

PART C – Decision under Appeal

The decision under appeal is the Ministry of Social Development and Social Innovation (the ministry) reconsideration decision dated July 23, 2015 which found that the appellant did not meet three of the five statutory requirements of Section 2 of the *Employment and Assistance for Persons with Disabilities Act* for designation as a person with disabilities (PWD). The ministry found that the appellant met the age requirement and that his impairment is likely to continue for at least two years. However, the ministry was not satisfied the evidence establishes that:

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

PART D – Relevant Legislation

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

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

PART E – Summary of Facts

The ministry did not attend the hearing. After confirming that the ministry was notified, the hearing proceeded under Section 86(b) of the *Employment and Assistance Regulation*.

The appellant's young daughter attended, but did not participate in, the hearing.

The evidence before the ministry at the time of the reconsideration decision included the Persons With Disabilities (PWD) Application comprised of the applicant information and self-report dated April 14, 2015, and a physician report (PR) and an assessor report (AR) dated April 14, 2015 and completed by a general practitioner who did not indicate how long he has known the appellant.

The evidence also included the following documents:

- 1) Discharge Summary from a hospital dated May 7, 2014;
- 2) Response by the general practitioner dated July 9, 2015 to a number of questions posed by the appellant's advocate; and,
- 3) Request for Reconsideration dated July 7, 2015, which referred to the attached response letter from the general practitioner.

Diagnoses

In the PR, the appellant was diagnosed by the general practitioner with chronic obstructive pulmonary disease (COPD) with no date of onset indicated.

Physical Impairment

In the PR and AR, the general practitioner reported that:

- In terms of health history, the appellant has COPD which is "clinically severe." The appellant takes regular medication, "can walk ½ block" and "any exertion causes severe SOB [shortness of breath]."
- Under the degree and course of impairment: "chronic condition; lungs damaged; goal is to prevent oxygen dependency."
- The appellant does not require any prosthesis or aid for his impairment.
- In terms of functional skills, the appellant can walk less than 1 block unaided, climb 2 to 5 steps unaided, lift under 2 kg. (under 5 lbs.), and remain seated for 1 to 2 hours.
- In the additional comments, the appellant has a young daughter and "no family support."
- The appellant is assessed as being independent with walking indoors and walking outdoors, climbing stairs, and standing. The general practitioner indicated that the appellant requires continuous assistance from another person with lifting and carrying and holding and does not provide further comment.
- In the section of the AR relating to assistance provided, the general practitioner did not identify any of the listed devices as applying to the appellant.
- In the additional information, reference is made to the forms being filled out "in good faith and in consultation with [the appellant] and not done based on home assessment."

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

- He has extreme shortage of breath (lung capacity).
- A simple task, such as a short walk or stairs, is extremely difficult, leading to the use of a rescue inhaler causing very high anxiety that makes it harder for him to catch his breath.
- It feels like a car is parked on his chest.

- Although he recently quit smoking, his lung capacity is very limited.
- Although COPD is incurable, it can be managed as long as stress and fatigue are kept low as these are triggers for an attack.

In the Discharge Summary from a hospital dated May 7, 2014, the physician wrote:

- The appellant was diagnosed with COPD in 2012, left knee replacement and left ankle surgery in 2007 and silent MI [myocardial infarction] 2012.
- On examination, his chest was seen after his nebulizer, which did not reveal any wheeze. His chest x-ray did not show any signs of consolidation, but with clinical correlation, he was treated for his pneumonia.
- There was no one to care for his young daughter so the appellant decided to discharge himself, against medical advice.

In the response dated July 9, 2015 to questions posed by the appellant's advocate, the general practitioner indicated his agreement that:

- The appellant stated he cannot walk more than half a block because he cannot catch his breath due to severe COPD. He is unable to take his child to school.
- The appellant stated that he is very weak, his health has been declining steadily for the last year and continues to deteriorate. He is "significantly underweight which contributes a great deal to his restrictions."
- The appellant stated that all physical movements take him at least 3 to 4 times longer than typical as he loses his breath with very little movement and has minimal energy.
- The appellant's condition is severe, he has significant restrictions with his ADL's [activities of daily living] and, as a result, he requires help most of the time (continuous) as noted. In his own handwriting, the general practitioner added "severe COPD; goal is to maintain current health; no improvement to be expected."

