

PART C – Decision under Appeal

The decision under appeal is the Ministry of Social Development and Social Innovation (the “ministry”) reconsideration decision of September 29, 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

With the consent of the appellant the ministry had an observer attend the hearing.

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 dated March 5, 2015; a physician's report ("PR") completed by the appellant's general practitioner (the "physician") on March 5, 2015; and an assessor's report ("AR") completed by a physical therapist (the "therapist") on March 6, 2015.
- One page of a Supplemental Medical Opinion form completed and signed by the physician on August 23, 2015 ("the physician's SMO").
- A two-page Supplemental Medical Opinion form completed and signed by the therapist on September 3, 2015 ("the therapist's SMO").
- A DLA checklist completed by the appellant (the "Checklist"). The top of the Checklist bears the date October 2003.
- A two-page handwritten letter from the appellant's mother, dated August 27, 2015.
- A three-page handwritten letter from the appellant's spouse, dated August 31, 2015.

Admissibility of Additional Information

Prior to the hearing the appellant submitted the following two documents to the office of the Employment and Assistance Appeal Tribunal:

- Appendix 1, consisting of a Medical Report – Persons with Persistent Multiple Barriers form completed and signed by the physician on May 6, 2015 (the "PPMB Medical Report"); and
- Appendix 2, consisting of a medical imaging report dated March 9, 2015 and a long term medication list dated October 28, 2015.

The ministry stated it had no objection to admissibility of these documents.

Both documents provide additional detail tending to corroborate information that was before the ministry with respect to his medical condition. Accordingly, the panel has admitted Appendices 1 and 2 into evidence in accordance with section 22(4) of the *Employment and Assistance Act*.

Oral information provided by the appellant through his advocate, and by the appellant's mother and spouse, supplied additional detail which was consistent with information that was before the ministry at the time of reconsideration. This oral information was accepted by the panel as evidence in support in accordance with section 22(4) of the *Employment and Assistance Act*.

The ministry relied on its reconsideration decision and provided no additional information.

Diagnoses

In the PR the physician diagnosed the appellant with thoracic left-convex scoliosis and a spinal disorder. In the Health History portion of the PR the physician referred to left upper posterior chest pains radiating to left arm, and noted that "For the past two or three years, this disorder has progressed, no firm diagnosis having been established." In Appendix 1, the physician stated that the spinal disorder is the appellant's primary medical condition, with left scapular dysfunction as a secondary medical condition. He gave a date of onset of the conditions as 2008.

In his self-report the appellant wrote that "My disabilities are that [I'm] blind in my left eye and I have scoliosis in my spine [which] causes me to have excessive back pain...more strain on eye causes headaches & migraines." In the Checklist the appellant commented "I'm completely blind in my left eye (slightly effects my depth perception.)"

Physical Impairment

In the PR the physician reported that:

- He has known the appellant for over 20 years and had seen the appellant eleven or more times over the previous 12 months.
- In terms of physical functional skills the appellant can walk 4+ blocks unaided on a flat surface, climb 5+ steps unaided, can lift 5 to 15 pounds (2 to 7 kg), and has no limitations on remaining seated.
- Trials with anti-inflammatory and muscle relaxant medication have not proven helpful.
- In the Additional Comments section of the PR the physician commented that consultation with a neurologist had been arranged, along with a CT scan of the appellant's upper thoracic vertebrae. He also commented that a consultation with a physiatrist may prove beneficial.

In the physician's SMO, the physician responded to the question "In your professional opinion, does [the appellant] have a severe physical and/or mental impairment?" by indicating "yes", and commenting "This appears to be a fluctuating, movement centered disorder. Assessment by a physiatrist would be in order."

In the AR the therapist reported that:

- The appellant's impairment is "anatomical impairment – diagnosed with [a spinal disorder], increased kyphosis of thoracic spine, significant pain."
- The appellant independently manages all aspects of mobility and physical impairment, including walking indoors and outdoors, climbing stairs, standing, and carrying holding. The therapist commented "Client able to perform all activities independently, but requires increased time and positional awareness in order to complete."
- In the Additional Information portion of the AR the therapist wrote that the appellant is unable to participate in sporting activities for himself or his child, and that he is unable to perform certain prescribed exercises due to increased pain and discomfort.
- She had formed her opinion on the appellant's condition through office interviews with the appellant, a physical assessment at the initial appointment, the CT scan report, and physician referral.

