

PART C – Decision under Appeal

The decision under appeal is the reconsideration decision of the Ministry of Social Development and Social Innovation (the ministry) dated 23 October 2015 that denied the appellant designation as a person with disabilities (PWD). The ministry determined that the appellant did not meet all of the required criteria for PWD designation set out in the *Employment and Assistance for Persons with Disabilities Act*, section 2. Specifically, the ministry determined that the information provided did not establish that the appellant has a severe mental or physical impairment that in the opinion of a prescribed professional

(i) directly and significantly restricts his ability to perform daily living activities (DLA) either continuously or periodically for extended periods; and,

(ii) as a result of those restrictions, he requires help to perform those activities.

The ministry determined that the appellant satisfied the other 2 criteria: he has reached 18 years of age and his impairment in the opinion of a medical practitioner is likely to continue for at least 2 years.

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 reconsideration consisted of the following:

1. The appellant's PWD Designation Application dated 12 May 2015. The Application contained:
 - A Physician Report (PR) dated 21 April 2015, completed by the appellant's general practitioner (GP) who has known the appellant since 1989 and seen him 2 - 10 times over the past year
 - An Assessor Report (AR) dated 21 April 2015, completed by the same GP.
 - A Self Report (SR) dated 28 March 2013, completed by the appellant with the assistance of his advocate.
2. The appellant's Request for Reconsideration, dated 17 September 2015, to which was attached a submission from the appellant's advocate dated 22 October 2015.

In the PR, the GP lists the following diagnoses related to the appellant's impairment: pseudo arthrosis at L5 transverse process/sacrum, with onset December 2010, and reactive depression (mild).

The panel will first summarize the evidence from the PR and AR relating to the PWD criteria at issue.

Severity of impairment

Physical impairment

PR:

Under health history, the GP writes:

"[The appellant] has suffered with chronic lower back pain since a work related injury in Dec. 2010. This was extensively investigated & he was found to have a congenital pseudo arthrosis on his left L5 transient process of his L5 vertebra articulating with his sacrum. He has had a number of treatments to this area, without success.

He reports daily, > constant LBP [lower back pain] that prevents him from walking any significant distances, climbing, standing or sitting too long. It is managed somewhat with medications, but it has not improved."

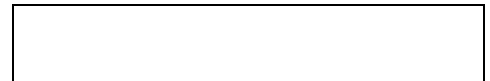
Under additional comments, the GP writes;

"[The appellant] is booked to see pain clinic [which] may provide some relief with his symptoms. His lower back pain prevents him from enjoying his daily activities & impacts his quality of life. It is hoped that he will be able to get some therapy or treatment that will alleviate his pain, to date this has not happened. Although presenting disabled, I am hopeful that this will not be permanent & a treatment to alleviate his pain will occur."

The GP indicates that the appellant's height and weight are relevant: ~ 180-185 cm. and ~105-110 kg.

A GP indicates that the appellant has not being prescribed any medication and/or treatments that interfere with his ability to perform DLA.

As to whether the appellant requires any prosthesis or aids for his impairment, the GP reports that the appellant uses a cane when walking any distances.



Regarding functional skills, the GP indicates that the appellant can walk less than 1 block unaided on a flat surface, it is unknown how many stairs he can climb, is limited to lifting 5-15 lbs. and can remain seated for less than 1 hour.

Mental impairment

PR:

Under health history, the GP writes that the appellant's mood has suffered because of his chronic pain.

The GP indicates that the appellant has no difficulties with communication.

The GP reports that the appellant has significant deficits with cognitive and emotional function in the areas of executive (mild), memory (mild), emotional disturbance, and motivation. The GP comments: "When more disabled, this affects his mood, concentration, memory & executive function."

