

PART C – Decision under Appeal

The decision under appeal is the Ministry of Social Development and Social Innovation (the ministry) reconsideration decision dated December 30, 2015 which found that the appellant did not meet three of the five statutory requirements of Section 2 of the *Employment and Assistance for Persons with Disabilities Act* for designation as a person with disabilities (PWD). The ministry found that the appellant met the age requirement and that his impairment is likely to continue for at least two years. However, the ministry was not satisfied the evidence establishes that:

- the appellant has a severe physical or mental impairment;
- the appellant's daily living activities (DLA) are, in the opinion of a prescribed professional, directly and significantly restricted either continuously or periodically for extended periods; and,
- 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.

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

With the consent of both parties, the hearing was conducted as a written hearing, pursuant to section 22(3)(b) of the *Employment and Assistance Act*.

The evidence before the ministry at the time of the reconsideration decision included the appellant's Persons With Disabilities (PWD) Application comprised of the applicant information dated June 9, 2015, a physician report (PR) dated June 12, 2015 and an assessor report (AR) dated June 13, 2015 and both completed by a general practitioner who has known the appellant for 1 week and had seen him once.

The evidence also included the following documents:

- 1) Psychiatric Consultation Report dated January 16, 2001;
- 2) C-Neuro Psychiatry Clinic Registration Record dated January 23, 2001;
- 3) Psycho-educational Report dated February 21 & 26, 2001;
- 4) Letter dated April 15, 2005 from the administrative principal- special education to the appellant's parents;
- 5) Psycho-educational Report dated October 11, 2006;
- 6) Adjudication Psycho-educational Report dated June 30, 2009;
- 7) Note dated January 18, 2013 from a different general practitioner than the general practitioner who completed the PWD Application; and,
- 8) Request for Reconsideration dated November 22, 2015 with attached documents:
 - Written submission dated December 29, 2015 by an advocate on behalf of the appellant;
 - Handwritten statement dated December 2015 by the appellant and his mother; and,
 - Undated handwritten note by the appellant's mother.

Diagnoses

In the PR, the appellant was diagnosed by the general practitioner with dyslexia, learning disability, ADD/ADHD [Attention Deficit Disorder/ Hyperactivity Disorder], MDD [Major Depressive Disorder] and Dissociative Personality Disorder, with onset during childhood and the teen years. Asked to describe the mental or physical impairments that impact the appellant's ability to manage daily living activities, the general practitioner wrote in the AR "...dyslexia, learning disability, ADHD, MDD."

Physical Impairment

In the PR and AR, the general practitioner reported that:

- The appellant does not require an aid for his impairment.
- In terms of functional skills, the appellant can walk 4 or more blocks unaided, lift 7 to 16 kg. (15 to 35 lbs.), and remain seated 2 to 3 hours. No assessment was provided for the ability to climb stairs unaided.
- The appellant is assessed as being independent with walking indoors and outdoors and standing. The appellant requires periodic assistance with climbing stairs ("physically and mentally"), as well as for lifting ("slow") and carrying and holding. The general practitioner wrote that it "takes longer to do all activities."
- In the section of the AR relating to assistance provided, the general practitioner did not identify any of the listed assistive devices as applying to the appellant.

Mental Impairment

In the PR and AR, the general practitioner reported:

- In terms of health history, that the appellant has “learning disability, can’t focus, can’t learn well, ADD, ADHD, can’t focus, can’t learn new information, MDD, GAD, depression, dyslexia, Personality Disorder.”
- The appellant has sensory and other difficulties with communication, described as “dyslexia, ADHD, can’t focus.”
- The appellant has significant deficits with cognitive and emotional function in the areas of executive, language, emotional disturbance, motivation, impulse control, motor activity, and attention or sustained concentration. The general practitioner wrote: “...dyslexia, learning disability, ADHD, MDD” and added comments that the appellant has “difficulties with all mental tasks, struggles daily.”
- The appellant has a good ability to communicate in hearing and poor ability with speaking, reading (note: “ADHD”) and writing (“dyslexia”).
- In terms of daily impacts to areas of cognitive and emotional functioning, the appellant has moderate impacts with impulse control, insight and judgment, attention/concentration, executive, motor activity, and other neuropsychological problems. The general practitioner assessed minimal impacts in the areas of bodily functions, emotion, memory and language. There is no impact in the areas of consciousness, psychotic symptoms, and other emotional or mental problems. The general practitioner wrote: “dyslexia, ADHD, can’t focus, can’t learn new information, memory poor, poor executive planning.”
- Regarding social functioning, the appellant is assessed as requiring periodic support/supervision in all areas, specifically with making appropriate social decisions, developing and maintaining relationships, interacting appropriately with others (note: “can’t communicate well”), dealing appropriately with unexpected demands (“can’t ask for help”) and securing assistance from others (“can’t ...with stressful situation”).
- The appellant has marginal functioning in both his immediate and extended social networks.
- Asked to describe the support/supervision required that would help maintain the appellant in the community, the general practitioner wrote “counseling/ --- support worker.”

