

PART C – Decision under Appeal

The decision under appeal is the Ministry of Social Development and Social Innovation (the ministry) reconsideration decision dated August 18, 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 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 21, 2015, a physician report (PR) and an assessor report (AR) both dated April 21, 2015 and completed by a general practitioner who has known the appellant for 5 years.

The evidence also included the following documents:

- 1) Letter dated July 22, 2015 from the appellant's general practitioner to the ministry;
- 2) Letter dated July 24, 2015 'To Whom It May Concern' from the appellant's daughter; and,
- 3) Request for Reconsideration dated July 20, 2015, which attached a written submission by an advocate on behalf of the appellant.

Diagnoses

In the PR, the appellant was diagnosed by the general practitioner with Ischemic Heart Disease with an onset in March 2003, congestive heart failure and COPD [chronic obstructive pulmonary disease] both with an onset of January 2011, and diabetes with an onset of January 2005. Asked to describe the mental or physical impairments that impact the appellant's ability to manage daily living activities, the general practitioner wrote in the AR: "severe shortness of breath."

Physical Impairment

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

- In terms of health history, the "Ischemic heart disease limits exercise tolerance; able to walk about ½ block only" and "unable to work and constantly depressed regarding finances" and "unable to afford healthy food required for a diabetic diet."
- 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 2 to 7 kg. (5 to 15 lbs.), and remain seated 2 to 3 hours.
- No restrictions are indicated for mobility inside the home, but the appellant has continuous restrictions with mobility outside the home.
- The appellant is assessed as being independent with walking indoors and outdoors, climbing stairs and standing and requiring periodic assistance with lifting and carrying and holding. The general practitioner noted "walking restricted; needs help carrying or lifting, e.g. shopping bags."
- 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 and wrote: "N/A," or not applicable.

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

- He was diagnosed with COPD 4 years ago and he had a major heart attack 12 years ago. One third of his heart is no longer functioning.
- Due to his conditions, he suffers shortness of breath and chronic fatigue. He tires easily and has difficulty with all physical activity: standing, walking, going up and down stairs, getting in and out of bed, lifting/carrying more than 5 lbs.
- He cannot walk even a block and cannot manage any inclines. If he has to walk, he always watches for a place to sit or something to lean on.
- He can manage 3 to 5 stairs. He always needs to be able to stop and catch his breath.
- He uses furniture to steady himself when he moves around the house.
- He uses 3 different inhalers and he takes medication for cholesterol and to lower his heart rate.

In the letter dated July 22, 2015, the appellant's general practitioner wrote:

- The appellant has Ischemic Heart Disease with ejection fraction 35%, Congestive Heart Failure, COPD FE1 57% predicted and Diabetes Type 2.
- The appellant suffers severe shortness of breath and chronic fatigue, which means he has difficulty with all physical activities including standing, walking, going up and down stairs, getting in and out of bed and lifting and carrying more than 5 lbs.

In the letter dated July 24, 2015, the appellant's daughter wrote:

- The appellant is usually too tired and short of breath to do things.
- He spends most of his time sitting, resting or napping because he has no energy and he is out of breath.
- 50% of the time the appellant cannot do anything at all.

Mental Impairment

In the PR and AR, the general practitioner reported:

- In terms of health history, the appellant is "unable to work and constantly depressed regarding finances."
- The appellant has no difficulty with communication.
- The appellant has significant deficits with cognitive and emotional function in the areas of memory, emotional disturbance and motivation, with a comment added by the general practitioner "depressed mood; difficulty initiating and completing tasks."
- There is no indication whether the appellant is restricted with social functioning.
- There is no assessment of the appellant's ability to communicate in the different areas, specifically: speaking, reading, writing, and hearing.
- Regarding the degree of impact to the appellant's cognitive and emotional functioning, there are major impacts to emotion and motivation and moderate impacts to insight and judgment, and attention/concentration. There are minimal impacts to executive and memory, and no impacts to the remaining 8 listed areas of functioning. The general practitioner wrote: "depression unresolved secondary to poverty."
- With respect to social functioning, the appellant is independent in making appropriate social decisions, interacting appropriately with others and securing assistance from others. The appellant requires periodic support/supervision with developing and maintaining relationships (note: "misses appointments") and dealing appropriately with unexpected demands (note: "seems to give up").
- The appellant has marginal functioning with his immediate and extended social networks.

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

- He is very frustrated by the fatigue and limitations on his daily living.
- He is frustrated because he is mostly inactive on bad days, 3 days per week, and constantly needing to rest and catch his breath on good days. He does not have any energy anymore.

Daily Living Activities (DLA)

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

- The appellant has not been prescribed medications and/or treatments that interfere with his ability to perform daily living activities.
- There is no indication whether the appellant is restricted with mobility inside the home but he is continuously restricted with mobility outside the home.

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- There is no indication whether the appellant is restricted with personal self care, meal preparation, management of finances, or social functioning.
 - The appellant is not restricted with daily shopping.
 - The appellant is continuously restricted in his management of medications, basic housework, and use of transportation.
 - Regarding the degree of restriction: “daughter helps him with medication.”
 - Asked to describe the assistance that the appellant needs with DLA, the general practitioner wrote: “daughter assists with meals and managing medications.”
 - The appellant is independent with walking indoors and with walking outdoors, although walking is noted to be restricted.
 - 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 transfers on/off of chair), the DLA shopping (going to and from stores, reading prices and labels, making appropriate choices, paying for purchases, and carrying purchases home), pay rent and bills (including banking and budgeting), the DLA medications (filling/refilling prescriptions, taking as directed, safe handling and storage), and the applicable tasks of the DLA transportation (getting in and out of a vehicle and using transit schedules and arranging transportation).
 - The appellant requires continuous assistance from another person with the tasks of basic housekeeping (note: “assistance daughter”), while remaining independent with doing laundry as part of the basic housekeeping DLA.
 - The appellant requires periodic assistance from another person with the tasks of food preparation and cooking (note: “assistance daughter”), while remaining independent with meal planning and safe storage of food as part of the meals DLA.

