

PART C – Decision under Appeal

The decision under appeal is the Ministry of Social Development and Social Innovation (“Ministry”) reconsideration decision dated September 3, 2015 in which the Ministry found that the Appellant was not eligible for designation as a Person With Disabilities (“PWD”) because he did not meet all of the requirements for PWD designation in Section 2(2) of the *Employment and Assistance for Persons with Disabilities Act* (“EAPWDA”). The Ministry was satisfied that the Appellant has reached 18 years of age and that his impairment is likely to continue for at least two years. However, based on the information provided in the PWD Designation Application (“PWD application”) and Request for Reconsideration, the Ministry was not satisfied that:

- The Appellant has a severe mental or physical impairment; and
- The impairment, in the opinion of a prescribed professional, directly and significantly restricts his ability to perform daily living activities (“DLA”) either continuously or periodically for extended periods; and
- As a result of these restrictions, the Appellant requires help to perform those activities through an assistive device, the significant help or supervision of another person, or the services of an assistance animal.

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 reconsideration consisted of the following:

1. A PWD application comprised of the Applicant Information and a self-report completed by the Appellant on April 15, 2015, as well as a Physician Report (“PR”) dated April 18, 2015, and an Assessor Report (“AR”) dated April 24, 2015. Both reports were completed by the Appellant’s family physician. The Appellant has been his patient since 2012 and he has seen the Appellant eleven or more times in the past twelve months. In the AR, the physician indicated he completed the forms by way of an office interview with the Appellant as well as file and chart information.

The PWD application included the following information:

Diagnoses:

- In the PR, the Appellant was diagnosed with COPD, onset 2011; Degenerative Disc Disease, onset 2014; Mood Disorders and Anxiety Disorders, onset 2013.
- In the AR, the physician wrote that chronic back pain, COPD, anxiety, and stress are the mental or physical impairments that impact (the Appellant’s) ability to manage Daily Living Activities.
- In his self-report, the Appellant described hearing loss and ear problems (both ears). His asthma can suddenly start up, and left leg pain has started up since last year - he was already suffering from back pain but ignored it. He has depression including low mood off and on. His circumstances (unemployment, very low income, and homelessness) are adding to his anxiety and stress.

Physical or Mental Impairment:

In the PR, under Degree and Course of Impairment, the physician added that the Appellant is currently not on treatment for anxiety.

Functional Skills

PR

- The physician check marked that the Appellant is able to walk 1-2 blocks unaided on a flat surface; climb 2-5 steps unaided; has limitations in lifting of under 5 lbs., and is limited in remaining seated for 1-2 hours. The physician checked that there are no difficulties with communication.
- The physician check marked that the Appellant has significant deficits in the following areas of *Cognitive and Emotional Function*:
 - Memory, Emotional disturbance (depression/anxiety)
 - Motivation
 - Attention/sustained concentration
- The physician commented, “Suffers from chronic anxiety and decreased ability to concentrate due to ongoing socio-economic conditions.”
- Under Additional Comments, the physician wrote, “Patient has multiple and permanent health conditions. Currently homeless, no access to permanent shelter, income. Also has nutritional lack. All combine to increase the stress and anxiety levels.”

AR

- The physician check marked “poor” for *Ability to Communicate - Hearing*, with the explanation, “reduced hearing in both ears.” The physician check marked “good” for all other areas of communication.
- The physician checked that the Appellant is independent in all areas of *Mobility and Physical Ability* except Lifting, and Carrying/holding for which he requires periodic assistance from another person. No comments were provided.
- Under *Cognitive and Emotional Functioning*, the physician checked “no impact” for eight out of fourteen areas. Impacts in six areas were described as follows:
 - A “minimal impact” was reported for Memory.
 - A “moderate impact” was reported for Emotion, Insight and judgement, Attention/concentration and Executive function.
 - A “major Impact” was reported for Motivation.
 - Under Comments, the physician wrote, “lack of motivation, decreased concentration, reduced short-term memory, reduced interest and initiative. Homelessness contributes towards the condition.”

Self-report

- The Appellant wrote that he has trouble maintaining “body balance” due to a problem with both ears. His asthma affects normal breathing and activity - he has difficulty taking a long walk. Due to his leg and back pain he cannot lift heavy objects.

Daily Living Activities (DLA):

PR

- The physician check marked “No”, the Appellant has not been prescribed medication/treatment that interferes with his ability to perform DLA.