Mental Impairment

In the PR and AR, the general practitioner reported:

- The appellant has no difficulty with communication and no significant deficits with cognitive and emotional function.
- The appellant has a good ability to communicate in reading, writing, and hearing and a satisfactory ability with speaking. No additional comments are provided.
- The section of the report designed to indicate the degree of impact to the appellant's cognitive and emotional functioning is crossed out, indicating that it is not applicable to the appellant.
- With respect to social functioning, the appellant is independent in all aspects, and the section has been crossed out, also indicating that it is not applicable to the appellant.

Daily Living Activities (DLA)

In the PR and AR, the general practitioner indicated that:

- The appellant has not been prescribed medications that interfere with his ability to perform daily living activities. The general practitioner noted: "to control symptoms needs to take inhaler permanently."
- The appellant is independent with moving about indoors and outdoors, with no further comments provided.
- The appellant is independent with all of the listed tasks of the DLA personal care (dressing, grooming, bathing, toileting, feeding self, regulate diet, transfers in/out of bed and on/off chair)

and the DLA medications (filling/refilling prescriptions, taking as directed, safe handling and storage).

- The appellant is independent with tasks of the DLA shopping (reading prices and labels, making appropriate choices), the DLA meals (meal planning, cooking, safe storage of food), the DLA pay rent and bills (banking and budgeting), and the DLA transportation (getting in and out of a vehicle and using transit schedules and arranging transportation).
- The appellant requires continuous assistance with the DLA housekeeping (including laundry) and with tasks of the DLA shopping (going to and from stores and carrying purchases home) and with one task of the DLA transportation (using public transit.)
- The appellant also requires periodic assistance with one task of the DLA shopping (paying for purchases) and with one task of the DLA pay rent and bills, both described as “funds,” and with one task of meals (food preparation) , with no explanation or description provided.

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

- He is the sole provider and caregiver to a young child. Daily care for his child is full-time since it takes him twice as long to complete daily tasks: laundry, cleaning, shopping and daily exercise. Fortunately, he has a strong network of friends who are crucial in assisting him and his child.
- He is confident that with continued care and exercise, he can be a good parent and provide guidance and a good home for his child which is all that matters.

In the response dated July 9, 2015 to questions posed by the appellant’s advocate, the general practitioner indicated his agreement that the appellant stated:

- Going to the bathroom, getting in and out of bed, moving about in his apartment, etc. all take longer (3 to 4 times longer) due to his severe COPD and lack of energy.
- He cannot do his own grocery shopping because he cannot walk through the store. His neighbor shops for him.
- He is not able to carry his groceries due to severe shortness of breath and weakness. His neighbor brings them in for him.
- His neighbor does his laundry; he cannot carry it down to the basement of his building and there is no elevator.
- He only showers two times per month since he is not able to breathe in the warm air from the water. He generally cleans with a facecloth and water from the sink the rest of the time. The general practitioner noted: “having cold bath other times.”
- He is not able to perform any repetitive movements and he cannot tolerate dust. Tasks such as vacuuming, sweeping, dusting, laundry are all done by his neighbor.
- His neighbor brings meals over most days. Cooking and preparing regular meals is too difficult for him. He cannot tolerate steam/heat, has no energy to stand or move about the kitchen. When he does make something it is typically from a can, noodles or some other similar item that can be heated in the microwave.
- His friends take him where he needs to go. He cannot use public transit as the bus stop is 2 blocks away and he cannot stand to wait.

Need for Help

In the AR, the general practitioner reported that, with respect to the assistance provided by other people, the appellant’s friends and community service agencies provide that assistance. In the section of the AR for identifying assistance provided through the use of assistive devices, the general

practitioner did not identify any of the listed items as being applicable to the appellant.

Appellant's additional information

In his Notice of Appeal dated July 50, 2015, the appellant wrote that he believes a closer look at his medical condition and prognosis shows that it is virtually impossible for him to return to the work force. Without daily assistance from friends (at their own expense), it would be almost impossible for him to raise his child since her mother is [not available].