AR:

Regarding the degree of how the appellant's mental impairment restricts functioning, the GP assessed the degree of impact in the listed areas as follows:

- Major impact: none.
- Moderate impact: motivation.
- Minimal impact: emotion, attention/concentration, executive, and memory.
- No impact: bodily functions, consciousness, impulse control, insight and judgment, motor activity, language, psychotic symptoms, other neuropsychological problems, and other emotional or mental problems.

The GP comments:

"[The appellant] suffers from mild depression, which at times worsens when his chronic LBP flares. Although on medications for this, it at times will impact his motivation, mood, memory, concentration & executive functioning."

Ability to perform DLA

PR:

The GP reports that the appellant is restricted in performing the following DLA on a continuous basis: personal self care (mild), basic housework, daily shopping and mobility outside the home.

The GP reports that the appellant is not restricted for meal preparation, management of medications, use of transportation, management of finances and social functioning.

The GP indicates "unknown" for mobility inside the home.

The GP comments that the appellant uses devices to help with personal care.

AR:

The GP reports that the appellant lives alone.

The GP describes the impairments that impact the appellant's ability to manage DLA as "Chronic, daily low back pain (L.B.P.) prevents him from sitting/standing too long, unable any distances & any significant weight."



The GP indicates that the appellant's ability to communicate is good for speaking, reading, writing and hearing.

Respecting the assistance required for mobility and physical ability, the GP indicates that the appellant uses a cane for walking indoors, walking outdoors and climbing stairs. No information is provided for standing. GP indicates that the appellant's ability for lifting carrying holding is limited, commenting "His chronic LBP prevents him from significant lifting or carrying."

Regarding the assistance required to manage DLA, the GP provides the following assessments (the GP's comments in parentheses):

- Personal care – Independent for dressing, toileting, feeding self and regulating diet, transfers in/out of bed and transfers on/off chair; uses assistive device for grooming and bathing (long-handled the brushes, etc.).
- Basic housekeeping – independent for all aspects.
- Shopping – independent for all aspects (uses carts, etc. for carrying purchases home).
- Meals – Independent all aspects.
- Pay rent and bills – independent for all aspects.
- Medications – independent for all aspects.
- Transportation – Independent for all aspects.

In terms of social functioning, the GP assesses the appellant as independent for all listed aspects – making appropriate social decisions, developing and maintaining relationships, interacting appropriately with others, dealing appropriately with unexpected demands and securing assistance from others.

The GP describes the appellant's relationships with his immediate and extended social networks as good functioning.

Help provided/required

AR:

The GP reports that help is provided to the appellant by family and friends "when required."

The GP indicates that the appellant routinely uses a cane as an assistive device.

The GP indicates that the appellant does not have assistance animal.

Self report

In describing his disability, the appellant writes that he suffers from chronic pain in his back and from arthritis. An accident at work three years ago caused him to severely injure his lower back, resulting in a state of near constant pain today. This greatly restricts his daily activities. It is only through the use of a cane or other supportive device that he is able to go about his day. He has also been diagnosed with and suffers from depression and diabetes and takes an antidepressant and must manage his diabetes on a daily basis, taking insulin as required. His depression affects his motivation

and ability to function, impacting his ability to complete daily tasks and his relationships with family and others. He has also suffered from issues with impulse control and anger management.

In summary, the appellant explains how his disability affects his life and his ability to take care of himself as follows:

- He is unable to walk more than a block without the assistance of a cane or crutches.
- He avoids stairs if at all possible, and if he must take them he needs the assistance of a railing and must take them very slowly.
- He cannot sit for more than 20 minutes without pain and the need to adjust or move around.
- Lifting any weight it is quite painful and forces him to suffer through the pain or seek assistance.
- Maintaining personal self-care is difficult and takes much longer as a result of his pain. He uses a long handled scrub brush to clean below his waist, as it is too painful to bend.
- Laundry and housekeeping are extremely painful and he is unable to lift his laundry, usually ending up pushing it around to move it.
- He requires support from a table or some other surface to get in or out of bed or chair. Getting in and out of a car can be quite painful.
- He uses a grocery cart to support himself shopping.
- His depression leads to extreme lack of motivation, chronic fatigue and anxiety. On bad days he lacks the energy and desire to do household chores and the motivation to leave his home.
- His severely depressed moods can prevent him from seeing to his own needs and things that need to be done.
- His lack of motivation and energy is aggravated by extreme disturbances in his sleep, caused by high levels of pain. He ends up staying up until he is absolutely exhausted so he can fall asleep through the severe back pain.
- His mental struggles also have had an impact on his relationships. Problems with anger have had a strong impact on his family, including his relationship with his son. After the end of his marriage this past year, his struggles with depression increased and he suffers from anxiety around his relationships with his family and tends to avoid contact, finding it hard to reach out for the support he needs.