AR

- The physician indicated that the Appellant is independent in all areas of the following DLA: Personal care, Basic housekeeping, Meals, Pay rent and bills, Medications, and Transportation.
- Under Shopping, the physician checked that the Appellant requires periodic assistance with Making appropriate choices, and he requires continuous assistance (or is unable) in Carrying purchases home. Under Additional comments, the physician wrote, “reduced lifting ability.”
- For Social Functioning, the physician checked the following:
 - The Appellant is independent in only one area: Able to secure assistance from others.
 - He requires periodic support/supervision for Appropriate social decisions, Interacts appropriately with others, and Able to deal appropriately with unexpected demands.

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- He requires continuous support/supervision for Able to develop and maintain relationships.
 - The Appellant has marginal functioning in both his immediate and extended social networks.

Self-report

- The Appellant wrote that due to his asthma, he is restricted in walking longer distances and has to stop at each block.

Need for Help:

PR

- The physician checked “No” regarding any prostheses or aids required for the Appellant’s impairment.

AR

- The Appellant lives alone with the comment, “most of the time homeless”.
- Under *Support/supervision required that would help maintain* (the Appellant) *in the community*, the physician wrote, “social support, nutritional support, shelter”.
- Under *Assistance provided by other people*, the physician checked that help is provided by volunteers.
- Under *What assistance would be necessary if help is required but there is none available*, the physician wrote, “nutritional support and shelter.”
- The physician did not fill in the section, *Assistance provided through the use of assistive devices*. He check marked “No” the Appellant does not have an assistance animal.

2. An “Urgent” fax from the Ministry to the Appellant’s physician dated June 15, 2015. The Ministry requested the physician to “please provide more detail about the applicant’s support/supervision required for social functioning.” The Ministry attached a page from the AR - *Part C Social Functioning* (“AR addendum”). The physician provided the following comments to explain/describe the degree and duration of support/supervision required for each of the following areas:

- *Appropriate social decisions*: periodic support/supervision required, with the comment, “requires shelter, supervised/social support, self-care, personal hygiene”.
- *Able to develop/maintain relationships*: continuous support/supervision required, with the comment, “unstable relationships with [illegible] shifts of feelings, lonely depression, anxiety and irritability”.
- *Interacts appropriately with others*: periodic support/supervision required, with the comment, “feelings of deprivation, resentment [illegible], and fear of loss, over-reacting to physical/ clinical conditions”.
- *Able to deal appropriately with unexpected demands*: periodic support/supervision required, with the comment, “unpredictable and at times impulsive behavior and attitudes, feeling of being flawed and defective.”

3. A Request for Reconsideration (“RFR”) signed by the Appellant on August 4, 2015, with a statement from his advocate who said that the Appellant is homeless and it is difficult to get a true picture of his functioning in a home setting. The advocate included the Appellant’s argument which the panel will address in *Part F - Reasons*.

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4. A questionnaire prepared by the advocate and signed by the Appellant's physician on August 24, 2015 ("the questionnaire"). The advocate indicated that the physician was asked to re-assess the Appellant's restrictions to DLA. The physician's responses included the following:

(i) When asked whether the Appellant has a severe physical or mental impairment (or both), considering the impact on his daily life, the physician indicated:

- Yes, the Appellant has a severe physical and mental impairment and his health limitations have a major impact.
- He experiences chronic back pain, shortness of breath, lack of energy and chronic fatigue.
- His ability to stand, walk, bend, lift, and carry is limited. He has reduced endurance and stamina.
- He has recurrent anxiety and depression resulting in a lack of motivation, decreased concentration and memory, and reduced interest and initiative.

(ii) When asked whether the Appellant takes significantly longer than normal to perform many DLA, or puts off doing tasks, the physician wrote, "yes".

(iii) When asked whether the Appellant's level of activity is significantly reduced due to his impairment, the physician wrote, "yes".

(iv) When asked how often the Appellant is significantly restricted in his DLA, the physician wrote, "Daily, continuous and chronic conditions."

(v) When asked if overall, the Appellant's impairment significantly restricts his DLA continuously or periodically for extended periods, the physician wrote, "Yes, he has significant and continuous restrictions in his ability to do DLA."

(vi) When asked if he can confirm that the Appellant requires significant help with DLA, or takes much longer than typical to complete routine tasks, the physician wrote, "yes, depends upon a number of community services for daily help. Takes longer than normal to complete daily tasks."

