

PART C – Decision under Appeal

The decision under appeal is the Ministry of Social Development and Social Innovation (“Ministry”) reconsideration decision dated August 11, 2015 in which the Ministry found that the Appellant was not eligible for designation as a Person With Disabilities (“PWD”) because he did not meet all of the requirements for PWD designation in Section 2(2) of the *Employment and Assistance for Persons with Disabilities Act* (“EAPWDA”). The Ministry was satisfied that the Appellant has reached 18 years of age and that his impairment is likely to continue for at least two years. However, based on the information provided in the PWD Designation Application (“PWD application”) and Request for Reconsideration, the Ministry was not satisfied:

- That the Appellant has a severe mental or physical impairment; and
- That the impairment, in the opinion of a prescribed professional, directly and significantly restricts his ability to perform daily living activities (“DLA”) either continuously or periodically for extended periods; and
- As a result of these restrictions, the Appellant requires help to perform those activities through an assistive device, the significant help or supervision of another person, or the services of an assistance animal.

PART D – Relevant Legislation

Employment and Assistance for Persons with Disabilities Act – EAPWDA - section 2

Employment and Assistance for Persons with Disabilities Regulation – EAPWDR - section 2

PART E – Summary of Facts

The evidence before the Ministry at the reconsideration consisted of the following:

1. A Request for Reconsideration signed by the Appellant on July 13, 2015 in which he requested an extension of time to provide submissions. In his subsequent Request for Reconsideration of August 5, 2015, he provided three documents:

(a) A seven-page submission from an advocate that outlined his argument [to be addressed in Part F - Reasons] and confirmed a diagnosis of "musculoskeletal system pain in his hips, knees, back, and wrists as well as his anxiety". The advocate reported that:

- The Appellant requires assistance with tasks involving lifting, carrying, and holding (laundry, basic housekeeping, cooking, and carrying purchases home).
- His condition has deteriorated since the time his physician completed the PWD application on April 10, 2015: he is recently unable to lift more than one pound, and is unable to walk more than one block necessitating the use of public transportation. He also has difficulty ascending and descending stairs and must call ahead to make sure the escalators are operating at transit stations.
- He further suffers from anxiety which includes the following symptoms: depression, hopelessness, feelings of inadequacy, loss of appetite, insomnia, reduced vitality, and inability to concentrate. He has subsequent memory loss which causes him to often forget to pay his bills and pick up his medications. His psychological condition has also declined since his physician completed the PWD application and his recent symptoms include constant worrying, interrupted sleep, and frustration and anxiety on a daily basis. The Appellant recently completed a therapeutic program to assist him with managing stress and anger.

(b) One page of undated hand-written notations [the advocate's submission indicates these were written by the Appellant]; and a copy of a prescription pad note from the Appellant's physician dated March 20, 2015. The notations contain definitions of anxiety, insomnia, and depression and a list of physical symptoms and limitations including "back is stiff, hips - hard to get up in the morning, both knees and legs, grinding in knees, mobility, stairs - up and down". They state that the Appellant is also "unable to concentrate - memory", and he uses Tiger Balm constantly to loosen up. The prescription note stated "This patient is unable to work because of osteoarthritis and anxiety."

(c) A two-page handout describing a program for anger and stress management, and conflict resolution.

2. A PWD application comprised of the Applicant Information and self-report completed by the Appellant on March 31, 2015, and a Physician Report ("PR") and Assessor Report ("AR"), both dated April 10, 2015 and both completed by the Appellant's family physician who has known the Appellant for twenty years, and has seen him two to ten times in the past year.

The PWD application included the following information:

Diagnoses:

- In the PR, the Appellant was diagnosed with "pain in hips, knees, back, wrists", date of onset January 2014. The physician commented, "No radiographic evidence of degeneration but patient symptomatic".

- In the AR, the physician confirmed that “pain in joints (hips, knees, back, wrists)” is the *mental or physical impairments that impact his/her ability to manage Daily Living Activities*.

Physical or Mental Impairment:

In the PR, under Health History, the physician wrote “There is no radiographic evidence of degenerative disease. Patient c/o pain in hips, knees, back and wrists. Takes patient longer to do some ADL’s”. Under Degree and Course of Impairment, the physician wrote, “I cannot see his symptoms getting any better.” The physician check marked “No” the Appellant does not require any prostheses or aids for his impairment.