Request for Reconsideration

The submission by the appellant's advocate goes to argument, referring to a letter attached to this submission that clarifies and elaborates on how the appellant meets the requirements for PWD designation. The advocate states that this letter ("the advocate's letter") was prepared by the advocate on the basis of extensive interviews with the appellant. The letter addresses several of the GP's assessments in the PR and AR as follows:

- The appellant avoids stairs at all times; if unavoidable he must use a railing to pull himself up and this takes approximately three times longer than average.
- He is limited to lifting 10 pounds and only from waist height; he cannot twist and turn while lifting nor can he hold or carry this weight due to his lower back pain; carrying and holding is limited to 5 pounds
- He can stand for only 2 to 3 minutes at a time due to his back pain; as a result he requires assistance with any activity that requires him to stand for longer than a couple of minutes – e.g. he uses a grab bar in the shower and requires a shower seat so that he can stay in the

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shower long enough to have access to the lower half of his body

- Getting up from a seated position is also difficult – he uses a towel bar to pull himself up from the toilet, but requires a proper grab bar as well.
- Getting out of bed take significantly longer than average – he has to move slowly and carefully and the process can take several minutes.
- He cannot get out of the chair unless it has armrests or is close to something that he can use to pull himself up.
- Getting dressed also takes significantly longer and he has to be seated to put clothes on – it takes 3-4 times longer than it used to.
- He eats only simple foods such as cereal or sandwiches at home as he cannot stand long enough to cook proper meals for himself.
- He requires continuous assistance with grocery shopping as he can only carry 5 pounds and can't wait in line to pay – often his sons help and he uses a grocery cart to assist him walking around the store, but would benefit from the use of a walker.
- Laundry and housekeeping are also restricted: he cannot vacuum, clean his fridge, oven, under his bed or baseboards; if something spills he cannot bend down to clean it up; to clean his toilet he has made an extension for his toilet brush using an old broom handle; he has an ironing board near the washing machine where he keeps his laundry hamper so that he does not have to bend over to pick up and transfer his clothes to the machine.
- As to social functioning, he loses focus easily and often repeats himself without realizing it; he has very low motivation and procrastinates for extended periods; he avoids interacting with others and has trouble relating to his friends as many of the activities he used to do with them he no longer can; being intimate with his girlfriend is restricted by his back pain; all these restrictions to social functioning further exacerbate his depression.

The appellant filed his Notice of Appeal on 03 November 2015. Under Reasons for Appeal, he writes that his disability makes it impossible for him to work as he is in constant pain. He adds that he has new information from his doctor.

The hearing

At the hearing, the appellant's advocate presented a submission that went to argument (see Part E, Reasons for Panel Decision, below). The submission referred to a "To whom it may concern" letter dated 19 November 2015 from the appellant's GP that was also submitted at the hearing. The letter ("the GP's letter"), which the advocate acknowledged that she drafted, reads:

I am [the appellant's] physician and am writing in support of his appeal of the decision to deny his PWD application

I have read the letter from his advocate, [name], dated October 22, 2015 and confirm that it represents a current reflection of the appellant's impairments and restrictions. The details contained in the letter are the most accurate reflection of [the appellant's] disability.

