

PART C – Decision under Appeal

The decision under appeal is the Ministry of Social Development and Social Innovation (the ministry) reconsideration decision dated October 17, 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 appellant's information and self-report dated March 28, 2016, a physician report (PR) dated April 20, 2016 and an undated assessor report (AR), both completed by a general practitioner (GP) who has known the appellant since June 1989.

The evidence also included the following:

- 1) Radiological Consultation Report dated May 27, 2014 for an MRI of the cervical spine;
- 2) Orthopedic Consultation Report dated June 29, 2014;
- 3) Radiological Consultation Report dated December 5, 2014;
- 4) Hospital Out-patient Reports dated December 11 and 15, 2014;
- 5) Letter dated March 23, 2015 from a physician who is a specialist in hematology and medical oncology;
- 6) Orthopedic Consultation Report dated May 5, 2015;
- 7) Radiological Consultation dated July 31, 2015;
- 8) Radiological Consultation dated September 18, 2015;
- 9) Outpatient Clinic Note dated September 23, 2015;
- 10) Final Report dated October 31, 2015;
- 11) Medical Imaging Report date February 12, 2016 for the appellant's chest;
- 12) Letter dated March 9, 2016 from a ophthalmic surgeon;
- 13) Outpatient Clinic Note dated March 10, 2016;
- 14) Diagnostic Report dated March 14, 2016 indicating normal pulmonary function test;
- 15) Letter dated September 28, 2016 from the appellant's chiropractor; and,
- 16) Request for Reconsideration dated September 30, 2016.

Diagnoses

In the PR, the GP diagnosed the appellant with degenerative disc disease (DDD)/ radiculopathy cervical, with an onset in January 2011, unproven right leg DVT [deep vein thrombosis] requiring ongoing anti-coagulation, with an onset in June 2009, and anxiety secondary to ongoing pain/ disability, with an onset in May 2013. Asked to describe the mental or physical impairments that impact the appellant's ability to manage daily living activities, the GP left this section of the AR (Section 3B- Question 1) blank.

Physical Impairment

In the PR and AR, the GP reported that:

- In terms of health history, the appellant has "...severe/marked pain radiating from neck to left arm and decreased power left arm/hand limits lifting, carrying objects, ADL's. Also triggers headaches which further limits his activity."
- The appellant does not require an aid for his impairment.
- In terms of functional skills, the appellant can walk 4 or more blocks unaided, climb 5 or more steps unaided, lift under 2 kg. (under 5 lbs.) and remain seated less than 1 hour.
- The appellant is assessed as being independent with walking indoors and walking outdoors. He takes significantly longer than typical with climbing stairs and standing, and requires continuous assistance from another person with lifting and carrying and holding. For comments, the GP wrote that "...due to ongoing neck pain/arm, takes significantly longer and requires assistance at times."
- In the section of the AR relating to assistance provided, the appellant routinely uses braces as

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assistive devices, with the comment that he “wears neck brace p.r.n. [as needed].”

In his self-report, the appellant wrote that:

- Severe pain in his neck and arm severely limit his ability with lifting, bending, reaching, sitting without neck support, looking left and right and especially up.
- He has been deemed high risk by the surgeon due to being prone to clotting.
- He has DDD C5/6, C6, C7-T1 and vertigo on occasion.
- He cannot stand still, sit down or be in any position for more than 10- 15 minutes and usually less.
- Due to the nerve being pinched so severely at the C6 nerve, it has caused regional pain syndrome in his arm, causing pressure.
- Pain killers do not work for him.
- Every day is different, the pain is always present, but always moderate to severe. Many times he feels like vomiting. He wakes up multiple times in the night needing to adjust his positioning from the pain.

In his Request for Reconsideration, the appellant wrote that:

- Every physical activity, including walking for 15 minutes maximum, requires several hours of lounged down time with his head supported.
- He can lift a bag of groceries and then he must lie down with his head supported for several hours of recuperation.
- Looking up and side-to-side causes terrible pain and must be avoided if possible.
- His arm goes numb and he is unable to use it after limited use such as in the pool or holding any lightweight object, a coffee for example. Repetitive lifting of any lightweight is impossible.
- He cannot get surgery as the risk of clotting is too great due to blood clotting issues.
- Painkillers such as morphine, T-3's and hydromorphone do not work.