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

- For personal care, he gets up late and often forgets to shower. He goes out only 1 or 2 times per week. He needs a shower chair or a grab bar to steady himself in the shower. He needs a bath to help him relax and grab bars or a specialized tub to simplify getting in and out.
- For meal preparation, his daughter does most of the preparation and clean-up and he tries to assist when he is able. He cannot help at all on bad days, 2 to 3 days per week. He forgets cooking on the stove or in the oven and his daughter monitors this. If he is able to help with the dishes, he rests his elbows against the counter and takes frequent breaks to sit down.
- Regarding housework, he is not able to do any on bad days, 2 to 3 times per week. Other days he does very little or nothing. He is always tired and short of breath so moving around, lifting and carrying are difficult or impossible. He cannot carry a jug of milk more than a few steps. He cannot do any heavy cleaning such as vacuuming, sweeping, or washing the floor, or bending to clean the bathroom. He tries to do his own laundry but it piles up because he forgets about it or he has no energy to do it.
- For grocery shopping, he shops with his daughter so she can do the lifting of heavier items into the car. He can manage shopping on his own for a few items, being nothing more than 5 lbs., but he needs to stop and rest by sitting down on the bench outside or leaning against a wall until he can catch his breath and fatigue passes. He cannot manage the walking in big stores. On bad days, usually 3 days a week, he does not go out at all.

In the letter dated July 24, 2015, the appellant’s daughter wrote:

- She does the cooking, housecleaning and laundry and takes out the garbage.
- The appellant drives her to the grocery store and, on bad days, he waits in the car while she



does the shopping. She carries the groceries.

- She reminds him to take his medications because the appellant forgets.
- She helps him with these activities every day because he cannot do them on his own.

In the letter dated July 22, 2015, the appellant's general practitioner wrote:

- He confirms that these restrictions continuously, directly and significantly restrict the appellant's ability to perform activities of daily living.
- As a result, the appellant requires daily assistance from his daughter for meal preparation, housecleaning, laundry, grocery shopping, and management of his medications.

Need for Help

In the PR, asked to describe the assistance that the appellant needs with DLA, the general practitioner wrote: "daughter assists with meals and managing medications." In the AR, with respect to the assistance provided by other people, the general practitioner indicated family and wrote "lives with daughter." 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 and indicated that they are not applicable to the appellant.

Appellant's additional information

In his Notice of Appeal dated August 25, 2015, the appellant wrote that he has provided information which establishes that his daily living activities are significantly restricted and that he requires significant help from his daughter.

Prior to the hearing, the appellant provided the following additional documents:

- 1) Medication Record for the appellant;
- 2) Print-out from a medical information website regarding Coronary Artery Disease; and,
- 3) Print-out from another medical information website regarding Congestive Heart Failure and Chronic Obstructive Pulmonary Disease (COPD).

At the hearing, the appellant's advocate provided a written submission on his behalf.

At the hearing, the appellant stated that:

- Prior to having his heart attack in 2001, his health was good and he used to actively participate in hobbies such as hiking, boating and fishing. He also kept busy with work in his trade.
- He had a "massive pain" on his left side. The treatment has been medications, angioplasty and a stent. One-third of his heart is not functioning and it will not repair or improve.
- He has constant fatigue and he is always out of breath. He does not have much drive anymore and sits most of the time. His health has been declining over the past 5 to 6 years and his need for assistance has been increasing.
- Some days are not bad and other days it is hard for him to get motivated. He never knows from day to day whether it will be a good day or a bad day.
- On bad days, he has shortness of breath (SOB) on waking. Sometimes just turning over in bed can cause SOB. He could only go out on a bad day if his "life depended on it."
- On his worse days, he wishes he could just stay in bed but he gets up and sits down at his computer and does not do too much. He spends 8 hours of the day just sitting, and he could also spend time napping. Depending on the day, he might also get up and walk around.
- Of the past 30 days, about 12 days have been "good" days, about 10 days have been

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“medium” days and about 8 days have been “bad” days. On a “medium” day, he can do more than on a bad day. He can walk further since he cannot walk at all on a bad day but he would rest more than on a “good” day.

- For his personal care, he gets dressed every day but he does not have the energy to shower every day. He loses his balance in the shower very easily.
- The only “chore” he does is dishes, which he does like “shift work” by doing some then resting. He does a bit at a time. His daughter will do the dishes if it is “a really bad day.”
- His daughter does 90% of the cooking.
- When he comes home, he has to walk up 5 steps into his house and he often has to stop on the 3rd or 4th step and “take a breather” and then continue.
- For shopping, he will drive his daughter to the store and, if it is “not too good of a day”, he will sit in the car because he is too tired to walk around the store.
- He takes a long list of medications for high cholesterol, high blood pressure, nitroglycerin for his heart, pain relief, his COPD, and to help him quit smoking.
- He needs reminders from his daughter regarding taking his medications because he forgets.

