

PART C – Decision under Appeal

The decision under appeal is the Ministry of Social Development and Social Innovation (“Ministry”) reconsideration decision dated January 12, 2016 in which the Ministry found the Appellant was not eligible for designation as a Person With Disabilities (“PWD”) because he did not meet all of the criteria in Section 2(2) of the *Employment and Assistance for Persons with Disabilities Act* (“EAPWDA”). The Ministry was satisfied that the Appellant has reached eighteen 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 (“RFR”), the minister 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. An RFR signed by the Appellant on December 30, 2015 in which he stated his argument regarding restrictions and the need for assistance as a result of his medical condition. The panel will address the arguments of both parties in *Part F – Reasons*.
2. A PWD application comprised of the Applicant Information and self-report form (which the Appellant chose not to complete) signed by the Appellant on June 5, 2015, as well as a Physician Report (“PR”) and Assessor Report (“AR”), both dated July 9, 2015 and both completed by a general practitioner (“the physician”). In the PR, the physician indicated the Appellant has been his patient since February 2015 and he has seen him two to ten times in the past twelve months. In the AR, the physician indicated he completed the form by way of an in office interview, clinical assessment, and file/chart information, and he has known the Appellant for four months.

The PWD application included the following information:

Diagnoses

In the PR, the Appellant was diagnosed with “mal union fracture right ankle with blown up ankle and foot amputation with severe leg length discrepancy complicated by scoliosis”, onset 1991.

Mental or Physical Impairment

In the PR, under *Health History*, the physician described the circumstances that caused the Appellant’s ankle injury.

Functional Skills

PR

The physician provided the following information regarding any functional limitations:

- The Appellant can walk one to two blocks unaided on a flat surface;
- Climb two to five steps unaided;
- Lift under five pounds;
- Remain seated with no limitation;
- Has no difficulties with communication;
- Has “significant deficits” with Emotional disturbance, with the comment, “some degree of anxiety exists; exacerbated by lack of possibility to provide for family.”
- *Additional Comments* (relevant to understanding the significance of the medical condition) was left blank.

AR

The physician provided the following information for *Mental or Physical Impairment (Abilities)*:

- *Ability to Communicate*: Speaking and Hearing are good, and Reading and Writing are satisfactory.
- *Mobility and Physical Ability*: The Appellant requires periodic assistance from another person for Walking indoors, Walking outdoors, Climbing stairs, and Standing. In the area of Lifting, the Appellant requires continuous assistance from another person or is unable to do the activity. For Walking indoors, the Appellant uses an assistive device with the comment, “walking cane, shoes”.

The physician reported the following impacts for the fourteen areas of *Cognitive and Emotional Functioning*:

- No impact in five areas: Insight and judgement, Attention/concentration, Executive, Memory, and Psychotic symptoms.
- Minimal impact in five areas: Bodily functions, Consciousness, Impulse control, Motor activity, and Language.
- Moderate impact in two areas: Emotion, and Motivation.
- No areas were check marked Major impact.
- The *Comments* section was left blank.

Daily Living Activities (DLA)

PR

The physician checked *No*, the Appellant has not been prescribed medication/treatment that interferes with his ability to perform DLA.

The physician checked *Yes*, the impairment directly restricts the Appellant’s ability to perform DLA and indicated that the following activities (in a list of ten activities) are restricted:

- Personal self-care;
- Meal preparation, Basic housework, Daily shopping, Mobility inside the home, Mobility outside the home and Use of transportation – continuously restricted.

Activities with no reported restrictions include Management of medications, Management of finances, and Social functioning with the comment, “anxiety and frustration”.

Under *additional comments regarding the degree of restriction*, the physician wrote, “severe leg length discrepancy with poor balance.”

AR

The physician provided the following information:

- “Severe lack of balance, blown up ankle with mal union and leg length discrepancy plus scoliosis” are the mental or physical impairments that impact (the Appellant’s) ability to manage DLA.

Personal Care, Basic housekeeping, and Shopping

- The Appellant is independent with four out of eight areas of Personal care: Feeding self, Regulate diet, Transfers in/out of bed, and Transfers on/off of chair;
- He requires periodic assistance from another person for three areas of Personal Care: Dressing, Bathing, and Toileting, and continuous assistance in the area of Grooming.
- He requires continuous assistance with both areas of Basic housekeeping: Laundry (with the comment, “lack of balance”), and Basic housekeeping.
- He is independent in three out of five areas of Shopping: Reading prices and labels, Making appropriate choices, and Paying for purchases. He requires assistance with the other two areas of Shopping: Going to and from stores (periodic assistance), and Carrying purchases home (continuous assistance).
- Under *Additional comments*, including the type and amount of assistance and any safety issues, the physician wrote, “see above.”

