PART C – Decision under Appeal

The decision under appeal is the Ministry of Social Development and Social Innovation (the ministry) reconsideration decision dated June 22, 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 February 12, 2016, a physician report (PR) and an assessor report (AR) dated February 12, 2016, both completed by a general practitioner who has known the appellant for 4 months.

The evidence also included the following:

1) Independent Medical Examination dated April 6, 2005 completed by a physician who is a specialist in plastic surgery;
2) Medical Certificate dated June 10, 2016 (the Medical Certificate) by the general practitioner who completed the PR and the AR;
3) Supplemental self-report by the appellant; and,
4) Request for Reconsideration dated June 10, 2016.

Diagnoses

In the PR, the general practitioner diagnosed the appellant with arthritis (hands, ankles, feet and thoracic spine) with onset around 2000, amputation of fingers (left third and fourth- traumatic injury), degenerative disc disease (DDD)/arthritis, and rotator cuff tear of right shoulder. Asked to describe the mental or physical impairments that impact the appellant's ability to manage daily living activities, the general practitioner wrote "…has chronic pain in hands, feet, and back that make sitting for more than 1 hour or walking more than 1 block difficult." There was no mental health diagnosis.

Physical Impairment

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

- In terms of health history, the appellant "…has sustained multiple injuries creating dysfunctional joint anatomy and chronic arthritis type pain in his hands and feet… he sustained a crush injury to his left hand resulting in finger amputation (third and fourth)(2003)… he has difficulty holding tools and has pain in his feet and ankles from previous injuries (fractures to multiple bones now with arthritis) that makes prolonged sitting or pushing a pedal difficult…"
- The appellant does not require an aid for his impairment.
- Regarding the degree and course of impairment, the general practitioner commented that "…these are permanent injuries to his hands, feet and back with limited and painful range of motion."
- In terms of functional skills, the appellant can walk 1 to 2 blocks unaided, climb 5 or more steps unaided, lift 2 to 7 kg. (5 to 15 lbs.) and remain seated 1 to 2 hours.
- The appellant is not restricted with mobility inside the home, but he is continuously restricted with mobility outside the home. Asked to provide additional comments regarding the degree of restriction, the general practitioner left the section incomplete.
- In the additional comments to the PR, the general practitioner wrote that the appellant "…is not able to grip properly with his hands nor is he able to sit for long periods without significant pain." He would require these functions to resume his previous work and "…further, the piece of bone that was removed from his leg to repair his jaw after his squamous cell cancer of the jaw has caused nerve damage and pain in his leg that makes mobility difficult/painful."
- The appellant is assessed as being independent with all mobility and physical ability, specifically: walking indoors and outdoors, climbing stairs, standing, lifting, and carrying and holding. For comments, the general practitioner wrote that the appellant "is able to do the above but each is with considerable pain in his legs and feet."

- In the section of the AR relating to assistance provided, that "none" of the listed assistive devices are routinely used by the appellant.
- In the additional comments to the AR, that the appellant "…has also had squamous cell cancer of the right retromolar trigone (jaw) and had part of his jaw removed. This can cause some speech and swallowing difficulties."

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

- Due to the cancer, he has no feeling in the right side of his face and throat. He cannot eat or chew properly and has difficulty swallowing. His lower jaw and tongue swell up causing speaking and swallowing problems and gives him a headache.
- The nerve damage caused by the surgery to his throat has given him bursitis and limited mobility in his neck and shoulders.
- A bone was removed from his right leg to replace his jaw and this has caused limited mobility in his ankle and foot and constant numbness and loss of feeling.
- Due to an accident to his left hand, he has had 2 fingers amputated and pins in his fingers.
- Multiple injuries to his right wrist and hand and having had a plate inserted and then removed have caused arthritis, loss of dexterity, mobility and strength in both hands, as well as being in constant pain.
- He has severe chronic obstructive pulmonary disease (COPD), so he has problems breathing or doing any little bit that exerts himself.
- After multiple injuries to his hip and back, he has difficulties sitting, standing, walking and sleeping.
- He also has osteoarthritis from all these injuries.
- He gets only 3 to 4 hours of sleep a night before the pain in his hips and back wakes him up.
- Doing stairs puts pressure on his hips and lower back and causes him pain.
- Over- exertion of walking any distance affects his breathing because of COPD, as well as acute pain in his legs, ankles, hips and back.
- His balance is very poor and he has difficulty walking on uneven surfaces even using his cane.
- He has problems with taking pain medication as it affects his ability to sleep.
- He qualified for disability in another province.