In her handwritten statement, the appellant’s mother wrote that:

- The appellant needs prompting all day, including any activity that requires written output.
- The appellant removes himself from conversations and always had a problem with socializing because of his communication barrier.
- She has been told that the appellant has a severe learning disability with genius abilities of learning in other areas.

In the reports from the appellant’s childhood, the diagnoses of ADD/ADHD and a learning disability are confirmed and qualified the appellant for adaptations for his learning and for exam writing.

Daily Living Activities (DLA)

In the PR and AR, the general practitioner indicated that:

- The appellant has been prescribed medications and/or treatments that interfere with his ability to perform daily living activities, but the general practitioner did not provide an explanation.
- The appellant is independent with walking indoors and walking outdoors, taking “longer to do all activities.”

-
- The appellant is independent with all of the listed tasks of the DLA medications, specifically filling/refilling prescriptions, taking as directed and safe handling and storage.
 - For the DLA personal care, the appellant is independent with feeding self, regulating diet, and with transfers in/out of bed and on/off of chair. He requires periodic assistance from another person and takes significantly longer than typical with dressing, grooming, bathing, and toileting. The general practitioner wrote: “no interest in personal care, won’t do personal grooming.”
 - For the DLA basic housekeeping, the appellant requires periodic assistance from another person, described as “no interest or motivation for housekeeping.”
 - Regarding the DLA shopping, the appellant is independent with going to and from stores although he “avoids going to stores” and carrying purchases home, and he requires continuous assistance from another person and takes significantly longer than typical with reading prices and labels, he requires periodic assistance and takes significantly longer than typical with making appropriate choices and he requires periodic assistance with paying for purchases, described as “can’t find his way around.”
 - The appellant “needs to be taken to stores, shopping, needs help with housekeeping, needs help with (illegible).”
 - For the meals DLA, the appellant is independent with safe storage of food and requires periodic assistance from another person with meal planning, food preparation and cooking. The general practitioner wrote that the appellant “can’t cook, can’t plan meals.”
 - Regarding the DLA “pay rent and bills,” the appellant requires continuous assistance from another person with banking, budgeting and paying rent and bills. The general practitioner commented that he “can’t pay bills, can’t manage finances.”
 - Regarding the transportation DLA, the appellant requires periodic assistance from another person with getting in and out of a vehicle, using public transit, and using transit schedules and arranging transportation. The general practitioner wrote that the appellant “can’t find bus schedule and (illegible).” As well, the appellant “needs help with shopping, transportation, budgeting and paying bills, (illegible).”

In the Note dated January 18, 2013, a different general practitioner than the general practitioner who completed the PWD Application wrote that:

- The appellant has a learning disability and a history of ADHD.
- The appellant will have difficulty seeking and keeping employment.
- Appropriated management has been initiated and he is advised to follow up with his regular physician for continuity of care.

In her handwritten statement, the appellant’s mother wrote that:

- The appellant needs prompting all day for ADL’s [activities of daily living].
- She has to tell him daily to brush his hair and wash his face, to tidy up around himself, and to do laundry.
- When he is eating, his use of the stove scares her as he has ADD when the computer is on, he has trouble holding utensils, he needs prompting on how to cut and cook stuff.
- He needs daily motivation.
- He needs help with any activity that requires written output.
- He is not able to live alone now.



Need for Help

In the AR, the general practitioner reported that, with respect to the assistance provided by other people, the appellant receives help from family, described as “mother helps him.” Asked to describe assistance needed but not available, the general practitioner wrote “reading assistance, counseling, psychologist.” In the section of the AR for identifying assistance provided through the use of assistive devices, the general practitioner did not identify any of the listed items as being applicable to the appellant.