Meals, Pay rent and bills, Medications, and Transportation

- The Appellant is independent in two out of four areas of Meals: Meal planning, and Safe storage of food. He requires continuous assistance with the other two areas of Meals: Food preparation, and Cooking.
- He is independent in all areas of Pay rent and bills, and Medications.
- He requires continuous assistance in one out of three areas of Transportation: Getting in/out of a vehicle, and periodic assistance with the other two areas of Transportation: Using public transit and Using transit schedules.
- Under *Additional comments*, the physician wrote, “physically impaired, see above”.

Social functioning

The Appellant is independent in all areas and the physician checked “good functioning” for the Appellant’s immediate and extended social networks.

Additional Information (relevant to the nature/extent of the Appellant’s impairment and its effect on DLA)

The physician put a strike mark through this section.

Need for Help

PR

- The physician check marked yes, prostheses or aids are required for the Appellant’s impairment with the comment, “custom made foot boots”.
- Under *Daily Living Activities*, when asked to describe *what assistance does your patient need*, the physician wrote, “help from another person to carry out his daily activities.”

AR

- The physician indicated the Appellant lives with family.
- Under *Support/supervision required* that would help maintain (the Appellant) in the community, the physician wrote, “custom made boots”. No safety issues were identified.
- Under *Assistance provided by other people*, the physician checked that help is provided by family and left the *Comments* section blank.
- Under *Assistance provided through the use of assistive devices*, the physician checked Cane. He commented, “cane, custom made shoes”.
- He also checked *No*, the Appellant does not have an assistance animal.

3. A *Disability Self-Report* prepared by the Appellant’s advocate and completed by the Appellant as a tool to aid the physician in understanding limitations and restrictions from the patient’s perspective.

The report indicated the following information:

- The Appellant’s conditions include deformities in both feet from his injury, gastrointestinal issues, and back problems.
- Restrictions include “severe mobility restrictions”, “severe sleep disturbances”, and “requires custom foot orthosis and walker”.

The *Disability Self-Report* indicates the Appellant needs help with the following checklist items:

Mobility and Physical Ability

- Walking indoors, Walking outdoors, and Climbing stairs with the comments, “must use cane at all times”, and “very minimal walking” (Walking indoors).
- Lifting, Carrying/holding with the comment, “Requires continuous assistance from his wife and children”.

Personal Care

- Dressing, Grooming, and Bathing with the comment, “Must be seated, requires assistance from family.”
- Toileting: takes longer with the comment, “Must push off counter tops and his cane to get on/off toilet.”
- Transfers with the comment, “Requires continuous assistance from his wife to slowly get out of bed and must use cane and get help from someone to get out of a chair.”

Housekeeping

- Laundry and Housekeeping with the comment, “Unable, requires continuous assistance from his wife.”

Shopping

- Going to and from the store with the comment, “Unable to go to the store. Requires continuous assistance from his wife and children.”
- Paying for purchases, and Carrying purchases home with the comment, “Unable. Requires continuous assistance from his wife and children.”

Meals

- Planning, Preparation, and Cooking with the comment, “Unable, requires continuous assistance from his wife.”

Financial management

- Banking, Budgeting, and Paying rent and bills with the comment (for Banking), “Unable, requires continuous assistance from his wife.”

Medication management

- Filling/refilling prescriptions and Safe handling/storage with the comment, “Unable, requires continuous assistance from his wife.”

Transportation

- Getting in/out of vehicle takes longer with the comment, “Needs assistance to get out of vehicle”,
- Using public transit takes longer with the comment, “Very difficult to use bus service, needs transportation from someone instead.”

Additional submissions

Subsequent to the reconsideration decision, the Appellant filed his Notice of Appeal in which he stated his argument and reported that he has a new family doctor.

Following an adjournment that was granted by the panel so that the Appellant’s advocate could attend, the Appellant participated in the hearing with the advocate and an interpreter. The advocate summarized the Appellant’s argument on appeal with elaboration by the Appellant. The Ministry reviewed the reconsideration decision and summarized the Ministry’s argument. The panel accepts the arguments of both parties as submissions in support of the arguments that were made at the reconsideration. The panel will address the oral and written arguments in the next section, *Part F – Reasons*.