In the Final Report dated October 31, 2015 and the Outpatient Clinic Note dated March 10, 2016, his cervical spine examination showed a global loss of range of motion of mild severity in all planes. The results of the nuclear medicine bone scan on September 18, 2015 showed increased uptake in his C5-C6 disk space, but not appreciably in any of his facet joints.

In the letter dated September 28, 2016, the appellant's chiropractor wrote that:

- Due to the severity of the appellant's state, it is recommended that he does not participate in prolonged sitting, lifting, twisting, or movements that are repetitive in nature.
- Upon examination, neurological deficits were discovered in his balance and coordination. He had significant restrictions in range of motion of his neck.
- He experiences severe headaches accompanied by vertigo.
- He is receiving care to alleviate the disabling pain.

Mental Impairment

In the PR and AR, the GP reported:

- The appellant has no difficulties with communication.
- The appellant has significant deficits with cognitive and emotional function in the areas of emotional disturbance, motivation, and attention or sustained concentration, and the GP commented: "...due to ongoing pain and limitation of activity."
- The appellant has a good ability to communicate in all areas, specifically: speaking, reading,

writing and hearing.

- With respect to impacts to cognitive and emotional functioning, there are no major impacts and moderate impacts in emotion, attention/concentration, memory, and motivation. There are no impacts to the 10 remaining listed areas. The GP wrote that "...with marked ongoing pain neck/arm, significantly limits ADL's and recreational activities. This in turn results in anxiety which impacts his ability to concentrate and focus on completing tasks. Ongoing pain causes decreased motivation."
- Regarding impacts to social functioning, the appellant is independent in most areas, specifically: making appropriate social decisions, developing and maintaining relationships, interacting appropriately with others, and securing assistance from others. The appellant requires periodic support/supervision with dealing appropriately with unexpected demands and the GP wrote "...at times requires mother's or friend's help."
- The appellant has marginal functioning in both his immediate and extended social networks "...due to ongoing pain limits socialization/recreational activities."
- Regarding additional comments, including identification of any safety issues, the GP wrote "none."

In his self-report, the appellant wrote that for the last 3 years, he has questioned his ability to go on. He has been quite depressed not knowing what is going to happen with his future. He has been prescribed medication which has helped a little.

Daily Living Activities (DLA)

In the PR and the AR, the GP indicated that:

- The appellant has been prescribed medications that interfere with his ability to perform DLA, causing sedation and mild drowsiness and the anticipated duration is "ongoing."
- 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), "paying rent and bills" (including banking and budgeting) and medications (filling/refilling prescriptions, taking as directed, and safe handling and storage).
- For the basic housekeeping DLA, the appellant requires periodic assistance from another person with housekeeping and laundry, described by the GP as "help from mother."
- Regarding the shopping DLA, the appellant is independent with most tasks (going to and from stores, reading prices and labels, making appropriate choices, and paying for purchases), and requires periodic assistance from another person with the task of carrying purchases home. The GP wrote that "...with ongoing pain neck/left arm limits ability to carry objects left arm/hand. Requires assistance with laundry/home chores, carrying groceries."
- For the meals DLA, the appellant is independent with the tasks of meal planning and safe storage of food and requires continuous assistance from another person with food preparation and cooking. The GP wrote that the appellant "...lives with and gets assistance from mother."
- For the DLA transportation, the appellant is independent with getting in and out of a vehicle and using transit schedules and arranging transportation, but takes significantly longer than typical with using public transit. The GP wrote that "...difficulty with taking bus, increased pain neck/arm trying to hold on with sudden starts/stops."

In his self-report, the appellant wrote that he experiences pain when cleaning, shopping, driving, exercising, working, etc. If He gets a reprieve and does one of these, the pain returns.

Need for Help

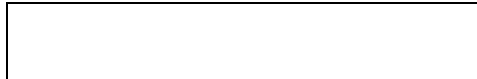
In the AR, the GP reported that, with respect to the assistance provided by other people, the appellant receives help from family and friends and the GP wrote "lives with mother." With respect to help required where none is available, the GP wrote "vocational assistance to assess possible future work possibilities." In the section of the AR for identifying assistance provided through the use of assistive devices, the GP indicated that the appellant wears a neck brace as needed.

