PART C – Decision under Appeal

The decision under appeal is the Ministry of Social Development and Social Innovation (the ministry) reconsideration decision dated September 15, 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 dated April 23, 2015, a physician report (PR) and an assessor report (AR) both dated May 3, 2015 and both completed by a general practitioner who has known the appellant since 2013, or approximately 2 years. In completing the AR, the general practitioner indicated that an office interview with the appellant was the only approaches and information source used and there was no home or other assessment, no reference to family/friends/caregivers or other professionals or community service, or to file/chart information.

The evidence also included the Request for Reconsideration dated August 31, 2015, which attached the following documents:

1) CT scan report dated January 24, 2015 for CT of the appellant's abdomen and pelvis, with an impression of cirrhosis with portal hypertension.
2) CT scan report dated January 24, 2015 for CT of the appellant's head and an impression of no acute intracranial findings.
3) CT scan report dated January 24, 25 and 26, 2015 for CT of the appellant's chest with an impression of no acute intrathoracic findings. No significant change when compared with previous examination. Right –sided internal jugular catheter had been placed.
4) Hospital Discharge Summary dated January 25, 2015 indicating the appellant was being discharged to the care of his family and to the Recovery House for further treatment of his substance abuse. He was admitted due to taking a medication overdose. He also had a recent admission in early January 2015 for alcoholic hepatitis after 2 years of sobriety. His renal function recovered and is back in the normal range and he is medically stable.
5) Internal Medicine Consultation report dated January 25, 2015 indicating the appellant is somewhat confused and a poor historian. The issues included acute liver failure, medication overdose, acute kidney injury, and abdominal pain not yet determined.
6) Nephrology Consultation report dated January 27, 2015 with an impression of acute kidney injury which is likely multifactorial. He is still actively drinking which would preclude him from a liver transplant.
7) Urology Consultation report dated January 28, 2015 indicating mild right hydronephrosis, minimum left hydronephrosis, cause unknown. Renal failure, portal hypertension with cirrhosis, possibility of intrinsic renal disease. He may even represent hepatorenal syndrome.
8) CT scan report dated January 29, 2015 for a renal CT with findings that there are cysts in the upper pole of the right kidney and the left kidney is not well visualized. No hydronephrosis is seen on either side.
9) CT scan report dated July 16, 2015 for CT of the appellant's abdomen with an impression of "cirrhosis with portal hypertension has already been described on the January 25, 2015 report."
10) Medical imaging report dated August 15, 2015 for the appellant's lumbar spine, sacrum and coccyx with an impression of "old moderate compression fracture of L2. Degenerative disc disease. Cholelithiasis."
11) Letter dated August 18, 2015, in which the general practitioner wrote that the appellant has chronic back pain and the X-Ray shows an old compression fracture. He is unable to lift heavy loads and he is unable to sit and stand for prolonged periods of time. The appellant also had a CT abdomen and shows cirrhosis (liver failure) and gallstones. The appellant will be seeing a GI specialist. He also has diabetes and depression. He has low energy, low mood, unable to focus, and insomnia. "Due to these conditions patient is unable to work. Patient is totally disabled."

Diagnoses
In the PR, the appellant was diagnosed by the general practitioner with back pain and cirrhosis, alcohol abuse, depression and anxiety, with no dates of onset provided. 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 "…history alcohol abuse, depression, anxiety, back pain, ankle pain. "

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

- In terms of health history, the appellant "…states has chronic back pain for 7 to 8 years; patient can't lift any heavy loads. Patient states history disc herniation; can't sit or stand for prolonged period of time; has paresthesia in feet sometimes; patient states has ankle pain- had surgery on it; patient also in Recovery House, was in hospital recently, being evaluated for cirrhosis… patient was approved for disability in [another province]."
- The appellant does not require any prosthesis or aid for his impairment.
- In terms of functional skills, the appellant can walk less than a block unaided, climb 5 or more steps unaided, lift 2 to 7 kg. (5 to 15 lbs.), and remain seated less than one hour.
- In the additional comments, the appellant "had disability in [another province] for 5 years."
- The appellant is assessed as being independent with walking indoors, requiring continuous assistance and taking significantly longer than typical with walking outdoors (note: "can't do long distances"), requiring periodic assistance with climbing stairs (note: "hurts sometimes"), and requiring continuous assistance with standing (note: "can't do prolonged standing"), lifting and carrying and holding (note: "can't lift heavy loads").
- 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.