In the Medical Certificate, the general practitioner who completed the PR and the AR wrote that:

- The appellant is also diagnosed with COPD and osteoarthritis.
- Note that the appellant uses a cane on occasion to help with mobility.

In the Independent Medical Examination dated April 6, 2005, the physician who is a specialist in plastic surgery wrote that:

- The appellant complained of very poor grip and pinch strengths on the left side and he is extremely clumsy and cannot do dexterous work with the left hand at all anymore.
- The impairments to the appellant's hands can be considered permanent impairments.

Mental Impairment

In the PR and AR, the general practitioner reported:

- The appellant has no difficulties with communication.
- The appellant has no significant deficits with cognitive and emotional function.
- The appellant is restricted in his social functioning. The general practitioner did not indicate

the degree of restriction (periodic or continuous) but commented that he is "…not able to socialize due to pain in multiple joints. Worse in lower back, right ankle has ++ pain."

- The appellant has a good ability to communicate in speaking (note: "can at times be difficult with jaw surgery"), reading, and hearing, and a poor ability with writing as he "cannot grip a pen to write clearly."
- With respect to impacts to cognitive and emotional functioning, there is a minimal impact in the area of emotion and no impacts to all remaining listed areas. The general practitioner wrote that the appellant "…feels low/ sad that he cannot work for a living. He struggles to get by on the little money he has. This is causing a low mood/ mild depression."
- 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 general practitioner wrote that the appellant "does not have a brain injury."
- The appellant has good functioning in both his immediate and extended social networks.

In the Medical Certificate, the general practitioner wrote that:

- The appellant now admits to suffering from depression (emotional disturbance), which started when he was injured in 2002.
- The appellant says he has a bad temper recently. He has come to the point of feeling like life is pointless and has considered "ending it all." He has isolated himself and does not feel he is able to socialize. He feels worthless and sad most days.
- The appellant also has poor sleep due to pain and likely insomnia from his low mood.
- The appellant is isolating himself, does not attend family events or will isolate at the event. He has a small social network with two friends. Mostly his contacts are family.
- The appellant admits to feeling withdrawn likely due to his low mood and pain.

Daily Living Activities (DLA)

In the PR and the AR, 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 most of the listed DLA, specifically: personal self care, meal preparation, management of medications, basic housework, daily shopping, mobility inside the home, use of transportation, and management of finances.
- The appellant is restricted with social functioning, but there is no assessment of whether these restrictions are continuous or periodic. The general practitioner wrote: "not able to socialize due to pain in multiple joints. Worst in lower back, right ankle has ++pain."
- The appellant is continuously restricted with mobility outside the home. There are no additional comments provided by the general practitioner regarding the degree of restriction.
- The appellant is independent with walking indoors and walking outdoors.
- The appellant is independent with all of the tasks of several DLA, specifically: personal care (dressing, grooming, bathing, toileting, feeding self, regulate diet, transfers in/out of bed, transfers on/off of chair), basic housekeeping (including laundry), shopping (going to and from stores, reading prices and labels, making appropriate choices, paying for purchases, and carrying purchases home), meals (meal planning, food preparation, cooking and safe storage of food), "paying rent and bills" (including banking and budgeting) and medications (filling/refilling prescriptions, taking as directed, and safe handling and storage).

- For the DLA transportation, the appellant is independent with using public transit and using transit schedules and arranging transportation, but requires periodic assistance from another person with getting in and out of a vehicle. The general practitioner wrote: "getting in and out of his truck it is difficult to grip handles with left hand."

