

PART C – Decision under Appeal

The decision under appeal is the Ministry of Social Development and Social Innovation (the “ministry”) reconsideration decision of June 28, 2016, which found that the appellant did not meet three of five statutory requirements of section 2 of the *Employment and Assistance for Persons With Disabilities Act* (“EAPWDA”) for designation as a person with disabilities (“PWD”). The ministry found that the appellant met the age requirement and that in the opinion of a medical practitioner the appellant’s impairment is likely to continue for at least two years. However, the ministry was not satisfied that:

- 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 that
- as a result of those restrictions, the appellant requires the significant help or supervision of another person, an assistive device, or the services of an assistance animal.

PART D – Relevant Legislation

EAPWDA, section 2

Employment and Assistance for Persons with Disabilities Regulation (“EAPWDR”), section 2

PART E – Summary of Facts

The information before the ministry at the time of reconsideration included the following:

- L-Spine Scan from a hospital dated January 19, 2016 (the “Imaging Report”).
- The appellant’s PWD application form consisting of the appellant’s self-report form dated February 2, 2016 (“SR”), a physician’s report dated February 16, 2016 completed by the appellant’s general practitioner (“PR”) and an assessor’s report dated February 18, 2016 (“AR”), completed by the appellant’s chiropractor.
- The appellant’s Request for Reconsideration (“RFR”) form signed and dated June 9, 2016.

Diagnoses

- In the PR the physician (who has been the appellant’s general practitioner for one year and has seen him 2-10 times in the past 12 months), diagnosed the appellant with degenerative disc disease, left S1 nerve root scarring (onset 2005), blindness left eye (onset 1983) and depression.
- For Section B – Mental or Physical Impairment in the AR, the chiropractor (who has known the appellant since July 8, 2014 and seen him 11 or more times in the last year) states that the appellant’s physical or mental impairments that impact his ability to manage DLA are back mobility as the appellant is unable to stand, lift, or carry items without significant pain in the lumbar spine with left leg radiculopathy.
- In the Health History portion of the PR, the physician states that the appellant had back surgery in 2005 resulting in S1 nerve root scarring, as well as pain, weakness and inability to perform any manual labor which has resulted in depression and dependence on long-term narcotic pain medicine. The physician indicates that this results in a pervasive disability both physical and mental.

Physical Impairment

- In terms of physical functioning the physician reported in the PR that the appellant can walk 1 to 2 blocks unaided, can climb 2 to 5 steps unaided, can lift 5 to 15 pounds and can remain seated less than 1 hour. The physician indicates that the appellant is 5’10” and weighs 148 pounds. In Part F – Additional Comments, the physician indicates that the appellant’s impairment is chronic and pervasive.
- In the AR the chiropractor reports that the appellant is independent with all aspects of mobility and physical ability but explains that with walking outdoors the appellant is limited to 3 blocks maximum due to pain, has pain after climbing 3 steps, is limited to standing 30 minutes, and can lift or carry and hold a maximum of 5-10 pounds.
- The Imaging Report indicates that the appellant’s L1/2 disc is normal; that his L2/3 and L3/4 discs have mild bulges, that his L4/5 disc have a moderate central protrusion and that his L5/S1 disc indicates a previous left-sided discectomy with perineural scarring in the left lateral recess. The Imaging Report also indicates that the appellant has mild to moderate facet osteoarthritis in the lower lumbar spine
- In the SR the appellant states that he has experienced chronic pain since he was 18 years old, was diagnosed with a herniated disc at 21 and underwent surgery when he was 31 years old after the L5 herniated disc turned to a ruptured disc. He states that in the past 12 years he

has experienced severe chronic lower back pain that radiates down his left leg. The appellant states that he now has chain-reactions happening such as acute bursitis in his shoulder; neck pains and headaches, numbness in his left foot and groin.

- In the RFR the appellant states that he is in constant, extreme pain every minute of every day, whether walking, sitting, standing or sleeping. He states that if there was an empty box to tick off that said less than 1-2 blocks of walking, then he would have ticked off that box but there isn't one. The appellant states that three years ago he was forced to sell his business due to inability to perform his work duties due to extreme chronic pain. Since then he has attempted to return to work as a painter's helper but was fired on the second shift due to pain, which resulted in inability to work. He also tried to work four months previously to do some bookkeeping but he could not sit or stand for more than 30 minutes so he was let go. The appellant states that he has worked long and hard his entire life but has reached a point where his body is failing him, leaving him unable to perform the simplest of duties.

