

PART C – Decision under Appeal

The decision under appeal is the Ministry of Social Development and Social Innovation (the ministry) reconsideration decision dated May 2, 2016 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

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 and self-report dated October 20, 2015, a physician report (PR) dated October 27, 2015 completed by a general practitioner who has known the appellant for 3 years, and an assessor report (AR) dated November 3, 2015 completed by an orthopedic surgeon who has known the appellant for approximately 2 years and has "followed him for his bilateral shoulder pain."

The evidence also included the appellant's Request for Reconsideration dated April 18, 2016.

Diagnoses

In the PR, the appellant was diagnosed by the general practitioner with bilateral shoulder tendon tear, with an onset in December 2013. Asked to describe the mental or physical impairments that impact the appellant's ability to manage daily living activities, the orthopedic surgeon wrote "NA" [not applicable] in the AR. There was no mental health diagnosis.

Physical Impairment

In the PR, the general practitioner reported that:

- In terms of health history, the appellant "...injured (ruptured) both bicep tendons since December 2013. Successive three surgical repairs with little improvement. Physio ongoing. Pain relief ongoing."
- The appellant requires an aid for his impairment, described as "arm slings."
- Regarding the degree and course of impairment, the general practitioner commented that "after about 2 years of intense rehab and 3 surgeries, patient's condition has barely improved."
- In terms of functional skills, the appellant can walk 4 or more blocks unaided, climb 5 or more steps unaided, and there is no limitation with remaining seated. The appellant can do no lifting.
- The appellant is periodically restricted with mobility inside and outside the home. Asked to provide additional comments regarding the degree of restriction, the general practitioner left the section incomplete. With respect to the periodic restrictions, the general practitioner wrote that the appellant is "trying his best to rehab but physical pain and weakness get in the way."

In the AR, the orthopedic surgeon reported that:

- The appellant is assessed as being independent with walking indoors and outdoors and standing. He requires periodic assistance from another person with climbing stairs as well as lifting (note: "cannot do overhead lifting") and carrying and holding.
- In the section of the AR relating to assistance provided, the orthopedic surgeon responded that none of the listed assistive devices are routinely used by the appellant.

In his self-report and Request for Reconsideration, the appellant wrote that:

- He is very limited with lifting. He has had four surgeries on his left arm and he has refused surgery on his right arm under the advice of his doctor as not being the best option at this time.
- If he elects to have another surgery, the surgeon said he would not have use of his right arm for at least 6 months, with no guarantee it will work.
- They have started a deep muscular and hormone treatment that is doing wonders but he cannot afford the treatment.
- He sees the general practitioner on a weekly basis and he only sees the orthopedic surgeon

every 3 months.

- While he can walk 4 blocks and climb stairs unaided, he does not use his arms to perform these tasks. He needs assistance to walk and climb stairs when carrying things.
- After countless attempts at physiotherapy, pain and other medications, nothing has worked. The pain is 24/7 and does not ever go away.
- He takes painkillers and muscle relaxants for pain management. Daily medication is required for him to function.

Mental Impairment

In the PR, the general practitioner reported:

- The appellant has no difficulties with communication.
- The appellant has significant deficits with cognitive and emotional function in the areas of emotional disturbance, motivation, and attention or sustained concentration.
- The appellant is periodically restricted in his social functioning. The general practitioner commented that “physical pain and weakness compromise self-confidence.”

In the AR, the orthopedic surgeon indicated that:

- The appellant has a satisfactory ability to communicate in speaking, reading, writing and hearing.
- With respect to impacts to cognitive and emotional functioning, there is a moderate impact in the areas of bodily functions and emotion and minimal impacts to attention/concentration and motivation, with no impact in the remaining 10 areas.
- Regarding impacts to social functioning, the appellant is independent in all areas, specifically: making appropriate social decisions, developing and maintaining relationships, interacting appropriately with others, dealing appropriately with unexpected demands and securing assistance from others.
- The section of the report for assessing impacts to the appellant’s immediate and extended social networks is marked “NA” or not applicable.

In his self-report and Request for Reconsideration, the appellant wrote that:

- The number of surgeries has caused depression, sleepless nights, mood swings and loss of weight.
- The impact to his social functioning is periodic depending on what he is doing. When in public, he always has to be aware of opening doors and people running into him. Going out into crowded places can be very taxing and scary.

