

PART C – Decision under Appeal

The decision under appeal is the Ministry of Social Development and Social Innovation (“ministry”) reconsideration decision dated June 29, 2016 in which the ministry found the appellant was not eligible for designation as a Person With Disabilities (“PWD”) because he did not meet all of the criteria in Section 2(2) of the *Employment and Assistance for Persons with Disabilities Act* (“EAPWDA”). The ministry was satisfied that the appellant has reached 18 years of age, that his impairment is likely to continue for at least 2 years, and that he has a severe *mental* impairment. However, based on the information provided in the PWD Designation Application (“PWD application”) and Request for Reconsideration (“RFR”), the minister was not satisfied that:

- the appellant has a severe physical impairment; and
- his mental impairment, in the opinion of a prescribed professional, directly and significantly restricts his ability to perform daily living activities (“DLA”) either continuously or periodically for extended periods; and
- as a result of these restrictions, the appellant requires help to perform those activities through an assistive device, the significant help or supervision of another person, or the services of an assistance animal.

PART D – Relevant Legislation

Employment and Assistance for Persons with Disabilities Act – EAPWDA - section 2

Employment and Assistance for Persons with Disabilities Regulation – EAPWDR - section 2

PART E – Summary of Facts

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

1. A PWD application comprised of:

- The Applicant Information and Self-report (“Self-report”) signed by the appellant on November 16, 2016 with his attached submission;
- a Physician Report (“PR”) completed by a general practitioner (“the physician”) on November 17, 2015. The appellant is described as a new patient since September 2015 and has been seen by the physician 2-10 times in the past 12 months; and
- an Assessor Report (“AR”) completed by a registered social worker on November 2, 2016. The social worker has known the appellant for approximately 2 weeks and has seen him 2-10 times in the past year. She is employed by the local health authority which was providing the appellant transitional mental health and substance use programming at a supportive housing site to address his "social and health domain goals." She indicates that she completed the AR through an interview with the appellant, home assessment, and information from his file/chart and other professionals.

The PWD application includes the following information:

Diagnoses

PR

The appellant is diagnosed with cavernous hemangioma: right temporal lobe (brain tumour); seizure disorder, alcohol use disorder, and social anxiety disorder. For *Health History* the physician reports:

- “frequent seizures - up to daily despite (medications), tonic-clonic and absence, post-ictal states, significant periods of decreased level of consciousness/ alertness and causing memory difficulties”;
- Alcohol use disorder: “sober since July 2015, requires addiction services, since teens with drinking excess alcohol, requires psychiatric care”;
- Social anxiety: “limits interactions with strangers and avoids situations.”

Under *Degree and Course of Impairment* the physician reports, “pending excision of (brain tumour), less than 50% chance becoming seizure free.” Under *Additional Comments* the physician writes, “seizure disorder in context of (brain tumour), frequent uncontrolled seizures despite medication. Alcohol in past may have resulted seizures, non-abstinent. Surgery pending, requires ongoing neurology follow up.”

AR

The social worker reports the following mental or physical impairments that impact the appellant's ability to manage DLA: “non-malignant brain tumour with seizures and short-term memory loss; anxiety; and alcohol dependence - early remission.”

Self-report

The appellant reports that he is recently in recovery for his alcohol use and is in "rough shape both mentally and physically." He is working with his health team to have the tumour removed and no surgery date has been scheduled. He reports that secondary to his seizures and tumour he has depression and social anxiety. Further, he has used alcohol in the past to cope, but has now been sober for 4 months.

Functional Skills

PR

The physician provided the following information regarding any functional limitations:

- The appellant can walk 4+ blocks unaided on a flat surface;
- climb 5+ steps unaided;
- has no limitations with lifting or remaining seated;
- has no difficulties with communication; and
- has significant deficits with cognitive and emotional function in 3 out of the 12 listed areas: Consciousness, Memory, and Emotional disturbance with the comment, "seizures disrupt level of consciousness - post ictal state. Social anxiety."