In his oral testimony the Appellant explained that he has no function at all in his injured foot and his other foot has half of the normal function. He reported back pain with sitting, walking, and standing and this is related to his scoliosis. He showed the panel and the Ministry representative his foot deformity and modified footwear. He explained that he has lived in Canada for a short period of time and until he can afford custom made shoes, he is wearing a flip flop on his injured foot with a wooden block under it and an additional piece of wood attached to create a heel. He had a regular shoe on his other foot but requires a pair of custom shoes to ensure he doesn’t walk on the outer edge of his non-injured foot.

The Appellant explained that his new doctor, whom he has been with since October 2015, is aware of the PWD denial and is ready to write a medical opinion about his restrictions. However, he did not obtain a report for the reconsideration because he thought the Ministry would tell him to re-apply for PWD designation with the new doctor. The panel explained its authority to consider additional information (including oral testimony) that is in support of the information and records that were before the minister at the time the decision being appealed was made. The panel further noted that neither the panel nor the Ministry have the medical knowledge or authority necessary to assess the Appellant’s limitations and restrictions based on the appearance of his feet and his modified shoe.

PART F – Reasons for Panel Decision

The issue in this appeal is whether the Ministry's reconsideration decision of January 12, 2016, which found that the Appellant was 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 and RFR, the Ministry was not satisfied that the following criteria in EAPWDA section 2(2) were met: 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 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.:

Definitions for Act

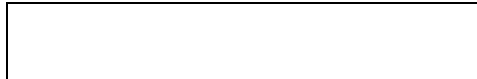
2 (1) In this section:

"assistive device" means a device designed to enable a person to perform a daily living activity that, because of a severe mental or physical impairment, the person is unable to perform;

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, section 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 physician.

Appellant's position - Severe mental impairment

The advocate submits the Ministry has looked at mental and physical impairments as two separate conditions, but the Appellant's mental and physical conditions are intertwined. The advocate submits that a severe event created mental trauma along with the Appellant's significant foot injury, and a mental impairment is therefore an expected consequence.

Ministry's position - Severe mental impairment:

In the reconsideration decision, the Ministry argued the Appellant does not have a severe mental impairment based on the information provided by the physician. The Ministry noted that in the PR under *Functional Skills*, the physician reported no difficulties with communication. While a deficit for Emotional disturbance was check marked in this section, and the physician noted "some degree of anxiety", the Ministry argued that the severity of the emotional disturbance was not described. Furthermore, no restrictions were indicated for Social Functioning and although "anxiety and frustration" were reported, there was no information on the severity, frequency, or duration of these symptoms.

Regarding the information in the AR under *Mental or Physical Impairment*, the Ministry argued that it is difficult to establish a severe impairment of mental functioning based on the physician's assessments in this section. The Ministry noted that no "major impact" in daily functioning was identified for any area of *Cognitive and Emotional Functioning* and a "minimal impact" or "no impact" was reported for most areas.

At the hearing, the Ministry acknowledged the advocate's argument that a mental impairment could arise from a physical condition but noted that the physician did not provide a diagnosis of a mental impairment in the PR or AR. The Ministry also noted that the legislation separates mental and physical impairment and includes a mental disorder in the definition of mental impairment. The Ministry explained that it has to base the decision on the information received and assess how the information fits the legislative criteria.

Panel's decision – Severe mental impairment

The panel finds that the Ministry reasonably determined the Appellant does not have a severe mental impairment. The panel also finds that the Ministry reasonably concluded it is difficult to establish a severe mental impairment based on the physician's assessments of the Appellant's cognitive and emotional functioning. The physician commented in the PR that social functioning is impacted by "anxiety and frustration"; however, he reported no deficits with communication or social functioning and indicated the Appellant has "good functioning" in all of his social networks.

While Emotional disturbance was noted in the PR, the comment "some degree of anxiety" (in relation to the Appellant's ability to provide for his family) was the only explanation provided. Further, while the advocate described the Appellant's trauma due to his injury [the panel notes that the injury happened twenty-five years ago], words such as "anxiety" and "trauma" do not confirm a severe mental impairment. As noted by the Ministry at the hearing, there was no diagnosis of a mental impairment and no evidence of any referral or treatment through mental health resources. The panel finds that the Ministry reasonably concluded there was not enough information to confirm a severe mental impairment.

