

PART C – Decision under Appeal

The decision under appeal is the Ministry of Social Development and Social Innovation (the “ministry”) reconsideration decision of October 2, 2015, which found that the appellant did not meet three of five statutory requirements of section 2 of the *Employment and Assistance for Persons With Disabilities Act* (“EAPWDA”) for designation as a person with disabilities (“PWD”). The ministry found that the appellant met the age requirement and that in the opinion of a medical practitioner the appellant’s impairment is likely to continue for at least two years. However, the ministry was not satisfied that:

- 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 that
- as a result of those restrictions, the appellant requires the significant help or supervision of another person, an assistive device, or the services of an assistance animal.

PART D – Relevant Legislation

EAPWDA, section 2

Employment and Assistance for Persons with Disabilities Regulation (“EAPWDR”), section 2

PART E – Summary of Facts

The information before the ministry at the time of reconsideration included the following:

- The appellant's PWD application form consisting of the appellant's self-report form dated March 10, 2015 ("SR"), a physician's report ("PR") completed by the appellant's general practitioner (the "physician") on May 25, 2015; and an assessor's report ("AR") completed by a social worker (the "Assessor") on April 2, 2015.
- Report from the appellant's rheumatologist (the "Rheumatologist") dated August 20, 2010 (Assessment #1)
- Report of the appellant's endocrinologist (the "Endocrinologist") dated November 2, 2010 (Assessment #2)
- Report of the Endocrinologist dated March 8, 2011 (Assessment #3)
- Letter from the Endocrinologist dated March 22, 2011 (Assessment #4)
- Report of the Rheumatologist dated October 6, 2011 (Assessment #5)
- Report of the Rheumatologist dated March 1, 2012 (Assessment #6)
- Report of the Rheumatologist dated June 12, 2012 (Assessment #7)
- Report of the Rheumatologist dated February 26, 2013 (Assessment #8)
- Report of the Rheumatologist dated October 31, 2013 (Assessment #9)
- Report of the Rheumatologist dated September 30, 2014 (Assessment #10)
- The appellant's Request for Reconsideration ("RFR") form dated September 2, 2015. The RFR states that the facts are not totally correct, that his physician did not include information about his cortisone treatments, and that his "aches and pains" are from numerous fractures before he was diagnosed with osteoporosis, not from growth hormone deficiency.

Diagnoses

- In the PR the physician (who has known the appellant since June 2010 and has seen him 11 or more times in the past 12 months) diagnosed the appellant with early childhood growth hormone deficiency (onset 42 years ago); osteoporosis (date of onset not indicated); shoulder, hips and knee arthritis (onset 5 years ago); and anxiety disorder (date of onset 10+ years).
- In the Health History portion of the PR the physician indicates that the appellant was diagnosed with growth hormone deficiency which affected him with very loss body height as compared to his ongoing adult age which affected him socially, physically and mentally.
- In the AR, the Assessor states that the appellant's physical or mental impairments that impact his ability to manage DLA are: osteoporosis (9 years), bursitis in right shoulder and both hips, and chronic back pain (8 years).

Physical Impairment

- In the Health History portion of the PR the physician indicates that the appellant was diagnosed with growth hormone deficiency which affected him with very loss body height as compared to his ongoing adult age which affected him socially, physically and mentally. The physician indicates that the appellant suffers osteoporosis. He explains that the appellant is dealing with daily aches and pains in his shoulder, knees and hips due to worsening arthritis and that he has to wear a knee brace for his mobility. The physician also indicates that he got

steroid injections for his knee.