Although I indicated in the original application that [the appellant] does not require assistance in activities of daily living, further consultation has shown that to be inaccurate. [The appellant] requires continuous assistance with any activity that requires him to remain standing longer than 2-3 minutes or carry more than 5 pounds including: bathing, toileting, laundry, housekeeping, shopping, and meal preparation.

[REDACTED]

As such, it is my medical opinion that [the appellant] meets the criteria for this designation.

In her submission and at the hearing, the advocate stated that due to difficulties with scheduling, the GP was unable to meet with the appellant before the reconsideration deadline.

The ministry stood by its position at reconsideration.

Admissibility of new Information

The ministry did not object to the admissibility of the GP's letter. The position of the appellant is that the letter corroborates the information in the advocate's letter and therefore should be admitted as evidence.

The panel must be guided by section 22(4) and 24(1) of the *Employment and Assistance Act (EAA)*, which state:

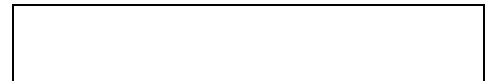
22(4) In a hearing referred to in subsection (3), a panel may admit as evidence only
(a) the information and records that were before the minister when the decision being appealed was made, and
(b) oral or written testimony in support of the information and records referred to in paragraph (a).

24(1) After holding the hearing required under section 22 (3) [*panels of the tribunal to conduct appeals*], the panel must determine whether the decision being appealed is, as applicable,
(a) reasonably supported by the evidence, or
(b) a reasonable application of the applicable enactment in the circumstances of the person appealing the decision.

Section 22(4)(b) of the *EAA* is designed to strike a balance between a pure appeal on the record of the ministry decision and a hearing *de novo* (a completely new hearing). It contemplates that while a party may wish to submit additional evidence to the panel on the appeal, the panel is only empowered to admit (i.e. take into account in making its decision) "oral or written testimony in support of" the record of the ministry decision; it provides appellants with a limited opportunity to augment their evidence on appeal but it does not provide them with a hearing *de novo*, as the panel is tasked with assessing the reasonableness of the ministry's decision. If the additional evidence substantiates or corroborates the information and records before the minister at the reconsideration stage, the evidence should be admitted; if it does not, then it does not meet the test of admissibility under s. 22(4)(b) of the *Employment and Assistance Act* and should not be admitted.

While the GP's letter ostensibly corroborates the advocate's letter, there are a number of issues to be considered respecting its admissibility:

- As the ministry noted in the reconsideration decision (see Part E, Reasons for Panel Decision, below), and as the GP's letter acknowledges, there are many inconsistencies between the advocate's letter and the assessments provided by the GP in the AR, to the point where the panel finds that the two provide contradictory assessments.
- The AR provides the opportunity for a prescribed professional to identify in detail whether and to what degree the appellant's impairments directly restrict the ability to perform aspects of the legislated DLA and as a result of such restrictions how much help is required. Such assessments are also crucial to the determination of the severity of impairment.
- The GP's letter states that after "further consultations" the original assessments have been shown "to be inaccurate." As it is not unreasonable to expect the GP to have completed the



AR with due diligence, the ministry would have made its decision accordingly.

- In submitting the GP's letter, the appellant's advocate is asking the panel to largely ignore the AR and to substitute the prescribed professional's assessments with those set out in the advocate's letter.
- Section 2 of the *EAPWDA* requires that for PWD designation the ministry is required to base its determination as to whether the person is directly and significantly restricted by impairment in performing DLA and whether as a result significant help is required primarily on the opinion of a prescribed professional. Thus, under the *EAPWDA* the evidence from the prescribed professional assumes a unique status different from any other information provided.
- At reconsideration, the assessments in the advocate's letter did not have the unique status of that of the opinion of a prescribed professional. In essence the appellant's advocate is asking the panel to make a decision with the assessments in the advocate's letter becoming the opinion of the prescribed professional and the GP's original assessments being ignored as "inaccurate." In other words, the advocate would see the advocate's letter assuming the unique status of that of the opinion of a prescribed professional.
- Section 24(1) of the *EAA* limits the jurisdiction of the panel to determining the reasonableness of the ministry's reconsideration decision. Panels cannot become decision makers of first instance. Section 22(4) limits a panel's jurisdiction to reviewing the ministry's decision, not making a new decision based on information that was not before or in support of the information before the ministry at reconsideration.
- As the GP's letter repudiates his opinion as a prescribed professional and replace them with a different set of assessments, it cannot be said to corroborate or substantiate the opinion he provided as a prescribed professional that was before the ministry at reconsideration. The panel therefore finds that the GP's letter is not in support of the information before the ministry at reconsideration.

