

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 December 14, 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 section 2 of the *Employment and Assistance for Persons with Disabilities Act*. Specifically, while the ministry was satisfied that the appellant has a severe physical impairment, though not a severe mental impairment, the information provided did not establish that in the opinion of a prescribed professional his impairment

- (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

At the hearing, the appellant was accompanied by an advocate and an observer. The ministry did not object to the presence of the observer.

The evidence before the ministry at reconsideration consisted of the following:

1. The appellant's PWD designation application dated June 17, 2015. The application included:
  - A physician Report (PR) dated June 7, 2015 completed by the appellant's general practitioner (GP) who has known the appellant since 2011 and has seen him 2-10 times over the past year.
  - An Assessor Report (AR) dated June 17, 2015 completed by the same GP.

The appellant chose not to complete the self-report.

2. A CT of the appellant's lumbar spine dated August 7, 2015.
3. A 4-page questionnaire/report (QR) dated December 1, 2015 and signed by the appellant's GP that describes the appellant's physical and mental impairments, the restrictions resulting from these impairments and the assistance required by the appellant as a result of these restrictions.
4. The appellant's *Request for Reconsideration* signed and dated on November 27, 2015 and accompanied by a 3-page (undated) submission by the appellant's advocate.

The appellant's *Notice of Appeal* was signed but not dated, and included the following reason for the appeal "*The Minister has erred and has not correctly applied legislation.*"

In the PR, the GP lists the following diagnoses related to the appellant's impairment: hip pain/replacement (date of onset unspecified); (left) ankle Fx (date of onset unspecified); leg pain (date of onset unspecified); and shoulder pain (date of onset unspecified). Under "Health History" the GP has written "*Pt states has a history of hip replacement. He has chronic pain in (left) hip. States has pain there everyday. Grades it 10/10 at times. Pt states also had (left) ankle fracture and reconstruction surgery + still has pain there. Pt states gets pain in legs. Has chronic pain in them. Unable to walk long distances, has to take frequent breaks. Also has chronic shoulder pain. Has difficulty lifting heavy loads + difficulty putting on shoes.*"

In the QR, the GP confirms that the appellant suffers from the following severe conditions: Hip pain/replacement, (left) ankle fracture, leg pain, shoulder pain and depression.

The panel will summarize the evidence from the PR, AR and QR relating to the appellant's impairments as it relates to the PWD criteria at issue.

### Mental impairment

PR:

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

The GP indicated that the appellant has significant deficits with the following cognitive and emotional functions: consciousness, memory, emotional disturbance, motivation, impulse control, motor activity and attention or sustained concentration.

The GP reports that the appellant is not restricted in his social functioning.

AR:

The GP lists the appellant's ability to communicate as "good" for speaking, reading, writing and hearing.

For cognitive emotional functioning, the GP reports that the appellant's mental impairment has a major impact on: emotion, motivation and motor activity; a moderate impact on bodily functions, consciousness, and attention/concentration; and a minimal impact on impulse control and memory. He reports that there is no impact upon the following areas of the appellant's cognitive/emotional functioning: insight and judgement, executive, language, psychotic symptoms, other neuropsychological problems and other emotional or mental problems.

QR:

The GP reports that the appellant suffers from severe depression and as a result of his mental health conditions he experiences the following symptoms daily: lack of appetite, sleep disturbances, drowsiness, lack of motivation, depressed moods, difficulty concentrating & paying attention, extreme tension & agitation, social isolation, difficulty developing & maintaining relationships and difficulty dealing with unexpected demands.

#### Ability to perform DLA

PR:

The GP comments: "Unable to walk long distances, has to take frequent breaks. " and "Has difficulty lifting heavy loads & difficulty putting on shoes."

The GP indicates that the appellant has not been prescribed any medication and/or treatments that interfere with his ability to perform DLAs.

The GP indicates that the appellant's impairment directly restricts his ability to perform DLAs. He reports that the appellant has continuous restrictions to: personal self care, meal preparation, basic housework, daily shopping, mobility outside the home and use of transportation. He reports that the appellant is not restricted in the following: management of medications, mobility inside the home, and social functioning.

AR:

The GP assesses the appellant as independent for the following DLAs: grooming, toileting, feeding self, regulating diet, transfers (on/off chair) (but the GP comments "*Takes longer 2X holds chair arm*"), reading prices and labels, making appropriate choices (shopping), meal planning, safe storage of food (ability, not environmental circumstances), budgeting, pay rent and bills, filling/refilling prescriptions, safe handling and storage (medications), using transit schedules and arranging transportation, appropriate social decisions (incl. avoiding situations dangerous to self or others, good social judgement), interacts appropriately with others (e.g. understands and responds to social cues; problem solves in social context), and able to secure assistance from others.