Mental Impairment

- In the PR the physician indicates that the appellant was diagnosed with depression. The physician indicates that the appellant has significant deficits with cognitive and emotional function in the areas of emotional disturbance and memory, noting that his prescribed medication makes him foggy. The physician indicates that the appellant does not have any difficulties with communication.
- In the AR the chiropractor indicates that the appellant's ability to communicate with speaking, reading, writing, and hearing are good. The chiropractor indicates that the appellant's mental impairment has impacts to his cognitive and emotional functioning with major impact in the area of emotion; moderate impacts in the areas of consciousness, motivation and other neuropsychological problems (visual); minimal impact in the areas of attention/concentration, memory, and motor activity; and no impact in the areas of bodily functions, insight and judgment, language, psychotic symptoms and other emotional or mental problems.
- In the SR the appellant states that he has had two nervous breakdowns in the last four months and has very high anxiety. He states that he is receiving counseling and has taken an anxiety-depression/meditation course through mental health.

DLA

- In the PR, the physician indicates that the appellant has been prescribed medication indefinitely that interferes with his ability to perform DLA as the prescribed medication makes him sluggish.
- In the PR the physician indicates that the appellant's impairment directly and continuously restricts his ability to perform DLA in the areas of personal self care, basic housework, daily shopping, mobility inside the home, mobility outside the home and use of transportation. The physician indicates that the appellant's impairment does not directly restrict his ability to perform DLA of meal preparation, management of medications, management of finances and social functioning. The physician explains that the appellant cannot drive without pain and that he depends on others to drive and move items in his own home.
- In the AR, the chiropractor indicates that the appellant is independent with all tasks of personal care except dressing, explaining that he takes longer with discomfort putting on his pants and socks. The AR indicates that the appellant requires periodic assistance with laundry and basic housekeeping explaining that he is unable to carry his laundry load and is unable to bend over,

lift or carry items. With respect to shopping the AR indicates that he is independent with reading prices and labels, making appropriate choices and paying for purchases but requires periodic assistance going to and from stores and carrying purchases home, explaining that he is unable to drive or carry or lift items. The AR indicates that the appellant is independent with meal planning and safe storage of food but takes significantly longer (2x) with food preparation and cooking, explaining that it is a slow process with discomfort in the low back and legs. The AR indicates that the appellant is independent with budgeting and paying rent and bills but requires periodic assistance with banking. The appellant is independent with all aspects of medications. With respect to transportation the AR indicates that the appellant is independent with using transit schedules but takes significantly longer (2x) with getting in and out of a vehicle and using public transit due to pain in his low back and legs.

- With respect to social function, the AR indicates that the appellant is independent with all aspects and has good functioning with his immediate and extended social networks.
- In the SR the appellant states that he has sought many forms of help including physiotherapy, exercise, stretching, acupuncture, massage, naturopathic treatment, chiropractic treatment and pain killers but in the last decade his injury has increased significantly and has left him unable to perform simple, basic duties such as laundry or house cleaning without pain and fatigue. He states that he has recently given up driving as he cannot sit for more than 15 minutes and cannot stand longer than 15 minutes. He sleeps for 1.5 to 2 hours at a time and cannot lie down in the same position for more than that. He states that he is unable to lift over 20 pounds without extreme pain and is unable to walk more than 2 blocks without pain and fatigue. He indicates that he avoids climbing stairs as it leaves him in pain and fatigued.
- In the RFR, the appellant states that he now avoids stairs completely. He also states that he has reached a point where his body is failing him, leaving him unable to perform the simplest of duties.

Help

- In the PR the physician reports that the appellant does not require any prosthesis or aids for his impairment but requires assistance with DLA as he needs help with lifting, driving and shopping.
- In the AR the chiropractor indicates that the appellant receives help from family and friends. The appellant does not use assistive devices or have an assistance animal.
- In the RFR, the appellant states that he needs assistance to prepare meals, clean his home and get groceries as he cannot do those things alone anymore.

Additional information provided

In his Notice of Appeal signed and dated July 28, 2016 the appellant states that he will be submitting information from his physician, which more clearly explains his restrictions with DLA.

Prior to the hearing the appellant provided a letter from the physician dated August 18, 2016 (the "Physician's Letter") in which the physician provides further information and asks the ministry to reconsider its rejection and to provide the appellant with the assistance he requires to cope with his disabilities. The physician states that the appellant suffers from degenerative disc disease and scarring of the S1 nerve root, which leaves him in constant pain. He also suffers from moderate to severe depression secondary to his current situation. The physician indicates that the appellant is unable to do any kind of physical activity without aggravating his existing pain and that if he walks

more than 10-15 feet, if he climbs stairs (which he cannot do without a handrail) or lifts 5 pounds, his pain is aggravated and it takes 30-60 minutes to return to his normal pain levels. The physician notes that with climbing stairs his pain becomes intolerable. The physician indicates that the appellant is unable to sit without constantly changing his position to try and alleviate the increase in his pain. The physician indicates that standing causes the appellant a great deal of pain and he must hang on his shopping cart and try to relieve it, usually unsuccessfully.