Additional information

In his Notice of Appeal dated January 11, 2016, the appellant expressed his disagreement with the ministry’s reconsideration decision and wrote:

- He is a person with a disability since his childhood, struggling with every day activities and depending on his family for everything.

Prior to the hearing, the appellant’s advocate provided a written submission on his behalf dated March 11, 2016. As the submission contained no new evidence, it was considered by the panel as argument on behalf of the appellant.

The ministry relied on the reconsideration decision as its submission in the appeal.

PART F – Reasons for Panel Decision

The issue on appeal is whether the ministry's reconsideration decision, which found that the appellant is not eligible for designation as a person with disabilities (PWD), was reasonably supported by the evidence or was a reasonable application of the applicable enactment in the circumstances of the appellant. The ministry found that the evidence does not establish that the appellant has a severe mental or physical impairment and that his daily living activities (DLA) are, in the opinion of a prescribed professional, directly and significantly restricted either continuously or periodically for extended periods. Also, as a result of those restrictions, it could not be determined that 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 criteria for being designated as a person with disabilities (PWD) are set out in Section 2 of the EAPWDA as follows:

Persons with disabilities

2 (1) In this section:

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

"**daily living activity**" has the prescribed meaning;

"**prescribed professional**" has the prescribed meaning.

(2) The minister may designate a person who has reached 18 years of age as a person with disabilities for the purposes of this Act if the minister is satisfied that the person has a severe mental or physical impairment that

(a) in the opinion of a medical practitioner is likely to continue for at least 2 years, and

(b) in the opinion of a prescribed professional

(i) directly and significantly restricts the person's ability to perform daily living activities either

(A) continuously, or

(B) periodically for extended periods, and

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

(3) For the purposes of subsection (2),

(a) a person who has a severe mental impairment includes a person with a mental disorder, and

(b) a person requires help in relation to a daily living activity if, in order to perform it, the person requires

(i) an assistive device,

(ii) the significant help or supervision of another person, or

(iii) the services of an assistance animal.

(4) The minister may rescind a designation under subsection (2).

Section 2(1) and (2) of the EAPWDR provide definitions of DLA and prescribed professionals as follows:

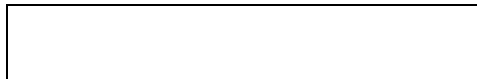
Definitions for Act

2 (1) For the purposes of the Act and this regulation, "**daily living activities**" ,

(a) in relation to a person who has a severe physical impairment or a severe mental impairment, means the following activities:

(i) prepare own meals;

(ii) manage personal finances;



- (iii) shop for personal needs;
- (iv) use public or personal transportation facilities;
- (v) perform housework to maintain the person's place of residence in acceptable sanitary condition;
- (vi) move about indoors and outdoors;
- (vii) perform personal hygiene and self care;
- (viii) manage personal medication, and

(b) in relation to a person who has a severe mental impairment, includes the following activities:

- (i) make decisions about personal activities, care or finances;
- (ii) relate to, communicate or interact with others effectively.

(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.

Severe Physical Impairment

The appellant's position, as argued by the advocate, is that the general practitioner has confirmed in the PWD application that the appellant has a severe physical impairment.

The ministry's position, as set out in the reconsideration decision, is that there is insufficient evidence to establish that the appellant has a severe physical impairment. The ministry wrote that the general practitioner did not provide the diagnosis of a condition that would be expected to cause a physical impairment. The ministry wrote that although the general practitioner noted that it takes the appellant longer to do all activities, she does not indicate that the appellant takes significantly longer than typical and is not considered indicative of a severe impairment of physical functioning.

Panel Decision

In the PR, the general practitioner, who had known the appellant for one week, diagnosed the appellant with health conditions that relate primarily to an impairment of mental abilities, specifically dyslexia, learning disability, ADD/ADHD, MDD and Dissociative Personality Disorder. In the PR and AR, the general practitioner reported that the appellant does not require an aid for his impairment. In terms of functional skills, the general practitioner assessed the appellant at the higher end of the scale, as being able to walk 4 or more blocks unaided, lift 15 to 35 lbs., and remain seated 2 to 3 hours. In the AR, the appellant is assessed as being independent with walking indoors and outdoors

and standing. The general practitioner reported that the appellant requires periodic assistance with climbing stairs (“physically and mentally”), as well as for lifting (“slow”) and carrying and holding, and wrote that it “takes longer to do all activities.” The general practitioner does not provide an explanation of the connection between the diagnoses and the need for assistance with physical skills which are performed at the high end of the scale for functional skill limitations, or a description of the duration or frequency of the periodic assistance needed or how much longer it takes the appellant.