Functional Skills

In the PR, the Appellant was reported as able to walk four or more blocks on a flat surface, climb five or more stairs unaided, lift 5 to 15 pounds, and remain seated with no limitation. The physician reported that the Appellant has no difficulties with communication and no significant deficits with cognitive and emotional function; however, he wrote, “Patient claims memory declining. I have no objective evidence of this”. Under Additional Comments, the physician wrote, “As stated, patient claims to have pain in knees, back, hips, and wrists. Also claims to have declining memory.”

In the AR, the physician check marked “Good” for all areas of *Ability to Communicate* and that the Appellant is independent in all areas of *Mobility and Physical Ability* except for two areas:

- lifting, and
- carrying/holding.

For these areas the physician check marked “Periodic assistance from another person”, with the comment “help from family”.

Under *Cognitive and Emotional Functioning* the physician check marked that the Appellant has “No impact” for eleven out of fourteen areas. A “Minimal impact” was reported for three areas:

- emotion,
- attention/concentration, and
- memory.

For these areas the physician commented, “Claims to feel anxious and have decreasing memory.”

In his self-report, the Appellant described a history of leaving his physically demanding employment due to anxiety and constant joint pain which affected his hips and mobility - "unable to bend". His concentration is also affected due to his stress level and anxiety as well as related memory problems. Further, climbing up and down stairs (while using transit), and mobility in general, is a challenge due to his joint pain.

Daily Living Activities (DLA):

In the PR, the physician check marked “Yes”, to indicate that the Appellant has been prescribed medication/treatment that interferes with his ability to perform DLA with the comment, “has tried Tylenol”. Regarding the duration of the medications/treatments, the physician wrote, “says it bothers his stomach”.

In the AR, under *Daily Living Activities*, the physician check marked that the Appellant is independent in all areas of personal care, pay rent and bills, medications, transportation, and social functioning [with "good" functioning in his social networks]. He requires "periodic assistance from another person" [with the comment, "help from family"] for the following tasks of three DLA:

- Basic housekeeping: laundry and basic housekeeping;
- Shopping: carrying purchases home; and
- Meals: cooking.

No additional comments were provided regarding the type or amount of assistance required or identification of any safety issues.

In his self-report the Appellant stated that he does everything at a slow pace including dressing and showering, and he is very careful using cooking appliances for safety reasons - "due to accidents". It becomes a fire hazard when he "forgets to un plug or to check what is on the stove". He takes precautions to the best of his ability - "due to memory".

Need for Help:

- In the PR, the physician check marked "No" regarding any prostheses or aids required for the Appellant's impairment.
- In the AR, the physician indicated that the Appellant receives assistance from "Family" with the comment, "wife helps with some ADL's", and "help from family" for the three DLA where he was reported to require periodic assistance.
- The physician left blank the section for assistance provided through the use of assistive devices. The physician check marked "No" the Appellant does not have an assistance animal.

Appellant's oral testimony

The Ministry did not attend the hearing and upon confirming that the Ministry had been notified of the hearing time and location, the panel proceeded in the Ministry's absence pursuant to section 86(b) of the Employment and Assistance Regulation. The Appellant testified that he was awaiting a call for a mental health assessment but could not get an appointment in time for his PWD application or appeal. He confirmed that he wished to go ahead with the appeal on the basis of the information in the record.

He explained that he has legal and family problems that have caused him a lot of stress and he left his employment in November 2014 due to anxiety and his body being "worn out" from years of physical labour. He stated that he does not have the support that his physician assumes he has and that, in fact, he has no help at all from his family and no longer lives with them.

He reported that he moved to his own residence in April after living with a relative for awhile. He was not living with his immediate family when his physician filled out the PWD medical reports but he did not give his physician all of the (sensitive) details about his family situation. His living standards have gone down a lot and there is no one at his current residence to help him, although a neighbour will knock on his door to remind him to turn the stove off when he forgets to check if his water is boiling. His residence has a shared kitchen but the tenants do their own cooking.

He reported that he is very forgetful and must use sticky notes and reminders. He forgets to bring change for the bus, and has had his phone disconnected when he forgot to pay his bills. His physician “recognizes these memory symptoms but did not back me up too much” in the PWD reports.