- In terms of physical functioning, the physician reported in the PR that the appellant can walk 2 to 4 blocks unaided, can climb 5+ steps unaided, can lift under 5 pounds, and can remain seated for 1 to 2 hours.
- In the AR the Assessor indicates that the appellant is independent with standing, but takes significantly longer than typical with walking indoors (2x longer due to pain in hips, knees and back), walking outdoors (4x longer due to pain in hips, knees and back), climbing stairs (2x slower and must use handrails), lifting (tries to avoid lifting due to extreme pain in back and both hands), and carrying and holding (can only carry no more than 5-10 pounds due to pain in his back, left knee and hands). The Assessor comments that the appellant experiences extreme pain in his hips, left knee, back and hands which limits his physical abilities, necessitating him to rely on others to help him with physical tasks.
- Assessment #1 indicates that the appellant has severe osteoporosis with prevalent fractures and pituitary dwarfism. Assessment #2 indicates that the appellant was diagnosed with growth hormone deficiency at age five, treated with hormone injections from ages 5 to 15, has been recently diagnosed with osteoporosis, and has a history of multiple fractures.
- Assessments #3 and #4 indicates that the appellant has a growth hormone deficiency which is likely one of the major causes of his osteoporosis.
- Assessment #5 indicates that the appellant has severe osteoporosis with multiple prevalent fractures, chronic pain related to multiple fractures and that he cannot do any type of work that requires physical work and puts him at risk of re-fracturing. The Rheumatologist also indicates that the appellant was going to seek Canada Pension Plan disability.
- Assessment #6 indicates that the appellant has severe osteoporosis with multiple prevalent fractures and weight bearing exercises were recommended.
- Assessment #7 indicates that the appellant has recurrent rotator cuff tendonitis in his left shoulder (injected with Depo-Medrol) and that a referral was made for an adjustment to his left knee brace.
- Assessment #8 indicates that the appellant has been using knee braces which help.
- Assessment #9 indicates that the appellant has right rotator cuff tendonitis with good improvement since February 2013 but the symptoms have been recurring so his shoulder was reinjected. The Rheumatologist also indicates that the appellant had right hip trochanteric bursitis for which stretching exercises were recommended.
- Assessment #10 indicates that the appellant has left trochanteric bursitis (injected with Depo-Medrol).

Mental Impairment

- In the Health History portion of the PR the physician commented that the appellant suffers from anxiety disorder.
- The PR indicates that the appellant does not have difficulties with communication.
- In the PR the physician indicated that the appellant suffers from significant deficits in one of twelve categories of cognitive and emotional function in the area of emotional disturbance. The physician comments that the appellant's compromised height and weight always give him anxiety which is aggravated by ongoing body pains.
- In the AR the Assessor indicates that the appellant's ability to communicate with speaking, reading, writing and hearing are all good.

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- For question 4 of section B, Mental or Physical Impairment the Assessor reports that the appellant has major impact to bodily functions (pain in body), moderate impact to attention/concentration (lack of sleep and meds), minimal impact to consciousness (due to lack of sleep), emotion, memory and motivation (due to lack of sleep and periods of depression), and motor activity. The Assessor reports that there is no impact to the appellant's impulse control, insight and judgment, executive, language, psychotic symptoms, other neuropsychological problems and other emotional or mental problems. The Assessor comments that the appellant struggles most days with feeling alert and with his concentration due to lack of sleep due to pain and the medications he is on. The Assessor also comments that the appellant goes through periods of depression due to constant pain, is often housebound, and feels cooped up and that plays on his mental health.

DLA

- In the PR the physician indicated that the appellant has not been prescribed medication or treatment that interferes with his ability to perform DLA.
- In the PR the physician reported that the appellant is not restricted with personal self-care, meal preparation, management of medications, mobility inside or outside the home, use of transportation, management of finances or social functioning. The physician indicates that the appellant is periodically restricted with respect to basic housework and daily shopping, explaining that the appellant needs other people to help him carry his groceries.
- In the PR, under Part F – Additional Comments, the physician indicates that the appellant has anxiety disorder and ongoing pain secondary to osteoporosis and arthritis affecting him on a daily basis. The physician indicates that on some days the appellant is unable to do anything for his daily function unless helped by someone.
- In the AR, with respect to personal care, the Assessor indicates that the appellant is independent with grooming, toileting, feeding self and regulating diet (noting that he takes significantly longer than typical with regulating diet due to lack of motivation). The Assessor indicates that the appellant takes significantly longer with dressing (4x slower because of bending due to back pain), bathing (4x slower due to pain and stiffness and struggles with bending), and transfers (in/out of bed), noting 4x slower due to pain in his hips and back. The Assessor indicates that for transfers (on/off of chair) the appellant uses an assistive device, noting that he must use arm rests to push himself out of chair.
- For basic housekeeping, the Assessor indicates that the appellant takes significantly longer with laundry (3x longer because it is painful to bend) and basic housekeeping (4x longer to vacuum and wash floors because of severe pain in his back, right shoulder, hips, hands and left knee).
- For shopping, the Assessor indicates that the appellant is independent with reading prices and labels, making appropriate choices and paying for purchases but requires continuous assistance with going to and from stores and carrying purchases home, explaining that he requires someone to drive him to and from the store and carry his purchases home. The Assessor comments that due to his severe pain in his back, left knee, right shoulder and hands, he needs assistance to do any shopping. The Assessor also notes that he does minimal housekeeping and laundry because it is too daunting due to his pain.
- For meals, the Assessor indicates that the appellant is independent with safe storage of food but that he takes significantly longer with meal planning (picking meals that are easy to prepare because he cannot stand for very long), food preparation and cooking, explaining that he takes 4x longer, tries to have food prep minimal due to pain and struggles with standing,

chopping and opening cans.