Given the absence of an explanation of the connection with the appellant’s diagnoses, and with functional skill abilities in the high range, the panel finds that the ministry reasonably determined that taking longer with activities is not indicative of a severe impairment of physical functioning. Therefore, the panel finds that the ministry reasonably concluded that there is not sufficient evidence to establish that the appellant has a severe physical impairment under Section 2(2) of the EAPWDA.

Severe Mental Impairment

The appellant’s position is that a severe mental impairment is established by his difficulties with focusing and learning new information and with communication as a result of diagnosed dyslexia, learning disability, ADD/ADHD, MDD and Dissociative Personality Disorder. The appellant argued, through his advocate, that he has suffered with severe mental health conditions since birth, he was not meeting grade-level academic expectations and has been receiving learning assistance support and counseling. The appellant argued that in addition to his learning disability he has attention and non-compliance behavior problems and he has a history of being physically aggressive towards others. The appellant argued that the legislative definition for “severe” is to be interpreted broadly and that to interpret it too narrowly defeats the purpose of the PWD program

The ministry’s position, as set out in the reconsideration decision, is that there is insufficient evidence to establish that the appellant has a severe mental impairment as required by Section 2(2) of the EAPWDA. The ministry wrote that while the general practitioner identified areas of significant deficit in cognitive and emotional functioning, the daily impacts were assessed to be largely moderate, with no major impacts. As well, the ministry argued that the other reports were dated by many years, some as much as 15 years, and that there was no additional information from a medical practitioner or other prescribed professional provided.

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 the ministry 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 the ability to perform DLA is restricted. In making its determination the ministry must consider all the relevant evidence, including that of the appellant. However, the legislation is clear that the fundamental basis for the analysis is the evidence from a “prescribed professional” – in this case, the general practitioner.

The general practitioner diagnosed the appellant with several conditions, specifically dyslexia, learning disability, ADD/ADHD, MDD and Dissociative Personality Disorder, and wrote that the appellant has “...learning disability, can’t focus, can’t learn well, ADD, ADHD, can’t focus, can’t learn new information, MDD, GAD, depression, dyslexia, Personality Disorder.” In her handwritten

statement, the appellant's mother wrote that she has been told that the appellant has a severe learning disability with genius abilities of learning in other areas. The general practitioner indicated that there are significant deficits with cognitive and emotional function in the areas of executive (moderate impact), language (minimal impact), emotional disturbance (minimal impact), motivation (no assessment of impact), impulse control (moderate impact), motor activity (moderate impact), and attention or sustained concentration (moderate impact). The general practitioner wrote: "dyslexia, ADHD, can't focus, can't learn new information, memory poor, poor executive planning" and added the appellant has "difficulties with all mental tasks, struggles daily" but the general practitioner did not assess major impacts to any areas of cognitive and emotional functioning.

Considering the two DLA that are specific to mental impairment – make decisions about personal activities, care or finances (decision making), and relate to, communicate or interact with others effectively (social functioning), while there is some evidence from the general practitioner of impacts, the panel finds that the ministry reasonably determined that there is a lack of detail to establish significant impacts overall. The general practitioner assessed decision-making components of DLA as independent, specifically personal care (regulate diet), and managing medications (taking as directed and safe handling and storage), or as requiring unspecified periodic assistance, including shopping (making appropriate choices and paying for purchases described as "can't find his way around") and transportation (using transit schedules and arranging transportation, described as "can't find bus schedule"). For the DLA meals, the appellant is independent with safe storage of food and requires periodic assistance with meal planning, described as "can't plan meals," but there is no indication of how often he cannot plan meals. For managing his finances (budgeting and paying rent and bills), the general practitioner indicated that the appellant requires continuous assistance in these decision-making areas and that he "can't manage finances."