[Redacted]

In the therapist's SMO, the therapist responded to the question "In your professional opinion, does [the appellant] have a severe physical and/or mental impairment?" by indicating "yes", and commenting "physical...He has been diagnosed with scoliosis and [a spinal disorder] and has decreased functional mobility and independence with ADL's as a result."

In his self-report the appellant stated that:

- His impairments cause him to be unable to:
 - be consistently dependable for his employer,
 - maintain a daily schedule,
 - sit for more than 30 minutes to one hour,
 - stand for more than one to two hours,
 - sleep well or get rest,
 - lift or twist with medium to heavy weight, or
 - drive for more than one hour.
- He has to take pain medication and muscle relaxants regularly, and he is unable to take extreme pain killers during the day because he needs to care for and transport his child to and from school.

In the PPMB Medical Report in Appendix 1 the physician stated that the restrictions relating to the described medical conditions are "Reduced use of upper back (eg; twisting and lifting > 10 kg."

In Appendix 2 the medical imaging report concluded that underlying spinal disorder is the most likely explanation for observations of midthoracic kyphosis with endplate irregularity at multiple levels, and mild anterior wedging at T7 and T8. The long term medication list reported four different medications during the period November 19, 2014 to February 19, 2015.

Mental Impairment

- In the PR the physician reported that the appellant has no difficulties with communication and has no significant deficits with cognitive and emotional function.
- In the Ability to Communicate section of the AR the therapist wrote "n/a", and indicated that the appellant's ability to communicate is satisfactory in all respects except for "hearing", for which she provided no response. The therapist left part B4 of the AR (which is to be completed for applicants with an identified mental impairment or brain injury) blank.
- In the Checklist the appellant indicated that he requires help communicating when anxiety gets overwhelming, and he commented "I get overwhelmed & hyped up when having conversations about things I can't control."
- In her letter of August 31, 2015 the appellant's spouse commented that the appellant tries his best to communicate with others, but over the years with the increased pain communication can be difficult and he is often too frustrated or anxious to talk or deal with things.
- In response to a question from the panel, the appellant's advocate indicated that the appellant is relying on physical impairment rather than mental impairment for his application. The advocate stated that the upcoming appointment with the neurologist may provide information about a mental impairment.

DLA

- In the PR the physician indicated that the appellant has not been prescribed any medication or treatments that interfere with his ability to perform DLA. In response to a question as to whether the appellant's impairments directly restrict his ability to perform DLA, the physician responded "Yes", and indicated that the appellant's mobility outside the home is continuously restricted. He reported no direct restrictions to any other DLA. Commenting on the degree of restriction, the physician wrote "States that he cannot do moderate physical work involving upper extremities over 2 hours daily."
- In the physician's SMO, the physician indicated that the appellant is periodically restricted with DLA "listed on the previous page", and commented "can carry out general work for short periods of time (apparently less than 1 hour) before requiring rest." In describing the frequency and duration of the periodic restrictions to DLA, the physician wrote "According to history provided to me, back and left shoulder girdle pain require regular periods of rest (e.g. 15 minutes/session.)"
- In the AR the therapist indicated that the appellant independently manages all tasks related to the prescribed DLA of personal self-care, daily shopping (except for needing periodic assistance with carrying purchases home), management of personal finances (pay rent and bills), management of personal medications, and use of transportation (independently gets in and out of vehicle but with increased pain when driving, and independently uses public transportation when necessary but increased pain." The section of the AR dealing with the DLA of "relate to, communicate or interact with others effectively" or social functioning is to be completed only if the applicant has an identified mental impairment including brain injury. The therapist left this section blank. The therapist reported that the appellant requires periodic assistance with two tasks related to the DLA of meal preparation (food preparation and cooking). She also reported that the appellant requires continuous assistance with all tasks related to basic housekeeping.
- In the therapist's SMO, she indicated that the appellant is severely restricted in the DLA of meal preparation, daily shopping, use of transportation, basic housework, mobility indoors and outdoors, and management of personal medication. She did not indicate any restrictions to the DLA of decision-making or social functioning. In reporting that the appellant's ability to perform DLA is continuously restricted, the therapist commented that "Restriction is continuous but level of restriction can vary slightly due to level of P[ain]."

In the Checklist the appellant indicated that his disability makes it difficult for him to perform almost every task related to every DLA.