The GP assesses the appellant as requiring periodic assistance from another person for the following DLAs: laundry and basic housekeeping; and periodic support/supervision for being able to deal appropriately with unexpected demands.

The GP assesses the appellant as requiring continuous support for the following DLAs (GP comments in parentheses): dressing (*Can't put socks on*), bathing (*Difficult to do*), transfers - in/out of

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bed (*Hard to do due to pain*), going to and from stores (*Can't do long distances*), paying for purchases (*Can't stand in line too long*), carrying purchases home (*Unable to do*), food preparation (*Has to sit to do it*), cooking (*Can't do prolonged standing*), banking (*Can't do prolonged standing*), taking medications as directed (*Needs reminders*), getting in and out of a vehicle (*Painful, difficult to do*) and using public transport (*Can't do long distances – difficult to walk*); and continuous support/supervision for being able to develop and maintain relationships (*Stays isolated, gets depressed*).

Under "Additional Comments" the GP writes "*Requires periodic (70% of time) to continuous assistance (with) all above DLAs due to physical and mental impairment.*" This comment appears to apply only to the following DLAs: dressing, bathing, transfers (in/out of bed), laundry, basic housekeeping, going to and from stores, paying for purchases and carrying purchases home.

QR:

The GP indicates the following restrictions apply to the appellant:

- Dressing: significant restrictions with bending to put on shoes, socks and pants due to chronic pain in back, and both legs.
- Grooming: directly restricted with grooming due to pain in back, and both legs. Takes 2x longer.
- Bathing: significant restrictions with standing in shower longer than 10 to 15 minutes due to chronic pain in back, and both legs. Neglects 2 to 3 times per week due to depression.
- Toileting: directly restricted from transferring on and off the toilet due to chronic pain back, and both legs. Has to hold on to the counter to get up.
- Transfers on/off bed or chair: significant restrictions with transferring in and out of bed due to chronic pain in back, both legs and depression. Has to roll in and out of bed on daily basis.
- Laundry/Basic housekeeping: significant restrictions with bending and being unable (to) lift to complete laundry or housekeeping due to chronic pain in back, legs and fatigue as well as depression. Friend helps.
- Going to and from the store: significant restrictions with shopping due to chronic pain in back and both legs as well as depression. Avoids going to the store 80% of the time.
- Reading labels and prices: directly restricted from reading labels, gets significantly frustrated and irritated due to pain and depression.
- Making appropriate choices: significantly restricted from making appropriate choices due to depression and pain. Experiences overwhelmed and frustrated due to depression.
- Paying for purchases: directly restricted from standing longer than 10 to 15 minutes in a line up due to chronic pain in back and both legs.
- Carrying purchases home: directly restricted from lifting, carrying or holding more than 5 to 10 pounds due to chronic pain in back, and both legs. Uses shuttle bus services.
- Food preparation/Cooking: significant restrictions with standing longer than 10 to 15 minutes due to chronic pain in back, both legs and depression.
- Banking: direct restrictions with standing in line ups longer than 10 to 15 minutes due to chronic pain in back, and both legs.
- Getting in/out of vehicle: significantly restricted from getting in and out of a vehicle due to chronic pain in back, and both legs. Takes 2x longer.
- Using public transit: significant restrictions with walking more than 1 block to the bus stop; stepping up onto the bus and with standing on bus due to chronic pain, fatigue and depression.

Help provided/required

PR:

The GP indicates that the appellant does not require any prostheses or aids for his impairment. The GP makes no comment in response to the question "What assistance does your patient need with Daily Living Activities?"

AR:  
The GP indicates that the appellant lives alone. In regard to assistance provided by other people the GP writes "No one."  
No response is given by the GP in response to the question "If help is required but there is none available, please describe what assistance would be necessary."  
No assistive devices are identified by the GP and he confirms that the appellant does not have an assistance animal.

