriptions as directed. However the physician does not provide any explanation as to why he requires continuous assistance with these aspects of DLA.

In the AR the physician indicates that it takes the appellant significantly longer than typical with grooming, bathing, toileting, transfers in/out of bed and on/off of chair, laundry, and basic housekeeping but does not provide any further information as to how much longer than typical it takes.

The information provided by the appellant with respect to his lack of motivation with respect to meal planning and cooking is more consistent with the AR than the PR, but the Assessment indicates that the appellant described himself as independent in all personal and homecare needs, that he has

shopped, cooked and cleaned for himself, and made his own way to school since his first Grade 8 year. Although the Assessment was completed 20 months before the PR, the information provided in the PR is more consistent with the Assessment than the AR, and there is no further information provided by the physician to indicate why the information provided in the AR, completed just two months after the PR, is so different.

The panel also notes that in the PR, the physician indicated that the appellant has not been prescribed medication or treatment that interferes with his ability to perform DLA but in the AR the physician indicates that the appellant requires continuous assistance with filling/refilling prescriptions and taking prescriptions as directed.

It is hard to get a clear picture of the appellant's restrictions as the information provided from the physician in the PR is so inconsistent with the AR and with respect to the good physical functional skills reported in section D of the PR, in which the physician notes that the appellant can walk 4+ blocks unaided, can climb 5+ stairs and has no lifting limitations and no limitation with remaining seated.

In the panel's view, the ministry reasonably determined that the information provided by the physician in the PR and AR does not provide enough information to demonstrate that the appellant satisfies the legislative criteria, namely that he has a severe impairment which directly and significantly restricts the appellant's ability to perform DLA either continuously or periodically for extended periods.

Help with DLA

The appellant's position is that he requires help because of his knee problems and he requires a cane and assistance to go to the grocery store or outside his residence. He also requires help to remember most of his DLA and appointments due to his impaired memory. He states that he requires help with motivation due to his depression as he can rarely make it passed his bedroom door.

The ministry's position is that there is not enough information to establish that DLA are significantly restricted so it cannot be determined that significant help is required from other people. The ministry also states that the appellant does not require the services of an assistance animal.

Panel Decision

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

In addition, in the PR the physician does not include any information about the appellant's knee pain or condition and reports that the appellant does not require any prostheses or aids for his impairment, yet in the AR he indicates that a cane would provide stability and assistance with walking. In the AR the physician does not indicate whether the appellant has an assistance animal. As with the other sections of the PWD application the information provided by the physician is not consistent and no explanation is provided for the differing opinions.

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

Conclusion

The panel acknowledges that the appellant's medical conditions affect his ability to function. However, having reviewed and considered all of the evidence and the relevant legislation, the panel finds that the ministry's reconsideration decision finding the appellant ineligible for PWD designation is a reasonable application of the legislation in the circumstances of the appellant. The panel therefore confirms the ministry's decision.