

PART C – Decision under Appeal

The decision under appeal is the Ministry of Social Development and Social Innovation (the ministry) reconsideration decision dated September 8, 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 March 26, 2015, a physician report (PR) and an assessor report (AR) both dated April 30, 2015 and both completed by a general practitioner who has known the appellant for “many years.”

The evidence also included the following documents:

- 1) Letter dated August 14, 2015 by an advocate on behalf of the appellant posing questions which have been answered by the general practitioner who completed the PR and AR and signed on August 17, 2015; and,
- 2) Request for Reconsideration dated August 14, 2015, which attached the letter signed by the general practitioner.

Diagnoses

In the PR, the appellant was diagnosed by the general practitioner with chronic oedema right leg old compound fracture, OA [osteoarthritis] of his knees, bilateral rotator cuff repairs with poor results, recurrent DVT [deep vein thrombosis], chronic back pain and depression, with no dates of onset provided. When asked to describe the mental or physical impairments that impact the appellant's ability to manage daily living activities, the general practitioner did not provide a response in the AR.

Physical Impairment

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

- In terms of health history, the osteoarthritis in his knees, back pain, shoulder pain, rotator cuff repair and stiffness in his shoulders are “moderately severe.” The appellant is “unable to sit or stand for half an hour [as a result of] severe pain in his back.” He is “unable to lift weight due to back pain and shoulder stiffness and pain.”
- The appellant does not require any prosthesis or aid for his impairment.
- In terms of functional skills, the appellant can walk less than one block unaided, climb 2 to 5 steps unaided, lift 2 to 7 kg. (5 to 15 lbs.) and remain seated less than 1 hour.
- In the additional comments, the appellant “...is unfit for any work. Please help him.”
- The appellant is assessed as being independent with all aspects of mobility and physical ability, specifically: walking indoors and walking outdoors, climbing stairs, standing, lifting and carrying and holding. The general practitioner wrote: “see limitations.”
- In the section of the AR relating to assistance provided, the general practitioner did not identify any of the listed assistive devices as applying to the appellant and crossed the section out as not applicable to the appellant.

In the self-report, the appellant wrote:

- He knows the moment he steps down off his bed upon awakening he will experience pain “at a level of 8.5 to 9 from his knees and lower back.”
- He cannot sleep because of the pain in his knees, lower back and shoulders so he is never well rested.
- He cannot exercise.
- He is a recovering drug addict so his doctor cannot give him the narcotics it would take for him to be comfortable.
- He cannot sit for very long without experiencing pain and stiffness so intense that he wants to

scream. He cannot stand for very long because of the same pain. He spends an extra 6 to 8 hours a day in bed lying down.

- He cannot get or keep a job.

In the letter signed August 17, 2015, the general practitioner indicated that:

- He agreed the appellant stated he is not able to walk more than approximately 100 steps, maybe half a block, due to severe low back and knee pain.
- He agreed the appellant stated he is not able to carry more than 15 lbs. and “limited less than 20 feet one time.” If he does carry this, he is in so much pain he has to sit down and take the pressure off his knees and back.
- He disagreed that the appellant stated any amount of walking indoors or outdoors takes him at least 5 times longer than typical due to pain. The appellant added: “I told the advocate 3 to 5 times longer, she wrote 5 times, that is why he didn’t agree.”
- Asked whether he would agree that the appellant’s condition is severe, that he has significant restrictions with his ADL’s and, as a result, he requires the continuous assistance of another person, he responded “no,” and noted: “...as long as he can get some help when needed, he is OK.”

Mental Impairment

In the PR and AR, the general practitioner reported:

- In terms of health history, the appellant is “unable to concentrate, poor memory, poor sleep, feel depressed, lethargic, unable to work.”
- The appellant has no difficulty with communication.
- The appellant has significant deficits with cognitive and emotional function in the areas of memory, emotional disturbance, motivation, and attention or sustained concentration with no additional comments provided.
- The appellant has a good ability to communicate in all areas, specifically: speaking, reading, writing, and hearing.
- In the section of the report designed to indicate the degree of impact to the appellant’s cognitive and emotional functioning, the general practitioner indicated moderate impacts in 5 areas, specifically: bodily functions, emotion, attention/concentration, memory, and motivation. No impact is reported for the remaining 8 areas of functioning.
- With respect to social functioning, the appellant is independent in making appropriate social decisions and requires periodic support/supervision with developing and maintaining relationships, interacting appropriately with others, dealing appropriately with unexpected demands, and securing assistance from others. No further explanation or description is provided.
- The appellant has marginal functioning in both his immediate and extended social networks.