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

- He has difficulties sitting, standing, walking and sleeping.
- For getting out of bed, he has to slowly put his legs on the floor and pull himself using the end of the bed, waiting to get his balance.
- It takes at least 20 minutes of slowly moving around before the pain in his hips, back and ankles begins to ease.
- He has to be cautious with eating due to nerve damage in his mouth.
- Getting into the bathtub/shower has to be done in a certain way and very slowly as his balance is off and lifting his legs causes pain. Even washing his hair causes pain in his shoulder and neck from lifting his arm over chest height.
- Getting dressed is difficult because of nerve damage in his hands because of loss of grip function in his hands.
- He constantly drops things and cannot open a jar or bottle and has to be very careful lifting a hot pot.
- His balance is now very poor and he has difficulty walking on uneven surfaces even using his cane.

In the Medical Certificate, the general practitioner wrote that:

- Dressing takes the appellant longer than the average person. For grooming, he has a hard time lifting his arm over his shoulder due to pain. Getting in and out of the shower is slow and difficult and he has fallen a few times getting in and out of the tub. With toileting, there is pain getting up and down and he does this slowly, or twice as long as the average person. Due to difficulty feeding, he has lost significant weight. For transfers in/out of bed, he has to roll onto the floor with his knees on the floor and use his hands to climb up, and this is done much slower than the average person. He is also slower than normal to get up and go when transferring on/off of chair.
- With laundry, bending over to get clothes out of the dryer causes severe pain and he has to do this slowly and often avoids this task due to pain. Repetitive motion with hands like wiping, cleaning or putting away dishes causes pain and he often drops things due to the sharp pains in his fingers from arthritis.
- He has difficulty getting in and out of the car due to severe pain and this takes considerable added time. With carrying purchases home, the pain is severe in his shoulders, hands and amputated fingers of the left hand and this task is very difficult to manage on his own. He has to have the assistance of family (sisters).
- He is not able to safely hold a knife and he uses a can opener but it is painful and slow to open food this way.
- Getting in and out of a vehicle has to be done very slowly as he has pain in his right hip and his left hand cannot grip the handles easily with only one functional finger on this hand.

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. The general practitioner added that the appellant's

sister “has to write/fill out forms for him as he cannot write clearly.” In the section of the AR for identifying assistance provided through the use of assistive devices, the general practitioner wrote “none.”

Additional information

In his Notice of Appeal dated June 28, 2016, the appellant expressed his disagreement with the ministry’s reconsideration decision and wrote that his disability restricts all aspects of his daily life, contrary to the ministry’s findings. Many DLA he cannot do, have difficulty doing, or it causes severe pain for hours after. The cancer has greatly compounded his problems. He feels the ministry is minimizing the effect that his disability has on his life.

At the hearing, the appellant provided the following additional documents, arranged chronologically:

1) Return to Work Assessment dated July 5, 2006 (Exhibit #10);
2) Imaging Report of lumbar spine dated October 18, 2010 for clinical history of low back and right hip pain (Exhibit #5);
3) Imaging Report for right shoulder ultrasound dated October 20, 2010 (Exhibit #8). Impression was “no calcification or tear of a tendon. Subdeltoid bursitis.” And “Impingement on the supraspinatus by the coracoacromial ligament. The supraspinatus has a moderate tendonopathy.”;
4) Imaging Report of lumbar spine dated February 14, 2012 (Exhibits #2 & #11). Impression was “mild active facet arthropathy on the left at L2-L3 and right at L3-L4;”
5) Surgical Pathology Report dated March 28, 2012 for cancer (Exhibit #9);
6) Operative Report dated June 25, 2012 for cancer (Exhibit #12)
7) Progress Notes dated August 2, 2012 for cancer treatment (Exhibit #7);
8) Consultation Report dated August 22, 2012 for cancer treatment (Exhibit #3);
9) Medical Report dated October 12, 2012 for disability assistance in another province and based on a report of the squamous carcinoma and describing his limitations as “general weakness/lethargy following surgery/radiation and current chemo” and that he can walk 1 to 2 blocks, climb 6 to 10 steps, lift 5 to 15 lbs. and there is no limitation with remaining seated. Regarding the degree of impairment given the impact of the medical condition on the activities of daily living, the physician indicated “moderate.” Reference is made to reports that were not attached. (Exhibit #14);
10) Treatment Summary dated October 30, 2012 for cancer (Exhibit #4);
11) Letter dated November 16, 2012 in which a physician who is a specialist in otolaryngology wrote that the appellant was 3 weeks post treatment and was doing very well (Exhibit #13);
12) Letter dated April 9, 2013 (Exhibit #6) in which a physician who is a specialist in otolaryngology wrote that:
    - The appellant continues to do well from his surgical resection of his oropharyngeal malignancy; however, he does have significant difficulties with mobility and pain control.
    - He has a severely restricted neck movement following his surgery. A CT scan of his neck did not reveal any evidence of recurrent or residual disease.
    - The appellant’s functional capacity was discussed and it appears that the appellant is quite severely disabled and this may be permanent. He asked the appellant to have an evaluation with the family doctor for [disability] support.; and,
13) Letter dated October 22, 2015 (Exhibit #1) in which a physician who is a specialist in otolaryngology wrote that:
    - The appellant had a squamous cell carcinoma of the right retromolor trigone area treated with surgery and chemo in 2012 and he recently had some left neck swelling.