- The Assessor indicates that the appellant is independent with banking, budgeting, and paying rent and bills.
- For medications, the Assessor indicates that the appellant is independent with filling/refilling prescriptions and safe handling and storage of medications but that he takes significantly longer than typical with taking medications as directed as he will take more than prescribed at times because his pain can get out of control.
- For transportation the Assessor indicates that the appellant is independent when using public transit and using transit schedules and arranging transportation but that he is 2x slower with getting in and out of a vehicle as he must go slowly and hold on to things to get in and out due to pain in his hips.
- The Assessor indicates that the appellant is independent with all aspects of social functioning and has good functioning with his immediate and extended social networks.

Help

- In the PR the physician reports that the appellant requires a prosthesis or aids for his impairment as he wears a knee brace. The physician indicates that the appellant needs some personal help for his household work and a knee brace.
- In the AR the Assessor indicates that the appellant is provided help from friends and uses a brace. The appellant does not have an assistance animal.

Additional information provided

In his Notice of Appeal the appellant states that he disagrees with the ministry's reconsideration decision because the information he has supplied indicates that his condition is severe in nature and his DLA are significantly restricted.

Prior to the hearing the appellant's advocate provided a letter from an Orthotist dated October 26, 2015 indicating that the appellant has been using a custom made left knee orthoses full time for the past three years and that he is unable to weight bear on the left leg with any degree of stability without his custom knee brace. The Orthotist states that the left knee orthosis allows the appellant to be independent and gives him the proper support to ambulate and participate in DLA. The Orthotist further states that he does not anticipate that the appellant will be able to go without his knee brace in the future and will require it for all weight bearing activities.

The advocate also provided a letter from the appellant's sister and brother in law dated October 20, 2015 which indicates that they have observed the deterioration in the appellant's condition over the last few years, have accompanied him to his specialist appointments and that due to his pain he is not able to work or participate in the activities he once did. They indicate that in the last year his personality, energy and humor have faded as he struggles with stairs and other simple tasks.

At the hearing the appellant provided oral evidence that he has used a knee brace daily since 2009, that he needs someone to help him to and from the food bank, that he has difficulties with housework and shopping due to the pain from his osteoporosis, previous fractures, shoulder bursitis, back, hip and left leg pain. The appellant advised that he does not agree with the information reported by the physician in the PR in that he is unable to walk any distance or go upstairs unaided as he requires a knee brace for his mobility. The appellant also stated that he is not able to sit for 1 to 2 hours as

reported by the physician and that some days he does not get out of bed. The appellant stated that he has good and bad days with approximately 5 days a month that are bad. He has to rely on friends to get to and from shopping and he needs help with laundry. The appellant stated that there is a Laundromat half a block away and because he has difficulty bending over to get his clothes out of the washer the employee there will help him to do that. The appellant also stated that the information from the physician regarding his DLA is not correct as he is restricted with respect to his mobility inside and outside the house.

Admissibility of New Information

The ministry objected to the letters from the Orthotist and the appellant's sister and brother in law on the basis that the ministry did not have that information at the time of reconsideration. The panel has admitted the appellant's oral testimony, letter from the Orthotist, and the letter from the appellant's sister and brother in law, as it is evidence in support of information and records that were before the ministry at the time of reconsideration, in accordance with section 22(4) of the *Employment and Assistance Act*. In particular, the new information corroborates the information at reconsideration respecting the appellant's impairment, his ability to perform DLA, and help needed.

The ministry relied on the reconsideration decision.

PART F – Reasons for Panel Decision

The issue on this appeal is whether the ministry's decision to deny the appellant designation as a PWD was reasonably supported by the evidence or was a reasonable application of the applicable enactment in the circumstances of the appellant. In particular, was the ministry reasonable in determining that the appellant does not have a severe physical or mental impairment, and that in the opinion of a prescribed professional the appellant's impairments do not directly and significantly restrict him from performing DLA either continuously or periodically for extended periods, and that as a result of those restrictions the appellant does not require help to perform DLA?