Regarding restrictions to DLA involving cognitive skills, the *Disability Self-Report* indicates the Appellant requires continuous assistance with banking and budgeting for example. Nevertheless, no cognitive impairment was identified by the physician. The physician noted a moderate impact on function in the areas of Emotion and Motivation but it is not clear how these impacts establish, or are connected to, a severe mental impairment.

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

Appellant's position – Severe physical impairment

In his RFR submission, the Appellant argued that deformities in both of his feet result in severe mobility restrictions. He always needs assistance with getting out of a vehicle and using public transportation, he is unable to climb stairs or lift any heavy things, and he also has severe anxiety and fear.

At the hearing, the Appellant argued he is so restricted in walking that he has been unable to go places and attend classes and that makes him emotional about his situation. He was not satisfied with the physician's reports because there is a big difference between his current situation and what that doctor wrote. He has pain in his back if he sits for more than fifteen minutes and all of his DLA are limited. Although he requires help from his family, they cannot provide the level of assistance he needs. His wife cannot help him because she is sick and his child helps as much as possible but does not have the physical capability to bear the Appellant's weight.

The advocate argued there is enough evidence in the PWD application to meet all of the criteria for PWD designation. The Appellant cannot walk or climb stairs unaided and in fact, he cannot walk at all without his modified boot and a cane. The advocate submits the physician clarified this further along in the application where he indicated (in the AR - under *Mobility and Physical Ability*) that five out of six areas are restricted and noted that the Appellant is not "unaided" but uses a "walking cane and shoes".

Further, in the PR (under *Daily Living Activities*), the advocate noted that sixty percent of DLA are reported as continuously restricted and the physician explained that the reasons for the restrictions are the Appellant's poor balance, leg length issue, scoliosis, and anxiety. The advocate argued that given this degree of restriction, the Ministry erroneously found that the Appellant has a moderate rather than severe impairment.

Ministry's position - Severe physical impairment:

In the reconsideration decision, the Ministry argued that the diagnosis of a serious medical condition is not enough to establish a *severe* impairment. The impact on daily functioning as evidenced by limitations in mobility and other physical functions must be considered. The Ministry argued that the information provided shows a moderate rather than severe impairment of physical functioning. The Ministry made the following points in support of this position:

- In the PR, under Functional Skills, the physician reported the Appellant can walk one to two blocks unaided, climb two to five steps unaided, lift under five pounds, and has no limitations with remaining seated. The Ministry argued that this level of functioning is indicative of a moderate as opposed to a severe impairment.
- The Ministry noted that for the activities in the AR (*Mental or Physical Impairment*) requiring periodic support, the frequency/duration of the periodic support from another person (for walking, climbing stairs, and standing) is not described by the physician. In addition, in comparing the information on restrictions in the AR and PR (*Daily Living Activities*), with the functional abilities noted in the PR (for example, the ability to walk and climb unaided), the Ministry found that it was difficult to establish a severe impairment on the basis of the physician's assessments.
- At the hearing, the Ministry acknowledged that the Appellant disputes he can walk, climb stairs, etc., unaided, but argued that the Ministry must base the decision on the information provided by an accredited medical practitioner. The Ministry noted that the medical information is looked at in conjunction with self-reports, and the self-reported information was referenced in the decision with a summary of the Appellant's RFR submission.
- The Ministry explained that it cannot ignore inconsistencies in the physician's information, and argued that instead of singling out the information that does not support PWD eligibility in terms of a severe impairment with significant restrictions to function, the Ministry considered the information as a whole. The Ministry explained that while the adjudicator's process is to go through the medical reports line by line for due diligence, the decision is also characterized by conclusions based on the totality of the information. For example, the medical reports were characterized by a range of independence in functions with most areas of *Mobility and Physical Ability (AR)* requiring periodic assistance.

Panel's decision – Severe physical impairment

The panel finds the Ministry reasonably determined it is difficult to establish a severe physical impairment on the basis of the information provided. As noted by the Ministry, the physician's evidence is characterized by a range of independence in functions. On the one hand, the Appellant was reported as able to walk short distances and climb a few steps unaided, lift a minimal amount of weight, and remain seated without limitation (PR – *Functional Skills*). However, he also requires periodic assistance with walking, climbing stairs, and standing due to his "severe lack of balance",

and continuous assistance with lifting (AR – *Mental or Physical Impairment*). The Ministry noted the contradiction between doing things unaided and requiring assistance from other people or an assistive device.