Additional information

In his Notice of Appeal dated October 23, 2016, the appellant expressed his disagreement with the ministry's reconsideration decision and wrote that he believes his impairment is severe enough to physically disable him from performing normal daily activities.

At the hearing, the appellant stated that:

- He is thankful that he is not in a wheelchair and that he can use his motor skills. However, through the day and every day he has 'unbelievable' pain that cannot be measured with a yard stick. His doctor cannot see his pain and restrictions.
- His neck 'acts up' as soon as he does some physical activity. For example, when the doctor asks him to do a strength test, he is able to perform it and the doctor says his strength is good but then an hour later he has to lie down to get relief from the pain. He also sometimes gets vertigo from the pain.
- He can pick up a jug of milk and carry it to the car but then he will be lying down and supporting his head afterwards. He can lift a little, like 5 lbs. once, but not in a repetitive motion.
- He can wash dishes for 5 minutes but around 80% of the time it will feel like whiplash after a while. There is a 20% chance that it will not 'hit him' later.
- He lives with his elderly mother who continues to take care of him. She helps him by making meals and washing dishes. He in turn helps her by driving her to the grocery store and to appointments. When he is driving, every little bump in the road causes him to feel like he is being hit on the head with a mallet and he ends up back in bed afterwards.
- He has been going to the pool 4 or 5 times a week for exercise for about 3 years, but he does not lift his arms above his head. He uses his legs to swim and lies on his back.
- He has received acupuncture treatments in his neck, which will work for 2 to 3 days and then the pain returns.
- They do not want to do surgery because of his proneness to blood clotting. The hematologist gave an opinion that surgery was an option but the surgeon saw it differently and said if there was a clot, he 'would be dead.' His doctor has said he is "in no man's land" because there is not much else that can be done. His advice is for him to keep doing what he is doing with improving his lifestyle. Pain killers do not work on him because apparently he has a super efficient liver.
- No one will hire him because he could only work for a very limited period of time and then he would need to rest.
- He wears a neck brace a few times per week but he cannot use it for too long or too often because it can increase the pain afterwards. He has a travel pillow that he puts around his neck while driving. He also has a cervical neck traction device that hangs over the back of the door with a harness and he was using it a couple of times per day but his new chiropractor asked him to stop using it. He is currently going for chiropractic treatment once per week.
- Every step that he takes on the hard pavement is jarring to his neck.



- He received short term and then long term disability and it is still available to pay for medications and portions of the chiropractor and dental services.
- He believes he has a normal depression at times because he does not know about his future. He does not have any crazy episodes and he knows he is much better off than many. He takes medication for chronic pain and depression.
- He is quite sure, but not certain, that his doctor went through the questions in the application because there have been many forms, but overall the doctor is thorough, even if he was a bit fast.

The ministry relied on the reconsideration decision, as summarized at the hearing. At the hearing, the ministry clarified the distinction between PWD designation and the PPMB (Persons with Persistent Multiple Barriers) status that relates to a person's employability for the next 2 years. The ministry only rarely contacts the doctor before making the reconsideration decision, for example to get a clarification where something is illegible.

Admissibility of Additional Information

The panel considered the appellant's oral testimony as information that corroborates the extent of his impairment, as referred to in the PWD application, 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 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 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 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

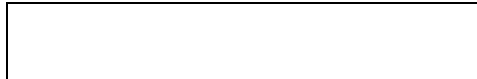
2 (1) For the purposes of the Act and this regulation, "**daily living activities**" ,

(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.

The positions of the parties

Appellant's position

The appellant's position is that he has a severe physical impairment as his doctor diagnosed him with DDD and radiculopathy in his cervical spine causing ongoing pain in his neck and weakness in his left arm, with limited ability to control the pain since he gets only temporary relief from the use of a neck brace, heavy pain medications do not work, and surgery is not a good option according to the surgeon due to his proneness to clotting, as evidenced by the DVT in his right leg. The appellant argued that severe pain in his neck and arm severely limits his ability with lifting, bending, reaching, sitting without neck support, looking left and right and especially looking up. The appellant stated the doctors test his mobility and strength at the office and determine he is able to perform functions but what they do not see is that after the simple exams he has to go home and lounge with his head supported for long periods making him unable to perform simple tasks. The appellant stated at the hearing that he believes his depression is related to the uncertainty about his future and he does not claim to have a severe mental impairment. The appellant's position is that his severe physical impairment directly and significantly restricts his ability to perform DLA on an ongoing basis and his mother has to help him with cooking and housekeeping and he uses a neck brace as an assistive device.