Accordingly, the panel does not admit the GP's letter as evidence under section 22(4) of the *EAA*..

PART F – Reasons for Panel Decision

The issue in this appeal is whether the ministry decision that determined that the appellant did not meet two of the five statutory requirements of Section 2 of the *EAPWDA* for designation as a person with disabilities (PWD) is reasonably supported by the evidence or is a reasonable application of the legislation in the circumstances of the appellant. The ministry found that the appellant met the age requirement and that, in the opinion of a medical practitioner, his 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 DLA are, in the opinion of a prescribed professional, directly and significantly restricted either continuously or periodically for extended periods; and,
- as a result of these restrictions, the appellant requires the significant help or supervision of another person, the use of an assistive device, or the services of an assistance animal to perform DLA.

The following section of the *EAPWDA* applies to this appeal:

2 (1) In this section:

"**assistive device**" means a device designed to enable a person to perform a daily DVDs that require any form of physical mobility. The information provided in his initial application reflects the assistance he, as he does not have access to the continual support requires, as he does not have access to the continual support he requires. In a beautiful 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

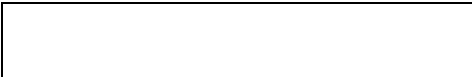
- (a) in the opinion of a medical practitioner is likely to continue for at least 2 years, and
- (b) in the opinion of a prescribed professional
 - (i) directly and significantly restricts the person's ability to perform daily living activities either
 - (A) continuously, or
 - (B) periodically for extended 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.

The following section of the *EAPWDR* applies to this appeal:

- 2 (1) For the purposes of the Act and this regulation, "daily living activities",
- (a) in relation to a person who has a severe physical impairment or a severe mental impairment, means the following activities:
 - (i) prepare own meals;



- (ii) manage personal finances;
 - (iii) shop for personal needs;
 - (iv) use public or personal transportation facilities;
 - (v) perform housework to maintain the person's place of residence in acceptable sanitary condition;
 - (vi) move about indoors and outdoors;
 - (vii) perform personal hygiene and self care;
 - (viii) manage personal medication, and
- (b) in relation to a person who has a severe mental impairment, includes the following activities:
- (i) make decisions about personal activities, care or finances;
 - (ii) relate to, communicate or interact with others effectively.
- (2) For the purposes of the Act, "**prescribed professional**" means a person who is
- (a) authorized under an enactment to practise the profession of
 - (i) medical practitioner,
 - (ii) registered psychologist,
 - (iii) registered nurse or registered psychiatric nurse,
 - (iv) occupational therapist,
 - (v) physical therapist,
 - (vi) social worker,
 - (vii) chiropractor, or
 - (viii) nurse practitioner, or
 - (b) acting in the course of the person's employment as a school psychologist by
 - (i) an authority, as that term is defined in section 1 (1) of the *Independent School Act*, or
 - (ii) a board or a francophone education authority, as those terms are defined in section 1 (1) of the *School Act*,
- if qualifications in psychology are a condition of such employment.

Severity of impairment

Physical impairment

The position of ministry, as set out in the reconsideration decision, is that it is not satisfied that the information provided is evidence of severe physical impairment. The ministry argues that a severe physical impairment requires weighing the evidence provided against the nature of impairment and its reported functional skill limitations.