QR:  
The GP indicates that the appellant receives the following assistance:

- Dressing: continuous assistance from a shuttle bus service(s).
- Bathing: continuous assistance from holding to the walls with getting in and out of the shower.
- Toileting: continuous assistance of a counter when transferring on and off the toilet.
- Transfers on/off the bed and chair: continuous assistance with transferring in and out of bed and by rolling himself in and out as well as holding on to the walls and counter.
- Laundry/Housekeeping: continuous assistance from friend with laundry and housekeeping.
- Going to and from the store: continuous assistance from shuttle bus services to access the community.
- Paying for purchases: continuous assistance when standing in line ups longer than 5 minutes by leaning on a shopping cart or uses a cane.
- Carrying purchases home: continuous assistance from friend carrying purchases home.
- Food preparation/Cooking: requires continuous assistance, otherwise eats microwaved meals.
- Banking: Sits down after 10 to 15 minutes of standing.
- Getting in/out of vehicle: continuous assistance with getting in and out of a vehicle by pulling himself using the car door.

The GP indicates that the appellant would benefit from bathing & toileting aids and a scooter.

At the hearing, the appellant indicated that he believed that he met the criteria associated with a severe mental impairment as well as a severe physical impairment. The rest of the appellant's presentation went to argument and is summarized in part F.

In response to questions from the panel, the appellant explained the following:

1. The QR was prepared and submitted because the GP completed the PR and the AR in June, 2015 and some things had changed by December, 2015 (when the QR was completed by the GP) and other issues required clarification.
2. The appellant has found a means of putting on his socks but generally finds that he is significantly restricted from bending and this makes dressing himself extremely difficult.
3. The appellant explained that he had told his GP that he "had no one" to assist him but did not mean that he "needed no one" to assist him. In addition, he noted that he has since found a friend who assists him with laundry, vacuuming and carrying his purchases.

The ministry summarized the contents of the *Reconsideration Decision* but provided no new information.

In response to questions for the panel, the ministry explained the following:

1. The Reconsideration Decision contains some contradictory information regarding whether the ministry accepts that the appellant has a severe physical impairment but the ministry does not accept this conclusion.
2. The ministry was asked if taking twice as long to perform an ADL was not considered to be a significant restriction (e.g. with grooming or transfers in/out of a car) then what would qualify as a significant restriction? The ministry explained that the legislation provides for ministry discretion in reviewing the evidence and the Reconsideration Officer had made a judgement in this matter.

## 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. The ministry was also satisfied that the appellant has a severe physical impairment, though not a severe mental impairment. However, the ministry was not satisfied that the evidence establishes that the appellant's impairment:

- directly and significantly restricted his ability to perform DLA 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**

#### **Mental impairment**

The appellant argues that he does have a severe mental impairment and while allowing that the PR did not include a diagnosis of mental impairment, the appellant argued that the GP did confirm in the QR that the appellant has a severe condition of depression which is expected to continue for at least 2 years and that the appellant is directly, significantly and continuously restricted in his ability to do his DLAs as a result of this condition. The appellant challenged the arguments contained in the *Reconsideration Decision* that the GP had not provided enough detail/explanation to establish that he did not have a severe mental impairment. It was the appellant's contention (and this argument was also made in regard to the ministry's determinations regarding restrictions on DLAs and on the amount of assistance required by the appellant) that the amount of space available to the prescribed professional(s) completing the PWD application is so limited as to make it impossible to provide the level of detail/explanation expected in the *Reconsideration Decision*. Moreover, the appellant noted that the PR identified seven areas of cognitive/emotional function that the GP determined were significant deficits. In addition, the AR identified 3 areas of cognitive and emotional functioning that had a major impact on daily functioning, 3 areas that had a moderate impact and 2 areas that had a minimal impact. Finally, the appellant noted that in the QR, the GP confirmed that the appellant's depression restricted his ability to do the following: bathing, transfers on/off bed or chair, laundry and basic housekeeping, going to and from the store, reading labels and prices, making appropriate choices, food preparation and cooking, and using public transit. The appellant argued that taken



together, these assessments confirmed a severe mental impairment rather than a moderate mental impairment.

In the *Reconsideration Decision*, the ministry argued that:

1. In the PR, the GP indicated that the appellant has no difficulties with communication and although the GP identified seven areas of cognitive emotional functioning in which the appellant is restricted, the GP did not describe the nature of these deficits. Additionally, the GP indicated that the appellant is not restricted in social functioning.
2. In the AR, the GP indicated that the appellant has major impacts to three areas of cognitive/emotional functioning, moderate impacts to three areas and minimal impact to two areas. The ministry concludes that this is indicative of a moderate as opposed to a severe impairment of mental functioning. Additionally, although the GP indicates that the appellant requires support/supervision in regards to social functioning (continuous for being able to develop/maintain relationships and periodic for being able to deal appropriately with unexpected demands) and has marginal functioning with both immediate and extended social networks, he does not describe the support/supervision that the appellant would require to maintain him in the community. The ministry notes that the GP does not indicate that there are any safety issues with regards to social functioning. Finally, the ministry notes that the GP does not describe the frequency/duration of the periodic support/supervision the appellant requires with being able to deal appropriately with unexpected demands.
3. In the QR, the GP does not describe the severity/frequency/duration of the appellant's lack of appetite, sleep disturbances, drowsiness, lack of motivation, depressed moods, difficulty concentrating/paying attention, social isolation, difficulty developing/maintaining relationships and dealing with unexpected demands. Furthermore, the GP does not describe the frequency/duration of the appellant's extreme tension/agitation.

The ministry concludes by acknowledging that the appellant currently experiences limitations to his cognitive and emotional functioning due to chronic pain and depression, but based upon the GP's assessments in the PWD application finds that the appellant has a *moderate* as opposed to *severe* impairment of mental functioning.

#### *Panel findings*

The panel notes that the *Reconsideration Decision* confirms that the appellant has major impacts to three areas of cognitive/emotional functioning, as well as three areas in which there is moderate impact, and two areas in which there is minimal impact (as well as six areas in which there is no impact). The *Reconsideration Decision* concludes that this is indicative of a moderate as opposed to a severe mental impairment. But there is no explanation of how that conclusion follows from the evidence. The panel also notes that the *Reconsideration Decision* argues that the QR "*does not describe the severity/frequency/duration of your lack of appetite, sleep disturbances, drowsiness, lack of motivation, depressed moods, difficulty concentrating/paying attention, social isolation, difficulty developing maintain(ing) relationships, and difficulty dealing with unexpected demands. Furthermore, he does not describe the frequency/duration of your extreme tension/agitation.*" Having reviewed these (apparent) omissions, the ministry concludes "*Therefore, it is difficult to establish a severe impairment of mental functioning based on the questionnaire included with your request for consideration.*" But the panel does not agree that the ministry's conclusion is reasonable. Consider the following:

- the *Reconsideration Decision* notes that the legislation does not require that the "frequency" of

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the appellant's restrictions be described. Recognizing that fact, the panel does not understand why the Reconsideration Decision repeatedly comments upon the absence of evidence relating to the frequency of the appellant's symptoms/restrictions. Moreover, the QR reports that the symptoms listed above are experienced on a daily basis. For both of these reasons, the ministry's argument that the appellant has not described the frequency of these symptoms/restrictions is not a reasonable one.

• The Reconsideration Decision (as quoted above) concludes that the GP has not described the severity of these symptoms/restrictions. Insofar as the QR is concerned, this is a reasonable conclusion. But the panel notes that the severity of these symptoms/restrictions is (in every case) addressed in the AR. For example, insofar as lack of motivation is concerned, the AR reports that the appellant experiences a major impact on daily functioning insofar as motivation is concerned. Similarly, the appellant experiences a major impact upon daily functioning insofar as emotion (which includes depression). The panel considers that the Reconsideration Decision has critiqued each piece of evidence (i.e. the PR, AR and QR) in isolation and has failed to consider it as part of an integrated and complementary set of evidence. The panel therefore concludes that the ministry's determination that the appellant suffers from (only) a moderate mental impairment and not a severe mental impairment is not a reasonable conclusion.

**Direct and significant restrictions in the ability to perform DLA.**

The appellant's position is that the GP has identified multiple DLAs which are directly and significantly restricted as a consequence of the appellant's severe impairments. The AR reports 12 DLAs that require continuous assistance from another person (or are ones which the appellant is unable to do) and one (social functioning) that requires continuous support/supervision. The appellant noted that in each case the GP had provided explanatory comments. Moreover, the QR confirms that the appellant is significantly restricted in 12 DLAs (note that the QR combines transfers on/off bed or chair, laundry/basic housekeeping and food preparation/cooking but these are actually six separate DLAs).

In the *Reconsideration Decision*, the ministry argued that:

1. In the PR the GP indicates that the appellant is not currently prescribed any medications or treatments that interfere with his ability to perform DLAs. In addition, although the GP indicates that the appellant's impairment directly restricts his ability to perform DLAs and that he is continuously restricted with personal self-care, meal preparation, basic housework, daily shopping, mobility outside the home and use of transportation, the GP has not described the nature of the appellant's restrictions with DLAs.