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

- The general practitioner specified in his letter dated July 22, 2015 that the appellant has Ischemic Heart Disease with ejection fraction of 35%, and a normal range is 50% to 75%. The information provided from the medical website refers to individuals with “severe” congestive heart failure “defined by an ejection fraction below 30% to 35%.” The ministry reconsideration decision ignored the information about the appellant’s ejection fraction score in terms of evaluating severity.
- According to the information from the medical websites, the appellant’s functional capability fits both Class III and IV, defined as “patient’s discomfort increases if any physical activity is undertaken” and that describes the appellant 50% of the time.
- The medical website information states that COPD is a progressive disease and that the measurement of its relative severity is through staging. The general practitioner specified that the appellant has COPD with a FEV1 at 57% predicted, which is “close to stage III” of the four stages. The ministry reconsideration decision did not reference this information and, rather, concluded that the information at reconsideration was “not significantly different.” In both the AR and his letter, the general practitioner refers to the appellant’s SOB as being “severe.”
- The July 22, 2015 letter from the general practitioner specifically states that the appellant requires “daily” assistance from his daughter for meal preparation, housecleaning, laundry, grocery shopping, and management of his medications.
- Although the ministry referenced the letter from the appellant’s daughter, the ministry did not properly consider it by weighing the merits. The ministry wrote in the reconsideration decision that “no additional information is provided to explain the frequency, the degree, or the duration” of the assistance that the appellant requires, but this has been provided by the appellant’s daughter. She says that “50% of the time” the appellant “can’t do anything at all.”
- The appellant wrote in his self-report that his daughter does most of the meal preparation and he tries to assist when he is able. Therefore, he is restricted from managing meal preparation.
- The general practitioner reported that the appellant has continuous restrictions with housekeeping. The appellant’s daughter wrote that she does the housecleaning and laundry and the appellant wrote that he is unable to do it on bad days. Therefore, the appellant is restricted from managing housecleaning and laundry.
- The appellant wrote in his self-report that he cannot do grocery shopping on bad days. The

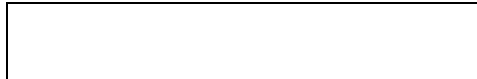
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doctor wrote that the appellant needs help carrying or lifting, e.g. shopping bags. Therefore, the appellant is restricted from managing grocery shopping.

- As for frequency or duration of the assistance required, the appellant wrote that he is unable to do anything 2 to 3 days per week. His daughter wrote that the appellant cannot do anything 50% of the time and the doctor wrote in his letter that the appellant requires “daily” assistance from his daughter for meal preparation, housecleaning, laundry, grocery shopping, and management of medications. This is an abundance of information on the type and frequency of the help required. The appellant’s daughter lives with him, sees his restrictions and provides the assistance he needs. Her letters supports the appellant’s self-report and is consistent with the doctor’s information in the application and in his letter.
- Taking into consideration the letters from the doctor and the appellant’s daughter, the appellant requires significant help from his daughter.
- The appellant is not claiming that he has a severe mental impairment.

The ministry relied on the reconsideration decision, as summarized at the hearing. At the hearing, the ministry added that:

- The ministry put significant weight on the fact that the general practitioner emphasized that the impairment that impacts the appellant’s ability to manage his daily living activities is “severe shortness of breath,” and the appellant stated that he rests on benches and leans on walls and furniture. However, the general practitioner specifically reported that none of the listed assistive devices apply to the appellant, including breathing devices, or devices to assist with his mobility such as a cane, walker or wheelchair.
- The appellant can walk up to a block unaided and there are no devices required to assist him to rest and catch his breath. For an impairment to be considered severe, the expectation is that a person needs help.
- The general practitioner has been the appellant’s doctor for 5 years and the appellant’s mobility has been assessed by him as independent. He can climb 3 stairs at a time and continue after taking a breath. He can lift 5 lbs. of weight on his own.
- Addressing the advocate’s point about the appellant’s congestive heart disease with an ejection fraction of 35%. This is not “below” 30% to 35% and is, therefore, not within the “severe” range as set out in the information from the medical website but, rather, is in the moderate range, although admittedly on the cusp.
- Addressing the advocate’s point about the appellant’s COPD at 57%, the information provided from the medical website shows that his score is within the range for stage II of 50% to 79%, which is the moderate range, and not in stage III, for severe, of 30% to 49%. There is no indication that the appellant requires oxygen or more besides puffers for his COPD.
- The appellant stated that on his “worse” days he spends about 8 hours of the day sitting and this leaves at least 6 hours of the day for other activities, including possibly mobilizing.
- In his letter, the general practitioner wrote that the appellant requires ‘daily’ assistance from his daughter for management of his medications but the appellant is not asserting that he has a severe mental impairment.
- All of the appellant’s personal care has been assessed as independent along with laundry and shopping. There is no indication in the AR that the appellant requires help with these tasks or even that the tasks take him longer to perform.
- The doctor has not elaborated on the type of periodic assistance the appellant receives from his daughter for food preparation and cooking.



Admissibility of Additional Information

The ministry did not object to the admissibility of the additional documents, noting that the print-outs provided general information only, and did not raise an objection to the oral testimony on behalf of the appellant. The panel considered the additional documents and the oral testimony on behalf of the appellant as information that corroborates the nature of the appellant's impairment as diagnosed in the PWD application, which was before the ministry at reconsideration. Therefore, the panel admitted this additional information as being in support of information and records that were before the ministry at the time of the reconsideration, in accordance with Section 22(4)(b) of the *Employment and Assistance Act*. The panel considered the advocate's written submission as argument on behalf of the appellant.