AR

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

- Ability to Communicate: All areas (Speaking, Reading, Writing, and Hearing) - *Good*;
- Mobility and Physical Ability: All areas - *Independent*;
- Comments: "To be reassessed post non-malignant brain tumour surgery. Surgery date unknown."
- Cognitive and Emotional Functioning: The appellant's impairments impact his functioning in 12 out of 13 areas. One area, *Psychotic symptoms* is check marked as *No impact*, and one area, *Other emotional or mental problems* is not rated. None of the areas are reported as *Moderate impact*, and the 13 areas with a *Minimal* or *Major impact* are as follows:
 - Bodily functions, Consciousness, Impulse control, Insight and judgment, Executive, Motivation, Motor activity, Language, and Other neuro-psychological problems - *Minimal impact*;
 - Emotion, Attention/ Concentration, and Memory - *Major impact*;
 - Comments (summarized): The appellant is observed to have major impacts in the areas of short-term memory, recall, learning new information, i.e., names. He carries a book with him, especially when attending appointments. He is currently residing in 24 hour supportive housing via (the local health authority) to provide support, safety, and housing. He is observed to have "moderate to major impact with emotions and often experiences seizures during stressful periods, feeling overwhelmed, and due to tumour."

Self-report

The appellant writes that the effects of his tumour and medication have limited his ability to further his career in a certified occupation and that makes him feel depressed. He is not able to work due to the

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risk of seizures which are often brought on by his daily experiences with anxiety and stress and numerous medical appointments. His memory problems result in forgetting about appointments, payments, and other things in his daily routine and these problems increase his depression which also brings on his seizures. He has some hope that the tumour will be removed but in the meantime he will be unable to work while waiting for and healing from surgery.

Daily Living Activities (DLA)

PR

- The physician checked Yes, the appellant has been prescribed medication/ treatment that interfere with his ability to perform DLA. Medications are listed, with side effects described as “sedation” and “bleeding gums.” The physician indicates that the duration of medications/ treatments is unknown with the comment, “pending surgical excision – right temporal cavernoma - will have to see impact on seizures.”
- In Part E - *Daily Living Activities*, the physician check marked Yes, the appellant’s impairment directly restricts his ability to perform DLA and provided the following information:
 - 9 out of the 10 listed DLA are marked as *not* restricted: Personal self-care, Meal preparation, Management of medications, Basic housework, Daily shopping, Mobility inside the home, Mobility outside the home, Use of transportation, and Management of finances;
 - 1 DLA is periodically restricted: Social functioning with the explanation, “Social anxiety - struggles with communication around strangers.”
 - For *additional comments regarding the degree of restriction* the physician writes, “Usually able to manage daily living activities on day to day basis but can cause anxiety and emotional distress.”

AR

The social worker provided the following information:

- The appellant is independent with all areas of Personal care, Basic housekeeping, and Shopping with the comment, “to be reassessed post non-malignant brain surgery. Surgery date unknown”;
- He is also independent with all areas of Meals, Medications, and Transportation, also to be reassessed post-surgery “or as presentation changes”;
- He requires periodic assistance from another person with all areas of Pay rent and bills with the comment, “support navigating system and complex financial matters due to significant change in financial affairs re medical”;
- For Social functioning he requires periodic support/ supervision in all areas:
 - Appropriate social decisions - comment, “Support with avoiding alcohol triggering areas/ social settings”;
 - Able to develop/ maintain relationships - comment, “close with family/ friends. Requires periodic support re- external friends who previously consumed alcohol with”;
 - Interacts appropriately with others - comment, “social anxiety disorder, previously used alcohol to cope. Working with staff to strengthen same”;
 - Able to deal appropriately with unexpected demands - comment, “periodic assistance to cope with stressors of same, prioritize and debrief”;
 - Able to secure assistance from others.