The relevant legislation is as follows:

EAPWDA:

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.

EAPWDR section 2(1):

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.

Panel Decision - Severe Physical Impairment

The ministry's position, as set out in its reconsideration decision, is that the information provided is not evidence of a severe physical impairment. The reconsideration decision states that although the Assessor reports that the appellant is 2 times slower in performing DLA, this is not indicative of a severe impairment of physical functioning. In addition, the information provided in the AR is inconsistent with the PR. In particular, the reconsideration decision states that the functional limitations reported in the PR are not indicative of a severe impairment and that when the physician indicates that the appellant can walk 2 to 4 blocks unaided, that means without the use of an assistive device such as a knee brace. The ministry notes that Section E of the PR, regarding DLA indicates that the appellant is not restricted with activities related to mobility inside and outside the home.

While the ministry acknowledges that the appellant is limited with his ability in lifting and is slower than typical with walking and climbing stairs, a severe impairment of his physical functioning has not been established.

The appellant's position is that he has chronic back pain that limits his mobility, that he requires a knee brace, that he has shoulder pain and cannot lift his arm over his head and that the information provided establishes that he has a severe physical impairment. He states that the information provided in the PR indicating that he is not restricted with respect to mobility inside and outside the home is not correct as he is restricted and requires his knee brace daily for all mobility. He states that the information provided by the Orthotist indicating that he is unable to weight bear on the left leg without his custom knee brace should be given more weight than the information provided by the physician in the PR.

The appellant states that the ministry has misunderstood the information provided by the physician as he is unable to walk unaided for 2 to 4 blocks or climb 5+ stairs as he is unable to do that without his knee brace. The appellant states that he requires his knee brace for all mobility and that the information provided by the physician confirms that information.

The advocate stated that while the appellant's PWD application is a bit scattered and not as focused as it could be, the information establishes that the appellant has a severe physical impairment and that the ministry downplays the extent that the appellant requires the knee brace.

The panel finds that the ministry's interpretation that the appellant can walk 2 to 4 blocks unaided means without the use of an assistive device is not reasonable based on the information in the PR as the physician states that the appellant has to wear his knee brace for his mobility. At the same time however, the physician has indicated that the appellant is not restricted with respect to his mobility inside and outside the house and the Orthotist states that the left knee orthosis allows the appellant to be independent and gives him the proper support to ambulate and participate in DLA.

To assess the severity of an impairment one 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 performing DLA is restricted. The legislation makes it clear that the determination of severity is at the discretion of the minister, taking into account all of the evidence and that the fundamental basis for the analysis is the evidence from a prescribed professional. Although Assessments #1, #5 and #6 describe the appellant's osteoporosis as severe, the word severe in and of itself is not determinative of the severity of a physical impairment.

While the Assessor indicates that the appellant experiences pain and is slower with determination that the appellant is able to walk 2 and the Assessments confirm the appellant's ongoing pain and inability to work, the panel finds that the ministry reasonably determined that the information provided does not demonstrate that the appellant has a severe physical impairment.

Panel Decision - Severe Mental Impairment

The ministry's position is that the information provided does not establish that the appellant has a severe mental impairment. The ministry notes the PR indicates that the appellant has significant deficits with cognitive and emotional functioning in the area of emotional disturbance as well as anxiety disorder secondary to osteoporosis and arthritis but that the physician does not describe the way in which the appellant is affected or the severity of the anxiety. The ministry notes that although the Assessor indicates that the appellant has major impact to cognitive and emotional functioning in the area of bodily functions, and moderate impact to attention/concentration, he has minimal impact in the areas of consciousness, emotion, memory, motivation and motor activity and no impact in the remaining listed areas. The ministry also notes that while the Assessor indicates that the appellant has panic attacks, she does not describe the frequency, duration or severity of the panic attacks.

The ministry notes that the PR and AR both indicate that the appellant does not have any difficulties with communication, is independent with social functioning and has good functioning in his immediate and extended social networks. The ministry's position is that the information provided indicates a moderate impairment rather than a severe mental impairment.

The appellant's position is that the information provided establishes that he has a severe mental impairment. In particular the appellant's position is that he has anxiety disorder that is exacerbated by his chronic pain and frustration at his limitations due to his injuries.