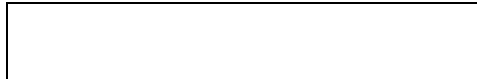
The physician indicates that the appellant's son helps him with shopping and most household tasks but even with the help, his pain is greatly exacerbated by getting in and out of a vehicle, walking in the store and standing in line to pay for his groceries. The problems with standing in line also impede his ability to do banking, pay bills and fill prescriptions and that all of these activities will require a rest of 1-2 hours to return to normal pain levels. The physician indicates that if the appellant were to walk with his son, his son would be half-way down the block before the appellant progressed more than 10 feet and that 10 feet would severely aggravate his pain and require 1-2 hours to return to normal pain levels. The physician indicates that personal grooming, toileting and dressing all require slow movements so as not to aggravate his pain and that standing, sitting down, getting in and out of the tub, and arm movements required for these tasks all aggravate his pain and put him in danger of falling. The physician indicates that the appellant has difficulty wiping himself when he toilets because of the pain caused by twisting his back. The physician indicates that the appellant's physical disabilities are of a degenerative nature and given his age and current modalities of treatment available to him, are unlikely to improve and will get worse with time.

The physician indicates that the appellant is on a medication for pain management but it makes him mentally sluggish. The physician indicates that with respect to his mental health, the appellant suffers from chronic moderate to severe depression causing him to have extreme sleep disturbance, feelings of hopelessness, a poor memory and a form of inertia particular to people with depression which is sometimes described as a lack of motivation, making it impossible for him to do the most simple of tasks. The physician indicates that the appellant has overwhelming fatigue, which he must fight constantly. The physician states that lack of sleep aggravates his pain and pain decreases his ability sleep and that he seldom manages to sleep more than 2 hours at a time. The physician indicates that the depression causes the appellant to isolate himself and it is very difficult for him to be around people even when he is attended by a friend or family member.

The ministry provided a letter dated September 7, 2016 (the "Submission") indicating that it had reviewed the Physician's Letter. The Submission states that had the ministry had the information in the Physician's Letter at the time of the reconsideration decision, the ministry may have found that the appellant met the criteria for PWD designation.

Admissibility of New Information

The ministry did not object to information in the Notice of Appeal or the Physician's Letter. The panel has admitted the new information as it is evidence in support of information and records that were before the ministry at the time of reconsideration, in accordance with section 22(4) of the *Employment and Assistance Act*. In particular, the Physician's Letter corroborates the information at reconsideration respecting the appellant's impairment, his ability to perform DLA, and help needed and responds directly to the questions raised by the ministry about the information provided by the physician in the PR.



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

PART F – Reasons for Panel Decision

The issue on this appeal is whether the ministry's decision to deny the appellant designation as a PWD was reasonably supported by the evidence or was a reasonable application of the applicable enactment in the circumstances of the appellant. In particular, was the ministry reasonable in determining that the appellant does not have a severe physical or mental impairment, and that in the opinion of a prescribed professional the appellant's impairment does not directly and significantly restrict him from performing DLA either continuously or periodically for extended periods, and that as a result of those restrictions the appellant does not require help to perform DLA?

The relevant legislation is as follows:

EAPWDA:

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.

EAPWDR section 2(1):

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.

Severe Physical Impairment

The ministry's position, as set out in its reconsideration decision, is that the information provided is not evidence of a severe physical impairment and that due to inconsistencies between the information provided by the physician and the chiropractor, it is difficult to develop a clear and coherent picture of the degree of the appellant's impairment, impacts to his ability to perform DLA, and the assistance that he requires as a result.

The reconsideration decision states that although the appellant indicates that he is not able to work, employability or ability to work is not taken into consideration for the purposes of determining eligibility for PWD designation. The reconsideration decision states that although the physician indicates that the appellant has a pervasive disability both physical and mental, the physician has not described how much less than 1 hour the appellant can remain seated and that the remaining assessments of his physical functioning provided by the physician and chiropractor are not indicative of a severe impairment. The ministry's position is that while the chiropractor indicates that the appellant's impairment has limited his ability to perform normal daily tasks, the chiropractor has not described those tasks.