Daily Living Activities (DLA)

In the PR, the general practitioner indicated that:

- The appellant has not been prescribed medications and/or treatments that interfere with his ability to perform DLA.
- The appellant is not restricted with some of the listed DLA, specifically: management of medications and management of finances.
- The appellant is periodically restricted with the remaining listed DLA, specifically: personal self-care, meal preparation, basic housework, daily shopping, mobility inside and outside the home, use of transportation and social functioning.
- The explanation provided for the periodic restrictions is that the appellant “is trying his best to rehab but physical pain and weakness get in the way.”

In the AR, the orthopedic surgeon reported that:

- The appellant is independent with walking indoors and walking outdoors.
- The appellant is independent with all of the tasks of several DLA, specifically meals (meal planning, food preparation, cooking and safe storage of food), medications (filling/refilling prescriptions, taking as directed, and safe handling and storage) and transportation (getting in and out of a vehicle, using public transit and using transit schedules and arranging transportation).
- For the DLA personal care, the appellant is independent with several tasks (dressing, grooming, bathing, toileting, feeding self and regulate diet), and is both independent and requires periodic assistance with transfers in/out of bed and on/off of chair. The orthopedic surgeon did not provide a further explanation or description of the assistance needed.
- The appellant is assessed as both independent and requiring periodic assistance from another person with laundry and with basic housekeeping. No comment or explanation is provided.
- Regarding the shopping DLA, the appellant requires periodic assistance with the tasks of going to and from stores and with carrying purchases home. The appellant is independent with the tasks of reading prices and labels, making appropriate choices and paying for purchases.
- Regarding paying rent and bills, the appellant is independent with banking and budgeting and requires periodic assistance from another person with paying rent and bills. There is no explanation or description provided of the periodic assistance needed.
- For additional information, the orthopedic surgeon wrote that “this patient is unable to do heaving lifting, specifically overhead; otherwise, he is able to do regular daily activities of living.”

In his self-report and Request for Reconsideration, the appellant wrote that:

- It is very difficult to shop, shower and do any physical activities such as bathing, getting dressed, laundry, and getting things from overhead.
- Public transport can be difficult, depending on how busy it is and the time of day. He needs assistance to walk and climb stairs when carrying things such as groceries or laundry.
- He requires daily assistance on some level, whether it is groceries or laundry. He has to move everything with the help of his neighbor, such as moving things from upper shelves or furniture.
- It takes him one hour every morning to shower because he cannot lift his arms.
- This is not periodic but every day, all day and night. There are days when he needs assistance and days when he cannot do it at all, i.e. housekeeping, shopping, etc.

Need for Help

In the AR, the orthopedic surgeon reported that, with respect to the assistance provided by other people, the appellant receives help from friends. In the section of the AR for identifying assistance provided through the use of assistive devices, the orthopedic surgeon wrote “none.”

Additional information

In his Notice of Appeal dated May 12, 2016, the appellant expressed his disagreement with the ministry’s reconsideration decision and wrote that he believes not enough information was provided and he would like show what he is going through in person.

At the hearing, the appellant stated that:

- He realizes that he should have been more specific about how his condition affects him. Although he can walk and is not in a wheelchair, it is still difficult to walk and he has to wear



slings on his arms to walk because it is so painful.