Ministry's position

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 or mental impairment as required by Section 2(2)

of the EAPWDA. The ministry wrote that the GP indicated that the appellant is independent in all activities requiring mobility and there is minimal functional impairment in his physical ability. The ministry wrote that while it is reported by the GP that the appellant is unable to return to work, employability is not a factor when determining the PWD designation. The ministry wrote that although the GP indicated significant deficits with cognitive and emotional functioning in the areas of emotional disturbance, motivation and attention/sustained concentration, he reported moderate impacts to his daily functioning in these areas.

As to DLA, the ministry's position 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 appellant experiences chronic pain and limitations in the neck, with lifting and sitting, he functions primarily independently and the amount of assistance he requires is not extensive or required for extended periods. The ministry noted that other than the assistance required with meals and periodic assistance with housework and carrying items over 5 lbs., the GP indicated that the appellant is able to manage all DLA independently. 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

Severe Physical Impairment

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 GP.

In the PR, the GP, who had known the appellant for over 25 years, diagnosed the appellant with DDD/ radiculopathy in his cervical spine and an unproven right leg DVT requiring ongoing anti-coagulation, resulting in "...severe/marked pain radiating from neck to left arm and decreased power left arm/hand," which "...limits lifting, carrying objects, ADL's." However, 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. In his self-report, the appellant wrote that severe pain in his neck and arm severely limits his ability with lifting, bending, reaching, sitting without neck support, looking left and right and especially up. The appellant wrote that although every day is different, the pain is always present and "moderate to severe." The medical reports concluded that the range of motion in the appellant's neck is globally restricted; however, the appellant stated at the hearing that he continues to drive, although he finds it painful with each bump, and that he assists his mother by driving her for shopping and for appointments.

In terms of physical functioning, the GP reported that the appellant can walk 4 or more blocks

unaided, walk indoors and outdoors independently, he can climb 5 or more steps unaided although it takes him longer, he can remain seated less than 1 hour, he can lift under 5 lbs. and he requires continuous assistance from another person with lifting and carrying and holding (note: "...due to ongoing neck pain/arm, takes significantly longer and requires assistance at times.") At the hearing, the appellant stated that he can lift 5 lbs. once but not in a repetitive way and if he carries a weight, such as a jug of milk, he then needs to lie down and support his head afterwards. In his Request for Reconsideration, the appellant wrote that every physical activity, including walking for 15 minutes maximum, requires several hours of lounged down time afterwards with his head supported. At the hearing, the appellant stated that his doctor cannot see his pain and may not realize that after he does some physical activity he has to lie down to get relief from the pain. The evidence of the GP and the appellant is that the appellant requires continuous assistance with lifting and carrying and holding weights in excess of 5lbs., he has difficulty sitting without neck support and it takes him longer with climbing stairs as he needs to rest after physical activity. In the letter dated September 28, 2016, the chiropractor recommended that the appellant does not participate in prolonged sitting, lifting, twisting, or movements that are repetitive in nature.

In the PR, the GP reported that the appellant does not require an aid for his impairment and, in the AR, in terms of the equipment or devices that the appellant routinely uses to help compensate for his impairment the GP indicated that the appellant wears a neck brace as needed. The appellant stated at the hearing that he wears a neck brace a few times per week but he cannot use it for too long or too often because it sometimes increases the pain afterwards. The appellant also stated that his options for controlling the pain are limited, that surgery has been deemed high risk by the surgeon, pain killers do not work for him, and he recently commenced chiropractic treatments once per week. At the hearing, the appellant stated that no one will hire him because he could only work for a very limited period of time and then he would need to rest. The GP also commented in the AR that, while no assistance is currently available, the appellant requires assistance to assess possible future work possibilities. 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.