- He denied any pain, dysphagia, shortness of breath, hemoptysis, hoarseness or weight loss. He is an active smoker.
- A complete head and neck examination was performed and the swelling corresponds to some induration over the larynx but there is no obvious soft tissue mass and remainder of the examination was normal.

At the hearing, the appellant stated that:

- The ministry is not considering the impact of the cancer on his life. They had to take 18 inches of bone out of his leg to put in his jaw. He also has multiple hand injuries that have an impact.
- He is willing to go back to work but he is no longer able to perform the activities required.
- He has been on full disability when he was living in another province. He moved to British Columbia to be with his family.
- Around 6 to 8 different doctors have said he is disabled and the criteria must be similar in British Columbia as in the other province since all provinces should follow the same guidelines.
- Since the ministry has denied PWD designation, he has also been denied the federal CPP disability benefits. He worked for 3 months back in 2009 and the CPP program felt he had demonstrated that he could work. He is appealing the CPP disability benefits denial.
- It seems like everyone is neglecting to look at what happened after 2009 with the cancer.
- He has been told he has PTSD [Post Traumatic Stress Disorder].
- He no longer has a Class 1 driver's license. He learned his trade from his father and now they will not let him work since he cannot get his Class 1 driver's license back.
- He does not like to take pain medication because it upsets his stomach and he then has to take medication for that. As a result, he had not taken any medication for 2 years but he has recently started taking medication again to manage the pain. He realizes he cannot drive when he takes the medication.
- Many of the medications are not covered by the ministry. He has been on an inhaler for his COPD for 6 years.

At the hearing, the appellant's sister who acted as his advocate stated that:

- The appellant has experienced a number of different impairments, when considered together, are severe. He has finger loss, nerve damage in his neck and shoulder, bone loss in his leg and nerve damage in his face to the extent that his face is numb all the time and he cannot chew. He also has PTSD, osteoarthritis and COPD.
- The appellant has also suffered shoulder, hip, back, ankle, leg and hand damage and has also previously broken some of his ribs as a result of work-related accidents.
- The appellant cannot carry groceries, he cannot dress himself very easily, and he needs a ride everywhere. He has problems with stairs, which makes it difficult to get to the bus.
- When the piece of bone was taken out of his leg, it affected the injuries in his ankle.
- At least three doctors have said that the appellant is disabled and he cannot use his hands for his previous job. His family doctor cannot understand why the appellant does not qualify since she knows others who have far fewer problems who have qualified.
- The family doctor is a new doctor and this was the first time filling out the forms for the PWD application. When they went to the ministry after the first denial, they were told that the doctor should not fill out the forms again since this will initiate a new application, but to have her add to her first reports instead.
- The appellant is reluctant to admit that he is unable to do things and may have downplayed his

restrictions when asked by the doctor.
- He can get up 5 or more steps but it is very slow and he has more problems coming down the stairs.
- For his personal self-care, he uses something to pull up the zipper on his jeans and everything takes "forever."
- For meal preparation, he cannot use a knife and all his food has to go through the food processor.
- The appellant was very good at his previous job and had been officially commended for his safety.