- When he brought the ministry's denial back to the general practitioner, he was upset and disappointed as well. He sees the general practitioner at least every other week and he only sees the orthopedic surgeon about once every 3 months. The general practitioner knows his mental and physical condition the best.
- He can get on independently but there are definitely restrictions. For example, having walked to the hearing location, his entire day will be "a mess."
- He has undergone 3 surgeries on his left arm and he has declined the surgery on his right arm. He would not be able to manage with both arms not useable at the same time. With surgery, he would not be able to use his right arm for 4 to 6 months and there is also no guarantee that the surgery will solve the problem.
- He has already tried everything: numbing, cortisone shots, muscle relaxants, and physiotherapy. He stopped the cortisone shots because they were not helping. They are currently trying a hormone therapy, which is costing \$170 per week. It is supposed to also help with depression.
- He cannot drive or exercise; he lost over 30 lbs., cannot sleep, and gets depressed.
- His general practitioner is doing everything possible to make him comfortable, with pain medication. He needs the pain medications just to function but the medications also slow him down and hinder his ability to do his DLA.
- The last MRI scan that was done showed that arthritis is also setting into his shoulders. He is afraid that things are getting worse.
- For grocery shopping, his friend takes him out about once a month and helps him. Otherwise, he has to buy groceries day-by-day because he cannot carry anything.
- He does not have many social relationships because he cannot do any physical activities that his friends want to do, such as camping.
- He wears a shoulder brace on his right shoulder and slings on both arms. Dressing is extremely difficult, particularly in the winter.
- It is not easy to carry a laundry basket. If he does basic housekeeping, he will have to take pain medications and then lie in bed afterwards. If he tries vacuuming or doing laundry, he will "pay for it later." He has to do everything in "baby steps" and, some days, not at all.
- Both doctors completed the reports after the appellant had left their office. He is frustrated that the application process has taken so long and he is physically and emotionally drained and not getting any support. His goal of pursuing further education remains on hold without support.

The ministry relied on the reconsideration decision, as summarized at the hearing. At the hearing, the ministry stated that the appellant's physical therapist would also qualify as a prescribed professional to complete the AR and may be more familiar with the appellant's daily limitations than the orthopedic surgeon. The ministry clarified that the other option for obtaining support, the Persons with Persistent Multiple Barriers (PPMB) status, is a shorter process requiring a brief medical report completed by one doctor.

Admissibility of Additional Information

The panel considered the appellant's oral testimony as information that corroborates the extent of his impairment as diagnosed in the PWD application, which was before the ministry at reconsideration. Therefore, the panel admitted this additional information as being in support of information and records that were before the ministry at the time of the reconsideration, in accordance with Section 22(4)(b) of the *Employment and Assistance Act*.

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 is that a severe physical impairment is established by the pain and limited strength in his arms due to bilateral shoulder tendon tear. The appellant argued that when the orthopedic surgeon completed the AR, he did not appreciate the significant impacts the appellant is experiencing likely because he has only seen the appellant every 3 months.

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 assessments by the general practitioner and by the orthopedic surgeon are not consistent and it is difficult to develop a clear and coherent picture of the degree of the appellant's impairment. The ministry wrote that the orthopedic surgeon made qualifying comments in the AR that the appellant "cannot do overhead lifting" and that "otherwise he is able to do regular daily activities of living."

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 and the orthopedic surgeon.

In the PR, the general practitioner, who had known the appellant for 3 years, diagnosed the appellant with bilateral shoulder tendon tear, with an onset in December 2013. Regarding the degree and course of impairment, the general practitioner commented that “after about 2 years of intense rehab and 3 surgeries, patient’s condition has barely improved.” At the hearing, the appellant stated that he has already tried everything to avoid further surgery, including: numbing, cortisone shots, muscle relaxants, and physiotherapy, and they are currently trying a hormone therapy, which is very costly. In the PR, the general practitioner reported that the appellant can walk 4 or more blocks unaided, climb 5 or more steps unaided, and there is no limitation with remaining seated, but the appellant can do no lifting. At the hearing, the appellant stated that while he can walk 4 blocks unaided and he is not in a wheelchair, he has to wear slings on his arms because of the pain he experiences. Although the general practitioner indicated that the appellant uses arm slings as an aid to his impairment, the orthopedic surgeon reported that no assistive devices are routinely used by the appellant. In his self-report, the appellant wrote that he needs assistance to walk and climb stairs when carrying things. The general practitioner also assessed the appellant as periodically restricted with mobility inside and outside the home and wrote that the appellant is “trying his best to rehab but physical pain and weakness get in the way.”

In his self-report and Request for Reconsideration, the appellant wrote that he is very limited with lifting. He has had 4 surgeries on his left arm and he has refused surgery on his right arm under the advice of his doctor as not being the best option at this time. The appellant stated at the hearing that he typically sees the general practitioner on a weekly basis, or at least every other week, and he only sees the orthopedic surgeon about every 3 months and the general practitioner knows his mental and physical condition the best. While the general practitioner may have had more ongoing contact with the appellant, the panel finds that the ministry reasonably put equal weight on the evidence from the orthopedic surgeon given that he has followed the appellant for his bilateral shoulder pain and is a specialist in this field.