In the appellant’s self-report, he wrote that he often thinks of taking his life because of his disability.

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.
- The appellant is independent with walking indoors and with walking outdoors, with a comment: “see limitations.”

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- The appellant is independent with all of the listed tasks of all of the listed DLA, namely: personal care (dressing, grooming- “cannot put socks on”, bathing- “cannot wash feet”, toileting- “has to stand to wipe behind”, feeding self- “can’t stand has to eat prepared food”, regulate diet, transfers in/out of bed and on/off of chair), basic housekeeping including laundry (note: “never vacuumed for 3 years, owns vacuum”), shopping (going to and from stores, reading prices and labels, making appropriate choices, paying for purchases, carrying purchases home- “see limitations, but light loads”), meals (meal planning, food preparation, cooking- “4 times as long to cook meals”), “pay rent and bills” (including banking and budgeting), medications (filling/refilling prescriptions, taking as directed, safe handling and storage), and transportation (getting in and out of a vehicle, using public transit- “cannot use public transit”, and using transit schedules and arranging transportation”). There was no assessment provided by the general practitioner for the task of safe storage of food as part of the meals DLA.

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

- He cannot get or keep a job.
- His family has taken him in to help him. He was not able to take good care of himself and they help.

In the letter signed August 17, 2015, the general practitioner indicated that:

- He disagreed that the appellant stated he only showers 2 times per week because of the pain it causes and his hygiene is neglected, with a note added: “only because I have help today with cooking, cleaning and laundry, I can shower more.”
- He agreed the appellant stated he must sit to dress and it takes him about 20 minutes because pain slows him down and that he has to stand in order to clean himself after toileting since he is not able to reach behind himself in a seated position.
- He agreed that the appellant stated it takes him approximately 10 to 15 minutes to get out of bed and his body is very stiff and in pain after resting.
- He disagreed that the appellant stated his sister does his laundry for him since bending and reaching into the washer/dryer are too difficult, with a note added: “my sister still does my laundry, and that is why I can keep myself clean.”
- He agreed that the appellant stated that he has not cleaned his bathroom or vacuumed in years and he has never washed his floor. Basic housework requires movements that he is prevented in doing due to pain. His sister changes his sheets for him; he was doing it every 6 months or more.
- He agreed that the appellant stated that the only way he can go shopping is if the store has a scooter because he cannot walk through it and he needs help to carry his purchases.
- He agreed that the appellant stated that he cannot use public transit; he is not able to walk to the stop or stand and wait.
- He disagreed that the appellant stated that he does not cook or prepare meals and he only eats items that are microwave/reheat ready, with a note added: “...he can sit on a chair and prepare meal and cook.”
- Asked whether he would agree that the appellant’s condition is severe, that he has significant restrictions with his ADL’s and, as a result, he requires the continuous assistance of another person, he responded “no,” and noted: “...as long as he can get some help when needed, he is OK.”

Need for Help

In the AR, the general practitioner reported that the appellant's family provides the assistance required with DLA. In the section of the AR for identifying assistance provided through the use of assistive devices, the general practitioner did not identify any of the listed items as being applicable to the appellant and crossed the section out.

Additional information

In his Notice of Appeal dated September 15, 2015, the appellant expressed his disagreement with the ministry's reconsideration decision and wrote:

- He disagrees with his physician's assessment as he incorrectly stated the severity of his injuries and how those injuries impact his day-to-day life.
- He is in pain 7 days a week, 24 hours per day and he is offended that his physician portrays that he is living or capable of living the life of a normal person his age.