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

- He has a back problem with a disc and cannot lift any heavy weight. He cannot stand or sit too long.
- He was on disability in another province for the past 5 years.
- He became diabetic due to his alcohol abuse and he was in hospital for over 30 days in January 2015.
- He cannot function properly with very slow walking. He is not healthy and in lots of pain in his back and legs.
- He needs help to live a normal life.

In the letter dated August 18, 2015, the appellant's general practitioner referred to the medical reports attached to the appellant's Request for Reconsideration and indicated:

- The appellant has chronic back pain and the X-Ray shows an old compression fracture. He is unable to lift heavy loads and he is unable to sit and stand for prolonged periods of time.
- The appellant also had a CT abdomen and shows cirrhosis (liver failure) and gallstones. The appellant will be seeing a GI specialist. The appellant also has diabetes.
- "Due to these conditions patient is unable to work. Patient is totally disabled."

In the medical reports attached to the appellant's Request for Reconsideration, the findings also included:

- Cysts in the appellant's right kidney; his renal function recovered and was back in the normal

range.
- The appellant is still actively drinking which would preclude him from a liver transplant.

Mental Impairment

In the PR and AR, the general practitioner reported:
- In terms of health history, the appellant "…also has depression and anxiety. Can't sleep. Unable to focus at times. Patient was approved for disability in [another province]."
- The appellant has no difficulty with communication other than a lack of fluency in English.
- The appellant has significant deficits with cognitive and emotional function in the areas of consciousness, executive, memory, psychotic symptoms, emotional disturbance, motivation, impulse control, motor activity, and attention or sustained concentration. There is no further comment provided by the general practitioner.
- In the additional comments, the appellant "had disability in [another province] for 5 years."
- The appellant has a good ability to communicate in speaking, reading, and hearing, and a satisfactory ability with writing.
- There are no major or moderate impacts to the appellant's cognitive and emotional functioning. There are minimal impacts in the areas of bodily functions, consciousness, emotion, impulse control, attention/concentration, executive, memory, motivation, and motor activity, and no impact in the remaining 5 areas of functioning. The general practitioner did not provide any further comments regarding impacts to cognitive and emotional functioning.
- With respect to social functioning, the appellant is independent in the aspect of securing assistance from others but requires continuous support/supervision with the other 4 aspects, specifically: making appropriate social decisions (note: "sometimes has difficulty"), developing and maintaining relationships (note: "sometimes has difficulty"), interacting appropriately with others (note: "sometimes arguments in Recovery House"), and dealing appropriately with unexpected demands (note: "gets stressed out").
- The appellant has marginal social functioning with his immediate social networks and very disrupted functioning in his extended social networks. The general practitioner did not provide further comments regarding the appellant's functioning or the support/supervision required that would help to maintain him in the community.

In the appellant's self-report, he wrote:
- With family separation, he went into deep depression.
- Drinking alcohol has damaged his liver and he has lots of anxiety attacks.
- He was on disability in another province for 5 years.
- He is presently living in a Recovery House.
- He is not fit mentally and he has lots of issues. He needs help to live a normal life.
- He has lots of fear and he is not healthy at all.

In the letter dated August 18, 2015, the appellant's general practitioner referred to the medical reports attached to the appellant's Request for Reconsideration and indicated:
- He also has depression. He has low energy, low mood, unable to focus, and insomnia.
- "Due to these conditions patient is unable to work. Patient is totally disabled."

In the medical reports attached to the appellant's Request for Reconsideration, the findings also included:
- The hospital Discharge Summary dated January 25, 2015 indicating the appellant was being

discharged to the Recovery House for further treatment of his substance abuse.
- The appellant was admitted to hospital due to taking a medication overdose. He also had a recent admission in early January 2015 for alcoholic hepatitis after 2 years of sobriety.