The panel finds that the appellant has anxiety disorder which is aggravated by his ongoing pain. However, in the PR, the physician indicates that the appellant only has significant deficits with cognitive and emotional function in the area of emotional disturbance and the Assessor, in the AR indicates that the impact on the appellant's daily functioning of emotion is minimal, due to lack of sleep. The Assessor indicates that the appellant has major impact in the area of bodily functions, moderate impact to attention/concentration, and minimal impact to the areas of consciousness, memory, motivation and motor activity. The remaining areas of impulse control, insight and judgment, executive, language, psychotic symptoms, other neuropsychological problems and other emotional or mental problems are not impacted. While the letter from the appellant's sister and brother in law indicate that the appellant's personality, energy, and humor are fading, both the PR and AR confirm that the appellant has no difficulties with respect to communication and the AR indicates that the appellant has good functioning with respect to his immediate and extended social network.

Given the minimal impact to most of the areas of cognitive and emotional functioning, the panel finds that the ministry was reasonable in determining that the information provided is not sufficient to demonstrate that the appellant has a severe mental impairment.

Panel Decision - Significant Restrictions to DLA

The ministry's position is that the information provided in the PR indicates that the appellant is periodically restricted with basic housework and daily shopping, and needs a brace to assist with DLA, the physician indicates that the appellant is not restricted with DLA in the areas of personal self-care, meal preparation, management of medications, mobility inside the home, mobility outside the home, use of transportation, management of finances and social functioning. The ministry notes that the physician did not describe the frequency or duration of the periodic restrictions and does not describe the type of personal help required with basic housework. The ministry also notes that while the physician indicates that on some days the appellant is unable to do anything for his daily function unless helped by someone, the use of the term "some days" does not establish the frequency and duration of days in which the appellant is restricted with daily function. The ministry states that it is difficult to establish significant restrictions to DLA based on the information provided.

The ministry states that while the AR indicates that the appellant takes significantly longer than typical with dressing, bathing, laundry, basic housekeeping, regulating diet and transfers in/out of bed and uses an assistive device for transferring on/off chair, he is independent with grooming, toileting and feeding self. In addition the ministry's position is that being 2 to 3 times slower with an activity is not indicative of a significant restriction to DLA.

The ministry also notes that there are inconsistencies between the information provided in the PR and the AR in that while the Assessor indicates that the appellant is 4 times slower than typical with dressing, bathing, transfers in/out of bed, and food preparation, the PR indicates that the appellant is not restricted with activities relating to personal self-care, meal preparation and mobility inside the home. The ministry also notes that while the AR indicates that the appellant requires armrests to

transfer on/off chairs, chair armrests are not considered to be assistive devices when establishing that help is required with DLA. The ministry also notes that the appellant's decision to take more medication than prescribed is not indicative of a restriction to DLA.

The ministry's position is that it relies on the medical opinion and expertise of the appellant's medical practitioner and other prescribed professionals to determine whether the appellant's impairment significantly restricts his ability to perform DLA either continuously or periodically for extended periods. The ministry's position is that after reviewing all of the information provided, including the appellant's SR and Assessments, there is not enough evidence to confirm that the appellant has a severe impairment that significantly restricts his ability to perform DLA continuously or periodically for extended periods so the legislative criteria has not been met.

The appellant's position is that he has chronic pain that limits his mobility, requiring the daily use of a knee brace, shoulder pain that limits his ability to move his arm over his head, that he requires help with shopping, laundry, housework, and that he has some days where he does not even get out of bed. The appellant states that he is restricted with respect to mobility inside and outside the home, that the information establishes that he meets the legislative criteria and that his PWD application should be approved.

The legislation – s. 2(2)(b)(i) of the EAPWDA – requires that the minister be satisfied that in the opinion of a prescribed professional, a severe mental or physical impairment directly and significantly restricts the appellant's ability to perform DLA either continuously or periodically for extended periods. The term "directly" means that there must be a causal link between the severe impairment and the restriction. The direct restriction must also be significant. Finally, there is a component related to time or duration. The direct and significant restriction may be either continuous or periodic. If it is periodic it must be for extended periods. Inherently, any analysis of periodicity must also include consideration of the frequency. All other things being equal, a restriction that only arises once a year is less likely to be significant than one, which occurs several times a week. Accordingly, in circumstances where the evidence indicates that a restriction arises periodically, it is appropriate for the ministry to require evidence of the duration and frequency of the restriction in order to be "satisfied" that this legislative criterion is met.