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- The social worker checked that the appellant has marginal functioning with both his immediate and extended social networks with the comment, “Support navigating the system at large”;
 - The social worker did not identify any safety issues, or fill in *Additional Comments*.

Self-report

The appellant states that his medication affects his cognition, oral health, mental health, and bladder control. Bill payments and “other things in my daily routine” are restricted as he has forgotten to do them.

Need for Help

PR

- The physician check marked *No*, the appellant does not require any prostheses or aids for his impairment.
- For *Daily Living Activities*, the physician writes “none” in describing any assistance with DLA.

AR

- The social worker indicates the appellant lives alone in supportive housing.
- In describing the support/ supervision required to help maintain the appellant in the community, the social worker writes, “counsellor (at community agency), staff at (community agency), primary care interdisciplinary staff at (residential housing), family, friends.”
- Assistance is provided by family, friends, health authority professionals, volunteers, and community service agencies with the comment, “Applicant is connected to numerous formal and informal supports as of August 2015 to present.”
- In response to the question, *If help is required but none is available, please indicate what assistance would be necessary* the social worker writes, “To be assessed post-surgery - home support has been queried in pre-planning meetings for personal care, basic ADL’s, light housekeeping, transportation and meals.”
- There are no check marks for assistance provided through the use of assistive devices. In response to the question, *If equipment is required but is not currently being used, please describe the equipment or device that is needed* the social worker writes, “unknown equipment will be required following pending surgery for non-malignant brain tumour.”
- The social worker checked *No*, the appellant does not have an assistance animal.
- *Additional Information* (Part E of AR): The social worker notes that the appellant has just moved into supportive 24 hour, mental health and substance use housing, “to support him with his recovery goals, health goals, and monitoring/ assessment. Applicant requires support re: navigating the system to address multiple stressors (medical/ psycho-social) and establishing medical care plans pre and post-surgery re: tumour.”

Self-report

The appellant states that over the years, his condition has made him reliant on other people “to help him financially, socially, practically, and medically.” He states that he is currently seeing an addictions counsellor and he receives 24/7 on site support in his current housing. He also connects with an outside social worker and a nurse.

2. A copy of a Computed Tomography (CT scan) report signed by a physician on October 2, 2015 was attached to the PWD application. The report indicates the reason for the exam: “known cavernous hemangioma, recent increase in seizures.” In comparison to a previous CT scan and MRI, the current scan indicates that the tumour has not changed in size or appearance and the impression is “stable relatively large right temporal cavernoma, no new finding.”

3. A Request for Reconsideration (“RFR”) signed by the appellant on June 13, 2016 with attached submissions as follows:

(a) A written statement to the panel from the appellant dated June 8, 2016 in which he reports that he has had brain surgery to try and alleviate the frequency of his seizures. He is unable to work, is close to being homeless, and has lost some memories as a result of the seizures he has experienced over the years. He states that he has to write everything down and he has bad days and good days. He describes his worst days as “unable to function at all and fulfill daily commitments” while on good days, he can function reasonably well but is always worried about the occurrence of the next seizure. Along with seizures, which are not as frequent with high doses of medication, the appellant reports that he has periods of depression, low self-esteem, several health issues, is recently in recovery for his alcohol use, and is in “rough shape both mentally and physically.” The appellant also provides his argument on reconsideration which the panel will consider in *Part F - Reasons for Panel Decision*.

(b) A letter from the appellant’s addictions counsellor dated June 9, 2016 that states the appellant was diagnosed with a non-malignant brain tumour in 2007 and this tumour was removed in December 2015. He nevertheless suffers from “cognitive deficits as the result of his physical condition. His memory is extremely compromised.” The counsellor further reports that while his seizures are less frequent since the operation, he is still in danger of suffering seizures; there appears to be a relationship between stress and seizures; and the appellant is not foreseeably capable of returning to full-time employment. The counsellor reports that the appellant was previously homeless, suffering from substance use disorder and seizures and he is again at risk for homelessness due to the refusal of his PWD application. The counsellor also provides argument on behalf of the appellant for the reconsideration.