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 requires continuous assistance and takes significantly longer than typical with walking outdoors, note: "can't do long distances."
- The appellant is independent with all of the listed tasks of the DLA "pay rent and bills" (including banking and budgeting) and the DLA medications (filling/refilling prescriptions, taking as directed, safe handling and storage).
- The appellant is independent with tasks of the personal care DLA (dressing, grooming, bathing, toileting, feeding self, regulate diet), the shopping DLA (reading prices and labels, making appropriate choices, paying for purchases), and most tasks of the transportation DLA (using public transit and using transit schedules and arranging transportation).
- The appellant requires periodic assistance with the task of getting in and out of a vehicle, described as "sometimes back pain limits it."
- The appellant requires continuous assistance with two tasks of the personal care DLA (transfers in/out of bed and on/off chair), the DLA housekeeping (including laundry), described as "friend helps," and with tasks of the DLA shopping (going to and from stores and carrying purchases home), with the comments: "can't do long distances" and "can't do heavy lifting," and most tasks of the meals DLA (meal planning, food preparation, and cooking), described as "needs help with cooking."

In the letter dated August 18, 2015, the appellant's general practitioner referred to the medical reports attached to the appellant's Request for Reconsideration and indicated that "…due to these conditions patient is unable to work. Patient is totally disabled."

Need for Help

In the AR, the general practitioner reported that, with respect to the assistance provided by other people, the appellant receives help from community service agencies. 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.

Additional information

In his Notice of Appeal dated September 25, 2015, the appellant expressed his disagreement with the ministry's reconsideration decision and wrote:
- He has all the hospital and doctors' reports that prove he is a disabled person.
- He received disability benefits in another province.

At the hearing, the appellant stated that:
- When he was admitted to the hospital, the doctor informed his family that he only had 3 hours to live. His heart had stopped and his liver and kidney had failed.
- His memory is not good regarding when things happened. He told his doctor about all his problems when he applied for disability.

- Presently, his liver is not working properly and there are stones in his bladder.
- When he was living in another province, he got "the top level of disability" because of his back and liver problems and they told him his disability would continue in B.C. However, when he came to B.C., he found out he had to make a separate application. His application was rejected so he is on regular income assistance.
- He has been referred to a specialist for his back problems and surgery has been recommended but there are no guarantees and he could "lose his legs also after surgery" and he feels he is too old for surgery.
- He has so many problems, with his back, kidney and liver, and he cannot focus on anything or sit or walk for too long. He can only lift 5 lbs. and he starts feeling pain.
- He takes 8 different medications to control his pain, to sleep and for his high blood sugar level. The dosage of his medications has recently been increased. He is limited in the types of medications he can take because of his conditions.
- He has been living in a Recovery House for the past 3 years because of his addiction to alcohol. His family lives in another province.
- He had a family doctor in the other province that he had known for about 9 years, but none of his medical records were transferred to the doctor in B.C. In the other province, his doctor simply wrote a letter and he received disability.
- Friends who are in receipt of disability assistance told him that he has so many medical problems that he should have no difficulty getting PWD designation.
- He got one of his friends to write out the self-report for him because of his difficulties writing.
- He met with his doctor and the doctor asked him about his problems, such as whether he is able to get dressed in the morning, and he responded. He has a hard time focusing because of his back pain and addiction problems.
- He has received counseling for his addiction at the Recovery House.
- He sees the doctor at least once per month to get his medications, and often more like 3 or 4 times per month although he cannot remember specifically. His doctor has recently said that the appellant's conditions have worsened since the time of the PWD application.

The ministry relied on the reconsideration decision, as summarized at the hearing. At the hearing, the ministry provided the following additional documents that were inadvertently omitted from the Record of the ministry's decision:

1) Ministry's Quick Reference Guide for Assisting Clients with Reconsideration;
2) Request for Reconsideration document;
3) Letter dated July 24, 2015 to the appellant in which the ministry denied PWD designation;
4) Original Decision Summary dated July 24, 2015; and,
5) PWD Application, including the appellant's self-report, the PR and the AR.