At the hearing, the appellant provided the following additional documents:

- 1) Letter dated September 29, 2014 in which a psychiatrist wrote that:
 - The appellant said he has been off drugs and alcohol for about 7 years.
 - About 5 or 6 years ago, he had bilateral rotator cuff damage and was on WCB [benefits].
 - He presently takes an anti-depressant medication usually every other day. He has also used marihuana daily to cope with pain.
 - He has been frequently suicidal and last time he was scared of suicide was last Christmas.
 - On mental status examination, he walks with difficulty, has had both knees replaced and he has some scars on his legs.
 - He talks readily and to the point, seems to be fairly anxious and in need of reassuring himself, with no thought disorder and his sensorium was clear.
 - The impression is moderate depression with suicidal tendencies, history of multiple substance abuse and violence.
 - Management includes continuing with anti-depressant medication, would benefit with counseling and psychotherapy. In assessing his suicidal potential, not a big risk until he sees him next in a couple of months.
- 2) Prescription dated October 5, 2015 for a "power chair";
- 3) Letter dated October 24, 2015 in which a previous employer/ friend of the appellant wrote that he has known the appellant since January 2006 when he hired the appellant. In the last 5 years he has seen the appellant's ability decrease "to the point of being unemployable."
- 4) Letter dated October 25, 2015 in which a friend of the appellant wrote that she has known the appellant for approximately 10 years and has known him to be a "robust, hard working young man with a zest for life" even though he was having some difficulties. In the past year, she noticed that when the appellant would move his leg, she could see the excruciating pain on his face. Has been reduced to a helpless, dependent individual.
- 5) Letter dated October 26, 2015 in which a friend of the appellant wrote that she has been friends with the appellant for approximately 30 years. Over the last few years, his positive attitude has waned once the cellulitis started taking control over his life and he had many trips to the hospital. When his leg is at its worse, it becomes about twice the size as it normally is and it oozes liquid. "It's all he can do to get from the couch to the washroom never mind out to get groceries or spend time with friends. He at times would be shut in for weeks at a time

depending on the help from friends.” He is looking at his leg being amputated.

- 6) Letter dated October 27, 2015 in which a friend of the appellant wrote that he has been a friend of the appellant’s for 10 years. The appellant’s quality of life has declined rapidly over the past few years and it is a heartbreaking sight. His body decides when it will function, leaving him immobilized and depressed in his home, sometimes for days. His love for life has vanished. He has said how hard it is to get out of bed in the morning, to live with the pain.
- 7) Undated letter in which a friend of the appellant wrote that he has known the appellant for 7 years. When he first met the appellant, he was working and had a clean place. Then he tore both rotator cups (sic) in his shoulder but was still working and “pushing through the pain.” He had to quit his job because his shoulders were getting worse. His house became dirtier and dirtier and he moved his bed downstairs because he was having a difficult time going up and down stairs. The appellant stopped cleaning and cooking as much. He had a chair next to the stove so he could cook and sit down to rest his knees. The appellant started to get depressed and he was not going out anymore. Then the appellant moved in with his sister who had health issues and his life “got a little better.” The appellant is currently battling severe pain in his knees and is trying to look on the positive side- some days are great and other days the pain is too great and he stays home and keeps his legs up; and,
- 8) Photographs of appellant’s lower right leg and foot; upper leg; and upper portion of both legs;

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

- About 5 years ago she noticed a change in the appellant mentally, physically and spiritually, all aspects of his life. Starting last year, he has had severe pain in everything he did although he pretended it was not there. He always makes the best of the day or a situation.
- He was working in a physically-demanding job and she could not see the benefit of his body being put through that.
- Finally the pain became so severe that he no longer has a zest for life, no desire to get up in the morning. He told her that he had days where he was not sure that he wanted to get up the next day to live. There is never a day when there is not severity in his whole body.
- The appellant recently came to live with them. She had some health issues that she asked him to help her with. He was her spiritual coach. He tried to help with juicing but it would take him about 5 hours to do what her husband can do in one hour. He has to constantly shift from leg to leg when he is standing.
- In his previous place, he had not cleaned for months and months. He has a lack of drive because he is in so much pain. He was not vacuuming or washing dishes or taking care of himself. Sometimes going upstairs to the washroom was all he would do in a day.
- She read through the doctor’s information and she does not know how he could say that the appellant can take public transit and get his own groceries. Some things that the doctor says are contradictory.
- He cannot go from the couch to the sink without resting for 15 minutes.

At the hearing, the appellant’s brother-in-law stated that:

- He has known the appellant about 30 years. When they first met, the appellant had a lot of zest and happiness and drive. The appellant worked for him for a while.
- As a young man, the appellant was thrown in the air when he was hit by a car. They wanted to take his legs off at that time.
- He has watched the appellant’s condition deteriorate over the decades.
- When his wife became ill, she retired and the appellant moved in with them to help out. His

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heart was willing to help, but it became clear that his body was not. They have ended up helping each other.