The ministry's position is that it has considered the PR, AR, Imaging Report and the information provided by the appellant in the SR and RFR but that a severe impairment of the appellant's physical functioning has not been established.

The appellant's evidence is that he has a severe physical impairment resulting from chronic and continuous physical pain due to his low back pain and left leg radiculopathy. The appellant's position is that his impairment causes him severe pain with all activities and that he has had to stop working,

driving and needs help with the simplest of tasks due to his ongoing pain. The appellant's position is that the information provided demonstrates that he has ongoing pain and functional limitations that support his application for 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 one 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 performing DLA is restricted. The legislation makes it clear that the determination of severity is at the discretion of the minister, taking into account all of the evidence. However, the legislation is also clear that the fundamental basis for the analysis is the evidence from a prescribed professional. The panel notes that employability is not a criterion for designation with PWD.

The physician indicates that the appellant has been diagnosed with degenerative disc disease, S1 left nerve root scarring lumbar spine, and blindness in his left eye. The functional limitations in the PR indicate that the appellant can walk 1 to 2 blocks unaided on a flat surface, can climb 2 to 5 steps unaided, can lift 5 to 15 pounds and can remain seated for less than 1 hour. The AR indicates that the appellant is independent with all aspects of mobility and physical ability and although the chiropractor has not ticked off the box indicating that these tasks takes significantly longer, the chiropractor has provided further explanation that the appellant can walk 3 blocks maximum until pain, can climb 3 steps maximum with pain, can stand up to 30 minutes and can only lift or carry and hold items of 5-10 pounds maximum.

In the reconsideration decision the ministry indicates that the information provided in the PR and the AR regarding the appellant's functional abilities is not indicative of a severe physical impairment, and while the information in the Physician's Letter responds to the ministry's comments, the physician has not provided any explanation of why the information in the Physician's Letter is so different than the information provided in the PR. For example, in the PR the physician indicates that the appellant can walk 1-2 blocks unaided but in the Physician's Letter he indicates that the appellant has trouble walking 10-15 feet without requiring 1-2 hours of rest to return to normal pain levels. In the PR the physician indicates that the appellant can climb 2 to 5 steps unaided but in the Physician's Letter he states that the appellant cannot climb stairs without a handrail. The panel finds that the information provided by the Physician's Letter does not simply provide clarification of the information in the PR but is actually quite different information regarding the appellant's functional limitations.

The panel finds that the additional information provided in the Physician's Letter is not helpful to resolve the inconsistencies in the information provided and adds more inconsistencies, so the panel finds that the ministry's decision that the information provided is not indicative of a severe physical impairment was reasonable.

Severe Mental Impairment

The ministry's position is that the information provided does not establish that the appellant has a

severe mental impairment. The ministry's position is that there are inconsistencies between the PR and the AR, which make it difficult to determine the severity of the appellant's mental impairment. In particular the reconsideration decision indicates that the physician reports that the appellant has significant deficits with his cognitive and emotional function in the areas of emotional functioning and memory but in the AR the chiropractor reports that the appellant has major impact in the area of emotion but minimal impact to his memory. The ministry's position is that the physician has not indicated that the appellant has deficits with the majority of listed areas of cognitive and emotional functioning, that he is not restricted with social functioning, and he has good ability with all listed areas of communication.

The appellant's position is that he has high anxiety and depression, mental foggy due to his prescribed medications, and severe sleep disturbance resulting in a maximum sleep of 1.5 to 2 hours at a time. The appellant's position is that the information provided is evidence of a severe mental impairment.

Panel Decision

The appellant is diagnosed with depression and the physician indicates that the appellant has a pervasive disability both physical and mental. In the PR the physician indicates that the appellant has significant deficits with cognitive and emotional function in the areas of emotional disturbance and memory, noting that his prescribed medication makes him foggy.

Although the Physician's Letter states that the appellant's depression causes him to isolate himself and that it is very difficult for him to be around people, even when he is attended by a friend or family member, the PR and the AR indicate that the appellant does not have difficulties with communication or social functioning.

Although the Physician's Letter states that the appellant suffers from chronic depression causing him to have extreme sleep disturbance, feelings of hopelessness, a poor memory, and a form of inertia particular to people with depression which is sometimes described as a lack of motivation, making it impossible for him to do the most simple of tasks, the physician describes his condition as chronic moderate to severe depression. In addition, while the Physician's Letter indicates that the appellant has a poor memory, the PR does not indicate that the appellant has significant deficits with cognitive and emotional function in the area of memory. The panel finds that the physician has not explained why the information in the Physician's Letter is so different than the information provided in the PR. When considering the inconsistencies between the PR and the Physician's Letter and taking into account that the AR only indicates one area of major impact and three areas of moderate to the appellant's cognitive and emotional functioning, the panel finds that the ministry was reasonable in determining that the appellant does not have a severe mental impairment.