While the ministry acknowledges that the appellant experiences some degree of restriction to his impairment, it is not satisfied that the combination of his functional skills, mobility and physical abilities exhibit severe impairment.

In reaching its decision, the ministry reviews the functional skill limitations reported by the GP (i.e. able to walk less than 1 block unaided, etc.) Although it recognized that the appellant can walk less than 1 block unaided and uses a cane when walking any distances, the ministry was not satisfied that this in and of itself necessarily establishes a severe impairment, taking into account that the GP does not indicate that the appellant requires periodic or continuous assistance or takes significantly longer than typical when walking indoors and outdoors. This makes it appear to the ministry that he is able to mobilize well with the use of a cane.

The ministry noted that the GP had known the appellant since 1989 and had completed his application considering unspecified consult letters and provided a reasonable amount of narrative. Considering this, ministry was satisfied that the GP had provided a full and knowledgeable assessment of his condition and capabilities. The ministry went on to note that in the AR the GP indicated that the appellant is largely independent in almost every category of DLA, only requiring the use of a couple of assistive devices (e.g. long-handled brush) to accomplish his DLA and requires no assistance from another person in any category of DLA. The GP does not even indicate that any of his DLA takes significantly longer. The ministry concluded that it would be expected that if his lower back pain were considered severe a few of his DLA would take him somewhat longer to accomplish.

The ministry also considered the additional information provided in the advocate's letter, noting several inconsistencies with that provided by the GP – e.g. limitation in standing: can stand 2-3 minutes at a time and requires a grab bar in the shower seat, vs. limitations in standing not indicated by the GP, though he does indicate that the appellant uses an assistive device, commenting only "long-handled brushes etc." but not grab bar/shower seat. The ministry also noted inconsistencies in assessments regarding climbing stairs, lifting, getting in/out bed, and in/out of chairs, getting dressed and preparing meals, shopping laundry and housekeeping. Due to these inconsistencies, the ministry determined that it would give less weight to the advocate's letter than to the GP's assessments.

The appellant's position, as set out in his advocate's submission on appeal, is that the evidence submitted in the SR, PR and AR and in the advocate's letter establishes that he has a severe physical impairment. The submission reviews evidence in the PR and AR, including that the appellant uses a cane when walking any distance, can walk less than one block unaided, is continuously restricted with mobility outside the home, uses an assistive device when walking indoors, outdoors and climbing stairs, is limited to lifting 5 to 15 pounds due to back pain and is continuously restricted with personal self care, basic housework and shopping. The submission also reviews the information submitted in the advocate's letter at reconsideration regarding mobility and DLA (see Part E above under Request for Reconsideration).

Panel decision

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

To assess the severity of an impairment 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, and that the fundamental basis for the analysis is the evidence from the prescribed professional – in this case, the appellant's GP.

The panel will first address the ministry's position that the GP's assessments in the PR and AR be given more weight than those described in the appellant's letter. As the ministry noted, the GP has known the appellant for many years – since 1989 – and had seen him 2 to 10 times in the past year. Over the years, the GP has been the appellant's primary health care provider, arranging for extensive investigations and a number of treatments for his condition. Further, the panel notes that the legislation requires the ministry to rely on the opinion of a prescribed professional in determining the

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degree to which the appellant's impairments restrict his ability to perform DLA and how much help is required. Given the inconsistencies noted by the ministry in the assessments provided by the GP compared to those described by the advocate, and since the GP is a medical practitioner/prescribed professional and the advocate is not, the panel finds that the ministry was reasonable in giving less weight to the advocate's letter and more weight to the GPs independent and professional assessments.