- He went to the appellant's house to move some items and was "appalled" at the condition of the place. He had his bed in the living room and had been living in "horrible conditions."
- The appellant now lives with their son and it is apparent that he "cannot do anything."

At the hearing, the appellant stated that:

- The photograph of the upper portion of both of his legs is from "3 Easters ago" and the other photographs are from approximately 9 months ago. This is what happens to his legs when he pushes himself. The undated letter was written this week by another friend of his.
- There is an error in the psychiatrist's letter when he said that he had both of his knees replaced.
- He wears braces on both knees but his legs have swelled so much that he has to take the braces off. His doctor would not order new braces for him because he said that his legs are "too far gone." The doctor knew he was wearing braces at the time he prepared the reports. He has been using a walker to get around for the last month. The doctor has recommended double knee replacements but has told the appellant that he will likely lose his right leg from the knee down and he does not want to face that possibility right now.
- The doctor would not give him pain medications because of his past history as a drug addict and alcoholic. He got some Tylenol 3's and would take 16 to 20 a day to get through his work. Sometimes he would have to get pain medication "off the street."
- After his friend died, he went into a state of depression and he actually started looking for a gun. He stopped taking medications and ended up at the psychiatrist's office. He could not remember the appointments and missed so many that he cannot go back to the psychiatrist because he owes \$120 for every missed appointment. When he was living in his house, he could not take what was going on and he thought about taking his life. The psychiatrist suggested that he get help through mental health services for the thoughts he has had.
- His doctor did not agree that his impairment is severe but he also wrote in other comments that he is not able to walk and that he cannot use public transit.
- When he was living by himself, he never cleaned his house because he was always in pain. He has not vacuumed or washed floors in 6 years.
- His grooming and bathing is not okay. It takes him 2 to 3 hours to "get started" for the day.
- He is living on prepared meals. He used to entertain and prepare proper meals.
- He needs help with lifting and with carrying and holding.
- He met with the doctor for about 15 minutes to fill out the PWD application and he did not ask much and would not change his response even though the appellant disagreed. For example, the appellant said that he cannot cook proper meals and the doctor said that he does not believe the appellant and that the appellant is independent with this DLA because he can sit down and prepare meals. He is intending to report the doctor to the medical society because he has refused to listen to his problems.
- About 6 to 7 weeks out of the year, he is immobile. Being on his feet a lot can trigger one of these episodes that start with violent shaking and feeling cold. About 5 or 6 days out of each month he has to lie down with his feet up and he only gets up to go to the washroom.
- Every minute of every day, he is in pain at the rate of 6 or more on a scale of 1 to 10 and some days he wants to scream because of the pain. People he has lived with have said that he wakes up screaming but he does not remember it.
- He is in his doctor's office every couple of weeks.

The ministry relied on the reconsideration decision, as summarized at the hearing.

Admissibility of Additional Information

The panel considered most of the oral testimony on behalf of the appellant as well as the letters from the psychiatrist and the appellant's friends as information that corroborates the extent of the appellant's impairment as diagnosed in the PWD application, which was before the ministry at reconsideration. Therefore, the panel admitted this additional information as being in support of information and records that were before the ministry at the time of the reconsideration, in accordance with Section 22(4)(b) of the *Employment and Assistance Act*. The panel did not admit the prescription for a power chair or the oral testimony regarding the use of assistive devices as the evidence at reconsideration was that the appellant does not require an assistive device, and this is not information that tends to substantiate information before the ministry at reconsideration.

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:

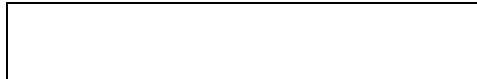
Definitions for Act

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 pain in his knees, lower back and shoulders. The appellant argued that he is a recovering drug addict so his doctor cannot give him the narcotics to relieve his pain, he cannot sit for very long without experiencing pain and stiffness so intense that he wants to scream, he cannot stand for very long because of the same pain, and he spends an extra 6 to 8 hours a day in bed lying down and cannot get or keep a job.

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 general practitioner reported that the appellant is independent in all aspects of mobility and physical ability, namely walking indoors and outdoors, climbing stairs, standing, lifting and carrying and holding, and there is no reported need for assistance or the use of an assistive device. At the hearing, the ministry pointed out that where the evidence of the general practitioner is conflicting, the ministry is not able to be "satisfied" of the severity of the impairment.