The panel also notes that there are inconsistencies between the PR and the AR with respect to the appellant's DLA. For example, the PR indicates that the appellant's DLA of personal self care is not restricted whereas the AR indicates that the appellant is independent with grooming, toileting and feeding self, but takes significantly longer with dressing, bathing, regulating diet and transfers (in/out of bed). The PR indicates that the appellant is independent with meal preparation whereas the AR indicates that it takes the appellant 2 times longer than typical with meal planning, preparation and cooking, as the appellant picks meals that are easy to prepare and do not require significant standing.

The PR indicates that the appellant is independent with all aspects of medications whereas the AR indicates that the appellant takes significantly longer as he will sometimes take more medications than prescribed due to his pain. The panel finds that the ministry's determination that the appellant's decision to take more medication than prescribed is not indicative of a restriction to DLA was reasonable.

While both the PR and the AR indicate that the appellant is restricted with respect to basic housework

and daily shopping, the information provided indicates that the appellant needs someone to take him to and from the store and help carry his purchases, but does not provide any information regarding the frequency or duration of help needed.

Although the appellant requires the use of an assistive device, being a knee brace, on a daily basis and the Assessor indicates that the appellant takes 2 times longer getting in and out of a vehicle, the PR indicates that the appellant is not restricted with respect to mobility inside and outside the home. The appellant disagrees with the information from the PR that his mobility is not restricted, but the Orthotist indicates that the left knee orthosis allows the appellant to be independent and gives him the proper support to ambulate and participate in daily activities. The PR indicates that the appellant is not restricted with respect to use of transportation whereas the AR indicates that the appellant takes twice as long getting in and out of a vehicle as he must go slow and hang on to things getting in and out.

The panel also notes that both the PR and the AR indicate that the appellant is independent with management of finances and social functioning.

The evidence must be considered as a whole and in context. Although the appellant uses a knee brace and takes two to four times longer with some aspects of DLA, the evidence of the prescribed professionals is that he has a significant degree of independence, as confirmed by the Orthotist. The panel finds, on balance, that the ministry reasonably determined that the evidence is insufficient to show that the appellant's ability to perform his DLA is significantly restricted either continuously or periodically for extended periods.

Panel Decision - Help with DLA

The ministry's position is that as it has not been established that DLA are significantly restricted; therefore, it cannot be determined that significant help is required from other persons. The ministry notes that although the physician indicates that the appellant wears a knee brace, he also indicates that the appellant is able to walk 2 to 4 blocks unaided. The ministry's position is that although friends assist him with lifting, it has not been established that DLA are significantly restricted; therefore, it cannot be determined that significant help is required.

The appellant's position is that the ministry's understanding of his ability to walk unaided is not correct and that he requires the knee brace to walk even 2 to 4 blocks or climb stairs and that he uses the knee brace on a daily basis. The appellant's position is that he requires assistance from friends and family with cleaning his house, laundry, housework, getting to and from stores, and lifting heavy items.

A finding that a severe impairment directly and significantly restricts a person's ability to manage his DLA either continuously or periodically for an extended period is a precondition to a person requiring "help" as defined by section 2(3)(b) of the EAPWDA.

The panel finds that the ministry's understanding that the appellant can walk 2 to 4 blocks unaided, meaning without his knee brace, is not reasonable, as the physician indicated in the PR that the appellant requires the knee brace for mobility. However, the physician indicates that the appellant is independent with mobility inside and outside the home and the Orthotist confirms that the knee brace

allows the appellant to be independent with daily activities. As the panel finds that the ministry reasonably determined that the appellant does not have a severe impairment that directly and significantly restricts the appellant's ability to manage his DLA either continuously or periodically for an extended period of time, the necessary precondition has not been satisfied in this case.

Accordingly, the panel finds that the ministry reasonably concluded it could not be determined that the appellant requires help with DLA as defined by section 2(3)(b) of the EAPWDA.

Conclusion

The panel acknowledges that the appellant's medical condition affects his ability to function. However, having reviewed and considered all of the evidence and the relevant legislation, the panel finds that the ministry's decision finding the appellant ineligible for PWD designation is a reasonable application of the legislation in the circumstances of the appellant. The panel therefore confirms the ministry's decision.