In the AR, the orthopedic surgeon reported that the appellant is independent with walking indoors and outdoors and standing. The orthopedic surgeon assessed the appellant as requiring periodic assistance from another person with climbing stairs as well as lifting and carrying and holding, and commented that he “cannot do overhead lifting.” At the hearing, the appellant stated that he wears a shoulder brace on his right shoulder and slings on both arms; however, the orthopedic surgeon reported in the AR that none of the listed assistive devices are routinely used by the appellant. For additional information, the orthopedic surgeon wrote in the AR that “this patient is unable to do heaving lifting, specifically overhead; otherwise, he is able to do regular daily activities of living.” As discussed in more detail in these reasons for decision under the heading “Restrictions in the Ability to Perform DLA”, the evidence indicates that the limitations to the appellant’s physical functioning have not directly and significantly restricted his ability to perform his DLA either continuously or for extended periods, as required by the EAPWDA.

Given the general practitioner assessed function skill limitations at the high end of the scale, other than lifting, and periodic restrictions to the appellant’s mobility with no description of these

restrictions, and the orthopedic surgeon qualified the restrictions to lifting for only heavy overhead lifting, the panel finds that the ministry reasonably determined that there was insufficient evidence of a severe impairment of physical functioning. Therefore, the panel finds that the ministry reasonably determined 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 the depression, sleepless nights, mood swings and loss of weight he has experienced as a result of the pain in his shoulder and the number of surgeries required.

The ministry's position 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 the general practitioner did not diagnose a mental impairment or brain injury and, although the general practitioner indicated there were some significant deficits to cognitive and emotional functioning, the orthopedic surgeon has assessed moderate and minimal impacts to cognitive and emotional functioning and no impact to social functioning.

Panel Decision

The general practitioner did not diagnose the appellant with a mental disorder, although he indicated that there are significant deficits with cognitive and emotional functioning in the areas of emotional disturbance, motivation, and attention or sustained concentration. However, in assessing the impacts to cognitive and emotional functioning, the orthopedic surgeon reported a moderate impact in the areas of bodily functions and emotion, and minimal impacts to attention/concentration and motivation.

Regarding the DLA of social functioning, the general practitioner reported that the appellant is periodically restricted, commenting that "physical pain and weakness compromise self-confidence." At the hearing, the appellant stated that he does not have many social relationships because he cannot do any physical activities that his friends want to do, such as camping. In assessing specific impacts to social functioning, the orthopedic surgeon reported that the appellant is independent in all areas and that the assessment of impacts to immediate and extended social networks are not applicable. The general practitioner reported that the appellant has no difficulties with communication and the orthopedic surgeon indicated the appellant has a satisfactory ability to communicate in all areas.

Given the absence of a mental health diagnosis and insufficient evidence from the general practitioner and the orthopedic surgeon of significant impacts to the appellant's cognitive and emotional and 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 friend and neighbor, and the use of slings and braces as assistive devices.

The ministry's position, as set out in the reconsideration decision, is that the information from the prescribed professionals does not establish that the appellant's impairment significantly restricts his

DLA either continuously or periodically for extended periods of time. The ministry wrote that while the general practitioner indicated that the appellant is periodically restricted with many of the listed DLA, there is no indication of the frequency or duration of these restrictions. The ministry wrote that the information provided by the orthopedic surgeon in the AR is that the appellant is both independent and requires periodic assistance with some tasks of DLA and, while the appellant is unable to do heavy overhead lifting, he is otherwise able to do regular activities of living.

Panel Decision

Section 2(2)(b) of the EAPWDA requires that the ministry be satisfied that a prescribed professional has provided an opinion that an applicant's severe impairment directly and significantly restricts his DLA, continuously or periodically for extended periods. In this case, the general practitioner and the orthopedic surgeon are the prescribed professionals. DLA are defined in Section 2(1) of the EAPWDR and are also listed in the PR and, with additional details, in the AR. Therefore, the prescribed professionals completing these forms have the opportunity to indicate which, if any, DLA are significantly restricted by the appellant's impairments either continuously or periodically for extended periods.