Panel Decision

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

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

In the PR, the general practitioner, who has known the appellant for “many years”, diagnosed the appellant with chronic oedema right leg from an old compound fracture, OA of his knees, bilateral rotator cuff repairs with poor results, recurrent DVT, and chronic back pain. The general practitioner wrote that the osteoarthritis in the appellant’s knees, his back pain, shoulder pain, rotator cuff repair and stiffness in his shoulders are “moderately severe.” The general practitioner reported that the appellant is “unable to sit or stand for half an hour [as a result of] severe pain in his back.” He is “unable to lift weight due to back pain and shoulder stiffness and pain.” Although the general practitioner indicated in the AR that the appellant is independent with all aspects of mobility and physical ability, specifically: walking indoors and walking outdoors, climbing stairs, standing, lifting and carrying and holding, he also noted to: “see limitations.”

In assessing the appellant’s functional skills, the general practitioner indicated that the appellant can walk less than one block unaided, climb 2 to 5 steps unaided, lift 5 to 15 lbs. and remain seated less than 1 hour. In the letter signed August 17, 2015, the general practitioner agreed the appellant stated he is not able to walk more than approximately half a block, due to severe low back and knee pain. He agreed the appellant stated he is not able to carry more than 15 lbs. However, the general practitioner disagreed that the appellant stated any amount of walking indoors or outdoors takes him at least 5 times longer than typical due to pain, and asked whether he would agree that the appellant’s condition is severe, that he has significant restrictions with his ADL’s and, as a result, he requires the continuous assistance of another person, he responded “no,” and noted: “...as long as he can get some help when needed, he is OK.” In the section of the AR relating to assistance provided, the general practitioner did not identify any of the listed assistive devices as applying to the appellant and crossed the section out as not applicable to the appellant.

In the self-report, the appellant wrote that he knows the moment he steps down off his bed upon awakening he will experience pain “at a level of 8.5 to 9 from his knees and lower back.” Because he is a recovering drug addict, his doctor cannot give him the narcotics for pain relief and he cannot sit for very long without experiencing pain and stiffness so intense that he wants to scream. He cannot stand for very long because of the same pain. The consistent evidence of the appellant’s friends and family, is that the appellant’s condition and level of functioning has continually deteriorated over the years and that he experiences observable pain, particularly in his legs. The appellant stated at the hearing that about 6 to 7 weeks out of the year, he is immobile due to an episode that starts with violent shaking and feeling cold and often ends up with him in hospital and his legs swollen, as depicted in the photographs. The appellant stated at the hearing that about 5 or 6 days out of each month he has to lie down with his feet up and he only gets up to go to the washroom. In the undated letter, one of the appellant’s friends wrote that the appellant is currently battling severe pain in his knees and that some days are ‘great’ and other days the pain is too great and he stays home and keeps his legs up. The general practitioner did not describe these exacerbations of the appellant’s condition in either the PR or the AR, or when given an opportunity to provide additional information in his letter dated August 17, 2015.

In his self-report, the appellant also concluded that he cannot get or keep a job due to his health conditions. In the letter dated October 24, 2015, a previous employer/ friend of the appellant wrote that he has known the appellant since January 2006 when he hired the appellant and, in the last 5 years he has seen the appellant's ability decrease "to the point of being unemployable." As well, in the additional comments to the PR, the general practitioner wrote that the appellant "...is unfit for any work: and to "please help him." As for finding work and/or working, the panel notes that employability is not a criterion in section 2(2) of the EAPWDA nor is it listed among the prescribed daily living activities in section 2 of the EAPWDR.

Given the conflicting evidence by the general practitioner regarding the appellant's mobility and physical ability, which indicates limitations but reiterates his independence and with no confirmation of exacerbations to his condition, as well as the emphasis on the appellant's inability to work, the panel finds that the ministry reasonably determined that there is not sufficient evidence to establish that the appellant has a severe physical impairment under Section 2(2) of the EAPWDA.

Severe Mental Impairment

The appellant's position is that a severe mental impairment is established by his depression and the resulting lack of motivation.

The ministry's position is that there is insufficient evidence to establish that the appellant has a severe mental impairment as required by Section 2(2) of the EAPWDA. The ministry argued that the general practitioner reported that the impacts to the appellant's cognitive and emotional functioning are moderate and does not describe the degree and duration of the support/supervision that is required for areas of social functioning.