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:

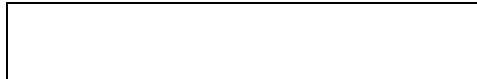
Definitions for Act

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 severe shortness of breath and chronic fatigue he experiences due to his conditions of Ischemic Heart Disease, congestive heart failure, COPD, and diabetes. The appellant argued, through his advocate, that he has difficulty with all physical activities including standing, walking, going up and down stairs, getting in and out of bed, and lifting and carrying more than 5 lbs. The advocate emphasized the statement in the letter from the appellant's daughter that "50% of the time he can't do anything at all." The advocate highlighted the *Interpretation Act* and argued that provincial enactments which must be construed as being remedial and must be given such fair, large and liberal construction and interpretation as best ensures the attainment of its objects. The advocate also relied on the decision in *Hudson v. EAAT* 2009 BCSC 1461 and argued that the court held that significant weight must be placed on the evidence of the appellant unless there is a legitimate reason not to do so, and the legislation must be interpreted with a benevolent purpose in mind.

The ministry's position is that there is insufficient evidence to establish that the appellant has a severe physical impairment. The ministry argued that the appellant's general practitioner indicated that the appellant is independent with mobility and most aspects of physical ability except lifting and carrying and holding, but does not explain the frequency, the degree or the duration of the assistance that the appellant requires.

Majority Decision

Severe Impairment Criterion

In the reconsideration decision, the ministry states that 'based on the information provided by your medical practitioner, the ministry is not satisfied that you have a severe physical impairment'. It further states that 'no additional information is provided to explain the frequency, the degree, or the duration of the assistance that you require'.

It is the view of the panel majority that the ministry's determination on severe impairment is unreasonable.

In the physician's letter of July 22, 2015 (PL), the physician lists the appellant's medical conditions as Ischemic Heart Disease Ejection Fraction 35%, Congestive heart failure, COPD FE1 57%, and Diabetes Type 2, and further states: "*He suffers from severe shortness of breath and chronic fatigue which means that he has difficulty with all physical activities, including standing, walking, going up and down stairs, getting in and out of bed and lifting and carrying more than 5 pounds*".

The PL concludes with the following statement: "*I confirm that these restrictions continuously directly and significantly restrict the appellant's ability to perform activities of daily living, and as a result, he requires daily assistance from his daughter for meal preparation, housecleaning, laundry, grocery shopping and management of his medications*".

The panel majority contends that these statements, from the prescribed professional who completed both the PR and AR, made three months later than both the PR and the AR, outweigh the omissions in the PR and the contradictions in the AR. Although the physician, in the PR, noted that 4 daily living activities were continuously restricted there is a significant omission in that he is silent on any restrictions to four other daily living activities. In the AR the physician appears to contradict the information provided in the PR when stating that there are no restrictions on daily living activities when he has previously noted those activities as restricted.

The majority also notes that the court, in the case of *Hudson v. EAAT 2009 BCSC 1461* (Hudson), as referenced by the advocate for the appellant, addressed the issue of ambiguity:

[63] I pause now to consider another difficulty in the Tribunal's Decision... If there is any ambiguity in the interpretation of s. 2(2)(a), which I doubt there is, it must be resolved in favour of the applicant: Gray at paras. 9-12.

The majority finds that the Hudson decision must be given consideration when attempting to resolve any ambiguity in the evidence on the issue of severity.

The majority notes the arguments at the hearing - from both the advocate and the ministry - on how to interpret the information provided in the PL, that the Ischemic Heart Disease is at the level of Ejection Fraction 35%, the COPD is listed as FE1 57% and the Diabetes is Type 2. However, the panel majority accepts that the clarification of the medical condition of the appellant is less relevant than the information provided in the PL about the effect on the appellant: how the appellant is impaired and restricted by his medical condition. Although the ministry quotes the physician comments, from the PR and AR, the ministry dismisses the significance of the PL by stating "While it

provides a further explanation of your restrictions, the information is not significantly different from that found in the application completed in April 2015".

As the panel majority finds the information in the PL to be *significantly different* from that found in the application, in that it provides clarification of information that was omitted in the PR and contradictory in the AR, the panel majority is left with the conclusion that the ministry failed to consider the information provided in the PL when determining whether the appellant has a severe physical impairment.

The conclusion of the panel majority is, therefore, that the ministry's determination that the appellant "did not have a severe physical impairment" is not reasonably supported by the evidence.

Daily Living Criterion

In its reconsideration decision, the ministry states 'As the majority of daily living activities are performed independently or require little help from others, the information provided by your prescribed professional does not establish that impairment *significantly restricts* daily living activities, either continuously or periodically for extended periods of time'.

It is the view of the panel majority that this finding is not reasonably supported by the evidence before the ministry at reconsideration.

Both the PR and AR report that the Daily Living Activities are continuously restricted in the areas of management of medications, basic housework, mobility outside the home and use of transportation. The PR also states "Daughter assists with meals". In the AR the physician states that the appellant requires periodic assistance with 'lifting' and 'carrying and holding' and provides the following information 'walking restricted, needs help carrying or lifting e.g. shopping bags'. In the same document the physician notes that the appellant needs continuous assistance in the area of basic housekeeping and periodic assistance in the areas of food preparation and cooking.

The ministry, at reconsideration, also had further information that was provided in the physician's letter (PL) dated July 22, 2015 plus a self-report from the appellant and a letter from his daughter. While the ministry notes that the PL is a "*one page letter*" the panel majority considers the length of the letter to be irrelevant as it is the information that is contained in the PL that is more significant than the brevity.

The majority notes that the ministry also misquoted the physician when analyzing the evidence surrounding daily living activities. The ministry states that the PL says "he (the appellant) requires assistance from his daughter" when what the physician actually stated was "he requires *daily* assistance from his daughter". This may explain why the ministry dismissed or failed to note the relevant information further provided in the PL and dismissed the PL in the following words "While it provides a further explanation of your restrictions, the information is not significantly different from that found in the application completed in April 2015" and went on to say 'However the type of assistance and the degree of assistance you require remains unclear'.