At the hearing, the appellant stated that:

- He has some friends who help him, that he was hoping would be available to tell the panel all that they do, but they are away assisting family members. The appellant wanted to go ahead with the hearing in any event.
- He worked for the same company for many years and they valued him so much as an employee that when he fell of the roof of a house and smashed his leg, they paid him for 1 year while he healed up. If he was healthy, he would have no problem getting work.
- In May 2014, he got sick when he was working in a unit that was overrun with rodents and he ended up in the hospital. He got a bacterial infection in a lung from which he never recovered.
- He had just finished going through a bankruptcy and he was looking forward to re-building when he got sick. The doctor wanted him to stay in the hospital but there was no one to look after his young child and he left against the doctor's wishes.
- He has used medications since that time to deal with the symptoms. They are very expensive and he only received limited financial help from the ministry. The status of his child provided qualification for assistance with the cost of medications through a first nations' organization.
- The ministry suggested that he complete the PWD application. With the help of the advocate, he recently submitted a Medical Report to apply for the Persons with Persistent Multiple Barriers (PPMB) status. In terms of a severe impairment, he can barely talk because it is so hard to breathe. Any exertion or excitement throws him into an attack and he has to use his rescue inhaler.
- He takes an anxiety medication 3 times per day to keep him calm, and he takes sleeping pills so that he can sleep at night. He uses an inhaler once a day and another one as needed.
- He is not going to get any better. COPD is not curable but it can be maintained.
- Regarding his daily living activities, his young child is his life. She is all he has. He makes her breakfast and sits with her to teach her but he cannot walk with her or play with her physically.
- His neighbor is his life saver. His child always says the neighbor comes "to the rescue" since she takes her out and gets the groceries and makes many of the meals and takes his child to get clothes. It "takes everything out" of him to just shampoo his child's hair. It is like running around the block for him.
- It takes him about 2 hours to take a bath and the neighbor will take his child during this time. He cannot shower because of the humidity and he cannot move his arms.
- No one lives in his house since he can take care of simple meals, although it takes him longer, and he does not always get to the dishes. His meals come out of a box or a can. The little amount that he does do takes all his energy. If he gets frustrated, the anxiety builds, and he is likely to have an attack. His rescue inhaler is only supposed to be used a maximum of 4 times per day or it can be harmful.
- His child is a huge help for her age. She makes sure her room is clean and will help with the dusting. If he reads her a story, it has to be short because he loses his breath.
- He believes the ministry went too much on the "basic black and white" of the documentation.

He does not know how much more “disabled” he needs to be. He feels like a person would not meet the criteria unless someone is living in the house helping but he wants to take care of himself and his child. He wants to be as independent as possible to show his child, but his house “isn’t the cleanest.” He obtained full custody and has raised his child since she was a baby and she is happy and stable.

- The general practitioner who completed the PR and AR is his family doctor who he has seen for over 5 years. He was involved in his treatment when he was hospitalized. He took the time to go through the application with him for about an hour and a half at the end of his day. When the advocate prepared the letter, his doctor sat down with him and went through it all and they discussed it and then he signed.
- He needs financial stability to help. After paying for his rent and medications, he has about \$15 to feed his child. He is not abusing the system. He really needs help. He gets meals-on-wheels once per month. They have lived in the same place since 2008 and he has tried to get into social housing but has not qualified as disabled. It is the same with services such as HandiDart, which require that a person go through an assessment and show they are disabled.
- His friends take his child on outings and have them over for dinner once per week. These friends will let him bring some of his personal laundry items to do at their house as the laundry is on the same level in their house.
- His neighbor does the bulk of his laundry and he does not know where he would be without her. It takes all day for him to clean the bathroom because he has to keep sitting and relaxing. He can vacuum for about 5 minutes and then he needs to rest.
- He walks with his child. It takes about 5 minutes to walk over to the park and then he will rest for 30 to 45 minutes and then they will continue to the next park and he sits and recovers again. He would not be able to walk from his place to the bank. He would have to sit and rest and use his rescue inhaler.
- All the shopping and laundry is done by his neighbor. If he goes shopping, he stops and takes a break and waits for his lung capacity to come up. His is limited in how much he can push the cart around the store.
- When he has an attack, it feels like he has a belt around his chest. When he was in the hospital they informed him that he had suffered two mild heart attacks.
- His diet fluctuates because of the stress. His impairment is primarily physical because the anxiety is more a “side impairment.”