At the hearing, the appellant's other sister stated that:
- The appellant has been staying with her and every day she sees the pain he is in and the difficulties he has. She sees the depression and anger that he experiences.
- Because of the numbness in his face, he will not sit with the rest of the family when they are eating. He has lost hand-to-mouth coordination and he withdraws from the family at different events. He has lost the ability to write because of the loss of hand coordination.
- She sees the difficulty the appellant has financially. He may have to move to another community where the cost of living is lower.
- He cannot carry bags of groceries because of nerve damage in his shoulders.
- The loss of these abilities is very frustrating to the appellant.
- The appellant keeps his bed on the floor without a box spring so he can roll out of bed.
- He has wanted to help her with gardening and chores but he cannot. Bending down to make the bed is very painful. He can put his laundry in the washer but he cannot take it out or put it in the dryer.

The ministry relied on the reconsideration decision, as summarized at the hearing.

Admissibility of Additional Information

The ministry objected to the admissibility of some of the additional documents (Exhibits #1, 3, 7 and 14). The ministry argued that Exhibits #1, 3 and 7 were not before the ministry at reconsideration and should be considered by the ministry in a new application. The ministry objected to the admissibility of Exhibit #14 because the Report was not complete since there are references in the document to attached reports that were not available. The ministry did not raise an objection to the admissibility of the oral testimony provided on behalf of the appellant. The appellant argued that either he or his general practitioner had forwarded all the additional documents, as well as other documents in his medical file, to the ministry as part of a previous PWD application and the package of documents had been returned to him by the ministry. The appellant argued that he had attempted to have all of these documents before the ministry at reconsideration and they should be considered by the panel.

The panel admitted the additional documents as they related to conditions raised by the appellant and his general practitioner at reconsideration, and are 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.* The panel assigned little weight to information about impacts from several years ago or that relate to an application for disability in another province, such as the Medical Report, Exhibit #14. The panel's jurisdiction on this appeal is limited to determining the reasonableness of the ministry's application of the applicable enactment, or the EAPWDA and EAPWDR, in the appellant's circumstances.

The panel considered the oral testimony on behalf of the appellant as information that corroborates the extent of his impairment, as referred to in the PWD application and the Medical Certificate, which was before the ministry at reconsideration and admitted the testimony 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 range of motion and mobility as a result of osteoarthritis in his hands, ankles, feet and back, DDD)/arthritis, amputation of two fingers, rotator cuff tear of right shoulder, and COPD. The appellant argued that although the doctor’s report failed to mention all of his medical conditions, such as COPD and arthritis and use of a cane to walk, she has added more information in the Medical Certificate that shows that, considering all his conditions, his impairment is severe. The appellant argued that the impact from the cancer he had removed from his jaw in 2012 is not being fully considered. The appellant argued that he qualified for full disability benefits in another province and he should also be considered disabled and qualify in British Columbia.

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 of the appellant’s functional skills are not considered indicative of a severe impairment of physical functioning. The ministry wrote that employability or the ability to work is not taken into consideration for the purposes of determining eligibility for the PWD designation.

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.

In the PR, the general practitioner, who had known the appellant for 4 months, diagnosed the appellant with arthritis (hands, ankles, feet and thoracic spine) with onset around 2000, amputation of fingers (left third and fourth- traumatic injury), degenerative disc disease (DDD)/arthritis, and rotator cuff tear of right shoulder. In the Medical Certificate, the general practitioner wrote that the appellant is also diagnosed with COPD and osteoarthritis. Regarding the degree and course of impairment, the general practitioner commented in the PR that "…these are permanent injuries to his hands, feet and back with limited and painful range of motion." In the most recent Imaging Report of the appellant's lumbar spine dated February 14, 2012, the impression was "mild active facet arthropathy on the left at L2-L3 and right at L3-L4," and the panel notes that this report is dated by over 4 years and, although the appellant's condition may have deteriorated since then, there were no current imaging reports provided to the panel.