Turning to the appellant's lower back pain [LBP] impairment, mobility (the DLA of walking indoors and outdoors) is a crucial factor in determining the severity of physical impairment. In the PR, the GP assessed the appellant as being able to walk less than 1 block unaided and ability to climb stairs as "unknown." In the AR, the GP indicates that the appellant uses an assistive device for walking indoors, walking outdoors, and climbing stairs, later indicating that he uses a cane. He also comments that the appellant's LBP prevents "walking any distances," but it is unclear whether this is with or without the cane, and how far he means. In his SR the appellant writes that only through the use of a cane or other supportive device is he able to go about his day. He also writes that he is unable to walk more than a block without the assistance of a cane or crutches, and avoids stairs if at all possible; if he must take them he needs the assistance of a railing and must take them very slowly. In her letter, the advocate states that this means 3x longer. As the ministry noted, the GP did not indicate that the appellant required either periodic or continuous assistance from another person or take significantly longer than typical walking indoors and outdoors or climbing stairs. Given this evidence the panel finds that the ministry was reasonable in concluding that the appellant appears to mobilize well with the use of a cane.

While the advocate indicated that the appellant was limited to standing 2-3 minutes, no limitations in this respect were reported by the GP except a comment that the appellant reports that his constant LBP prevents him from standing "too long" and the appellant made no reference to such a limitation in his SR. It is not unreasonable to have expected the GP to report such a significant limitation and finds that the ministry was reasonable in giving the advocate's assessment little weight.

The GP assessed the appellant as being able to lift 5-15 lb. The advocate clarified this by stating that the appellant could carry/hold 5 lb. maximum and 10 lb. from waist height, but cannot bend over without experiencing extreme pain. The GP also commented that the appellant's LBP prevents any significant lifting or carrying. Despite these restrictions to the appellant's mobility and physical ability, the GP has assessed the appellant as independent with virtually all aspects of DLA requiring physical effort, with no assessments that any take significantly longer than typical, and the use of assistive devices only for walking indoors and outdoors and a long-handled brush for grooming and bathing (publicly available stair railings and shopping carts are not considered assistive devices under the legislation). (See also Direct and significant restrictions to the ability to perform DLA below.)

Considering the appellant's ability to mobilize with the use of a cane and the GP's assessments regarding his ability to perform independently and without taking significantly longer than typical those aspects of DLA requiring physical effort, the panel find that the ministry was reasonable in determining that the information provided did not establish a severe physical impairment.

Mental impairment

The position of the ministry is that the information provided does not establish a severe mental

impairment. The ministry noted that the GP had diagnosed the appellant with mild reactive depression and assessed the appellant with no major impacts of daily functioning and only one moderate impact, while providing assessments that he was independent in all aspects of social functioning, with good functioning in both his immediate and extended social networks.

In her submission on appeal, the appellant's advocate did not specifically address severity of mental impairment. From the hearing, the panel understands that the appellant's position is that the GP's diagnosis of reactive depression and the description of the impact of the appellant's mental health condition on his daily functioning as described in the appellant's letter is sufficient to establish a severe mental impairment.

Panel findings

The panel notes that the GP diagnosed the appellant's reactive depression as mild. and while he has identified significant deficits with cognitive and emotional function in several areas – executive, memory, emotional disturbance and motivation – he has not assessed any of these deficits as having a major impact on daily functioning and with only one moderate impact, motivation. The advocate's letter describes several impacts of the appellant's mental health condition on his daily functioning. For the reasons discussed above, the panel places less weight on the advocate's information than that provided by the GP, who as assessor/prescribed professional, assessed the appellant as independent in all aspects of social functioning and with good functioning with his immediate and extended social networks, and finds that the ministry was reasonable in determining that a severe mental impairment had not been established.

Direct and significant restrictions in the ability to perform DLA.