Admissibility of Additional Information

The appellant did not object to the admissibility of the ministry's additional documents. The panel considered the ministry's additional documents as information and records that were before the ministry at reconsideration and admissible under Section 22(4)(a) of the *Employment and Assistance Act* (EAA). The panel considered the appellant's oral testimony as information that corroborates the appellant's previous written testimony, 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 *EAA.*

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 pain due to his many serious medical conditions and the fact that he was accepted for disability for 5 years in another province. The appellant argued that he walks slowly, he cannot lift any heavy weight and cannot stand or sit too long. The appellant argued that he is not healthy and in lots of pain in his back and legs and he needs help to live a normal life.

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 reiterated the appellant's evaluation of his condition and is not satisfied that the assessment is a medical opinion. The ministry argued that if the appellant's back pain was considered severe, there would be evidence of a referral to a specialist or the use of an aid for his impairment. The ministry argued that the general practitioner referred in his August 18, 2015 letter to the appellant's inability to work, the PWD application is not intended to assess employability or vocational abilities and a medical barrier to the appellant's ability to engage in paid employment is not a legislated criterion for severity. At the hearing, the ministry argued that the appellant's approval for disability in another province does not transfer to B.C. and is not conclusive for the determination of PWD designation in B.C. since the legislation and criteria are likely different.

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 had known the appellant for approximately 2 years, diagnosed the appellant with back pain and cirrhosis, with no dates of onset provided. In the AR, the general practitioner also referred to ankle pain. In terms of functional skills, the general practitioner indicated in the PR that the appellant can walk less than a block unaided, climb 5 or more steps unaided, lift 5 to 15 lbs., and remain seated less than one hour. The general practitioner wrote in the PR that the appellant "…*states* has chronic back pain for 7 to 8 years; patient can't lift any heavy loads. Patient *states* history disc herniation; can't sit or stand for prolonged period of time; has paresthesia in feet sometimes; patient *states* has ankle pain- had surgery on it; patient also in Recovery House, was in hospital recently, being evaluated for cirrhosis." [emphasis added] At the hearing, the appellant stated that when he was admitted to the hospital, the doctor informed his family that he only had 3 hours to live, that his heart had stopped and his liver and kidney had failed. In the medical reports attached to the appellant's Request for Reconsideration, the findings also included cysts in the appellant's right kidney; however, his renal function recovered after his hospital stay and was back in the normal range upon his discharge.

In completing the AR, the general practitioner also indicated that an office interview with the appellant was the only approaches and information source used and there was no home or other assessment, no reference to family/friends/caregivers or other professionals or community service, or to file/chart information. The panel finds that the ministry reasonably determined that the general practitioner does not clearly provide a medical opinion where he defers to the appellant's assessment regarding his medical history and past experience, which is particularly problematic in light of the comments in the Internal Medicine Consultation report dated January 25, 2015 that the appellant was "somewhat confused and a poor historian." At the hearing, the appellant acknowledged that his memory is not good regarding when things happened.

At the hearing, the appellant stated that he has been referred to a specialist for his back problems and surgery has been recommended but there are no guarantees and he could "lose his legs also after surgery" and he feels he is too old for surgery. The appellant also stated that his doctor has recently said that the appellant's conditions have worsened since the time of the PWD application. However, there were no further specialist reports or updated medical reports provided on the appeal.

In the AR, the general practitioner assessed the appellant as being independent with walking indoors, requiring continuous assistance and taking significantly longer than typical with walking outdoors (note: "can't do long distances"), requiring periodic assistance with climbing stairs (note: "hurts sometimes"), and requiring continuous assistance with standing (note: "can't do prolonged standing") and lifting and carrying and holding (note: "can't lift heavy loads"). The panel finds that the ministry

reasonably pointed to the narrative by the general practitioner as demonstrating a need for assistance with “long” distances, “prolonged” standing, and “heavy loads”, without explaining or describing these terms. In the appellant’s self-report, he wrote that he has a back problem with a disc and cannot lift any “heavy” weight, he cannot stand or sit “too long” and he cannot function properly with very “slow” walking. At the hearing, the appellant stated that he can only lift 5 lbs. and he starts feeling pain. Considered within the assessed functional skills range, it may be that “long” distances are more than one block unaided, “heavy” loads are more than 15 lbs., “prolonged” sitting is more than one hour, and assistance is required by the appellant when climbing more than 5 steps, although it is not clear. The general practitioner reported that the appellant does not require an aid for his physical impairment and does not require an assistive device.