In terms of health history, the general practitioner wrote in the PR that the appellant "…has sustained multiple injuries creating dysfunctional joint anatomy and chronic arthritis type pain in his hands and feet… he sustained a crush injury to his left hand resulting in finger amputation (third and fourth)(2003)… he has difficulty holding tools and has pain in his feet and ankles from previous injuries (fractures to multiple bones now with arthritis) that makes prolonged sitting or pushing a pedal difficult…" In the additional comments to the PR, the general practitioner wrote that the appellant "…is not able to grip properly with his hands nor is he able to sit for long periods without significant pain" and he would require these functions to resume his previous work and "…further, the piece of bone that was removed from his leg to repair his jaw after his squamous cell cancer of the jaw has caused nerve damage and pain in his leg that makes mobility difficult/painful."

Although the general practitioner wrote that mobility and prolonged sitting are difficult for the appellant, she also reported in the PR that he can walk 1 to 2 blocks unaided, climb 5 or more steps unaided, lift 5 to 15 lbs. and remain seated 1 to 2 hours. In the AR, the general practitioner clarified that the appellant "…has chronic pain in hands, feet, and back that make sitting for more than 1 hour or walking more than 1 block difficult." While the general practitioner indicated the appellant is restricted with mobility outside the home, there were no indications of the degree of restriction and the appellant was assessed by the general practitioner in the AR as being independent with all mobility and physical ability, specifically: walking indoors and outdoors, climbing stairs, standing, lifting, and carrying and holding. For comments, the general practitioner wrote that the appellant is able to do these activities "but each is with considerable pain in his legs and feet." In his self-reports, the appellant wrote that over- exertion of walking any distance affects his breathing because of COPD, as well as acute pain in his legs, ankles, hips and back and his balance is very poor and he has difficulty walking on uneven surfaces even using his cane. At the hearing, the appellant stated

that he has been using an inhaler for his COPD for 6 years.

The general practitioner reported in the PR that the appellant does not require an aid for his impairment and, in the AR, she indicated that "none" of the listed assistive devices, including a cane or breathing device, are routinely used by the appellant. Given an opportunity to clarify her assessments in the Medical Certificate, the general practitioner wrote that the appellant uses a cane "on occasion" to help with mobility and she did not refer to the appellant's difficulty with balance or with shortness of breath. There were no further reports regarding the progression of the appellant's COPD. In the PR, the general practitioner also related the restrictions to the appellant's ability to grip and to remain seated for long periods to his inability to engage in his previous work, and the panel finds that the ministry reasonably concluded 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.

The appellant argued that the impact from the cancer he had removed from his jaw in 2012 is not being fully considered. In his self-reports, the appellant wrote that due to the cancer, he has no feeling in the right side of his face and throat, he cannot eat or chew properly and has difficulty swallowing. His lower jaw and tongue swell up causing speaking and swallowing problems and gives him a headache. In the additional comments to the AR, the general practitioner wrote that the appellant "…has also had squamous cell cancer of the right retromolar trigone (jaw) and had part of his jaw removed. This can cause some speech and swallowing difficulties." The general practitioner assessed the appellant as having a good ability to communicate in speaking and noted: "can at times be difficult with jaw surgery." In the most recent letter dated October 22, 2015, a physician who is a specialist in otolaryngology wrote that the appellant had a squamous cell carcinoma of the right retromolor trigone area treated with surgery and chemo in 2012 and he recently had some left neck swelling but denied any pain, dysphagia [difficulty or discomfort in swallowing], shortness of breath, hemoptysis [coughing up blood], hoarseness or weight loss. A complete head and neck examination was performed and the swelling was found to correspond to some induration over the larynx but there was no obvious soft tissue mass and the remainder of the examination was reported as "normal."