The panel majority finds that the ministry erred when concluding that 'the majority of daily living activities are performed independently or require little help from others'. The panel majority notes that the PR states that the appellant is continuously restricted in the areas of management of medications,

basic housework, mobility outside the home and use of transportation; in additions the PR states that the daughter assists with meals. The AR says that the appellant needs periodic assistance with 'lifting' and 'carrying and holding' and provides the following information ' walking restricted, needs help carrying or lifting e.g. shopping bags'. In the same document the physician notes that the appellant needs continuous assistance in the area of basic housekeeping and periodic assistance in the areas of food preparation and cooking.

The majority notes that there is no legislative requirement that *the majority* of daily living activities must be restricted and defers to Hudson which says, in Para 43: "*The ordinary meaning of the plural 'activities' ... dictates that there must be evidence from a prescribed professional indicating a direct and significant restriction on at least two daily living activities. There is no statutory requirement that more than two daily living activities be restricted.*"

The majority is satisfied that more than two daily living activities have been directly and significantly restricted and that the physician states, in the PL, that the appellant requires "*daily assistance from his daughter for meal preparation, housecleaning, laundry, grocery shopping and management of his medications*". The majority considers that the term 'daily assistance' for the five DLAs listed as meeting the legislative test of 'continuously or periodically restricting DLAs for extended periods'.

Furthermore, the majority contends that the evidence of the physician and the assessor must be taken in its entirety to ensure that all information regarding the impairment is considered in full, and that the ministry did not present valid grounds for dismissing the PL with the comment: "While it provides a further explanation of your restrictions, the information is not significantly different from that found in the application completed in April 2015". In this regard, the direction of the court in Hudson, Paras 54 is persuasive:

[54] *The Tribunal wrote that "[b]oth the assessor and the physician note that the appellant's restrictions are periodic but they do not address whether these restrictions are for extended periods." Unless the Tribunal had valid grounds for rejecting the prescribed professionals' evidence, this is incorrect. The physician's evidence on the duration of the periodic limitations aside (leaving aside also the inquiry into whether a broad reading of the Act mandates reading the physician's evidence of periodic limitations together with the physician's evidence that the petitioner's impairment is "ongoing" and likely to last for more than two years), the assessor clearly stated that the petitioner requires continuous assistance from another person to go to and from stores and to carry purchases home. In other words, contrary to the Tribunal's decision, the assessor confirms that the petitioner has continuous restrictions in at least two daily living activities and that she requires help to perform those activities.*

The panel majority is satisfied that the ministry erred when finding that "*no additional information is provided to explain the frequency, the degree, or the duration of the assistance that you require*" and "*the type of assistance and the degree of assistance you require remains unclear*".

The majority notes the following statement in the PL: "*I confirm that these restrictions continuously directly and significantly restrict the appellant's ability to perform activities of daily living, and as a result, he requires daily assistance from his daughter for meal preparation, housecleaning, laundry, grocery shopping and management of his medications*". The panel majority therefore finds that the physician's statement that the appellant requires 'daily assistance' satisfies the *frequency* criterion and the criterion of "*degree*" has been established when the physician has noted 5 significant daily

living activities in which the appellant requires this 'daily assistance'

The panel majority find that the information provided by the physician in the PL both supplements and clarifies the information he provided in the PL, is supported by the information provided by the appellant and his daughter, and therefore outweighs the ambiguous and contradictory information that he provided in the AR.

The inclusion and weighting of both the appellant's and his daughter's comments in the analysis of the evidence is supported by the court's direction in Hudson that significant weight must be placed on the evidence of the applicant, unless there is a legitimate reason not to do so:

[64] *Concerning the weight to be given to the petitioner's evidence, while s. 2(2) of the EAPDA makes it clear that certain eligibility criteria for PWD status need to be confirmed by the applicant's physician or assessor, nothing in the EAPDA prevents the ministry or the Tribunal from placing considerable weight on the Petitioner's evidence, provided the statutory eligibility criteria are met. Indeed, it would be illogical for the Application to demand of the petitioner to describe her disabling condition if the situation were otherwise.*

The panel majority is further satisfied that the duration of the assistance required has been established, by the physician, when he states in the PL that the heart disease is "irreversible" and the COPD is a progressive disease". The panel majority finds that it is a reasonable interpretation of this evidence to conclude that the appellant will require this daily assistance "forever" and finds that the ministry erred when it stated that 'no additional information is provided to explain the frequency, the degree, or the duration of the assistance that you require'.

The panel majority contends that the statements from the PL, the appellant and his daughter provide sufficient evidence that the appellant is unable to perform DLAs independently or periodically for extended periods of time, and it considers that the ministry's assertion to the contrary is an unreasonable application of the legislation and the regulation.

Assistance required with DLAs Criterion

In discussing this criterion in the reconsideration decision the ministry simply states "*It has not been established that daily living activities are significantly restricted, therefore it cannot be determined that significant help is required from other persons.*"

The panel majority contends that the restriction on DLAs has, in fact, been demonstrated by the evidence in the PL, the appellant's self-report and his daughter's letter.

From the PL we have the following information: "*he requires daily assistance from his daughter for meal preparation, housecleaning, laundry, grocery shopping and management of his medications.*" From the appellant's self-report, on the subject of meal preparation, the appellant says: "*My daughters does most of the meal preparation and clean up and I try to assist when I am able. I cannot help at all on bad days – 2 to 3 days per week and I help a little on better days.*"

Further, the information from the PL is supported by the appellant's self-report, on the subject of housecleaning, there is the following information: "*I am not able to do any housework on bad days –*

2 to 3 days per week. Other days I do very little or nothing. I am always tired and short of breath, so moving around, lifting and carrying are difficult or impossible. I can't even carry a jug of milk more than a few steps. I can't do any heavy cleaning such as vacuuming, sweeping or washing floors, or bending to clean the bathroom. I try to do my own laundry but it piles up because I forget about it or I have no energy to do it."