In the letter dated August 18, 2015, the appellant’s general practitioner referred to the medical reports attached to the appellant’s Request for Reconsideration and indicated that the appellant has chronic back pain, the X-Ray shows an old compression fracture, and he is unable to lift “heavy” loads and he is unable to sit and stand for “prolonged” periods of time. The general practitioner wrote that the appellant also had a CT abdomen and shows cirrhosis (liver failure) and gallstones, and the appellant will be seeing a GI specialist. The reports noted that the appellant is still actively drinking which would preclude him from a liver transplant, but there is no further information regarding the extent of his cirrhosis or the results of any subsequent investigations by a GI specialist. The general practitioner also indicated that the appellant has diabetes.

In the letter dated August 18, 2015, the appellant’s general practitioner concluded that, due to the appellant’s several medical conditions, he is unable to work and “is totally disabled.” The panel finds that the reference to being “totally disabled” is associated with the appellant’s inability to work and the ministry reasonably considered 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. As the legislative criteria for disability designation are likely different in a province outside B.C., the panel finds that the ministry reasonably placed little weight on the appellant’s statement that he had disability in another province for 5 years.

Although the functional skill limitations as assessed by the general practitioner in the PR point to some restrictions to the appellant’s mobility and physical ability, these have been tempered with the narrative added by the general practitioner in the AR. With the emphasis by the general practitioner on the appellant’s disability status in another province as well as his 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.

<u>Severe Mental Impairment</u>

The appellant’s position is that a severe mental impairment is established by the fear and anxiety attacks due to his alcohol abuse, depression and anxiety. The appellant argued that with family separation, he went into deep depression, and he is not fit mentally and he has lots of issues. The appellant argued that he needs help to live a normal life.

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 assessed minimal or no impact to the various areas of the appellant’s cognitive and emotional functioning and the ministry placed weight on the absence of a referral to a mental health expert or a mental health assessment.

Panel Decision

The general practitioner diagnosed the appellant with alcohol abuse, depression and anxiety, with no dates of onset provided. The general practitioner reported in the PR that the appellant "…can't sleep. Unable to focus at times. Patient was approved for disability in [another province]." The general practitioner indicated that the appellant has significant deficits with cognitive and emotional function in several areas, specifically: consciousness, executive, memory, psychotic symptoms, emotional disturbance, motivation, impulse control, motor activity, and attention or sustained concentration. There is no further comment provided by the general practitioner and, when assessing the impacts to functioning, the general practitioner reported that there are no major or moderate impacts to the appellant's cognitive and emotional functioning. The general practitioner indicated that there are minimal or no impacts in all areas of functioning.

The hospital Discharge Summary dated January 25, 2015 indicated that the appellant was being discharged to the Recovery House for further treatment of his substance abuse and that the appellant had been admitted to hospital due to taking a medication overdose. He also had a recent admission in early January 2015 for alcoholic hepatitis after 2 years of sobriety. In the appellant's self-report, he wrote that with family separation he went into deep depression, drinking alcohol has damaged his liver and he has lots of anxiety attacks. The appellant stated at the hearing that he is presently living in a Recovery House, he is not fit mentally and he has lots of issues, and he needs help to live a normal life. Although there are pointers to the seriousness of the appellant's conditions and the appellant stated that he has received counseling for his addiction at the Recovery House, the general practitioner did not refer to any medication or other treatment for the appellant's mental health condition, or to a referral to a mental health specialist. In the letter dated August 18, 2015, the appellant's general practitioner referred to the medical reports attached to the appellant's Request for Reconsideration and indicated that the appellant has depression with low energy, low mood, unable to focus, and insomnia. The general practitioner wrote that due to these conditions the appellant is unable to work and he is "totally disabled." As previously mentioned, the panel finds that the reference to being "totally disabled" is associated with the appellant's inability to work and the ministry reasonably considered that employability is not a criterion in section 2(2) of the EAPWDA.