5. One page from a PWD Physician Report form, *Section E - Daily Living Activities* ("the additional PR"), dated August 2015. The physician check marked "yes", the following DLA are restricted continuously:

- Personal self-care
- Meal preparation
- Basic housework
- Daily shopping
- Social functioning, with the comments, "reduced ability to cope with stresses of daily life with social isolation. Homelessness contributes to the problem."
- Under Additional comments, the physician wrote, "significant degree of restriction overall."
- Under *What assistance does your patient need with DLA*, the physician wrote, "needs more help and assistance with secure housing, his health will deteriorate, relies on community programs for food and other support."

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6. Information from the Ministry record indicating the Appellant is a single person in receipt of Employment and Assistance benefits. The Ministry attached copies of two letters to the Appellant (dated July 7 and September 3, 2015) informing him that he has been denied PWD designation and explaining the reasons for denial including a Denial Summary.

Additional submissions

With the consent of both parties, the appeal proceeded by way of a written hearing pursuant to section 22(3)(b) of the *Employment and Assistance Act*. In an email to the tribunal of October 29, 2015, the Ministry stated that its submission for the appeal will be the reconsideration summary.

The Appellant filed two Notices of Appeal as follows:

1. A Notice of Appeal signed on September 14, 2015 in which he stated that his health is not very good.

2. A Notice of Appeal signed on September 18, 2015 outlining the Appellant's argument (which the panel will address in *Part F - Reasons*), and providing the following information in attached submissions as follows:

(a) The advocate's submission, *Appellant's Written Submission to the Tribunal*, dated October 21, 2015 that stated the following:

- The Appellant is over 60 years old and currently homeless.
- His actual health limitations, as reported in the questionnaire, are chronic back pain, shortness of breath, chronic fatigue, reduced endurance, lack of motivation, and decreased concentration and memory, with limits in his ability to stand, walk, bend, lift and carry.
- The Appellant has been homeless for two years and does not prepare food or do daily shopping, or housework. In completing the questionnaire, the physician was asked to take into account that the Appellant does not have a home.
- The Appellant relies on a network of community agencies for food and bathing facilities and has been unsuccessful, within the context of his mental health disorder, in addressing basic needs such as securing shelter and obtaining help from other people.

(b) The Appellant's submission, dated October 15, 2015 that stated the following:

- He has not had a fixed address for over two years – he is always on the move.
- He lives on a modest pension, often cannot afford the medication he needs, and is not in touch with his family.
- He has a number of chronic health conditions including COPD which is gradually getting worse. It causes him to experience shortness of breath and lack of energy, and he is quick to tire especially when he exerts himself.
- He has back and leg pain due to Degenerative Disc Disease. The left side of his body is weak and he cannot stay in one position for too long. He cannot walk very far due to pain and fatigue. He frequently stops and rests, and he also has difficulty standing, bending, lifting, and carrying.
- He suffers from depression and anxiety and feels negative thoughts and anger. He often talks to himself, and he has trouble motivating himself to do things. He has memory lapses and usually keeps to himself.

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- He has problems hearing, particularly when there is a lot of background noise.
 - He relies on community agencies and other people for food and meals. His diet is very poor and he does not prepare food or do daily shopping or housework. He does not have his own bathing facilities so it is very hard to attend to his personal care needs.
 - He does not have a support network to help him, so his life is very hard and he struggles to survive each and every day.

Admissibility

The panel finds that the appeal submissions are admissible as evidence in support of the reconsideration record because they corroborate the Appellant's health conditions, limitations, and living situation which were before the minister at the reconsideration. The panel therefore admits the appeal submissions under section 22(4)(b) of the *Employment and Assistance Act* as evidence in support of the information and records that were before the minister at the time the decision being appealed was made. The panel further accepts the submissions as argument in support of the Appellant's position at the reconsideration.

PART F – Reasons for Panel Decision

The issue in this appeal is whether the Ministry's reconsideration decision of September 3, 2015, which found that the Appellant is not eligible for PWD designation, was reasonably supported by the evidence or was a reasonable application of the applicable enactment in the circumstances of the Appellant. Based on the information provided in the PWD application, the Ministry was not satisfied that the following criteria in EAPWDA section 2(2) were met: the Appellant has a severe physical or mental impairment; and the impairment, in the opinion of a prescribed professional, directly and significantly restricts his ability to perform DLA either continuously or periodically for extended periods; and, as a result of these restrictions, he requires help to perform those activities.

The eligibility criteria for PWD designation are set out in section 2(2) of the EAPWDA as follows:

- (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.

The “daily living activities” referred to in EAPWDA section 2(2)(b) are defined in section 2 of the EAPWDR 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.