At the hearing, the appellant’s neighbor stated that:

- She does whatever is needed. She lives directly across from the appellant and his child. She does laundry and cares for his child. She is on disability so she has time and can help with whatever he needs.
- She is used to cooking for a large family and now it is only her and her son so she often has leftovers and will take them over to the appellant.
- If she did not do the laundry for the appellant, it would not get done. If she could not do the grocery shopping for him, he would not be able to go unless he had the finances for a taxi.
- She will help with his child whenever the appellant needs a break. He cannot walk her to school so she drives the child to school.
- The appellant’s condition has gotten worse over the time she has known him. There are about 12 stairs going up into their place and she once saw the appellant hunched over at the top of the stairs trying to catch his breath.

Admissibility of Additional Information

The panel considered the oral testimony on behalf of the appellant 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*.

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 extreme shortage of breath and weakness he experiences due to COPD. The appellant argued that a simple task, such as a short walk or stairs, is extremely difficult, leading to the use of a rescue inhaler causing very high anxiety that makes it harder for him to catch his breath. The appellant pointed out that his general practitioner clarified, in the response dated July 9, 2015, that he cannot walk more than half a block because he cannot catch his breath due to severe COPD. In his Notice of Appeal, the appellant argued that he believes a closer look at his medical condition and prognosis shows that it is virtually impossible for him to return to the work force and, without daily assistance from friends, it would be almost impossible for him to raise his young child.

The ministry's position is that while the ministry acknowledged that the appellant has a physical impairment, the evidence does not demonstrate a severe physical impairment. The ministry wrote in the reconsideration decision that the general practitioner indicated that the appellant is independent with walking indoors and outdoors, climbing stairs and standing and does not indicate that the appellant requires any assistive devices. The ministry wrote that the assessments provided by the medical practitioner speak to a moderate, rather than to a severe, physical impairment.

Panel Decision

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

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

In the PR, the general practitioner, who has known the appellant for approximately 5 years, diagnosed the appellant with COPD and, in the Discharge Summary from a hospital dated May 7, 2014, the physician wrote that the appellant was diagnosed with COPD in 2012. In the PR, the general practitioner wrote that the appellant has COPD which is "clinically severe" and he takes regular medication. The Discharge Summary dated May 7, 2014 does not include any reports of the appellant's lung function, and no other medical reports were provided. For the degree and course of impairment, the general practitioner wrote that the appellant has a "chronic condition; lungs damaged; goal is to prevent oxygen dependency." In terms of functional skills, the general practitioner reported that the appellant can walk less than 1 block and climb 2 to 5 steps unaided, lift under 5 lbs., and remain seated for 1 to 2 hours.

At the hearing, the appellant stated that he can barely talk because it is so hard to breathe. The appellant also stated that he walks with his child. It takes about 5 minutes to walk over to the park and then he will rest for 30 to 45 minutes and then they will continue to the next park and he sits and recovers again. He would not be able to walk from his place to the bank; he would have to sit and rest and use his rescue inhaler. The appellant stated that any exertion or excitement throws him into an attack and he has to use his rescue inhaler. The appellant pointed out that his rescue inhaler is only supposed to be used a maximum of 4 times per day or it can be harmful. He stated that he takes an anxiety medication 3 times per day to keep him calm, and he takes sleeping pills so that he can sleep at night. He uses an inhaler once a day and another one as needed. The appellant stated that he is not going to get any better since COPD is not curable, but it can be maintained. The general practitioner noted in the PR that in order to control his symptoms, the appellant "needs to take inhaler permanently." The appellant also stated at the hearing that he wants to take care of himself and his child and he wants to be as independent as possible, but his house "isn't the cleanest." The appellant's neighbor stated that she believes the appellant's condition has gotten worse over the time she has known him. The neighbor stated that there are about 12 stairs going up into their building and she once saw the appellant hunched over at the top of the stairs trying to catch his breath.

In the response dated July 9, 2015 to questions posed by an advocate, the general practitioner indicated his agreement that the appellant stated he cannot walk more than half a block because he cannot catch his breath due to severe COPD. The general practitioner also agreed that the appellant stated that he is very weak, his health has been declining steadily for the last year and continues to deteriorate, that he is "significantly underweight which contributes a great deal to his restrictions." The general practitioner did not elaborate and it is unclear whether the appellant's underweight status is related to his COPD or another condition and the nature of the related restrictions. The appellant

also stated that all physical movements take him at least 3 to 4 times longer. In his own handwriting, the general practitioner added “severe COPD; goal is to maintain current health; no improvement to be expected.” In his Notice of Appeal, the appellant wrote that he believes a closer look at his medical condition and prognosis shows that it is virtually impossible for him to return to the work force. As for searching for work and/or working, the majority of the panel finds that employability is not a criterion in section 2(2) of the EAPWDA nor is it listed among the prescribed daily living activities in section 2 of the EAPWDR.