(c) A letter from the physician dated June 1, 2016, stating that the appellant is able to mobilize well in the “absence of limiting physical conditions” but he remains “quite limited by his seizure disorder and social anxiety.” The physician states that the appellant had surgery for his (brain tumour) on December 18, 2015 and he remains on medication for ongoing seizures. He is left “cognitively impaired” as a result of many years of uncontrolled seizures, despite an improvement in his seizure frequency, “which continue to occur and leaves him incapacitated in a post-ictal state.” The physician reports that the appellant has difficulty with memory and keeping track of appointments and medications, etc. He must write most things down in order to keep them organized and ensure that he can follow even simple instructions; and he frequently requires instructions to be repeated a few times; and therefore, DLA take him “significantly longer than average”. In addition, the physician reports that the appellant’s social anxiety, despite his sobriety, “impairs his ability to communicate with strangers and causes him emotional distress” as well as avoidance of situations.

Additional submissions

Subsequent to the reconsideration decision, the appellant filed his Notice of Appeal dated July 7, 2016 in which he provides his argument and states that he suffers seizures “due to high stress” and is

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unable to work. The panel will address the arguments of both parties in the next section, *Part F - Reasons for Panel Decision*. Oral submissions at the hearing included the following:

The appellant attended the hearing with two advocates (advocates “A” and “B”). Both of them are outreach workers for agencies that provide support for addictions and mental health issues. They provided some information regarding the PWD process and the appellant’s circumstances at the time of the application. The ministry reviewed the chronology of the application:

- The advocates indicated they are not “prescribed professionals” for the purpose of completing the AR under the legislation, but will assist applicants in completing the PWD application by providing information that the physician may choose to include in the PR; working with the social worker who completes the AR; and going through a sample application with the applicant. Advocate B explained that this process was not followed with the appellant because he contacted the advocates after he received the ministry’s denials.
- Advocate A explained that the appellant was in a 30-day residential program for substance use stabilization; he then moved to supportive housing (for a maximum stay of 3 months) and he is currently staying with his ex-partner. His current accommodations are only temporary and he was previously couch-surfing and was therefore considered to be homeless. While he was in stabilization, everything was done for him including meals, daily schedule planning, and management of his finances. The appellant added that in supportive housing there was a breakfast, but everyone had their own apartment with a kitchen for other meals.
- Regarding the social worker’s indication (in the AR) that the appellant was to be re-assessed after his surgery, the advocates confirmed that a re-assessment has not taken place. The appellant added that the only new assessment is the letter from his doctor (physician’s letter of June 1, 2016 provided with his RFR). A new appointment for a PR and AR has not been arranged but the appellant has an appointment with a neurologist in August 2016 “to get weaned off the high dose of meds.”
- The PWD application was received by the ministry on November 26, 2016; the appellant was informed of the denial on May 31, 2016; his RFR was received on June 16, 2016 and PWD was denied at reconsideration (decision dated June 29). In response to questions, the ministry stated that the appellant could re-apply based on his new circumstances post-surgery, but Advocate B added that interim housing and support arrangements as well as new assessments would need to be lined up and the whole process for the PWD application usually requires a full 6 months.

The appellant testified that he has lost the hearing in his right ear since his surgery in December; his memory is horrendous; and he is stressed out all the time and on the brink of tears. He repeats himself and loses his train of thought, and his anxiety is through the roof and causes him to feel shaky and on the verge of a seizure. On his bad days, he cannot go anywhere except to the hospital and a bad day can last for a couple of days. When he has a seizure he cannot do housework or manage transportation and these tasks are nearly impossible even on a good day, due to the risk of having a seizure.