Severe mental or physical impairment

The diagnosis of a serious medical condition does not in itself determine PWD eligibility or provide evidence of a severe impairment. To satisfy the requirements in section 2(2) of the EAPWDA, evidence of how, and the extent to which, a medical condition restricts daily functioning must be considered. This includes the evidence from the Appellant and from a prescribed professional regarding the nature of the impairment and its impact on the Appellant's ability to manage the DLA listed in section 2(1) of the EAPWDR. However, subsection 2(2)(b) of the EAPWDA clearly sets out that the fundamental basis for the analysis of restrictions is the evidence from a prescribed professional - in this case, the Appellant's physician.

Appellant's position

The Appellant argued that his chronic health conditions including ear problems, COPD, and leg and back pain from Degenerative Disc Disease, cause limitations in the areas of balance, ability to breathe, and ability to walk and lift. His circumstances including unemployment, homelessness, and very low income add to his depression, anxiety, and stress. In the appeal submissions, the advocate argued that both the physician and the Appellant provided sufficient evidence of a severe impairment including the physician's opinion (in the questionnaire) that the Appellant has a severe mental and physical impairment with limitations and restrictions that have a major impact on his daily life. These are further exacerbated by his circumstance of homelessness.

Ministry's position

Severe mental impairment: The Ministry's position is that the physician's information does not establish a severe impairment of mental functioning, and that the cumulative impacts of anxiety and depression with ongoing socio-economic conditions, are indicative of a moderate as opposed to a severe mental impairment. The Ministry argued the following:

- The physician did not describe the frequency or duration of the Appellant's episodes of anxiety.
- Although, in the PR, the physician reported significant deficits in the areas of Emotional disturbance, Motivation, Memory, and Attention/concentration, in the AR he noted that Motivation is the only area with a "major impact". Also in the AR, the impairment on Memory was described as "minimal impact", while the impact was "moderate" with regard to Emotion, Attention/concentration, Insight/judgment, and Executive function.
- While the physician indicated a need for periodic support for several social tasks, he did not describe the frequency and duration of the support that is required. Further, the physician did not describe the type of support/supervision the Appellant needs to be maintained in the community.
- In the questionnaire, although the physician reported the Appellant as continuously and significantly restricted with Social Functioning, he did not describe the areas of Social Functioning that have significant restrictions. The minister therefore considered the information in the AR to hold true.

Panel's decision

The panel finds that the Ministry reasonably determined that a severe mental impairment is not established by the information provided. The panel also finds that the Ministry reasonably concluded that the evidence indicates a moderate (not severe) level of mental impairment. In the most recent information, the questionnaire of August 24, 2015, the physician described the Appellant's anxiety as "recurrent", not continuous. While he reported that the Appellant is significantly restricted "daily" by "continuous and chronic conditions" and has a "significant degree of restriction overall", it is uncertain whether the restrictions to the Appellant's mental/social DLA are the result of the Appellant's anxiety and depression, or stem from his homelessness which contributes to his sense of isolation, stress, and insecurity.

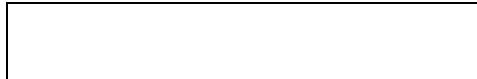
For example, in the PR, as the physician stated that the Appellant suffers from chronic anxiety and decreased ability to concentrate "due to ongoing socio-economic conditions." Further, in the AR, the only "major impact" was in the area of Motivation, with a "moderate impact" for several other areas of *Cognitive and Emotional Functioning*. While a lack of motivation and impacts in other mental areas may be symptoms of depression, the physician again stated that "homelessness contributes to the condition".

While Social Functioning was reported (in the questionnaire) to be continuously restricted, the information in the AR addendum indicated the Appellant needs only periodic support for most social tasks. As noted by the Ministry, the physician did not detail the nature or frequency of the support required. While the physician reported (in the AR) that the Appellant has marginal functioning in his social networks, the only area where the physician reported a need for continuous support/supervision is *Able to develop and maintain relationships*.

Based on the above analysis, the panel finds that the Ministry reasonably determined that the criterion of severe mental impairment in EAPWDA section 2(2) was not met.