While acknowledging that information about the frequency and duration of assistance is not a legislative requirement, the Ministry argued that such information can assist the Ministry in forming a clear picture of the impairment. The panel finds that the Ministry reasonably questioned the sufficiency of the information regarding assistance required and notes that while more detail is not required under the legislation, section 2(2) of the EAA does require the minister to be “satisfied that the person has a severe mental or physical impairment”. The legislation permits the Ministry to form an opinion regarding severity, and in the context of the Appellant’s PWD application, the panel finds that the minister was reasonably not satisfied that a severe physical impairment was established based on the information provided.

Regarding the reasonableness of the Ministry’s finding of a moderate rather than severe physical impairment, the panel notes that information regarding the frequency and duration of assistance could also be helpful in concluding that the impairment is moderate. The Ministry argued in the reconsideration decision [under *Physical Functioning*] that the functional skills described indicate a moderate impairment. The panel finds that the Ministry’s conclusion is reasonable based on the evidence that the Appellant is able to function unaided to some extent. Based on the totality of the evidence, the panel finds that the Ministry reasonably determined that the criterion of severe physical impairment under EAPWDA section 2(2) was not met.

Restrictions in the ability to perform DLA

Appellant’s position

The advocate acknowledges there is a discrepancy between the degree of restriction on DLA noted in the PR, and the functional abilities noted in the PR (able to walk unaided, etc.). He submits, however, that the Ministry used the information on function, in isolation from the rest of the application, to deny the Appellant PWD designation. The advocate submits that it is unfair for the Ministry to focus on one page of information rather than looking at the application as a whole. He argued that where there is a discrepancy in the information, the Ministry should look at the overall consistency in the narrative which indicates the Appellant is restricted in most activities and requires assistive devices and help from other people.

For the four areas that were restricted periodically (under *Mobility and Physical Ability* in the AR), the advocate submits that the Ministry’s decision unreasonably turned on the absence of information regarding the frequency and duration of the periodic support. The advocate emphasized that there is no requirement in the legislation for the physician to provide an explanation beyond the check marks. But several times throughout the application, the physician reiterates that DLA are restricted and the Appellant requires assistive devices.

The advocate submits that the Ministry has erroneously made written comments a requirement and has stepped out of line by concluding that PWD criteria are not met when information about the frequency and duration of periodic support is absent. The advocate further submits that the *Disability Self-report* was not mentioned in the Ministry’s decision and it is unclear how much weight the Ministry gave it.

Ministry's position

In the reconsideration decision, the Ministry acknowledged that the Appellant experiences limitations/restrictions with DLA due to his impairment. However, the Ministry argued there was not enough evidence in the physician's reports to establish that the Appellant's impairments significantly restrict DLA either continuously or periodically for extended periods as required by the legislation. The Ministry found that it is difficult to establish significant restrictions to DLA based on the physician's assessments of DLA in the PR and AR. The Ministry acknowledged that the legislation does not specifically require the frequency and duration of restrictions to be explained, but noted that it finds such information valuable in determining the significance of the client's restrictions.

The Ministry highlighted the following evidence in support of its position:

- In the PR, the physician did not indicate any medications or treatments that interfere with the Appellant's ability to do DLA.
- In the PR (under *Daily Living Activities*), the physician commented that the Appellant needs help from another person but did not describe the activities he needs help with or the frequency/duration of the help required. Although the Appellant was reported to be continuously restricted with Daily shopping in the PR, the Ministry noted that in the AR, the Appellant was independent in some areas of shopping, needed periodic assistance with other areas, and continuous assistance in the area of Carrying purchases home.
- The Ministry also noted inconsistencies in the evidence regarding mobility. In the PR, mobility both inside and outside the home was reported as continuously restricted; whereas, the Appellant was also reported in the PR (under *Functional Skills*) as able to walk one to two blocks and climb two to five steps unaided. Furthermore, the Ministry noted that in the AR, the Appellant required only periodic assistance with walking and climbing stairs.
- The Ministry noted that for the assessment of DLA in the AR, the evidence indicates an entire range of restrictions in DLA, from independence in many areas including physical areas of Personal Care (Transfers – bed/chair) to a need for periodic or continuous assistance in several areas. The Ministry noted that where periodic assistance was indicated, the physician did not describe the frequency/duration of the assistance required.