In the AR, the general practitioner assessed the appellant as being independent with walking indoors and walking outdoors, climbing stairs, and standing. While the general practitioner indicated that the appellant requires continuous assistance from another person with lifting and carrying and holding, he does not provide further comment. The general practitioner reported that the appellant does not require any aid for his impairment. Also, as discussed in more detail in these reasons for decision under the heading “Restrictions in the Ability to Perform DLA”, the limitations to the appellant’s physical functioning have not translated into significant restrictions to his ability to manage DLA.

Given the assessment by the medical professional of the appellant’s independent mobility and an indication by both the general practitioner and the appellant that his symptoms are currently being managed with medications to maintain a moderate level of physical ability, the majority of the panel finds that the ministry reasonably determined that there is not sufficient evidence to establish that the appellant has a severe physical impairment under Section 2(2) of the EAPWDA.

Severe Mental Impairment

The appellant did not directly advance a position that he has a severe mental impairment and stated at the hearing that anxiety is more a “side impairment.”

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 general practitioner reported that there are no significant deficits in some areas of the appellant’s cognitive and emotional functioning.

Panel Decision

The general practitioner did not diagnose the appellant with a mental health condition. In the PR and AR, the general practitioner reported that the appellant has no significant deficits with cognitive and emotional or social functioning. The general practitioner indicated that the appellant has no difficulty with communication and has a good ability to communicate in reading, writing, and hearing and a satisfactory ability with speaking, with no additional comments provided.

Given absence of a mental health diagnosis and the assessment by the general practitioner of no impacts to the appellant’s cognitive, emotional and 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 friends and the services of meals-on-wheels.

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 acknowledged that the appellant has limitations resulting from SOB that impacts his ability to manage DLA, particularly housework and grocery shopping, however, the ministry argued that the general practitioner indicated that the majority of the tasks of DLA are performed by the appellant independently and the assessments are more indicative of a moderate level of restriction.

Panel Decision

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

In the appellant's circumstances, the general practitioner reported that the appellant has not been prescribed medications that interfere with his ability to perform daily living activities and the general practitioner noted that to control his symptoms the appellant "needs to take inhaler permanently." The general practitioner reported in the AR that the appellant is independent with moving about indoors and outdoors, with no further comments provided. The appellant is also assessed as being independent with all of the listed tasks of the DLA personal care (dressing, grooming, bathing, toileting, feeding self, regulate diet, transfers in/out of bed and on/off chair) and the DLA medications (filling/refilling prescriptions, taking as directed, safe handling and storage). In the response dated July 9, 2015, the general practitioner indicated his agreement that the appellant stated that he cannot walk more than half a block because he cannot catch his breath due to severe COPD. He also stated that going to the bathroom, getting in and out of bed, and moving about in his apartment, etc. all take longer (3 to 4 times longer) due to his severe COPD and lack of energy. The general practitioner also agreed that the appellant stated that he only showers two times per month since he is not able to breathe in the warm air from the water and the general practitioner noted: "having cold bath other times." At the hearing, the appellant stated that it takes him about 2 hours to take a bath and the neighbor will care for his child during this time.

In the AR, the general practitioner reported that the appellant is independent with tasks of the DLA shopping (reading prices and labels, making appropriate choices), the DLA meals (meal planning, cooking, safe storage of food), the DLA pay rent and bills (banking and budgeting), and the DLA transportation (getting in and out of a vehicle and using transit schedules and arranging transportation).