In the appellant's circumstances, the general practitioner reported in the PR that the appellant has not been prescribed medications and/or treatments that interfere with his ability to perform DLA. Asked to describe the mental or physical impairments that impact the appellant's ability to manage DLA, the orthopedic surgeon wrote in the AR that this was not applicable. The general practitioner reported in the PR that the appellant is not restricted with some of the listed DLA, specifically: management of medications and management of finances. The orthopedic surgeon assessed all tasks of the DLA medications as independent as well as the tasks of banking and budgeting as part of the "pay rent and bills" DLA. Although the orthopedic surgeon indicated that the appellant requires periodic assistance with the task of paying rent and bills, he did not provide an explanation or description to allow the ministry to determine that the assistance is required for an extended period of time.

In the PR, the general practitioner reported that the appellant is periodically restricted with several listed DLA, specifically: personal self-care, meal preparation, basic housework, daily shopping, mobility inside and outside the home, and use of transportation. The explanation provided for the periodic restrictions is that the appellant "...is trying his best to rehab but physical pain and weakness get in the way." The appellant wrote in his self-report and Request for Reconsideration that it is difficult for him to do physical activities such as bathing, getting dressed because he cannot lift his arms. In the AR, the orthopedic surgeon indicated that the appellant is independent with 6 of 8 tasks of personal care and is both independent and requires periodic assistance with 2 of 8 tasks (transfers in/out of bed and on/off of chair), but did not provide any further explanation or description of the frequency or duration of the assistance required. At the hearing, the appellant stated that he is always in pain but sometimes the pain restricts him more so he is unable to do tasks.

Regarding the meals DLA, the orthopedic surgeon indicated that the appellant is independent with all tasks (meal planning, food preparation, cooking, safe storage of food). For the DLA basic housekeeping, the orthopedic surgeon also assessed the appellant as independent and requiring periodic assistance with both tasks (laundry, basic housekeeping) and did not provide further comment regarding the degree of assistance needed. The appellant wrote that it is difficult for him to do physical activities such as laundry and, at the hearing he stated that it is not easy to carry a laundry basket. If he does basic housekeeping, he will have to take pain medications and then lie in bed afterwards. If he tries vacuuming or doing laundry, he will "pay for it later." He has to do

everything in “baby steps” and, some days, not at all.

For the DLA shopping, the orthopedic surgeon indicated that the appellant is independent with 3 of 5 tasks and requires periodic assistance with 2 (going to and from stores and carrying purchases home), without providing further comment regarding the frequency or duration of the assistance required. At the hearing, the appellant stated that his friend takes him out for grocery shopping about once a month and helps him. The appellant stated that, otherwise, he has to buy groceries day-by-day because he cannot carry anything. The appellant stated that although he can walk and is not in a wheelchair, it is still difficult to walk and he has to wear slings on his arms to walk because it is so painful. The orthopedic surgeon reported that the appellant is independent with walking indoors and walking outdoors, with no assistive devices or assistance required.

For the transportation DLA, the orthopedic surgeon reported that the appellant is independent with all tasks. The appellant stated at the hearing that taking public transport can be difficult, depending on how busy it is and the time of day. The appellant wrote that he requires daily assistance on some level, whether it is with groceries or laundry. He has to move everything with the help of his neighbor, such as moving things from upper shelves to lower or moving furniture. He wrote that “this is not periodic but every day, all day and night.” There are days when he needs assistance and days when he cannot do it at all. The appellant stated at the hearing that the frequency of the exacerbations in his pain are dependent on how much he has been doing in a day and will often occur after he has exerted himself.

Considering the evidence of the general practitioner and the orthopedic surgeon as the prescribed professionals, the panel finds that there was not sufficient detail provided to establish a need for periodic assistance for extended periods of time. Therefore, the panel finds that the ministry reasonably concluded that 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 impairment significantly restrict his daily living functions to a severe enough extent that significant assistance is required from another person and the use of a brace and arm slings as assistive devices.

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 orthopedic surgeon reported that, with respect to the assistance provided by other people, the appellant receives help from friends. Although the general practitioner reported in the PR that the appellant requires an aid for his impairment, described as “arm slings,” in the section of the AR for identifying assistance provided through the use of assistive devices, the orthopedic surgeon did not identify any of the listed items.

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.