Significant Restrictions to DLA

The ministry's position, as set out in the reconsideration decision, is that the information provided by the physician and the chiropractor does not establish that a severe impairment significantly restricts DLA continuously or periodically for extended periods.

The ministry's position is that the inconsistencies between the PR and the AR make it difficult to

determine whether the appellant has significant restrictions to his DLA due to a severe impairment. The ministry notes that while the physician indicates continuous restrictions with personal self-care, the chiropractor indicates that the appellant is independent with seven of eight listed areas of personal care and that he requires periodic assistance from another person with dressing. The ministry notes that the PR indicates that the appellant has continuous restrictions with basic housework whereas the AR indicates that he requires periodic assistance from another person with laundry and basic housekeeping. The ministry also notes that while the physician indicates continuous restrictions with daily shopping, the AR indicates that the appellant is independent with three of five listed areas of shopping and that he requires periodic assistance from another person with going to/from stores and carrying purchases home.

The appellant's position is that he has a severe physical impairment that causes him to be in constant pain every day and that as a result he is unable to perform simple, basic duties such as laundry or house cleaning without pain and fatigue. The appellant's statements are that he has recently given up driving as he cannot sit for more than 15 minutes and cannot stand longer than 15 minutes. He sleeps for 1.5 to 2 hours at a time and cannot lie down in the same position for more than that. He states that he is unable to lift over 20 pounds without extreme pain and is unable to walk more than 2 blocks without pain and fatigue. He indicates that he avoids climbing stairs as it leaves him in pain and fatigued.

Panel Decision

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

The panel finds that there are significant inconsistencies between the information provided in the PR and the AR. For example, while the PR indicates that the appellant is continuously restricted with personal self-care, the AR indicates that the appellant is independent with all aspects of personal self-care except that he requires periodic assistance with dressing. While the PR indicates that the appellant requires continuous assistance with basic housework, the AR indicates that the appellant requires periodic assistance. While the PR indicates that the appellant requires continuous assistance with shopping the AR indicates that the appellant is independent with reading prices and labels, making appropriate choices and paying for purchases but requires periodic assistance with going to and from stores and carrying purchases home.

While the Physician's Letter provides further information regarding the appellant's restrictions with DLA, the panel finds that the information does not clarify the inconsistencies in the information and

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that the ministry was reasonable in determining that the evidence is insufficient to show that the appellant's ability to perform his DLA is significantly restricted either continuously or periodically for extended periods as required by EAPWDR section 2(2)(b).

Help with DLA

The ministry's position as set out in the reconsideration decision is that, as it has not been established that DLA are significantly restricted; therefore, it cannot be determined that significant help is required from other persons.

The appellant's position is that he has severe physical and mental impairments and that he is in constant pain and needs help with DLA, particularly with preparing meals, cleaning and getting groceries.

Panel Decision

In the PR, the physician reports that the appellant does not require any prosthesis or aids for his impairment but that he receives help from another person. In the Physician's Letter, the physician indicates that the appellant's son helps him with shopping and most household tasks but even with the help, his pain is greatly exacerbated by getting in and out of a vehicle, walking in the store and standing in line to pay for his groceries. The AR indicates that the appellant requires help with DLA from family and friends

The appellant's evidence is that he requires assistance to prepare meals, clean his home and get groceries, as he cannot do those things alone anymore.

Although the panel finds that the appellant requires some help with some tasks, a finding that a severe impairment directly and significantly restricts a person's ability to manage his DLA either continuously or periodically for an extended period is a precondition to a person requiring "help" as defined by section 2(3)(b) of the EAPWDA.

As the panel finds that the ministry was reasonable in determining that the appellant does not have a severe impairment that directly and significantly restricts his ability to manage his DLA either continuously or periodically for an extended period of time, the necessary precondition is not satisfied.

Accordingly, the panel finds that the ministry's decision that the appellant did not satisfy the legislative criteria of EAPWDA section 2(3)(b) was reasonable.

Conclusion

Having reviewed and considered all of the evidence and the relevant legislation, the panel finds that the ministry's decision finding the appellant ineligible for PWD designation is reasonable based on the evidence and is a reasonable application of the legislation in the circumstances of the appellant except. The panel therefore confirms the ministry's decision and the appellant is not successful in his appeal.