Given the GP assessed function skill limitations in the middle of the range with the exception of lifting and carrying and holding, which the appellant confirmed can be performed for weights under 5 lbs. with a rest period after physical activity, the panel finds that the ministry reasonably determined that there was insufficient evidence of a severe impairment of overall 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

In the PR, the GP diagnosed the appellant with anxiety since May 2013 secondary to ongoing pain/disability and the appellant stated at the hearing that he believes he has a normal depression at times because he is uncertain about his future, although he has been prescribed medication for chronic pain and depression. The GP reported that the appellant has significant deficits with cognitive and emotional function in the areas of emotional disturbance, motivation, and attention or sustained concentration, and the GP commented: "...due to ongoing pain and limitation of activity." However, when assessing the impacts to cognitive and emotional functioning, the GP indicated that there are no major impacts and there are moderate impacts in the areas of deficit, as well as the area of memory. The GP wrote that "...with marked ongoing pain neck/arm, significantly limits ADL's and recreational activities. This turn results in anxiety which impacts his ability to concentrate and focus

on completing tasks. Ongoing pain causes decreased motivation.”

Regarding impacts to social functioning, the GP reported that the appellant is independent in all but one area, dealing appropriately with unexpected demands, for which he requires periodic support/supervision and the GP wrote “...at times requires mother’s or friend’s help,” with no description of how often or how long this occurs. While the GP indicated that the appellant has marginal functioning in both his immediate and extended social networks, the GP wrote that “...ongoing pain limits socialization/recreational activities” and there are no safety issues. The GP also reported that the appellant has no difficulties with communication.

Given the absence of evidence of significant impacts to the appellant’s cognitive, 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

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 GP and the chiropractor are the prescribed professionals. DLA are defined in Section 2(1) of the EAPWDR and are also listed in the PR and, with additional details, in the AR. Therefore, the prescribed 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 GP reported in the PR that the appellant has been prescribed medication that interferes with his ability to perform DLA due to sedation and mild drowsiness and the anticipated duration is “ongoing.” In the AR, the GP reported that the appellant is independent with all of the tasks of several DLA, specifically: with move about indoors and outdoors DLA, the personal care DLA, the “paying rent and bills” DLA, and the medications DLA. For the basic housekeeping DLA, the appellant requires periodic assistance from another person with housekeeping and laundry, noted by the GP to consist of “help from mother,” without providing an explanation or description of how often or how long help is needed. Regarding the shopping DLA, the appellant is independent with most tasks and requires periodic assistance from another person with the task of carrying purchases home as the GP noted “...ongoing pain neck/left arm limits ability to carry objects left arm/hand,” and “...requires assistance with laundry/home chores, carrying groceries,” without providing an explanation or description of how often or how long help is needed.

For the DLA transportation, the appellant is independent with getting in and out of a vehicle and using transit schedules and arranging transportation, but takes significantly longer than typical with using public transit as he has “...difficulty with taking bus, increased pain neck/arm trying to hold on with sudden starts/stops.” The panel finds that the ministry reasonably concluded that there is insufficient information provided by the GP to conclude that the periodic assistance with the noted tasks is required for extended periods of time or that the appellant takes inordinately longer than typical with using public transit. For the meals DLA, the appellant is independent with the tasks of meal planning and safe storage of food and requires continuous assistance from another person with food preparation and cooking and the GP wrote that the appellant “...lives with and gets assistance from mother.” In his self-report, the appellant wrote that he experiences pain when he does cleaning, shopping, driving, exercising, working, etc. and, if he gets a reprieve and does one of these, the pain returns. Although the chiropractor qualifies as a prescribed professional under Section 2(2)(a) of the

EAPWDR, there was no information regarding the appellant's ability to perform specific tasks of DLA in the letter dated September 28, 2016.

Considering the evidence of the GP, the panel finds that the ministry reasonably determined that there was not sufficient detail provided to establish that the appellant requires periodic assistance for extended periods of time with aspects of 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

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 GP reported that, with respect to the assistance provided by other people, the appellant receives help from family and friends and the GP wrote "lives with mother." At the hearing, the appellant stated that he lives with his elderly mother who helps him by making meals and washing dishes and he, in turn, helps her by driving her to places in the community. In the section of the AR for identifying assistance provided through the use of assistive devices, the GP indicated that the appellant wears a neck brace as needed and the appellant stated that he uses it for short periods a couple of times per week.

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.