The appellant described having a seizure in front of a mental health worker, and stated he was fired from his job when he had a seizure at work. He wanted his tumour removed in 2009 but his doctors said it was too risky as he was drinking every day. He more recently had a seizure in his doctor’s office and ended up paying for a stabilization program out of his own resources. He reports having 5-6 seizures per week before the tumour was removed, and 1-2 per month since the operation (and some of these are during his sleep). He states that he has a 50/50 chance of having more seizures.

In response to questions, the appellant explained that his seizures vary in intensity, and the duration of the after-effects also varies. He described that when he “wakes up” after a seizure he is in a fog and he can “lose 2 hours of consciousness per seizure but can then be doing laundry 2 hours later.” He explained that if he “comes to” right away, he might “realize that it happened and then go and cook dinner. “ But at other times, it is “like a hangover” that persists, preventing him from functioning.

The ministry noted in the reconsideration decision that the social worker completed the AR before the physician filled out the PR and she therefore would not have been privy to the physician’s assessments. When asked if he was with the social worker when she filled out the AR and check marked that he was independent with most DLA, the appellant explained that he now remembers that she filled it out with him when he was in supportive living and he may have had an “I’m fine attitude” and said that he “could do everything” because he was “under less stress and happy and relaxed there without seizures and with people there to support him.”

The panel finds that the additional submissions provide an update and additional details regarding the appellant’s medical conditions and circumstances including his living arrangements; in particular, he has now had surgery for his brain tumour and he has completed an addictions stabilization program and a recovery period in a supportive living environment. The panel admits the additional submissions under section 22(4)(b) of the *Employment and Assistance Act* as evidence in support of the information and records that were before the minister at the time the decision being appealed was made.

PART F – Reasons for Panel Decision

The issue in this appeal is whether the ministry's reconsideration decision of June 29, 2016, which found that the appellant was not eligible for PWD designation, was reasonably supported by the evidence or was a reasonable application of the applicable enactment in the circumstances of the appellant. Based on the information provided in the PWD application and with the RFR, the ministry was not satisfied that the following criteria in EAPWDA section 2(2) were met: the appellant has a severe physical impairment; his mental impairment, in the opinion of a prescribed professional, directly and significantly restricts his ability to perform DLA either continuously or periodically for extended periods; and, as a result of these restrictions, he requires help to perform those activities.

The eligibility criteria for PWD designation are set out in section 2(2) of the EAPWDA as follows:

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

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

(b) in the opinion of a prescribed professional

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

(A) continuously, or

(B) periodically for extended periods, and

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

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

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

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

(i) an assistive device,

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

(iii) the services of an assistance animal.

The "daily living activities" referred to in EAPWDA section 2(2)(b) are defined in section 2 of the EAPWDR:

Definitions for Act

2 (1) In this section:

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

For the purposes of the Act and this regulation, **"daily living activities"**,

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

(i) prepare own meals;

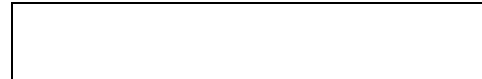
(ii) manage personal finances;

(iii) shop for personal needs; (iv) use public or personal transportation facilities;

(v) perform housework to maintain the person's place of residence in acceptable sanitary condition;

(vi) move about indoors and outdoors;

(vii) perform personal hygiene and self-care;



- (viii) manage personal medication, and
- (b) in relation to a person who has a severe mental impairment, includes the following activities:
 - (i) make decisions about personal activities, care or finances;
 - (ii) relate to, communicate or interact with others effectively.

Analysis

The panel provides the following analysis and decision for the legislative criteria that the ministry found were not met: While the ministry was satisfied that the appellant has a severe mental impairment, thereby meeting the requirement in section 2(2) of the EAPWDA, it nonetheless found that the appellant does not have a severe physical impairment.

Severe physical impairment

Appellant's position

Although the appellant is not claiming to have a severe physical impairment per se, he argues that due to his seizure disorder and recovery from addictions and brain surgery, he is in rough shape both mentally and physically. He cites physical side effects from his medications including bleeding gums and problems with his bladder.