Physically, he has to do everything at a slow pace to manage his symptoms. He can only buy groceries in small portions due to his limitations with lifting even though it is cheaper to buy in bulk. He has to be careful with his right hip and sit down with his feet up on a stool to put his socks on. It is also hard to lift his right leg for putting on pants or shorts. There is no laundry facility at his residence but he sometimes washes his socks in the shower, although the cold water aggravates his joint pain. He takes his laundry, by cart, to a laundromat a few blocks away and usually washes it himself there. Sometimes he will drop it off although it costs twice as much for that service. His residence is very small with piles of boxes, and he has not dusted for a long time. The hallways and common areas are cleaned by a janitor.

Regarding his medications, he does not want to take pain killers because of their interaction with his stomach medication for acid reflux. Although he has bad insomnia, the doctors will only prescribe a maximum of three or four sleeping pills. He takes a three-hour nap in the afternoons when his building is quieter. In response to a question about whether his condition is worsening (as reported by his advocate), the Appellant stated that the swelling of his feet is worse and his doctor gave him water pills. The swelling takes a long time to go down and he cannot get his shoes on so he has to wear sandals. He is not mobile when the swelling is there and has to really push himself to go out.

The panel finds that all of the oral testimony is admissible because it is evidence in support of the Appellant's reported condition and self-reported restrictions and need for help before the Ministry at the reconsideration. The panel therefore admits the information under section 22(4)(b) of the *Employment and Assistance Act* as evidence in support of the information and records that were before the Ministry at the time the decision being appealed was made.

PART F – Reasons for Panel Decision

The issue in this appeal is whether the Ministry's reconsideration decision of August 11, 2015, which found that the Appellant is not eligible for PWD designation, was reasonably supported by the evidence or was a reasonable application of the applicable enactment in the circumstances of the Appellant. Based on the information provided in the PWD application, the Ministry was not satisfied that the following criteria in EAPWDA section 2(2) were met: the Appellant has a severe physical or mental impairment; and the impairment, in the opinion of a prescribed professional, directly and significantly restricts the Appellant's ability to perform DLA either continuously or periodically for extended periods; and, as a result of these restrictions, the Appellant requires help to perform those activities.

The eligibility criteria for PWD designation are set out in section 2(2) of the EAPWDA as follows:

- (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.

The "daily living activities" referred to in EAPWDA section 2(2)(b) are defined in section 2 of the EAPWDR as:

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.

Severe mental or physical impairment

Appellant's position

In his Notice of Appeal dated August 18, 2015, the Appellant stated that the Ministry “hasn’t got all the facts”. In the advocate’s submission he argued that he has a severe physical impairment [“musculoskeletal system pain”] as well as a severe mental impairment [anxiety] that directly and significantly restrict his ability to perform DLA. In his self-report/oral testimony he indicated he has to do everything in slow motion and his condition has worsened due to swelling in his feet that he did not have previously. Further, he is under a lot of stress and has anxiety that impacts his memory, creating a safety hazard when he forgets to turn off the stove.

In her submission for the reconsideration, the advocate argued the following points:

Severe impairment

- The lifting limitation identified by the Appellant’s physician (5-15 pounds) does not negate that his ability to lift/carry/hold is restricted to a severe degree as even “the high end of the five to fifteen pound range” is a significant weight restriction.
- Performing tasks that involve holding and carrying engage different areas of the upper body than lifting does and lifting can also engage the lower part of the body. Therefore, the Appellant’s perceived ability to lift a range of weight “is not commensurate to his ability to carry and hold”.
- The physician’s evidence must be read in its entirety and in a broad way pursuant to BC Supreme Court decision *Hudson v. Employment and Assistance Appeal Tribunal*, 2009 BCSC 1461. Even if the physician does not tick a box, all of their evidence including the narrative portions, must be reviewed in full to see if it confirms PWD eligibility. As the physician noted that the Appellant requires periodic assistance with tasks involving carrying, lifting, and holding [laundry, housekeeping, cooking, and carrying purchases], the Ministry was unreasonable to rely narrowly on the weight limitation that was reported for lifting (5-15 pounds) to conclude that his ability to lift, carry, and hold “is not restricted to a severe degree, amidst a larger volume of information...that demonstrates that (such ability) is restricted to the extent that he cannot perform these tasks independently.”
- The *Hudson* decision requires significant weight to be placed on the evidence of the applicant unless there is a legitimate reason not to do so. The Appellant recently reported that his physical and psychological conditions have deteriorated with greater restrictions than were reported by the physician in lifting, carrying, walking, using stairs, and subsequent memory loss from his anxiety. Although the physician did not identify anxiety as a diagnosis, he mentions it in the AR and this implies that the Appellant is impaired by a psychological condition. As well, anxiety symptoms are further described in the Appellant’s hand written notations.