In the AR, the general practitioner reported that the appellant requires periodic assistance with one task of the DLA shopping (paying for purchases) and with one task of the DLA pay rent and bills, both described as "funds," and with one task of meals (food preparation), with no explanation or description provided. The majority of the panel finds that the need for assistance for paying for purchases when shopping and paying rent and bills is related by the general practitioner to a lack of funds, which is a financial restriction and not to a restriction related to the appellant's impairment. Regarding food preparation, the general practitioner indicated his agreement, in the July 9, 2015 response, to the appellant's statement that cooking and preparing regular meals is too difficult for him

and his neighbor brings him meals most days. The appellant stated that he cannot tolerate steam/heat, has no energy to stand or move about the kitchen, and when he does make something it is typically from a can or some other similar item that can be heated in the microwave. At the hearing, the appellant stated that his other friends invite him and his child over for dinner one night per week and he receives the services of meals-on-wheels once per month. He also stated that no one lives in his house since he can take care of simple meals, although it takes him longer, and he does not always get to the dishes. His meals come out of a box or a can. The little amount that he does do takes all his energy. The majority of the panel finds that the ministry reasonably determined that the evidence does not establish that the periodic assistance for food preparation is required for extended periods of time.

The general practitioner reported in the AR that the appellant requires continuous assistance with the DLA housekeeping (including laundry), which the majority of the panel finds is for tasks outside the appellant's functional skill limitations, as set out in the PR, of lifting more than 5 lbs. In the response dated July 9, 2015, the general practitioner indicated his agreement that the appellant stated he is not able to perform any repetitive movements and he cannot tolerate dust so that all tasks such as vacuuming, sweeping, dusting, and laundry are all done by his neighbor. The general practitioner agreed that the appellant stated his neighbor does his laundry since he cannot carry it down to the basement of his building and there is no elevator. At the hearing, the appellant clarified that his neighbor does the bulk of his laundry and he has other friends who let him bring some of his personal laundry items to do at their house, which he is able to do it because the laundry is on the same level in their house. The appellant stated that it takes all day for him to clean the bathroom of this place because he has to keep sitting and relaxing. He can vacuum for about 5 minutes and then he needs to rest.

The general practitioner reported in the AR that the appellant requires continuous assistance with tasks of the DLA shopping (going to and from stores and carrying purchases home), which the majority of the panel finds is for tasks outside the appellant's functional skill limitations, as set out in the PR, of lifting more than 5 lbs. and walking more than half a block. In the response dated July 9, 2015, the general practitioner indicated his agreement that the appellant cannot do his own grocery shopping because he cannot walk through the store and his neighbor shops for him. The general practitioner agreed that the appellant stated he is not able to carry his groceries due to severe shortness of breath and weakness and his neighbor brings the groceries in for him. At the hearing, the appellant clarified that if he goes shopping, he stops and takes a break and he is limited in how much he can push the cart around the store. At the hearing, the appellant's neighbor stated that if she could not do the grocery shopping for the appellant, he would not be able to go unless he had the money for a taxi. In the AR, the general practitioner indicated that the appellant requires continuous assistance with one task of the DLA transportation (using public transit.) In the July 9, 2015 response, the general practitioner agreed that the appellant stated his friends take him where he needs to go and that he cannot use public transit as the bus stop is 2 blocks away and he cannot stand to wait.

In the appellant's self-report, he wrote that he is the sole provider and caregiver for his young child and daily care for his child is full-time since it takes him twice as long to complete daily tasks such as laundry, cleaning, shopping and daily exercise. The appellant wrote that he has a strong network of friends who are crucial in assisting him and his child and he is confident that with continued care and exercise, he can be a good parent and provide guidance and a good home for his child which is all that matters. In his Notice of Appeal, the appellant wrote that he believes a closer look at his medical

condition and prognosis shows that without daily assistance from friends, it would be almost impossible for him to raise his child and it is virtually impossible for him to return to the work force. As previously mentioned, the majority of 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

Considering the evidence of the general practitioner as the prescribed professional, as elaborated upon by the appellant and his neighbor at the hearing, the majority of the panel finds that the ministry was reasonable to conclude that the majority of the tasks of DLA are performed by the appellant independently, although they take him 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 friends.

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

Panel Decision

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

The panel finds that the evidence of the appellant's general practitioner as the prescribed professional is that the appellant's friends and community service agencies provide the assistance required by the appellant. At the hearing, the appellant stated that his neighbor in his building and other friends assist him frequently and he uses the services of meals-on-wheels for meal delivery once per month. In the section of the AR for identifying assistance provided through the use of assistive devices, the general practitioner did not identify any of the listed items as being applicable to the appellant.

The majority of 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.