Regarding the DLA of social functioning, the general practitioner assessed the appellant as requiring periodic support/supervision in all areas, specifically with making appropriate social decisions, developing and maintaining relationships, interacting appropriately with others (note: "can't communicate well"), dealing appropriately with unexpected demands ("can't ask for help") and securing assistance from others ("can't- illegible- with stressful situation"). Although the advocate argued that the appellant has attention and non-compliance behavior problems and he has a history of being physically aggressive towards others, the general practitioner did not refer to current problems in these areas. The panel finds that the ministry reasonably concluded that there is a lack of explanation or description by the general practitioner of the need for periodic support/supervision to establish that it is required for extended periods of time. For communication, the appellant has sensory and other difficulties, described as "dyslexia, ADHD, can't focus." The general practitioner assess the appellant with a good ability to communicate in hearing and poor ability with speaking, reading (note: "ADHD") and writing ("dyslexia"). In her handwritten statement, the appellant's mother wrote that the appellant removes himself from conversations and always had a problem with socializing because of his communication barrier.

The appellant requested an adjournment of the appeal for the purposes of meeting with a psychiatrist and obtaining a psychological assessment, and no further reports were provided on the appeal. Given the Psycho-educational and Psychiatric Consultation reports were dated by several years, and the general practitioner, who only met with the appellant once for the purposes of completing the PWD application, assessed moderate impacts to cognitive and emotional functioning, with a lack of detail regarding impacts to social functioning, the panel finds that the ministry reasonably determined that a severe mental impairment was not established under Section 2(2) of the EAPWDA.

Restrictions in the ability to perform DLA

The appellant's position is that his physical and mental impairments directly and significantly restrict his ability to perform DLA on an ongoing basis to the point that he requires the significant assistance of another person, specifically his mother. The appellant argued, through his advocate, that the ministry did not take into consideration the entire PWD application when considering the extent that the appellant's medical conditions directly and significantly restrict his ability to complete his DLA. The appellant argued that there is nothing in legislation or the PWD application itself that asks for the duration, degree and frequency of assistance to be indicated and to base a denial on this claim is not in harmony with the legislation or the realm of the application. The appellant argued that it is the doctor's opinion that should be paramount when determining severity of the medical conditions, restrictions associated with the conditions, and the effects on DLA as they see the person, know the person, and are the medical professionals.

The ministry's position in the reconsideration decision is that the information from the prescribed professional does not establish that the appellant's impairments significantly restrict his DLA either continuously or periodically for extended periods of time. The ministry acknowledged that the appellant encounters limitations to his ability to manage DLA due to a moderate impairment of his cognitive functioning but wrote that there is a lack of detail to determine the connection between the impairment and the need for assistance with DLA that are not cognitive-based, or the determine that periodic assistance is required for extended periods of time.

Panel Decision

Section 2(2) of the EAPWDA requires that a severe impairment directly and significantly restricts the appellant's ability to perform the prescribed DLA either continuously or periodically for extended periods. The term "directly" means that there must be a causal link between the severe impairment and the restriction. The direct restriction must also be significant. Finally, there is a component related to time or duration. The direct and significant restriction may be either continuous or periodic. If it is periodic it must be for an extended time. Inherently, any analysis of periodicity must also include consideration of the frequency. All other things being equal, a restriction that only arises once a year is less likely to be significant than one which occurs several times a week. Accordingly, in circumstances where the evidence indicates that a restriction arises periodically, it is appropriate for the ministry to require evidence of the duration and frequency of the restriction in order to be "satisfied" that this legislative criterion is met.

In the appellant's circumstances, the general practitioner reported that the appellant has been prescribed medications that interfere with his ability to perform DLA, but has not provided any further explanation of the impact or the expected duration of the treatment. In the AR, the general practitioner reported that the appellant is independent with walking indoors and walking outdoors, noting that he takes "longer to do all activities" but the general practitioner does not describe how much longer. The appellant is assessed as being independent with all of the listed tasks of the DLA medications, specifically filling/refilling prescriptions, taking as directed and safe handling and storage. For the DLA personal care, the general practitioner indicated that the appellant is independent with the tasks of feeding self, regulating diet, and with transfers in/out of bed and on/off of chair. He requires periodic assistance from another person and takes significantly longer than typical with the tasks of dressing, grooming, bathing, and toileting. The general practitioner wrote: "no interest in personal care, won't do personal grooming," but does not explain the appellant's need for periodic assistance with toileting. For the DLA basic housekeeping, the general practitioner indicated that the appellant requires periodic assistance from another person, described as "no

interest or motivation for housekeeping.” In her handwritten statement, the appellant’s mother wrote that the appellant needs prompting all day for ADL’s, that she has to tell him daily to brush his hair and wash his face, to tidy up around himself, and to do laundry.