Ministry's position

The Ministry was not satisfied that the physician's information and Appellant's self-reports, collectively, establish a severe mental or physical impairment. The Ministry argued that the information does not confirm a severe physical impairment because the Appellant was reported as able to walk four or more blocks and climb five or more steps unaided, lift 5-15 pounds, and he has no limitations with remaining seated. Further, although he was reported to require periodic assistance from his family with lifting, carrying, and holding, there was no information provided to explain the frequency, degree, or type of assistance required to manage those activities. Further, he was reported as independent in walking, climbing stairs, and standing.

In terms of mental status, the Ministry argued that a severe mental impairment was not established by the physician's evidence that indicated no deficits to cognitive and emotional functioning, minimal impacts only on some areas of daily functioning, with no impacts in all other areas and no "major impacts" across the board. Further, although the physician reported that the Appellant was unable to work due to anxiety, the Ministry noted that employability is not a criterion in PWD designation. In addition, the Ministry was not satisfied that the submission from the advocate provided a further explanation of the Appellant's condition or established that a medical practitioner has confirmed a severe impairment that significantly restricts the Appellant's ability to perform DLA.

Panel's decision:

The diagnosis of a serious medical condition does not in itself determine PWD eligibility or provide evidence of a severe impairment. To satisfy the requirements in section 2(2) of the EAPWDA, evidence of how, and the extent to which, a medical condition restricts daily functioning must be considered. This includes the evidence from the Appellant and from a prescribed professional regarding the nature of the impairment and its impact on the Appellant's ability to manage the DLA listed in section 2(1) of the EAPWDR. However, section 2(2)(b) of the EAPWDA clearly sets out that the fundamental basis for the analysis of restrictions is the evidence from a prescribed professional - in this case, the Appellant's physician.

Severe mental Impairment.

The physician has not diagnosed the Appellant with a mental impairment in the PWD medical reports but stated in the PR that the Appellant "claims to have declining memory" and in the AR that he "claims to feel anxious and to have decreasing memory". The physician did confirm anxiety in the prescription note of March 20, 2015, stating that the Appellant was unable to work due to that condition. Regarding any impacts on the Appellant's functioning from either a memory problem or anxiety [other than employability which the panel also notes is not a PWD criterion], the physician check marked in the PR that the Appellant has no significant deficits with cognitive and emotional function, and wrote that he has "no objective evidence" of any decline in memory. Although the Appellant testified that his anxiety makes him very forgetful to the point of creating a safety hazard when cooking, he acknowledged that his physician did not back him up on that.

In the AR, the physician indicated that the majority of the areas under *Cognitive and Emotional Functioning* are "No impact", whereas, in three areas [emotion, attention/concentration, and memory] a minimal impact is noted. While the Appellant provided examples of family and legal stressors, the physician did not describe what the impact is for the three areas. In the AR, the physician further

reported that the Appellant is independent in all non-physical DLA and has good social functioning; while the Appellant reported that he forgets to pay bills and to refill his medications and is estranged from his family due to serious legal issues for which he had to take court ordered programs.

Given that the Appellant's information regarding his family/legal stressors, anxiety symptoms, and memory problems were not backed up or elaborated on by his physician, the panel finds that the Ministry reasonably determined that there was not enough information to establish a severe mental impairment. Although the advocate argued that the physician "implies" that the Appellant is suffering from a psychological condition, the panel in looking at both the check marks and the narrative as a whole, cannot find any evidence in the PWD medical reports that would make the Ministry's conclusion [that a severe mental impairment is not established] unreasonable.