The daughter's letter of July 24th further confirms the assertion of the PL when it says: *"I do the cooking, housecleaning, laundry and take out the garbage... I help him with these activities every day because he can't do them on his own."*

The panel majority finds that the statements in the PL, supported by the additional information from the appellant and his daughter, are persuasive in showing that *significant* help is in fact required from another person, namely the appellant's daughter. As the panel majority is satisfied that the appellant requires significant help from another person in relation to a daily living activity the majority is persuaded that the appellant has met the final criterion.

Majority Conclusion

The panel majority contends 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 not reasonably supported by the evidence, and was not a reasonable application of the applicable enactment in the circumstances of the appellant and therefore rescinds the decision.

Dissent 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 5 years, diagnosed the appellant with Ischemic Heart Disease with an onset in March 2003, congestive heart failure and COPD both with an onset of January 2011, and diabetes with an onset of January 2005. In the letter dated July 22, 2015, the appellant’s general practitioner added that the appellant has Ischemic Heart Disease with ejection fraction 35%, Congestive Heart Failure, COPD FE1 57% predicted, but the general practitioner did not provide any further commentary to indicate how these medical scores are to be interpreted. In the general information from a medial website regarding congestive heart disease, an ejection fraction of 50% to 75% is reported as normal. While the appellant’s score of 35% is not in the severe range of “below” 30% to 35% as stated by the advocate, it is “on the cusp” as acknowledged by the ministry. For the appellant’s staging for his COPD at 57% predicted, the general information provided from the medical website shows that his score is within the moderate range of stage II and, as the ministry pointed out at the hearing, there is no indication that the appellant requires oxygen or more than use of his puffers for his COPD. Asked to describe the mental or physical impairments that impact the appellant’s ability to manage daily living activities, the general practitioner wrote in the AR: “severe shortness of breath.”

In terms of functional skills, the general practitioner reported that the appellant can walk less than 1 block unaided, climb 2 to 5 steps unaided, lift 5 to 15 lbs. and remain seated 2 to 3 hours. The general practitioner reported that the appellant does not require an aid for his impairment and none of the listed assistive devices are required by the appellant, including those for mobility such as a cane, walker, wheelchair or scooter. While the general practitioner indicated in the PR that the appellant has continuous restrictions with mobility outside the home, he assessed the appellant in the AR as being independent with walking indoors and outdoors, climbing stairs and standing. The dissenting view is that although the general practitioner had an opportunity to indicate in the AR that the appellant requires assistance from another person or an assistive device, or that he takes significantly longer than typical with each of these areas, the general practitioner reported that the appellant is “independent” and did not indicate that he takes longer. The general practitioner indicated that the appellant requires periodic assistance with lifting and carrying and holding described as “needs help carrying or lifting, e.g. shopping bags,” with no indication in the AR of how often this assistance with lifting or carrying and holding is required.

Given an opportunity to clarify his assessment in the letter dated July 22, 2015, the general practitioner reported that the appellant suffers severe shortness of breath and chronic fatigue, which means he “has difficulty” with all physical activities including standing, walking, going up and down stairs, getting in and out of bed and lifting and carrying more than 5 lbs. The dissenting view is that while the general practitioner wrote that the appellant “has difficulty,” the general practitioner did not

take the opportunity to change his original assessment in the AR that the appellant does not require the assistance of either a person or an assistive device with walking indoors or outdoors, climbing stairs, or standing, and the general practitioner did not add detail about the periodic assistance required by the appellant for lifting or carrying and holding other than to specify that it is for “more than 5 lbs.” The general practitioner did not add an explanation or description in his July 22, 2015 letter of any exacerbations of the appellant’s conditions or indicate that the appellant has bad days when his mobility or physical functioning are further restricted.

In the appellant’s self-report, he wrote that due to his conditions, he suffers shortness of breath and chronic fatigue and “has difficulty” with all physical activity: standing, walking, going up and down stairs, getting in and out of bed, lifting/carrying more than 5 lbs. The appellant wrote that he cannot walk even a block but if he has to walk, he always watches for a place to sit or something to lean on. He can manage 3 to 5 stairs and he always needs to be able to stop and catch his breath. At the hearing, the appellant stated that when he comes home, he has to walk up 5 steps into his house and he often has to stop on the 3rd or 4th step and “take a breather” and then continue. He stated that some days are “not bad” and other days it is hard for him to get motivated. He never knows from day to day whether it will be a good day or a bad day.

The appellant stated at the hearing that on his “worse days”, he wishes he could just stay in bed but he gets up and sits down at his computer and does not do too much: he spends 8 hours of the day just sitting, and he could also spend time napping or walking around. Asked at the hearing how many days out of the past 30 have been “bad days”, the appellant estimated 8 days out of 30, which was consistent with the estimate in his self-report of 2 to 3 days out of each week. In the letter dated July 24, 2015, the appellant’s daughter wrote that the appellant is usually too tired and short of breath to do things and he spends most of his time sitting, resting or napping because he has no energy and he is out of breath. The dissenting view is that while the appellant’s daughter wrote in her letter that “50% of the time” the appellant cannot “do anything at all,” neither the information from the appellant nor his general practitioner supports finding an inability to do any physical activity “at all” for half of the time. While the advocate argued that the daughter lives with the appellant, sees his daily restrictions and provides the assistance, the appellant was available for questioning at the hearing and he stated that his bad days are approximately 8 days out of a month. The general practitioner did not report any exacerbations in the appellant’s condition in either the PR or the AR or when given an opportunity to provide additional, clarifying information in his July 22, 2015 letter. Therefore, the dissenting view is that the ministry reasonably placed little weight on the letter from the appellant’s daughter. Also, as discussed in more detail in these reasons for decision under the heading “Restrictions in the Ability to Perform DLA”, the dissenting view is that the limitations described to the appellant’s physical functioning do not appear to have translated into significant restrictions to his ability to manage DLA.