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 consistent evidence of impacts to either. The general practitioner assessed most decision-making components of DLA as independent, specifically personal care (regulate diet), shopping (making appropriate choices and paying for purchases), meals (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 indicated that the appellant requires continuous assistance from another person with the task of meal planning and wrote "needs help with cooking." The general practitioner also reported in the AR that the appellant requires continuous support/supervision with making appropriate social decisions and commented "sometimes has difficulty" without defining how often the difficulty occurs.

Regarding the DLA of social functioning, the general practitioner indicated the appellant is independent in the aspect of securing assistance from others but requires continuous support/supervision with developing and maintaining relationships (note: "sometimes has difficulty"), and interacting appropriately with others (note: "sometimes arguments in Recovery House"). The

appellant has marginal social functioning with his immediate social networks and very disrupted functioning in his extended social networks; however, the general practitioner did not provide further comments regarding the frequency of the appellant's difficulties or the support/supervision required that would help to maintain him in the community. The general practitioner reported that the appellant has no difficulty with communication and has a good or satisfactory ability to communicate in all areas.

Given the lack of consistent evidence of significant impacts to the appellant's cognitive and emotional and social functioning and the emphasis by the general practitioner on the appellant's disability status in another province and his inability to work, the panel finds that the ministry reasonably determined that a severe mental impairment was not established under Section 2(2) of the EAPWDA.

Restrictions in the ability to perform DLA

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

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 it was not satisfied that the general practitioner's assessment of the appellant's ability to perform DLA was consistent with the assessment of his mobility and physical abilities.

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 requires continuous assistance and takes significantly longer than typical with walking outdoors, that he cannot "do long distances" and does not require an aid for his impairment. The appellant is assessed as independent with all of the listed tasks of the DLA "pay rent and bills" (including banking and budgeting) and the DLA medications (filling/refilling prescriptions, taking as directed, safe handling and storage). The appellant is independent with most tasks of the personal care DLA, the shopping DLA, and the transportation DLA. The general practitioner reported that the appellant requires periodic assistance with the task of getting in and out of a vehicle, described as "sometimes back pain limits it," with no explanation provided for the frequency or duration of the limits.

The general practitioner indicated that the appellant requires continuous assistance with two tasks of the personal care DLA (transfers in/out of bed and on/off chair), the DLA housekeeping (including laundry), described as "friend helps," and with the physical tasks of the DLA shopping (going to and from stores and carrying purchases home), with the comments: "can't do long distances" and "can't

do heavy lifting," and most tasks of the meals DLA (meal planning, food preparation, and cooking), described as "needs help with cooking." As previously discussed, the panel finds that the ministry reasonably concluded that the general practitioner has not clearly defined the extent of the appellant's mobility and physical ability as a result of his use of descriptive language such as "long distances" and "heavy lifting."

In the letter dated August 18, 2015, the appellant's general practitioner referred to the medical reports attached to the appellant's Request for Reconsideration and indicated that "…due to these conditions patient is unable to work. Patient is totally disabled." As previously mentioned, the panel finds that the reference to being "totally disabled" is associated with the appellant's inability to work and the ministry reasonably considered 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, which included minimizing descriptive comments regarding the appellant's physical limitations, the panel finds that the ministry was reasonable to conclude that there was a lack of detail and consistency and, therefore, the evidence is insufficient to show that the appellant's overall ability to perform his DLA is significantly restricted either continuously or periodically for extended periods, pursuant to Section 2(2)(b)(i) of the EAPWDA.

Help to perform DLA

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

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. The ministry argued that no assistive devices are required by the appellant.

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, with respect to the assistance provided by other people, the appellant receives help from community service agencies. At the hearing, the appellant stated that a friend helped him write out his self-report and that he receives counseling for his addiction at the Recovery House. In the section of the AR for identifying assistance provided through the use of assistive devices, the general practitioner did not identify any of the listed items as being applicable to the appellant.

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

Conclusion

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