In her letter of August 27, 2015 the appellant's mother stated that:

- The appellant's condition has deteriorated over the years.
- Her assistance to the appellant is reduced now that he has a spouse, but the mother still runs errands and gets groceries. She does the bulk of the family's laundry as it is a "bad back chore" and "added expense."
- She has spent countless hours going over paperwork and forms for the appellant's application and appeal process.
- She gives financial help in times of great need, though the appellant is reluctant to accept it.
- The appellant helps his mother with maintenance of her home and offers help at his grandmother's home, but he then suffers for days afterward. He is a very willing and hard

worker.

In her letter of August 31, 2015 the appellant's spouse stated that:

- The appellant's condition has worsened during the time they have been together.
- The appellant has back pain more often than not, and she completes the tasks he is not able to complete. These tasks include every aspect of his daily life.
- Though the appellant is able to make small snacks she does the majority of carrying, stocking, food preparation and cooking as it requires much twisting and movement - activities that he is unable to perform without extreme pain.
- The appellant has to shave in the shower as leaning over the sink causes pain.
- There are many tasks for which the appellant is limited to his right arm and shorter periods of time, such as reading/writing, helping with homework and reading books, dealing with his appointments and business on the phone.
- The appellant is currently enrolled in school but can't sit for long periods of time but he is able to bring parts of his course work home for completion.

At the hearing, the appellant provided the following oral information personally and through his advocate:

- Despite significant efforts to schedule appointments with the physician, the physician completed both the PR and the physician's SMO without the appellant being present.
- The appellant was not with the therapist when she completed the AR, but he was with her when she completed the therapist's SMO.
- At the time she completed the AR, the appellant had seen the therapist for four or five 1 hour appointments. He has now seen her for eight appointments.
- By the time the therapist completed the therapist's SMO she was more aware of his impairments and "could see the way it was."
- The Checklist form is provided by another advocacy agency. The October 2003 date is the date the form was developed, not the date when the appellant filled in his information.
- The appellant had received 8 to 10 injections of medication in his neck over the course of about a year. The injections stopped about a year ago. He doesn't know why that medication is not listed in Appendix 2.
- The appellant does not want to take narcotic pain killers.

In response to a question from the panel as to why the appeal record only contains the second page of the physician's SMO, the advocate responded that she did not feel the first page was supportive of the appellant's position so she provided the ministry with only the second page.

In her oral testimony the appellant's mother substantially reiterated her statements in her letter of August 27, 2015. She also expressed concerns that the appellant is at a disadvantage of not having full knowledge of his medical condition since he has not yet been able to see a specialist despite waiting for many months.

In her oral testimony the appellant's spouse substantially supported the statements she had made in her letter of August 31, 2015. In response to a question from the panel as to how long during the day the appellant is immobile in bed or on the couch, the spouse stated that she wasn't sure, but said that the appellant tries to rest on the couch most of the time but he gets restless and can only sit or lie down for a half hour at a time.

Help

- In the PR the physician reported that the appellant does not require any prostheses or aids for his impairment. In response to a question about what assistance the appellant requires with DLA, the physician drew a circle with a line through it.
- In the physician's SMO, he indicated that the appellant does require help to perform DLA and commented "Again, the history provided indicates that, within an hour of starting physical work, he then needs help with back and shoulder work." In response to a question as to how many times per week help is required, the physician wrote "Unknown – I do not know about details of his current job, nor even if he has one."
- In the AR the therapist indicated that the appellant does not have an assistance animal, and she responded "n/a" to a question about assistance provided through assistive devices. She reported that the appellant receives assistance from family and friends.
- In the therapist's SMO, she commented that "[The appellant] is unable to perform ADL's independently due to P[ain]. He requires assistance with all ADL's on a daily basis."

Findings of Fact

The ministry indicated in its reconsideration decision that the diagnosis of the spinal disorder was not a "firm" diagnosis. The appellant argued that the ministry drew the wrong inference on this diagnosis. The panel expects that the ministry may have misinterpreted the physician's statement in the Health History section of the PR that "...this disorder has progressed, no firm diagnosis having been made." Reading the passage as a whole, it appears to the panel that the physician was discussing "chest pains radiating to the left shoulder" as not having a firm diagnosis, rather than the spinal disorder. Considering the PR, the PPMB Medical Report, and the medical imaging report in Appendix 2 together, the panel finds as fact that the physician provided a diagnosis of the spinal disorder.

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.