• although the GP indicates that the appellant is continuously restricted with dressing, his statement "*can't put socks on*" is not indicative of a *significant* restriction with dressing.

• although the GP indicates that the appellant is continuously restricted with bathing, his statement "*difficult to do*" does not describe the nature or severity of the appellant's restriction with bathing.

• although the GP indicates that the appellant is continuously restricted with transferring in/out of bed, his statement "*hard to do due to pain*" does not describe the nature or severity of the appellant's restriction with transferring in/out of bed.

• taking 2 times longer with transferring on/off a chair is not indicative of a *significant* restriction. Furthermore, an arm chair is not considered an assistive device when establishing that help is required with transferring on/off a chair.

• the GP does not describe how much longer than typical the appellant takes with laundry.

• although the GP states "*Requires periodic (70% of the time) to continuous assistance [with] all above DLAs [...]*" (i.e. personal-care, basic housekeeping, shopping), he also indicates that the

appellant is independent with grooming, toileting, feeding self, regulating diet, transferring on/off chairs, reading prices/labels and making appropriate shopping choices.

- although the GP indicates that the appellant requires continuous assistance from another person in taking medications as directed (you need reminders) he also indicates that impacts to the appellant's cognitive and emotional functioning in the area of memory are minimal.

- although the GP indicates that the appellant requires continuous assistance from another person with getting in/out of vehicles, his statement "*painful difficult to do*" does not describe the nature or severity of the appellant's restriction with getting in/out of vehicles.

- although the GP indicates that the appellant requires continuous assistance from another person with using public transit, his statement "*can't do longer distances, difficult to walk*" speaks to the appellant's limitations with mobility as opposed to his ability to use public transit.

3. In regard to the QR, the ministry makes the following comments regarding the GPs assessments of the appellant's DLAs:

- the GP's indication that the appellant must bend to put on shoes/socks/pants and sit to put on pants/shoes is not considered indicative of a *significant* restriction with dressing.

- taking 2 times longer with grooming is not considered indicative of a *significant* restriction.

- a limitation of standing in the shower and public line ups for 10 to 15 minutes is not considered indicative of a *significant* restriction.

- bathroom walls/counters are not considered assistive devices when establishing that help is required with entering/exiting the tub and transferring on/off the toilet.

- needing to roll in/out of bed is not considered indicative of a *significant* restriction with transferring in/out of bed. Furthermore, walls/counters are not considered assistive devices when establishing that help is required with transferring in/out of bed.

- the use of a public shuttle bus for going to/from the store is not considered indicative of a *significant* restriction.

- the GP does not describe the frequency/duration of your restrictions with reading labels/prices due to frustration/irritation/pain/depression.

- the GP does not describe the frequency/duration of your restrictions with making appropriate choices due to depression.

- although the GP indicates that the appellant requires continuous assistance when standing in line ups longer than *5 minutes* (paying for purchases), he also indicates restrictions with standing in line ups for upwards of *10 to 15 minutes* (paying for purchases, banking).

- taking 2 times longer to transfer in/out of a vehicle is not considered indicative of a *significant* restriction. Furthermore, a car door is not considered an assistive device when establishing that help is required with transferring in/out of vehicles.

- although the GP indicates that the appellant has significant restrictions when using public transit due to chronic pain/fatigue/depression, he also indicates that the appellant uses the shuttle bus for transportation (going to/from stores, carrying purchases home).

The ministry concludes that while it acknowledges that the appellant experiences restrictions with DLAs requiring lifting and prolonged standing, there is not enough evidence to confirm that the appellant has a *severe* impairment that *significantly* restricts his ability to perform DLAs *continuously or periodically for extended periods*.

#### *Panel findings*

The panel notes that there are some contradictions between the evidence presented in the AR and

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the QR insofar as restrictions experienced by the appellant in his ability to perform DLAs. For example, the QR reports that the appellant experiences restrictions in his ability to perform the following: grooming, toileting, reading labels and prices, and making appropriate choices. By contrast, the AR reports that the appellant is independent in performing all of these DLAs. As noted earlier, this may be a consequence of the QR having been completed six months later than the AR.