The panel notes that there is no information from a "prescribed professional" to substantiate the Appellant's self-reported restrictions to DLA (remembering to pay bills or refill prescriptions), as required by EAPWDA section 2(2)(b). As there is insufficient evidence of a severe mental impairment, the panel finds that the Ministry reasonably determined that the Appellant does not meet the mental impairment criterion in EAPWDA section 2(2).

Severe physical Impairment:

With respect to the Appellant's physical functional limitations, and restrictions to his physical DLA, the Appellant's evidence was that he has difficulty with walking, stairs (both ascending and descending), lifting, carrying/holding, dressing, laundry, carrying purchases, cooking, and using public transit (due to stairs). Further, the advocate reported that his condition is worsening and the Appellant confirmed that it is worse due to swelling in his feet that makes him have to "really push myself" in order to go out. However, despite his restrictions and worsening condition, he reported that he is currently not getting any help except for reminders from neighbours to turn off the stove.

By contrast, the physician reported in the PR that the Appellant's physical function is limited only in the area of lifting (5-15 pounds) and in the AR the Appellant was reported as independent in most areas in four out of five physical DLA but required periodic assistance "help from family" on two of the tasks within these DLA: carrying purchases, and cooking. On the fifth physical DLA (Basic housekeeping), he required periodic assistance for all areas.

As with a mental impairment, the degree of the Appellant's self-reported impacts and restrictions is not backed up by his physician, and in fact the physician indicated normal function for most of the areas where the Appellant reported difficulties: for example, walking, stairs, and personal care (dressing). Further, while the Ministry noted that it did not have information on the frequency, degree, or type of "periodic assistance" required from family, the Appellant clarified in his oral evidence that he was receiving no assistance with the tasks his physician indicated he needed assistance with: basic housekeeping, carrying purchases, and cooking. He testified that he mostly does his own laundry, carries purchases in small quantities, and cooks for himself in the shared kitchen at his residence. The panel therefore finds that the Ministry reasonably determined that the information does not confirm a severe physical impairment because the Appellant was reported as largely independent in physical function and most areas of physical DLA and there was insufficient detail regarding any "periodic assistance" that is required.

Regarding the advocate's argument that the Ministry gave insufficient weight to the Appellant's restriction with lifting (which she stated, also impacts his ability to carry and hold), the panel notes that the information on lifting was only one piece of evidence, and that the Ministry did look at all other areas, remarking that there were no other impacts reported for physical functioning and very few restrictions for physical DLA. Although the advocate argued that the need for "periodic assistance" confirms that the Appellant "cannot perform these tasks independently", the Appellant's oral testimony confirmed that he is doing his DLA independently as he has no one to help him. Further, without information on how often he was receiving "periodic assistance" from his family (when they were still helping him), neither the Ministry nor the panel would know whether he was able to do tasks independently when members of his family were unavailable. Further, other than the Appellant's evidence that he uses a stool to put on his socks, there was no information regarding any need for an assistive device, assistance animal or significant help from other persons.

While both the Appellant, and the physician (in the PR) confirmed that the Appellant does tasks slowly, the physician has not confirmed that the Appellant's condition is worsening, only that he cannot see "symptoms getting any better". Even where a condition is reported to be chronic or worsening, the entire picture of its severity is missing without sufficiently detailed information from a prescribed professional regarding impaired physical functioning and corresponding restrictions in the Appellant's ability to perform his DLA. In terms of "placing significant weight on the evidence of the applicant", as argued by the advocate, the panel notes that the EAPWDA section 2(2)(b) requires a "prescribed professional's" opinion regarding restrictions to DLA.

Accordingly, the panel finds that the Ministry reasonably concluded that there is insufficient information to establish a severe physical impairment. The panel finds that the Ministry was reasonably not satisfied that the Appellant has a severe physical impairment pursuant to EAPWDA section 2(2).

Restrictions in the ability to perform DLA:

Appellant's position

The Appellant argued that the Ministry "hasn't got all the facts" and he is restricted in personal care, basic housekeeping, shopping, meals, pay rent and bills and medications (due to his declining memory), transportation (due to stairs) and social functioning due to being estranged from his family as the result of serious legal issues.