Severe Physical Impairment

The appellant's position is that the pain caused by his back and shoulder problems constitute a severe physical impairment. He relied on the positive responses in the physician's SMO and the therapist's SMO as evidence that both professionals are of the opinion that his impairment is "severe". He argued that the ministry incorrectly determined that the diagnosis of the spinal disorder was not a firm diagnosis. The appellant referred to the PPMB Medical Report as evidence that the appellant has had the spinal disorder since 2008. The appellant also argued that the ministry was wrong to put more weight on the physician's evidence than the therapist's evidence. The ministry had done so because the physician had known the appellant for significantly longer than had the therapist. However, the appellant argued that the physician did not accurately reflect the severity of his impairment in the PR and physician's SMO as the appellant was not provided the opportunity to attend in person when the physician completed the various forms. He argued that more weight should be given to the AR and especially to the therapist's SMO since he was present and able to answer questions when the latter document was completed.

The ministry acknowledged that the appellant experiences pain due to scoliosis, but took the position that the information provided does not establish that the appellant has a severe physical impairment. The ministry argued that the appellant's physical functional skills as reported in the PR are not indicative of a severe physical impairment. The ministry also stated that the therapist indicated in the AR that the appellant is independent in all areas of mobility and physical ability, and that she did not describe how much longer than typical the appellant takes with these activities, making it difficult to establish a severe impairment of physical functioning .

Panel Decision:

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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 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. A medical barrier to the appellant’s ability to engage in paid employment is not a legislated criterion for severity. The legislation makes it clear that the determination of severity is at the discretion of the minister, and that the fundamental basis for the analysis is the evidence from prescribed professionals – in this case, the physician and the therapist.

As discussed earlier, the panel has found as a fact that the physician provided a diagnosis of the spinal disorder.

The appellant argued that both the physician and the therapist answered “yes” to a question in their respective SMOs regarding the appellant having a severe impairment. However, in exercising its decision-making power the ministry cannot merely defer to the opinion of the professionals with respect to whether the statutory requirements are met as that approach would amount to an improper fettering of discretion. The professional evidence has to be weighed and assessed like any other evidence.

The panel notes that comments made by the physician in the physician’s SMO (“can carry out general work for short periods of time”, “within an hour of starting physical work”, “I do not know the details of his current job”), indicate that the physician was likely assessing “restrictions” and “impairment” through the lens of employability rather than the ability to manage DLA as required by the legislation. That, along with the appellant’s advocate’s intentional decision to provide the ministry and the panel with only the second page of the physician’s SMO significantly reduces the weight that can be given to it. Accordingly, where there are differences between the PR and the physician’s SMO, the panel has given more weight to the PR.

The panel also notes that there are significant inconsistencies in the evidence provided by the therapist in the AR and the therapist’s SMO. In the AR the therapist indicated that the appellant required continuous assistance with one DLA (basic housekeeping), and periodic assistance with aspects of two others (meal preparation and daily shopping). In the therapist’s SMO, completed six months later, she stated that the appellant is continuously restricted in almost all DLA to the extent that he requires help with almost all DLA “every day” (though acknowledging that the degree of restriction varies “slightly” with pain). The appellant stated that more weight should be given to the therapist’s SMO since she had gotten to know him better by that time and since he was able to attend with her to answer questions while she completed the document. In the panel’s view it is reasonable to expect that the therapist would likely have developed a realistic opinion of the appellant’s abilities and restrictions during the four or five 1 hour sessions (including a physical assessment) she had spent with him at the time she completed the AR. In the absence of any explanation from the therapist regarding the inconsistencies between the two documents, where there are differences between them the panel has given more weight to the AR.

The physician’s assessment of the appellant’s physical functioning in the PR is mostly at the higher end of the scale. His evidence is reasonably consistent with that he provided in the PPMB Medical

Report where he indicated the appellant could lift up to about 10 kg. In the AR the therapist indicated that the appellant independently manages virtually all aspects of mobility and physical activity. The therapist provided no information in the AR to indicate that the requirements for “increased time and positional awareness” are a significant restriction to mobility and physical functioning.

There are frequent references in the evidence to the impact the appellant’s medical conditions have on his ability to work at paid employment. The panel notes that employability is not a statutory criterion regarding PWD designation – the focus of the legislation is on the ability to perform DLA. Paid employment generally requires a higher level of functioning than DLA. As discussed below under the heading Significant Restrictions to DLA, the appellant’s impairment does not appear to have translated into significant restrictions in his ability to manage DLA.