Severe physical impairment: The Ministry's position is that the information provided speaks to a moderate, rather than a severe level of impairment. The Ministry argued the following:

- In the PR, the physician reported the Appellant as independent with all functions of mobility and physical activity except for lifting, and carrying/holding.
- There was no information to confirm that the Appellant's reduced hearing causes a severe physical impairment.
- For those functions where the physician reported that periodic assistance from another person is required, the type, frequency, and duration of assistance was not described.
- In the questionnaire, although the physician indicated limitations in the Appellant's ability to stand, walk, bend, lift, and carry, he did not describe the degree of these limitations. The minister therefore considered the information in the AR to hold true.
- Although the physician indicated that the Appellant's level of activity is significantly reduced due to his impairments (limitations with regard to lifting, endurance, and stamina were reported), he did not describe what specific activities are reduced.
- The information regarding the impacts of homelessness and a lack of nutrition on the Appellant's overall health does not establish that he has mental or physical impairments.



Panel's decision:

The panel finds that the Ministry reasonably determined that a severe physical impairment is not established by the information provided. The panel also finds that the Ministry reasonably concluded that the evidence indicates a moderate (not severe) level of physical impairment. First, as noted by the Ministry, there was no information to confirm the severity of the Appellant's hearing impairment. The panel notes that no hearing tests were cited and although, in the AR, the physician indicated a poor ability to communicate due to reduced hearing in both ears, no difficulties with communication were reported in the PR and there was no recommendation for a hearing aid. Further, the physician did not provide any information regarding the severity of any of the Appellant's conditions in the PR, *Question B1* (the physician left it blank).

Regarding the Appellant's functional limitations, in the questionnaire of August 24, 2015, the physician indicated more severe limitations than in the original medical reports. In the PR, the physician check marked the middle range of restrictions for Walking (1-2 blocks), Climbing steps (2-5 steps), and Remaining seated (1-2 hours). The most notable limitation was with respect to Lifting (under 5 lbs.). In his self-reports, the Appellant stated he has difficulty walking longer distances but did not note any restrictions with shorter walks. In the questionnaire, the physician reported that the Appellant is significantly restricted "daily" by "continuous and chronic conditions" and has a "significant degree of restriction overall".

However, as noted by the Ministry, there was no information on which specific activities are reduced. As well, the functional skills as initially reported remain unchanged. As further noted by the Ministry, the circumstances of homelessness and a lack of nutrition do not, in themselves, establish a severe impairment. Based on the preceding analysis, the panel finds that the Ministry reasonably determined that the criterion of severe physical impairment in EAPWDA section 2(2) was not met.

Restrictions in the ability to perform DLA:

Appellant's position

In his self-report and appeal submission, the Appellant submitted that due to his asthma, COPD, and pain from Degenerative Disc Disease, he is restricted in walking distances, tires easily, and must stop at each block. Due to depression and anxiety, he has trouble motivating himself to do things. In the appeal submission, the advocate argued that the Ministry unreasonably put more weight on the physician's information in the PWD application, rather than his answers to the questionnaire. The advocate argued that the information in the questionnaire provides a more accurate description of the Appellant's impairment and restrictions to DLA, as well as his need for assistance. The advocate argued that it is difficult to assess DLA when the client is homeless and does not prepare food, go shopping, or do housework. However, the advocate noted that the physician assessed restrictions in five out of ten DLA, and remarked that the Appellant has a significant degree of restriction overall.

Ministry's position

The Ministry's position is that the assessments provided by the physician do not establish a significant restriction in the Appellant's ability to manage DLA continuously or periodically for extended periods. The Ministry argued the following:

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- The physician indicated the Appellant is not currently taking any medication or treatments that would interfere with his ability to perform DLA.
 - In the AR, the physician indicated the Appellant is independent in all areas except Shopping for which he requires continuous assistance with Carrying purchases home, and also needs periodic assistance with Making appropriate choices. However, the type, frequency, or duration of the assistance was not described.
 - The physician indicated the Appellant is independent in the remaining DLA listed in the AR (other than Social Functioning). For Social Functioning, the physician did not describe the frequency and duration of the periodic support that is required, nor did he describe the types of social supports needed for the Appellant to be maintained in the community.
 - In the questionnaire, the physician indicated that the Appellant takes significantly longer to perform many DLA and has continuous and significant restrictions with regard to Personal care, Meal preparation, Basic housework, and Daily shopping, and is significantly restricted in performing DLA on a continuous/daily basis due to chronic conditions. However, the physician did not describe how much longer than typical the Appellant takes to perform DLA, and he further did not specify which DLA take significantly longer.
 - The physician indicated the Appellant requires community assistance for securing housing and obtaining food and other support. However, the description of assistance required is not indicative of the activities listed as continuously restricted.