The appellant argued that he qualified for full disability benefits in another province based on this same information and he should also be considered disabled and qualify in British Columbia; however, the panel finds that the ministry reasonably considered whether the information satisfied the legislative criteria that apply in British Columbia, regardless of whether those criteria might have applied in the other province, which in any event is irrelevant in the circumstances of this decision. The appellant's sisters suggested that the appellant may have downplayed his restrictions when asked by the doctor and that the general practitioner admitted to them that she was unfamiliar with the PWD application forms. However, the general practitioner was given an opportunity to modify her initial assessments in the additional Medical Certificate provided. The panel finds that the ministry reasonably relied on the information of the general practitioner in the PR, AR, and the Medical Certificate, as describing the impacts of the appellant's physical conditions on his daily functioning. 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 in the middle of the range as well as the assessment of independent mobility and physical ability, with occasional use of a cane, 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 depression and possible PTSD that has caused insomnia and isolation due to his low mood and pain.

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 indicated there were no significant deficits to cognitive and emotional functioning and the appellant remains independent in all areas of social functioning, with good functioning in both his immediate and extended social networks.

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In the PR, the general practitioner did not diagnose the appellant with a mental disorder and reported that there are no significant deficits with the appellant's cognitive and emotional functioning. However, in the Medical Certificate, the general practitioner wrote that the appellant now admits to suffering from depression (emotional disturbance), which started many years ago when he was injured. Although the appellant stated at the hearing that he had been told he has PTSD, the general practitioner did not diagnose this disorder. The general practitioner wrote that the appellant says he has a bad temper, he has come to the point of feeling like life is pointless and has considered "ending it all." The general practitioner wrote that the appellant has isolated himself and does not feel he is able to socialize and feels worthless and sad most days. The general practitioner did not indicate in the Medical Certificate that she had made any further referral to mental health services for counseling or had prescribed medication for the appellant. In the AR, the general practitioner had assessed a minimal impact in the area of emotion and no impacts to all remaining listed areas of cognitive and emotional functioning. The general practitioner wrote that the appellant "…feels low/ sad that he cannot work for a living. He struggles to get by on the little money he has. This is causing a low mood/ mild depression."

With respect to 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), there is little evidence to establish that the appellant is significantly restricted in either. Regarding the decision making DLA, the general practitioner reported in the AR that the appellant independently manages all decision-making components of DLA, specifically: personal care (regulate diet), shopping (making appropriate choices and paying for purchases), meals (meal planning and safe storage of food), "pay rent and bills" (including budgeting), medications (taking as directed and safe handling and storage), and transportation (using transit schedules and arranging transportation). As well, the general practitioner reported in the AR that the appellant independently makes appropriate social decisions. The general practitioner did not change her assessment of the appellant's decision-making ability in her Medical Certificate.

Regarding the DLA of social functioning, the general practitioner assessed the appellant in the PR as restricted but did not indicate the degree of restriction (periodic or continuous) and commented that the appellant is "…not able to socialize due to pain in multiple joints. Worse in lower back, right ankle has ++ pain." However, in the AR the general practitioner reported that the appellant remains independent in all aspects of social functioning, including developing and maintaining relationships

and interacting appropriately with others, and that he has good functioning in both his immediate and extended social networks. In the Medical Certificate, the general practitioner wrote that the appellant is isolating himself, he does not attend family events or will isolate at the event and he has a small social network with two friends and most of his contacts are family. At the hearing, the appellant's sister stated that because of the numbness in his face, the appellant will not sit with the rest of the family and he has withdrawn from the family at different events. The general practitioner reported in the PR and the AR that the appellant has no difficulties with communication, with a good ability to communicate in most areas, specifically with speaking, reading and hearing, with a poor ability with writing since he "cannot grip a pen to write clearly."

Given the absence of sufficient evidence from the general practitioner 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 sisters, and the use of a cane as an assistive device.

The ministry's position, as set out in the reconsideration decision, is that the information from the prescribed professional 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 in the AR that the appellant is periodically restricted with one task of the DLA transportation, there is no indication of the frequency or duration of this restriction. The ministry wrote that the general practitioner did not describe in the Medical Certificate how much longer than typical the appellant takes with the additional tasks of dressing, bathing, transferring in/out of bed and on/off of chair, laundry, going to and from stores and getting in/out of vehicles. The ministry wrote that taking twice as long to complete a DLA is not considered indicative of a significant restriction.

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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 is the prescribed professional. 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 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.