For the foregoing reasons, the panel concludes that the ministry reasonably found that the evidence does not establish a severe physical impairment.

Severe Mental Impairment

The appellant did not expressly advance an argument regarding a severe mental impairment. He did, however, indicate that his social functioning has been affected.

The ministry’s position is that the evidence does not demonstrate a severe mental impairment. The ministry referred to the physician’s and therapist’s evidence about there being no identified impacts to cognitive and emotional functioning, the appellant’s good communication skills, and that the appellant does not require support or supervision with any aspects of social functioning.

Panel Decision:

The legislation (EAPWDA section 2(2)) requires that a severe impairment must be identified by a medical practitioner and be confirmed as being likely to continue for at least 2 years. The physician has provided no diagnosis of a mental health condition. There is no medical evidence to show that the appellant has any significant difficulties with communication, decision-making or social functioning. .

Based on the foregoing evidence, the panel concludes the ministry reasonably determined that the appellant does not have a severe mental impairment.

Significant Restrictions to DLA

The appellant’s position is that his impairments, primarily due to back and shoulder pain, significantly restrict his ability to manage his DLA. He argued that more weight should be given to the therapist’s SMO since he attended with her to answer questions while she completed that document, and she had gotten to know him and his restrictions better by that time. He also argued that the ministry incorrectly dismissed the Checklist as being too old to carry any weight. Finally, the appellant argued that he relies substantially on his wife and mother to manage DLA.

The ministry’s position, as set out in its reconsideration decision, is that there is not enough evidence to confirm that the appellant’s impairments directly and significantly restrict his ability to perform DLA either continuously or periodically for extended periods. The ministry argued that the PR and AR

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indicated that the appellant independently manages the majority of DLA. The ministry also argued that his statements in the physician's SMO indicate that the physician's comments were based more on the appellant's self-assessment rather than the physician's own medical assessments. Finally, the ministry argued that in the therapist's SMO she did not indicate which DLA were directly and significantly restricted, which DLA are continuously restricted, and which DLA require daily help.

Panel Decision

The legislation – s. 2(2)(b)(i) of the EAPWDA – requires the ministry to substantially assess direct and significant restrictions of DLA in consideration of the opinion of a prescribed professional, in this case the appellant's physician. This doesn't mean that other evidence shouldn't be factored in as required to provide clarification of the professional evidence, but the legislative language makes it clear that the prescribed professional's opinion is fundamental to the ministry's determination as to whether it is "satisfied".

The legislation requires that a severe 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 an extended time. 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 that occurs several times a week. Accordingly, in circumstances where the evidence indicates that a restriction arises periodically, it is entirely 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 evidence of the physician in the PR is that the appellant independently manages virtually all tasks related to all DLA, except for requiring undefined continuous assistance with mobility outside the home. His evidence on this is substantially consistent with that of the therapist in the AR. The panel accepts the appellant's statement that the Checklist was completed recently and not in 2003. However, the appellant's evidence – that he requires almost continuous assistance with almost all DLA – is not consistent with that of the physician in the PR or the therapist in the AR. Where the therapist did indicate that the appellant requires periodic assistance with certain tasks (food preparation, cooking, carrying purchases home) she provided no indication of how frequently these periods occur or their duration. Where the therapist indicated that the appellant requires continuous assistance (basic housekeeping) she provided no narrative as to why the appellant is unable to perform at least the lighter aspects of basic housekeeping, particularly in light of his physical functional skills as reported by both professionals. For the reasons given above under the discussion of Severe Physical Impairment, the panel has given significantly more weight to the PR and the AR where they differ from the physician's SMO and the therapist's SMO.

Based on the limited medical evidence of direct and significant restrictions to the appellant's ability to manage DLA independently, the panel finds that the ministry's was reasonable in concluding that there is not enough evidence to confirm that the appellant's impairments directly and significantly restrict his ability to perform DLA either continuously or periodically for extended periods.

Help with DLA

The appellant's position is that he requires significant assistance with DLA, relying substantially on his wife and spouse. He argued that the therapist confirmed that he requires continuous assistance with all DLA every day.

The ministry's position is that since it has not been established that the appellant's DLA are significantly restricted, it cannot be determined that significant help is required from other persons.

Panel Decision

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. For the reasons provided above, the panel finds the evidence falls short of satisfying that precondition.

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 conditions affect his ability to perform DLA. However, having reviewed and considered all of the evidence and the relevant legislation and for the reasons provided above, 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.