His advocate advanced the following point:

Restrictions to DLA

- Per the *Hudson* decision, there must be evidence from a prescribed professional indicating a direct and significant restriction for at least two DLA and there is no statutory requirement that more than two need to be restricted. It is evident that the Appellant and the physician confirmed restrictions in at least two DLA. Further, the physician has been the Appellant's doctor for twenty years and there is no requirement within the EAPWDA or the application to substantiate the physician's opinion.

Ministry's position

The Ministry argued that the information from a prescribed professional (the Appellant's physician) does not establish that the Appellant's impairment restricts DLA either continuously or periodically for extended periods because the majority of DLA are performed independently or require little help from others. The Ministry noted that no information was provided "to explain the frequency, the degree or the type of assistance that you require" for DLA where the physician reported that periodic assistance was required.

Panel's decision

Section 2(2)(b)(i) of the EAPWDA requires that the Ministry is satisfied that in the opinion of a prescribed professional an applicant's severe impairment directly and significantly restricts DLA, continuously or periodically for extended periods. In this case, the Appellant's physician 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, a prescribed professional completing these forms has the opportunity to indicate which, if any, DLA are significantly restricted by the Appellant's impairments either continuously or periodically for extended periods.

The panel finds that the Ministry reasonably determined that the physician's lack of detail regarding the Appellant's requirement for "periodic assistance" in DLA that were identified as restricted, does not satisfy the requirement of DLA being significantly restricted continuously or for extended periods. While the panel notes the advocate's argument that every DLA need not be restricted, and that the physician has identified that at least two DLA are restricted, the physician's evidence in the PR and AR is sparse for the DLA where restrictions were identified: basic housekeeping (including laundry), shopping (carrying purchases home), and meals (cooking). As noted earlier, the Appellant testified that he performs all of these activities independently because he has no one to help him. Moreover, for DLA where the Appellant reported restrictions (Pay bills and Medications, for example), a prescribed professional has not confirmed same. Further, although the physician identified that the Appellant's pain medications interfere with his ability to perform DLA, both the physician and the Appellant noted that he does not like to take the pain medication due to side effects (stomach) or interactions with other medication.

Given that the physician's information in the PWD application indicated that the Appellant is independent with respect to most DLA, and that insufficient detail was provided for DLA identified as restricted, the panel finds that the Ministry reasonably determined that there was not enough evidence to establish that the Appellant's impairments significantly restrict his ability to manage DLA either continuously or periodically for extended periods as required under section 2(2)(b)(i) of the EAPWDA.

Help to perform DLA:*Appellant's position*

The Appellant's position is that he does not have the support that his physician assumes he has and that, in fact, he has no help at all from his family and no longer lives with them. His advocate based her argument (as follows) on the physician's information that the Appellant was receiving help from his family:

Assistance required

- It is implied that he receives “assistance from his family” as a result of his diagnosis and ensuing limitations. By checking off “periodic assistance” in the AR, the physician is confirming that the Appellant “needs significant help for an activity *some* of the time.” The advocate further argued that both the Appellant and his physician have provided sufficient evidence to demonstrate that he requires assistance from his family to complete “most” of his DLA.

Ministry’s position

The Ministry’s position is that because it has not been established that DLA are significantly restricted, it cannot be determined that the Appellant requires an assistive device, significant help from another person, or the services of an assistance animal.

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. In the AR, the physician indicated that the Appellant receives help from his family “for some ADL’s” and check marked that the help provided is “periodic assistance” with laundry, housekeeping, carrying purchases, and cooking. No detail was provided on the frequency, type, or duration of the help given, and the Appellant testified that he, in fact, has no one to help him and performs the above tasks independently albeit with difficulty due to his conditions. Neither the physician nor the Appellant indicated a need for any assistive devices (although the Appellant reported that he uses a stool to put his socks on), and the Appellant does not have an Assistance Animal.

On the basis of the above noted evidence, the panel finds that the Ministry reasonably determined that, as direct and significant restrictions in the Appellant’s ability to perform DLA have not been established, it cannot be determined that the Appellant requires help to perform DLA as a result of those restrictions, as defined by section 2(3)(b) of the EAPWDA.

Conclusion:

Having reviewed and considered all of the evidence and relevant legislation, the panel finds that the Ministry’s reconsideration decision which determined that the Appellant was not eligible for PWD designation pursuant to EAPWDA section 2(2) was reasonably supported by the evidence. The panel confirms the reconsideration decision.