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 general practitioner wrote "…has chronic pain in hands, feet, and back that make sitting for more than 1 hour or walking more than 1 block difficult." In the PR, the general practitioner indicated that the appellant is not restricted with most of the listed DLA, specifically: personal self care, meal preparation, management of medications, basic housework, daily shopping, mobility inside the home, use of transportation, and management of finances. While the appellant is continuously restricted with mobility outside the home, there are no additional comments provided by the general practitioner

regarding the degree of restriction. In the AR, the general practitioner reported that the appellant is independent with walking indoors and walking outdoors. The general practitioner also assessed the appellant as being independent with all of the tasks of all of the listed DLA, with the exception of requiring periodic assistance from another person with the task of getting in and out of a vehicle as part of the DLA transportation. The general practitioner wrote: “getting in and out of his truck it is difficult to grip handles with left hand.” The general practitioner 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 Medical Certificate the general practitioner provided “additional information” regarding the appellant’s ability to perform his DLA. Specifically, the general practitioner reported that dressing takes the appellant “longer than the average person.” The appellant wrote in his self-report that getting dressed is difficult because of nerve damage and loss of grip function in his hands. The general practitioner wrote for grooming that the appellant has a hard time lifting his arm over his shoulder due to pain, and getting in and out of the shower is “slow and difficult.” In his self-report, the appellant wrote that getting into the bathtub/shower has to be done in a certain way and very slowly as his balance is off and lifting his legs causes pain. The general practitioner indicated that, with toileting, there is pain getting up and down and the appellant does this slowly, or it takes “twice as long as the average person.” The general practitioner wrote that, due to difficulty feeding, the appellant has lost significant weight. For transfers in/out of bed, the appellant has to roll onto the floor with his knees on the floor and this is done “much slower than the average person.” At the hearing, the appellant’s sister stated that the appellant keeps his bed on the floor without a box spring so he can roll out of bed. The general practitioner wrote in the Medical Certificate that the appellant is also “slower than normal” to get up and go when transferring on/off of chair. At the hearing, the appellant’s sister stated that the appellant is very slow with tasks of personal care and these take him “forever.”

The general practitioner wrote further that, for laundry, bending over to get clothes out of the dryer causes severe pain and the appellant has to do this “slowly” and he often avoids this task due to pain. At the hearing, the appellant’s sister stated that he can put his laundry in the washer but he cannot take it out or put it in the dryer. The general practitioner wrote that repetitive motions with hands like wiping, cleaning or putting away dishes cause pain and he often drops things due to the sharp pains in his fingers from arthritis. With carrying purchases home, the pain is severe in the appellant’s shoulders, hands and amputated fingers of the left hand and this task is very difficult to manage on his own, and he has to have the assistance of his sisters. At the hearing, the appellant’s sisters both stated that the appellant cannot carry bags of groceries. The general practitioner wrote in the Medical Certificate that the appellant is not able to safely hold a knife and he uses a can opener but it is “painful and slow” to open food this way. The general practitioner wrote that the appellant has difficulty getting in and out of the car due to severe pain and this takes “considerable added time.”

The information from the general practitioner in the Medical Certificate shows restrictions to the appellant’s DLA that were not initially reflected in the PR and AR and most physical tasks take the appellant longer than typical. However, with the exception of toileting, the general practitioner does not specify how much longer than typical it takes the appellant with these tasks other than to describe the tasks as “slow”, “difficult”, “longer/much slower than average”. With the task of carrying purchases home, as part of the shopping DLA, the evidence of the general practitioner, as supplemented by the appellant’s sisters, established that the appellant requires the ongoing assistance of another person (his sisters), whereas he was initially assessed as independent with

performing this task.

Considering the evidence of the general practitioner as the prescribed professional, the panel finds that the ministry reasonably determined that there was not sufficient detail provided to establish that the appellant takes significantly longer than typical with his DLA. 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 cane as an assistive device.

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. The general practitioner added that the appellant's sister "…has to write/fill out forms for him as he cannot write clearly." In the section of the AR for identifying assistance provided through the use of assistive devices, the general practitioner wrote "none" and, in the Medical Certificate, noted that the appellant uses a cane "on occasion" to help with mobility.

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. The appellant's appeal, therefore, is not successful.