Panel's decision

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

The information from the prescribed professional, the Appellant's physician, respecting the Appellant's ability to perform DLA is not consistent. In the AR, the physician indicated the Appellant is independent in all DLA except for two areas of Shopping and most areas of Social Functioning (periodic support required, with the exception of Carrying purchases and Developing/maintaining relationships, where he requires continuous support). However, subsequently in the additional PR, the physician indicated that Personal care, Meal preparation, Basic housework, and Daily shopping are restricted continuously. Both the advocate and the Appellant reported in the appeal submissions that due to being homeless, the Appellant does not do many of the listed DLA (Food preparation, Shopping, and Housework), and that he does not have his own bathing facilities which makes Personal Care very difficult.

Although the advocate noted that the physician was asked to take the Appellant's homelessness into account when filling out the questionnaire, it is clear from the physician's narrative in the AR that the physician was aware of the homelessness and attributed some of the limitations in the ability to perform DLA to homelessness/poverty which makes sense given that the physical functional skills were mostly in the middle range rather than severe. In the subsequent submission, the questionnaire and additional PR, there is no such clarifying narrative and the physical functional skills were not

revisited. Consequently, the panel finds that the Ministry was reasonable to view some of the restrictions in the ability to perform DLA as not relating to a physical or mental impairment.

While the advocate reported that the physician has confirmed (in the additional PR) that five out of ten DLA are significantly restricted continuously or periodically for extended periods, the evidence was that because the Appellant is homeless, community agencies are performing three of the five DLA (Meal preparation, Housework, and Shopping) and providing facilities for a fourth one (Personal Care). There is insufficient information to confirm that the Appellant cannot perform these DLA independently given the opportunity to do so. The physician provided no explanation for the discrepancy in the Appellant's ability to do DLA (between the AR and additional PR) when his functional skills have not changed.

In any event, where the physician reported that DLA are restricted, he did not (as argued by the Ministry) provide detail about how much longer the Appellant takes to perform the activities. Further, in the additional PR and appeal submissions, the help the Appellant needs for DLA was described as community programs for housing, food, and bathing facilities. These are required due to homelessness. Further, there is no evidence that the Appellant is taking medications that impair his ability to perform DLA; in particular, the physician stated in the PR that the Appellant is not taking treatment for his anxiety and the Appellant stated in his appeal submission that he cannot afford the medications he needs.

Based on the above analysis, the panel finds that the Ministry reasonably determined that a prescribed professional has not provided an opinion (supported by clear evidence) that the Appellant's impairment directly and significantly restricts his ability to perform DLA either continuously or periodically for extended periods as required by EAPWDA subsection 2(2)(b)(i), .

Help to perform DLA:

Appellant's position

Both the Appellant and his physician submitted that help is provided by volunteers and community organizations. The advocate argued that the need for assistance must be looked at in the context of a mental health disorder, and the physician has indicated that the Appellant requires help with shelter, supervised/social support, self-care, and personal hygiene, and he requires continuous supervision and support in developing and maintaining stable relationships. The advocate argued that the Appellant's mental health condition directly impacts his social functioning and decision-making ability and he has therefore not been able to secure basic outcomes such as shelter and obtaining help from other people. The advocate argued that the Appellant clearly requires significant help and supervision as he has been homeless for over two years.

Ministry's position

The Ministry argued that this criterion is not met for the following reasons:

- The physician indicated that the Appellant does not require an assistive device or assistance animal.
- Although the Appellant relies on help from volunteers and community services, the physician did not specify the type of help he requires from these sources (to perform DLA) and did not confirm the frequency or duration of their help.

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- As it has not been established that DLA are significantly restricted, it cannot be determined that significant help is required from other persons.

Panel's decision

Subsection 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.

The panel finds that the Ministry reasonably determined that there is insufficient information to show that the Appellant needs an assistive device or significant help or supervision to perform DLA. The physician indicated “no”, the Appellant does not use an assistive device, nor does he have an assistance animal. The panel further finds that the Ministry reasonably determined that the need for help cannot be determined where there was insufficient information to show that DLA are significantly restricted.

The panel notes that even where the physician indicated that the Appellant needs assistance, the help and assistance the Appellant requires are for the purpose of securing housing, food, and other community support. Neither the physician, nor the Appellant in any of his submissions, confirmed that the support he requires is for the specific purpose of performing DLA. Therefore, the panel finds that the Ministry reasonably determined that the requirement for help in EAPWDA subsection 2(2)(b)(ii) was not met.

Conclusion:

The panel finds that the Ministry reconsideration decision, denying the Appellant PWD designation under section 2 of the EAPWDA, was reasonably supported by the evidence. The panel confirms the reconsideration decision.