Regarding the DLA shopping, the appellant is independent with carrying purchases home and going to and from stores, with the note that he “avoids going to stores” and he requires continuous assistance from another person and takes significantly longer than typical with reading prices and labels, he requires periodic assistance and takes significantly longer than typical with making appropriate choices and he requires periodic assistance with paying for purchases, described as “can’t find his way around.” The panel finds that this need for assistance with shopping is not consistent with the appellant’s assessed independence with the tasks of managing his medications. The general practitioner wrote that the appellant “...needs to be taken to stores, shopping, needs help with housekeeping, needs help with (illegible).” For the meals DLA, the appellant is independent with safe storage of food and requires periodic assistance from another person with meal planning, food preparation and cooking. The general practitioner wrote that the appellant “can’t cook, can’t plan meals.” In her statement, the appellant’s mother wrote that when the appellant is eating, his use of the stove scares her as he has ADD when the “computer is on”, he has trouble holding utensils, he needs prompting on how to cut and cook stuff. There is no explanation for how the computer affects the appellant’s ADD or the reason for his trouble holding utensils.

Regarding the DLA “pay rent and bills,” the general practitioner reported that the appellant requires continuous assistance from another person with banking, budgeting and paying rent and bills. The general practitioner commented that he “can’t pay bills, can’t manage finances.” Regarding the transportation DLA, the appellant requires periodic assistance from another person with getting in and out of a vehicle, using public transit, and using transit schedules and arranging transportation, described as “can’t find bus schedule and (illegible).” There is no explanation for the need for assistance with getting in and out of a vehicle. Also, as previously discussed, the evidence does not clearly indicate that the appellant is significantly restricted in either DLA specific to mental impairment, namely decision making or social functioning.

As previously noted, the general practitioner who completed the PR and the AR only met with the appellant once for the purposes of completing the PWD application, and the other Psycho-educational and psychiatric consult letters were dated by several years. In the most current additional information, dated January 18, 2013, a different general practitioner than the general practitioner who completed the PWD Application wrote that the appellant will have difficulty seeking and keeping employment as a result of his learning disability and history of ADHD. As for finding work and/or working, the panel notes that employability is not a criterion in section 2(2) of the EAPWDA nor is it listed among the prescribed daily living activities in section 2 of the EAPWDR.

Considering the evidence of the general practitioner as the prescribed professional, the panel finds that while the appellant requires continuous assistance with the “pay rent and bills” DLA and with the task of reading prices and labels when shopping, for the other tasks of DLA requiring periodic assistance there is a lack of explanation or description to allow the ministry to conclude that the appellant requires assistance for extended periods of time, and that the need for assistance is as a result of a severe mental impairment. The panel finds that it was reasonable for the ministry to conclude that, therefore, the evidence is insufficient to show that the appellant’s overall ability to perform his DLA is significantly restricted either continuously or periodically for extended periods, pursuant to Section 2(2)(b)(i) of the EAPWDA.

[]

Help to perform DLA

The appellant's position is that his physical and mental impairments significantly restrict his daily living functions to a severe enough extent that significant assistance is required from another person.

The ministry's position is that because it has not been established that DLA are significantly restricted, it cannot be determined that significant help is required.

Panel Decision

Section 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.

In the AR, the general practitioner reported that, with respect to the assistance provided by other people, the appellant receives help from family, described as "mother helps him." Asked to describe assistance needed but not available, the general practitioner wrote "reading assistance, counseling, psychologist." In the section of the AR for identifying assistance provided through the use of assistive devices, the general practitioner did not identify any of the listed items as being applicable to the appellant.

The panel finds that the ministry reasonably determined that as direct and significant restrictions in the appellant's ability to perform DLA have not been established, it cannot be determined that the appellant requires help to perform DLA as a result of those restrictions, as defined by section 2(3)(b) of the EAPWDA.

Conclusion

Having reviewed and considered all of the evidence and relevant legislation, the panel finds that the ministry's reconsideration decision which determined that the appellant was not eligible for PWD designation pursuant to Section 2(2) of the EAPWDA was reasonably supported by the evidence, and therefore confirms the decision.