The dissenting view is that the ministry reasonably required sufficient consistent evidence of restrictions to the appellant’s ability to function independently or effectively in order to meet the legislative criteria of a “severe” physical impairment and the gaps and inconsistencies in the evidence submitted by the appellant, as detailed above, do not create an ambiguity in the ministry’s interpretation of Section 2(2) of the EAPWDA. Given the assessment of independent mobility and physical ability, with the exception of carrying and lifting and holding, and the lack of consistent information about any exacerbations to the appellant’s conditions, the dissenting view is 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 advance a position that he has a severe mental impairment, but wrote in his self-report that he is very frustrated by the fatigue and limitations on his daily living and that he is mostly inactive on bad days and constantly needing to rest and catch his breath on good days.

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 wrote in the reconsideration decision that the general practitioner assessed major impacts to the appellant's cognitive and emotional functioning in the areas of emotion and motivation noting "depression unresolved secondary to poverty" and all other areas have moderate, minimal, and predominantly no impact on daily functioning. The ministry argued that the general practitioner indicated that the appellant has no difficulties with communication.

Panel Decision

The general practitioner did not diagnose a mental disorder in the PR but reported that the appellant "unable to work and constantly depressed regarding finances." As for searching for work and/or working, 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. The appellant was also assessed with significant deficits with cognitive and emotional function in the areas of memory, emotional disturbance and motivation, with a comment added by the general practitioner "depressed mood; difficulty initiating and completing tasks." Regarding the degree of impact to the appellant's cognitive and emotional functioning, the general practitioner reported that there are major impacts to emotion and motivation and moderate impacts to insight and judgment and attention/concentration, with minimal and no impacts to the remaining 10 listed areas of functioning. The general practitioner wrote: "depression unresolved secondary to poverty" and the appellant wrote in his self-report that he is very frustrated by the fatigue and limitations on his daily living.

Considering the two DLA that are specific to mental impairment – make decisions about personal activities, care or finances (decision making), and relate to, communicate or interact with others effectively (social functioning), there is very little evidence of impacts to either. The general practitioner assessed all decision-making components of DLA as independent, specifically personal care (regulate diet), shopping (making appropriate choices and pay for purchases), meals (meal planning and safe storage of food), managing his finances (budgeting and paying rent and bills), and transportation (using transit schedules and arranging transportation). While the general practitioner reported in the PR that the appellant is continuously restricted in his management of medications and wrote "daughter assists with meals and managing medications," in the AR he indicated that the decision making components of the DLA managing medications are completed independently (i.e. taking as directed and safe handling and storage). The general practitioner also reported in the AR that the appellant is independent with making appropriate social decisions.

Regarding the DLA of social functioning, the general practitioner did not indicate in the PR whether the appellant is restricted with social functioning. In the AR, he reported that the appellant is independent in interacting appropriately with others and securing assistance from others. The general practitioner reported that the appellant requires periodic support-/supervision with developing and maintaining relationships, described as "misses appointments," and there is no other description of the extent of support or supervision required by the appellant in this area. The general practitioner reported that the appellant has no difficulties with communication.

Given the absence of a definitive mental health diagnosis and the lack of evidence of significant impacts to the appellant's cognitive, emotional or 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 severe physical impairment directly and significantly restricts his ability to perform DLA on an ongoing basis to the point that he requires the significant assistance of another person, specifically his daughter, as well as a grab bar in the shower as an assistive device. The appellant argued, through his advocate, that the general practitioner wrote in his July 22, 2015 letter that the appellant's restrictions continuously, directly and significantly restrict his ability to perform DLA and, as a result, he requires 'daily' assistance from his daughter for meal preparation, housecleaning, laundry, grocery shopping, and management of his medications. The advocate argued that the PWD application and the new information in the letters from the doctor and the appellant's daughter clearly establish that the appellant's impairments directly and significantly restrict his DLA continuously and periodically for extended periods.

The ministry's position is that the information from the prescribed professional does not establish that the appellant's impairments significantly restrict his DLA either continuously or periodically for extended periods of time. The ministry argued that the general practitioner indicated that the appellant is independently able to manage most DLA and, while he requires the assistance of his daughter to manage some tasks of DLA, the type and degree of assistance remains unclear.

Dissent 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 and/or treatments that interfere with his ability to perform DLA. In the PR, the general practitioner indicated that the appellant is continuously restricted with mobility outside the home and the appellant can walk less than 1 block unaided. In the AR the general practitioner assessed the appellant as independent with walking indoors and with walking outdoors, although walking is noted by the general practitioner to be "restricted."

There is no indication in the PR whether the appellant is restricted with personal self care, management of finances or meal preparation. In the AR, the general practitioner assessed the appellant as independent with all of the listed tasks of both the DLA personal care (dressing, grooming, bathing, toileting, feeding self, regulate diet, transfers in/out of bed and transfers on/off of chair), and with the DLA paying rent and bills (including banking and budgeting). In his self-report, the appellant wrote that he often forgets to shower and he needs a shower chair or a grab bar in the shower to steady himself; however, the dissenting view is that no assistive devices or need for assistance from another person has been indicated by the general practitioner, as the prescribed professional, for the DLA personal care.