Panel Decision

The general practitioner diagnosed the appellant with depression with no date of onset and wrote that the appellant is "...unable to concentrate, poor memory, poor sleep, feel depressed, lethargic, unable to work." As noted previously, 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 general practitioner reported that the appellant has significant deficits with cognitive and emotional function in the areas of memory, emotional disturbance, motivation, and attention or sustained concentration with no additional comments provided. In terms of the impacts to the appellant's daily cognitive and emotional functioning, the general practitioner indicated moderate impacts in 5 areas, specifically: bodily functions, emotion, attention/concentration, memory, and motivation, with no impact reported for the remaining 8 areas of functioning.

In the letter dated September 29, 2014, a psychiatrist wrote that his impression on mental status examination of the appellant is of moderate depression with suicidal tendencies, history of multiple substance abuse and violence. The recommended management of the condition included continuing with anti-depressant medication and pursuing counseling and psychotherapy. In the appellant's self-report, he wrote that he often thinks of taking his life because of his disability. In assessing his suicidal potential, the psychiatrist reported that this is "not a big risk" until he sees him next in a couple of months. At the hearing, the appellant stated that he missed so many appointments that he cannot return to the psychiatrist because he cannot afford to pay the amount owing for these missed appointments. He has not pursued counseling or any follow up with mental health services.

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 little evidence of significant 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 paying for purchases), meals (meal planning- with no assessment provided for safe storage of food), managing his finances (budgeting and paying rent and bills), managing medications (taking as directed and safe handling and storage), and transportation (using transit schedules and arranging transportation). The 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 reported in the AR that the appellant requires periodic support/supervision with several aspects of social functioning, including developing and maintaining relationships, interacting appropriately with others, and securing assistance from others, and there is an indication of marginal functioning in the appellant's immediate and extended social networks. The general practitioner did not provide further explanation or description to indicate how often this support/supervision is required and for how long. The general practitioner reported that the appellant has no difficulty with communication and has a good ability to communicate in all areas, specifically: speaking, reading, writing, and hearing.

Given the lack of evidence of significant impacts to the appellant's cognitive and emotional functioning as well as the lack of evidence from the general practitioner of the extent of impacts to, and the duration and frequency of the support/supervision required for, the appellant's social functioning, the panel finds that the ministry reasonably determined that a severe mental impairment was not established under Section 2(2) of the EAPWDA.

Restrictions in the ability to perform DLA

The appellant's position is that his physical and mental impairments directly and significantly restrict his ability to perform DLA on an ongoing basis to the point that he requires the significant assistance of another person, specifically his family.

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 does not describe the frequency or duration of the periods when the appellant requires assistance with his DLA in order for the ministry to determine whether they represent a significant restriction to the appellant's overall level of functioning.

Panel Decision

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

In the appellant's circumstances, the general practitioner reported that the appellant has not been prescribed medications and/or treatments that interfere with his ability to perform daily living activities.

The general practitioner indicated that the appellant is independent with walking indoors and with walking outdoors, with a comment: "see limitations." The general practitioner assessed functional skills limitations in the PR and reported that the appellant can walk less than one block unaided and, in his letter dated August, 2015, clarified that the appellant can walk no more that about half a block unaided due to his back and knee pain.

In the AR, the general practitioner reported that the appellant is independent with all of the listed tasks of all of the listed DLA. For the personal care DLA, the general practitioner indicated that appellant is independent with all tasks and also added notes indicating some difficulty with particular tasks, such as grooming: the appellant "cannot put socks on", bathing: he "cannot wash feet", toileting: he "has to stand to wipe behind", feeding self: he "can't stand, has to eat prepared food" In the letter signed August 17, 2015, the general practitioner indicated that he disagreed that the appellant stated he only showers 2 times per week because of the pain it causes and that his hygiene is neglected. The general practitioner indicated that the appellant takes longer with the task of grooming in that he agreed that the appellant stated he must sit to dress and it takes him about 20 minutes because pain slows him down and that he has to stand in order to clean himself after toileting since he is not able to reach behind himself in a seated position. He indicated that the appellant takes longer with the task of transfers in/out of bed in that he agreed the appellant stated it takes him approximately 10 to 15 minutes to get out of bed and his body is very stiff and in pain after resting.