Nonetheless, the panel notes that there are numerous DLAs in which the appellant is reported to be restricted where the evidence presented in the PR/AR/QR is consistent. Consider the following:

- The AR reports that the appellant is limited to lifting 5 to 15 pounds. The AR reports that the appellant is continuously restricted in “carrying purchases home” and the GP comments “*Unable to do*”. The QR reports that the appellant is “directly restricted from lifting, carrying or holding more than 5 to 10 lbs. due to chronic pain in back, and both legs. Finally, the appellant reported that he is unable to carry his purchases home and requires the assistance of a friend to do so.
- The PR reports that the appellant is continuously restricted in regard to basic housework. The AR reports that the appellant requires periodic assistance to do laundry and basic housekeeping. The GP has added the following comment “*Requires periodic (70% of time) to continuous assistance for all of the above DLAs due to physical and mental impairments.*” The QR reports that the appellant has “*significant restrictions with bending and being unable (to) lift to complete laundry or housekeeping due to chronic pain in back, legs and fatigue as well as depression. Friend helps.*”
- The PR reports that the appellant is continuously restricted in personal self care. The AR reports that the appellant requires continuous assistance from another person (or is unable to do) both dressing and bathing. In regard to dressing, the GP comments “*Can’t put socks on*” and in regard to bathing he comments “*Difficult to do.*” The QR reports that in regard to dressing, the appellant has “*significant restrictions with bending to put on shoes, socks, and pants due to chronic pain in back, and both legs.*” In regard to bathing, the QR states that the appellant has “*significant restrictions with standing in shower longer than 10 to 15 minutes due to chronic pain in back, and both legs. Neglects 2 to 3 times per week due to depression.*”
- The PR reports that the appellant is continuously restricted in meal preparation. The AR reports that the appellant requires continuous assistance from another person for (or is unable to do) food preparation and the GP comments “*Has to sit to do it.*” The QR reports that in regard to food preparation/cooking, the appellant has “*Significant restrictions with standing longer than 10 to 15 minutes due to chronic pain in back, both legs and depression.*”

The panel notes (once again) that the Reconsideration Decision has critiqued each piece of evidence in isolation and has not acknowledged the integrated and complementary picture they present of significant restrictions experienced by the appellant in performing DLAs. Based upon the above-noted considerations the panel concludes that the ministry determination that the appellant is not significantly restricted in performing his DLAs was not a reasonable conclusion.

### **Help with DLA**

The position of the appellant is that he does require significant assistance from another person to perform DLAs. As noted previously, the appellant explained that the GP’s comment in the AR that the appellant received assistance from “no one” was a result of the appellant telling the GP that he had no one to help but not that he needed no one to help. The appellant noted that the QR reported that he received assistance from a friend for lifting/carrying holding, laundry/housekeeping, and carrying purchases home. As explained previously, the appellant did not have assistance from others at the time the GP completed the PR and the AR (June 2015) but when the QR was completed (December

2015) the appellant had secured help from a friend.

In the *Reconsideration Decision*, the ministry argued that:

1. In the PR the GP indicates that the appellant does not require any prostheses or aids for his impairment.
2. In the AR, the GP indicates that the appellant is not provided assistance by other people.
3. In the QR the GP indicates that the appellant would benefit from the use of bathing/toileting aids and a scooter.

The ministry argues that as it has not been established that DLAs are significantly restricted, it cannot be determined that *significant* help is required.

#### *Panel findings*

The panel notes that there is some ambiguity/contradiction in the evidence regarding the level of assistance required by the appellant. It is clear that the appellant does not use assistive devices (although the QR reports that the appellant sometimes uses a cane when standing in line ups longer than 5 minutes) and the appellant does not have an assistance animal. In the AR, the GP reported that the appellant (has) no one to assist him. In addition, the GP did not answer the question regarding what assistance the appellant would require if help is required but none is available.

Nonetheless, the panel notes that the AR reported that the appellant requires continuous assistance with 12 DLAs and periodic assistance with 2 DLAs as well as continuous support/supervision for one DLA and periodic support/supervision for one DLA. Accordingly, the panel concludes that the AR supports that appellant's claim that he requires significant help or supervision from another person. Moreover, the QR reports that the appellant requires assistance for the following: dressing, bathing, toileting, transfers on/off bed and chair, laundry/housekeeping, going to and from the store, paying for purchases, carrying purchases home, food preparation/cooking, banking and getting in/out of a vehicle. More importantly, the QR reports that the appellant receives assistance from a friend for lifting/carrying/holding, laundry/housekeeping and carrying purchases home. The appellant indicated at the hearing that he was dependent on such assistance on a regular basis. Accordingly, the panel concludes that the ministry determination that it cannot be determined that significant help is required by the appellant is not a reasonable conclusion.

#### **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 that the appellant was not eligible for PWD designation was not reasonably supported by the evidence. The panel therefore rescinds the ministry's decision.