The general practitioner wrote in the PR that the appellant's "daughter assists with meals" and indicated in the AR that the appellant requires periodic assistance from another person with the tasks of food preparation and cooking (note: "assistance daughter"), while remaining independent with the tasks of meal planning and safe storage of food. However, there is no description by the general practitioner in either the PR or the AR of the frequency or duration of assistance required. In his letter dated July 22, 2015, the general practitioner wrote that the appellant requires "daily" assistance from his daughter for meal preparation, as one on of the four tasks for the meals DLA. In his self-report, the appellant wrote that his daughter does most of the preparation and he tries to assist when he is able but he cannot help at all on bad days, 2 to 3 days per week. In her letter, the appellant's daughter wrote that she does the cooking and helps him with these activities every day because he cannot do them on his own. At the hearing, the appellant stated that his daughter does 90% of the cooking. The dissenting view is that the ministry reasonably concluded that the evidence is not consistent with respect to the level of restriction and the resulting need for assistance with the DLA meals.

In the PR, the general practitioner reported that the appellant is not restricted with daily shopping and, in the AR, the general practitioner also indicated that the appellant is independent with all tasks of the DLA shopping (going to and from stores, reading prices and labels, making appropriate choices, paying for purchases, and carrying purchases home). In the AR, the general practitioner wrote with respect to the appellant's need for periodic assistance with lifting and carrying and holding: "e.g. shopping bags." In his letter dated July 22, 2015, the general practitioner wrote that the appellant requires "daily" assistance with grocery shopping, without specifying the degree of assistance or the task for which assistance is required and without explaining the reason for the change in his assessment for this DLA. The appellant wrote in his self-report that he shops with his daughter so she can do the "lifting of heavier items in and out of the basket and into the car." The appellant stated that he can "manage shopping" on his own for a few items, being nothing more than 5 lbs., but he needs to stop and rest until he can catch his breath and his fatigue passes. In her letter dated July 24, 2015, the appellant's daughter wrote that the appellant drives her to the grocery store and, on "bad days", he waits in the car while she does the shopping and she carries the groceries. The dissenting view is that the ministry reasonably concluded that the evidence is not consistent with respect to the level of restriction and the resulting need for assistance with the DLA shopping.

In the PR, the general practitioner reported that the appellant is continuously restricted in his management of medications, use of transportation, and basic housework and the general practitioner wrote regarding the degree of restriction "daughter helps him with medication." However, in the AR the general practitioner indicated that the appellant is independent with all tasks of the DLA medications (filling/refilling prescriptions, taking as directed, safe handling and storage), and the applicable tasks of the DLA transportation (getting in and out of a vehicle and using transit schedules and arranging transportation). In his letter dated July 22, 2015, the general practitioner wrote that the appellant requires "daily" assistance with management of his medications, without specifying the degree of assistance or the task for which assistance is required. The appellant's daughter wrote in her letter that she reminds the appellant to take his medications because the appellant forgets and that she helps him "every day." The general practitioner did not mention the DLA of transportation in his July 22, 2015 letter. The dissenting view is that the ministry reasonably concluded that the evidence is not clear with respect to the level of restriction and the resulting need for assistance with the DLA medications and the DLA use of transportation.

The appellant is assessed in the AR as requiring continuous assistance from another person with the

task basic housekeeping (note: “assistance daughter”), while remaining independent with the tasks of doing laundry. However, when asked in the PR to describe the assistance that the appellant needs with DLA, the general practitioner wrote: “daughter assists with meals and managing medications” and he did not mention housekeeping. In the letter dated July 22, 2015, the general practitioner wrote that the appellant requires “daily” assistance from his daughter for housecleaning and laundry, without explaining the reason for his change in assessment regarding the task of laundry. In his self-report, the appellant wrote that he is not able to do any housework on “bad days,” and he does little or nothing on other days as he cannot do any “heavy” cleaning such as vacuuming, sweeping or washing floors. The appellant wrote that he tries to do his laundry but it piles up because he forgets about it or he has no energy to do it. In her letter dated July 24, 2015, the appellant’s daughter wrote that she does the housecleaning and laundry and she helps the appellant “every day” because he cannot do these activities on his own. The dissenting view is that the ministry reasonably concluded that the evidence is not clear with respect to the level of restriction and the resulting need for assistance with the DLA housekeeping, which includes the task of laundry.

As previously discussed, the panel finds that the evidence does not establish that the appellant is significantly restricted in either DLA specific to mental impairment, namely decision making or social functioning.

Considering the evidence of the general practitioner as the prescribed professional, the dissenting view is that the ministry was reasonable to conclude that the appellant remains independent with most DLA and for those tasks of DLA that require the assistance of his daughter, the type and degree of assistance remains unclear and, therefore, the evidence is insufficient to establish 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 severe physical impairment significantly restricts his daily living functions to a severe enough extent that significant assistance is required from his daughter and he needs a grab bar in the shower as an assistive device.

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.

Dissent 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 PR, asked to describe the assistance that the appellant needs with DLA, the general practitioner wrote: “daughter assists with meals and managing medications.” In the AR, with respect to the assistance provided by other people, the general practitioner indicated family and wrote “lives with daughter.” 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 and noted that they are not applicable to the appellant. Given an opportunity to clarify his assessment in the letter dated July 22, 2015, the general practitioner did not indicate that the appellant requires an assistive device or provide information showing significant help from another person.

The dissenting view is 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.

Dissent Conclusion

Having reviewed and considered all of the evidence and relevant legislation, the dissenting view is 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 would therefore confirm the decision.