For the basic housekeeping DLA, the general practitioner indicated that the appellant is independent with housekeeping and laundry and added a note that the appellant "never vacuumed for 3 years, owns vacuum." At the hearing, the appellant's sister stated that in the appellant's previous house, he had not cleaned for months and months and he was not vacuuming or washing dishes or taking care of himself. The appellant's brother-in-law stated that he went to the appellant's house to move some items and was "appalled" at the condition of the place; the appellant had moved his bed into the living room and had been living in "horrible conditions." In the undated letter, the appellant's friend wrote that he has known the appellant for 7 years and when he first met the appellant, he was working and had a clean place; after the appellant tore both rotator cups (sic) in his shoulder, he had to quit his job and his house became dirtier and dirtier and then he stopped cleaning. In the letter signed August 17, 2015, the general practitioner disagreed that the appellant stated his sister does his laundry for him since bending and reaching into the washer/dryer are too difficult. The general practitioner agreed that the appellant stated that he has not cleaned his bathroom or vacuumed in years and he has never washed his floor, basic housework requires movements that he is prevented in doing due to pain and his sister changes his sheets for him.

Regarding the shopping DLA, the general practitioner indicated that the appellant is independent with all tasks and added notes indicating he performs the tasks within his limitations and for carrying purchases home, he carries only "light loads." In the letter signed August 17, 2015, the general practitioner indicated that he agreed that the appellant stated that the only way he can go shopping is if the store has a scooter because he cannot walk through it and he needs help to carry his purchases.

For the meals DLA, the general practitioner indicated that the appellant is independent with 3 of 4 tasks and no assessment was provided by the general practitioner for the task of safe storage of food. The general practitioner added a note that it takes the appellant longer for the task of cooking, specifically it takes the appellant "4 times as long to cook meals." In the letter signed August 17,

2015, the general practitioner disagreed that the appellant stated that he does not cook or prepare meals and he only eats items that are microwave/reheat ready, with a note added by the general practitioner that the appellant "...can sit on a chair and prepare meal and cook." In the undated letter, the appellant's friend noted that the appellant had a chair next to the stove in his previous house so he could cook and sit down to rest his knees.

The appellant did not take issue with the general practitioner's assessment of independence for the DLA of "pay rent and bills" and managing medications. For the transportation DLA, the general practitioner indicated that the appellant is independent with all tasks and added a note that the appellant "cannot use public transit." In the letter signed August 17, 2015, the general practitioner agreed that the appellant stated that he cannot use public transit; he is not able to walk to the stop or stand and wait. In the letter signed August 17, 2015, when asked whether he would agree that the appellant's condition is severe, that he has significant restrictions with his ADL's and, as a result, he requires the continuous assistance of another person, he responded "no," and noted: "...as long as he can get some help when needed, he is OK."

In the appellant's self-report, he wrote that his family has taken him in to help him. He was not able to take good care of himself and they help, and he cannot get or keep a job. As previously mentioned, the panel finds that employability is not a criterion in section 2(2) of the EAPWDA nor is it listed among the prescribed daily living activities in section 2 of the EAPWDR. Also, as previously discussed, the evidence does not clearly indicate that the appellant is significantly restricted in either DLA specific to mental impairment, namely decision making or social functioning.

Considering the evidence of the general practitioner as the prescribed professional, the panel finds that the ministry was reasonable to conclude that most of the tasks of DLA are performed by the appellant independently, although the narrative indicated the appellant is unable to perform some tasks such as housekeeping and taking public transit and that some tasks such as grooming , transfers in/out of bed, and cooking take him longer. Some tasks are also performed by the appellant with modification, such as carrying light loads of groceries and sitting on a chair to prepare meals and cook. Based on these discrepancies, there is insufficient evidence from the prescribed professional to show that the appellant's overall ability to perform his DLA is significantly restricted either continuously or periodically for extended periods, pursuant to Section 2(2)(b)(i) of the EAPWDA.

Help to perform DLA

The appellant's position is that his physical and mental impairments significantly restrict his daily living functions to a severe enough extent that significant assistance is required from his family.

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

Panel Decision

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

In the AR, the general practitioner reported that the appellant's family provides the assistance required with DLA. At the hearing, the appellant's brother-in-law stated that the appellant moved in

with them so the appellant could help his sister, but they ended up “helping each other.” 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 crossed the section out as not applicable.

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

Conclusion

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