The position of the ministry is that the information provided does not establish that the appellant is significantly restricted in performing his DLA either continuously or periodically for extended periods. In the reconsideration decision, the ministry recognized that there are inconsistencies between the GP's assessment of the appellant's ability to perform DLA between those set out in the PR and those in the AR and has given the information provided in the AR more weight because it provides a more detailed, broken-down version of assessing the appellant's capabilities in performing his DLA. In the AR, the GP indicates that the appellant is independent in almost every aspect of all DLA. Those categories that he does not indicate as independent, he only explains that the appellant uses an assistive device to perform the task (cane, long-handled brush). The ministry concluded that it was not satisfied that the information established any kind of significant restriction.

The appellant's position, as described in his advocate's submission on appeal, is that there is sufficient evidence to demonstrate that this criterion has been met. The GP in the PR has assessed the appellant as restricted for the DLA of personal self-care, basic housework, daily shopping and mobility outside the home. The appellant's letter further clarifies and elaborates on his restrictions, referring to his need for assistive devices such as a cane for mobility, a long handled brush for showering, the use of shopping carts while shopping and railings while climbing stairs and his need for a walker and grab bars and a seat in the shower. The advocate's letter also documents that the appellant takes significantly longer than typical for such activities as climbing stairs and dressing, and requires continuous assistance from others for housekeeping and shopping. His social functioning is

also restricted as a result of his depression and limited mobility. Taken together, the appellant submits that this evidence establishes that his impairments directly and significantly restrict his ability to manage DLA on an ongoing basis.

Panel findings

According to the legislation, whether there is a direct and significant restriction in the ability to perform DLA must be based on the opinion of a prescribed professional. The significant restriction in the ability to perform DLA must also be a result of a severe impairment, a criterion that has not been established in this appeal. This DLA criterion must also be considered in terms of the preceding legislative language of section 2 of the *EAPWDA*, which provides that the minister may designate a person as a person with disabilities “if the minister is satisfied that” the criteria are met, including this one. In exercising the discretion conferred by the legislation, it is reasonable that the minister would expect that the opinion of a prescribed professional be substantiated by information from the prescribed professional that would satisfy the minister that there are direct and significant restrictions in the ability to perform DLA, either continuously or periodically for extended periods, by presenting a clear and complete picture of the nature and extent of these restrictions.

The appellant's advocate has argued that in the PR the GP assessed the appellant as restricted for personal care, basic housekeeping, shopping and mobility outside the home. However these assessments do not address the degree of restriction (except for personal care, which the GP notes “mild”) – that is, whether the restriction is “significant.” In the AR, the GP assesses the appellant as independent for meal preparation, basic housework and daily shopping. The ministry has referred to these differences as “inconsistencies.” Another interpretation is that for these DLA, the appellant is somewhat restricted on an ongoing basis, but not to the point where he needs continuous or periodic assistance from another person, takes significantly longer than typical or requires the use of an assistive device. For the DLA of moving about indoors and outdoors and personal care, GP has reported that the appellant requires the use of a cane for the former and a long-handled brush for the latter. While the advocate’s letter states that the appellant needs a walker, grab bars in the bathroom/shower and a shower seat, this need has not been confirmed by the GP.

Regarding the DLA applicable to a person with a severe mental impairment – make decisions about personal activities, care or finances, and relate to, communicate or interact with others effectively – in the AR the GP assesses the appellant as independent in making appropriate social decisions, developing and maintaining relationships, interacting appropriately with others, dealing with unexpected demands and securing assistance from others. He assesses relationships with immediate and extended social networks as “good functioning.”

Given that a severe physical or mental impairment has not been established and considering the GP’s assessments of independent functioning across most DLA, the panel finds that the ministry was reasonable in determining that the information provided did not establish that, in the opinion of a prescribed professional, the appellant's impairments directly and significantly restrict his ability to perform DLA either continuously or periodically for extended periods

Help with DLA

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.

The appellant's position is that he requires significant assistance with DLA, requiring the use of a cane for mobility, a long-handled brush for personal care, and needs a walker and assistive bathroom accouterments. He also needs help from another person for shopping, housework and meal preparation.

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

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 reasonably supported by the evidence. The panel therefore confirms the ministry's decision.