Ministry's position - Severe physical impairment:

The ministry argues that a severe physical impairment is not established by the information in the PWD application and reconsideration submissions, noting that the appellant does not require any prostheses or aids for his impairment and in the PR, the physician check marked the lowest degree of restriction for walking and climbing stairs and indicated no limitations with remaining seated or lifting. Similarly, the ministry notes the social worker's information indicating that the appellant is independent with all of physical abilities listed in the AR.

Panel's decision - Severe physical impairment

The panel finds that the ministry reasonably determined a severe physical impairment has not been established by the information provided. The physician check marks and comments in the PR and specifically states in his letter of June 1, 2016 that the appellant has no physical limitations. While the appellant reports problems with bodily functions including bleeding gums and bladder problems, the social worker indicates in the AR that the appellant's impairments have a minimal impact on Bodily Functions. Furthermore, as noted by the ministry, the social worker also indicates the appellant is independent with physical skills and abilities.

The legislation requires evidence of a severe impairment that significantly impacts daily functioning. The physician's and social worker's information that the appellant has no restrictions to his mobility and other physical functions does not fulfill the legislative test. The panel therefore finds that the ministry reasonably determined a severe physical impairment under section 2(2) of the EAPWDA was not established.

Restrictions in the ability to perform DLA

Appellant's position

The appellant argues that his seizure disorder restricts his ability to perform DLA. He is unable to work to support himself and is one step away from being homeless as a result. The medication he takes affects his cognition and mental health, and he suffers from depression because of things he can no longer do such as work and drive a vehicle. Due to his impaired memory he has forgotten about appointments, payments, and other things in his daily routine and he therefore has to write everything down.

He argues that on his worst days he is unable to function and fulfill his daily commitments. His worst days can last for a couple of days and he cannot go anywhere except the hospital, and when he has a seizure he cannot do housework or manage personal transportation. While he states that he can function relatively well on his good days, he is worried about having another seizure, and his financial and psycho-social stressors lead to more seizures.

The advocates argue that the appellant cannot survive on his own. He receives only \$610 per month from the ministry and needs PWD and safe housing to prevent him from becoming homeless. They argue that the fact that he was homeless before shows that he is unable to manage on his own and his \$20,000 debt shows that he is unable to manage his finances. They state that his ex-partner cannot continue caring for him and he does not know where to turn or how to navigate the system.

Ministry's position

The ministry acknowledges that due to his medical history, the appellant would reasonably be expected to encounter some restrictions to his ability to perform DLA. The ministry argues, however, that the information from the physician and social worker does not establish that a severe impairment *significantly* restricts the appellant's DLA continuously or periodically for extended periods. The ministry notes that the physician reports that the appellant's medications interfere with DLA but at the same time, the physician indicates the appellant is able to independently manage the majority of DLA.

The ministry notes the physician's information that only Social functioning is restricted, in that the appellant requires periodic assistance for communication with strangers. The ministry further notes the social worker's information: the appellant is able to independently manage all aspects of DLA with the exception of banking, budgeting, and paying rent and bills for which he requires periodic support. The ministry acknowledges that the appellant has certain limitations with his social functioning but argues that the lack of information about the frequency and duration of the periodic assistance he requires precludes a determination of whether the restriction is significant to his overall functioning.

Panel's decision - Restrictions to DLA

Subsection 2(2)(b)(i) of the EAPWDA requires the minister to be satisfied that in the opinion of a prescribed professional an applicant's severe impairment directly and significantly restricts DLA either continuously, or periodically for extended periods. In this case, the appellant's physician and social worker are the prescribed professionals. DLA are defined in section 2(1) of the EAPWDR and are also listed in the PR, with additional details in the AR. Therefore, a prescribed professional

completing these forms has the opportunity to indicate which, if any, DLA are significantly restricted by the appellant's impairments either continuously or periodically for extended periods.