Panel's decision – Restrictions to DLA

Subsection 2(2)(b)(i) of the EAPWDA requires the Ministry to be 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 panel finds that the Ministry reasonably determined there was not enough evidence to establish that the Appellant's DLA are directly and significantly restricted. The panel also finds that the Ministry reasonably found that it is difficult to establish significant restrictions to DLA based on the physician's assessments of DLA in the PR and AR. Although the advocate argued that the physician's information establishes that most DLA are restricted and that the Appellant needs help with his activities, the legislation requires restrictions to be significant and either continuous or periodic. The advocate acknowledged the inconsistencies within the PR (regarding mobility) and between the PR

and AR for several DLA including Daily shopping. However, he argued that the information in the AR clarifies the PR as the physician indicated the Appellant needs assistive devices to carry out his DLA. He further argued that the Ministry should look at the information as a whole and not use isolated information regarding function and independence in some areas to hold that the criteria were not met.

The reconsideration record indicates the Ministry looked at the information as a whole, describing areas that are independent, restricted periodically, and restricted continuously, and also providing an analysis of the inconsistencies within the information. As noted by the Ministry, the restrictions to DLA fall within every degree of restriction. In the PR, as noted by the advocate, six out of ten DLA are continuously restricted. In the AR, the Appellant requires continuous assistance with every task of only one DLA (Basic Housekeeping).

Furthermore, in the AR, the Appellant is reported as independent in nineteen tasks across all of the DLA listed, and he requires periodic or continuous assistance with thirteen tasks. Regarding the use of an assistive device, the physician reported in the AR that the “walking cane and shoes” are used only for Walking indoors. The panel gives more weight to the evidence in the AR as the AR breaks the DLA into specific tasks and the physician therefore has the opportunity to provide detailed information. As noted by the Ministry, the Appellant is reported as independent with many DLA and there is insufficient information from the physician to confirm that the Appellant’s impairment directly and significantly restrict DLA continuously or for extended periods. As the Appellant was reported as largely independent with most DLA tasks, the panel finds that the Ministry reasonably determined the criterion in EAPWDA subsection 2(2)(b)(i) has not been met.

Help to perform DLA

Appellant’s position

The advocate submits that the Appellant requires assistive devices (cane and modified boot) at all times, and he is unable to do many DLA without continuous assistance from his family. The advocate further submits that a description of the frequency and duration of periodic support required is not a legislative requirement.

Ministry’s position

The Ministry’s position is that although the physician indicated the Appellant uses “custom made boots” and a cane, it has not been established that DLA are significantly restricted and therefore it cannot be determined that significant help is required. As noted earlier, while the Ministry acknowledged that the Appellant needs periodic assistance from another person for many tasks, the frequency and assistance of help was not described, yet the Ministry finds this information helpful in forming a complete picture of restrictions.

Panel’s decision – Help to perform DLA

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.

Given that the physician's information does not confirm direct and significant restrictions to DLA due to the Appellant's impairments, the panel finds that the Ministry reasonably determined that the criterion for help set out in EAPWDA subsection 2(2)(b)(ii) was not met. The panel nonetheless recognizes that the Appellant requires special boots to move about. A homemade boot as opposed to a professionally made boot still enables him to move about and it still may be a "device designed to enable a person to perform a DLA" (walking, moving about). Even so, the device must be needed because DLA are significantly restricted and neither the panel nor the ministry found DLA to be significantly restricted.

Similarly, while the *Disability Self-Report* indicated the Appellant is unable to do most DLA without continuous support from his family including his wife, the Appellant testified at the hearing that his wife is unable to assist him as she is ill, and his child has limited physical capacity to assist him. It therefore appears that the Appellant is performing his DLA independently as there was no evidence that he is not doing DLA when the level of assistance he is reported to require is unavailable. This supports the Ministry's finding that DLA are not significantly restricted and, in turn, the panel's finding that the Ministry was therefore reasonable in determining that the criterion of help under subsection 2(2)(b)(ii) of the EAPWDA was not met.

Conclusion

The panel finds that the Ministry's reconsideration decision denying the Appellant PWD designation under section 2 of the EAPWDA was reasonably supported by the evidence. The panel confirms the decision pursuant to sections 24(1) and 24(2)(a) of the *Employment and Assistance Act*.