The panel finds that the ministry reasonably determined the evidence does not establish that the appellant's DLA are directly and significantly restricted either continuously, or periodically for extended periods. Despite side effects from his medications, the physician indicates, in the PR, that the appellant is independent in all DLA except social functioning for which he requires periodic assistance. As noted by the ministry there is no information on how frequently or for how long this assistance is required. Similarly, the social worker indicates, in the AR, that the appellant requires periodic support with social functioning, in particular, to avoid alcohol use and cope with stressors. Again, there is no information provided on the frequency and duration of support and therefore, the information does not confirm the legislative requirement that the restriction must be either continuous or periodic for extended periods.

While the appellant argues that he is unable to manage his finances, and on his bad days he cannot do housework or arrange transportation and the threat of a seizure makes it hard to do things even on good days, the information from his prescribed professionals does not corroborate these restrictions. The physician reports no restrictions with Management of Finances and both the physician and the social worker report no restrictions with Basic housekeeping and Transportation. While the social worker indicates that the appellant requires periodic assistance with Pay rent and bills, she comments that the support he requires is for "navigating the system" due to significant changes in his financial situation.

Further, there is no information from these professionals regarding the variable nature of the seizures which could explain whether they restrict the appellant's DLA periodically for extended periods. The evidence in the record is that the seizures are less frequent with medications and surgery. While the appellant explained that he can lose two hours of consciousness per seizure and be in a "hangover" state that can persist for two days, the information from the physician and social workers lacks this degree of detail regarding the appellant's restrictions.

The panel also notes that the appellant's major concerns are his inability to work and financial need for PWD so that he does not become homeless. While the panel is sympathetic to his circumstances, employability and financial need are not criteria for PWD under the legislation and the panel therefore cannot give weight to those factors in determining the reasonableness of the ministry's decision. As noted by the ministry at the hearing, the appellant's application was denied because the information provided did not satisfy all of the criteria in the EAPWDA.

While the panel can consider additional information that is in support of the information that the ministry had at the reconsideration, the evidence is that the appellant had not undergone any new assessments of his function despite the social worker's information that he was to be reassessed after his surgery. The appellant provided letters from the physician and from his addictions counsellor, and these letters confirm that he had the surgery and is "cognitively impaired" (he has significant memory problems and needs to write everything down and have instructions repeated). Nevertheless, the letters do not provide detail about the specific DLA listed in the legislation and the physician reports only that "activities of daily living take him significantly longer than average as a result."

The legislation requires evidence of significant restrictions to DLA either continuously or periodically for extended periods as a result of the applicant's impairment. While the professionals describe cognitive and social impediments, the appellant is reported as independent with the majority of DLA. The panel therefore finds that the ministry reasonably determined the information provided by the prescribed professionals does not confirm that the criteria in subsection 2(2)(b)(i) of the EAPWDA were met.

Help to perform DLA

Appellant's position

The appellant submits that he relies on other people "to help him financially, socially, practically, and medically." The social worker, in the AR, describes the support he has received through supportive housing and other community programs as well as family and friends, and indicates that he needs help navigating the system and may need home care to assist him with DLA after his surgery. The advocates argue that the appellant is unable to manage at all without supports, and even with help and support he is still struggling to manage his daily affairs.

Ministry's position

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

Panel's decision - Help to perform DLA

Subsection 2(2)(b)(ii) of the EAPWDA requires a prescribed professional to confirm that as a result of significant restrictions to DLA, the person requires help to perform an activity. Where another person is providing the help, the level of assistance or supervision required must be significant as set out in subsection 2(3)(b)(ii) of the EAPWDA. While there is information that the appellant relies on community support services and individuals to assist him with daily living, the panel found that the ministry reasonably determined the information provided did not confirm significant restrictions to DLA as a result of the appellant's impairment. The panel therefore finds that the ministry reasonably determined the criterion for help under EAPWDA subsection 2(2)(b)(ii) was not met.

Conclusion

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