PART C – Decision under Appeal

The decision under appeal is the Ministry of Social Development and Social Innovation (the ministry) reconsideration decision dated September 23, 2016 which found that the appellant did not meet three of the five statutory requirements of Section 2 of the *Employment and Assistance for Persons with Disabilities Act* for designation as a person with disabilities (PWD). The ministry found that the appellant met the age requirement and that his impairment is likely to continue for at least two years. However, the ministry was not satisfied the evidence establishes that:

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

PART D – Relevant Legislation

Employment and Assistance for Persons with Disabilities Act (EAPWDA), Section 2

Employment and Assistance for Persons with Disabilities Regulation (EAPWDR), Section 2

PART E – Summary of Facts

The evidence before the ministry at the time of the reconsideration decision included the appellant's Persons With Disabilities (PWD) Application comprised of the applicant information and self-report dated May 2, 2016, a physician report (PR) dated April 18, 2016, and an assessor report (AR) dated April 26, 2016, both completed by a general practitioner (GP) who has known the appellant 2 to 4 months and saw the appellant 2 to 10 times in that period.

The appellant provided the following additional documents:

1) Letter dated October 6, 2015 from a physician;
2) Letter dated August 25, 2016 from the GP who completed the PR and the AR;
3) Letter dated September 2, 2016 from the appellant's previous employer;
4) Letter dated September 22, 2016 from the appellant; and,
5) Request for Reconsideration dated August 25, 2016.

Diagnoses

In the PR, the GP diagnosed the appellant with degenerative changes in his cervical spine, arthropathy of his right hip joint, hypothyroidism, hypertension and degenerative arthritic changes in his lumbar spine. Asked to describe the mental or physical impairments that impact the appellant's ability to manage daily living activities, the GP wrote "…pain and weakness and limitation of movement in his hip, shoulder and back. Also affect him mentally and make him feeling (sic) low."

Physical Impairment

In the PR and AR, the GP reported that:

- In terms of health history, the appellant "…feels pains in his neck and lower back, popping sensation when he move his right hip joint, numbness on the back of his thigh, right leg and foot. He says all his symptoms are periodic, some days he feels good and energetic and some days cannot move, with no motivation and pain and numbness all over. Blood test shows hypothyroidism (TSH high) and he is hypertensive. X-ray shows degenerative changes in C-spine, arthropathy of right hip and degenerative arthritis changes in L3-S1 vertebrae."
- The appellant does not require an aid for his impairment.
- In terms of functional skills, it is unknown how far the appellant can walk unaided. The GP wrote that it depends on his situation at that day and "….most of the time he can do 4+ blocks."
- It is unknown how many stairs the appellant can climb unaided. The GP wrote that it depends on his condition that day.
- The appellant can lift 7 to 16 kg. (15 to 35 lbs.), with a note by the GP that "…he can do that most of the time, but sometimes he cannot do that, depending on his condition that day."
- The appellant can remain seated for 1 to 2 hours and "…sometimes he needs to lay (sic) down, feeling that sitting is not enough."
- The appellant is periodically restricted with mobility inside or outside the home, with the note that it is "…periodic because one day he feels good and normal and other days he feels disabled , exhausted, cannot perform well."
- In the additional comments to the PR, the GP wrote that the appellant "…feels very bad pain some days and so he cannot do his daily activities properly even at home and, if he becomes exhausted, that would delay his recovery time to heal and return to normal state. Chronic pain in his hands and in legs and back and knees and hips and shoulders and neck restrict his activity some days and need him to just sit or lay (sic) down and not to move."
- The appellant is assessed as taking significantly longer than typical with all mobility and

physical ability, specifically: walking indoors (note: "need to hold wall, back of chair"), walking outdoors (note: "need to sit and take break"), climbing stairs (note: "need railing"), standing (note: "wall, couch, chair arm"), lifting (note: "can't lift items himself") and carrying and holding (note: "needs to buy less grocery"). The GP commented that "…all activities would take longer time to be done."

- In the section of the AR relating to assistance provided, the appellant does not routinely use any of the listed assistive devices. The GP noted that the appellant needs a wagon "…to carry things from stores."

In his self-report, the appellant wrote that:

- His disability is in his legs, hips, back, shoulders, arms and neck. He has some kind of pain 24 hours a day.
- This condition started around 20 years ago and has gotten worse with time.
- In the last 2 to 3 years, he is losing strength more on the left side than the right side. He has numbness in both legs but more in his right leg.

In his Request for Reconsideration and letter, the appellant wrote that:

- He lives with his impairments 24 hours a day.
- He worked for over 35 years until his condition got worse and he could not perform his duties at work.
- He is waiting for his previous medical records to come from another province.

In the letter dated August 25, 2016, the GP who completed the PR and the AR wrote that:

- The appellant has"… episodes of weakness, numbness, tingling beside easily and progressively fatigued in the muscle groups that he is using for his daily activities and at work as well."
- The appellant feels progressively fatigued with lifting heavy things and walking as well.

In the letter dated October 6, 2015, a physician wrote that:

- The appellant has a diagnosis of osteoarthritis, which affects multiple joints including his cervical spine. This is a degenerative condition that will worsen with time.
- The appellant would not be considered fit to drive commercial vehicles due to his cervical spine osteoarthritis as he has limited range of motion and ability to move his neck.

Mental Impairment

In the PR and AR, the GP reported:

- The appellant has no difficulties with communication.
- The appellant has no significant deficits with cognitive and emotional function. The GP noted that the appellant "…was diagnosed with dyslexia (mild) in [childhood]."
- The appellant is periodically restricted in his social functioning. The GP commented that the appellant "…cannot go for walks or sports or pleasure. He just keeps his energy for essential tasks."
- The appellant has a good ability to communicate in speaking, satisfactory ability with writing and hearing (note: "tinnitus since [young], with loss of sound recognition"), and poor reading ("dyslexia").
- With respect to impacts to cognitive and emotional functioning, there is one major impact to motor activity and moderate impacts to bodily functions, emotion, impulse control,

attention/concentration, executive, and memory. There are minimal or no impacts to the remaining 7 areas of functioning. The GP commented that the appellant's "…illness has impacts on his activity, motor activity is the most affected and then others are moderately affected as eating and toilet and sometimes his mood is very low as well as his concentration and attention and especially remembering names. He said he never feels hostile or aggressive or in delusions and hallucination or suicidal."

- Regarding impacts to social functioning, the appellant is independent in all areas, specifically: making appropriate social decisions, developing and maintaining relationships, interacting appropriately with others, dealing appropriately with unexpected demands and securing assistance from others.
- The appellant has good functioning in both his immediate and extended social networks.

In his self-report, the appellant wrote that:

- His disability also is affecting his mental health. It makes it harder to block out the pain and affects his ability to see how to fix or make his life better.
- He knows in time he will but he just does not see it now and he needs some kind of help to get there.

Daily Living Activities (DLA)

In the PR and AR, the GP indicated that:

- The appellant has been prescribed medication that interferes with his ability to perform DLA and the anticipated duration is "for life."
- The appellant is not restricted with some of the listed DLA, specifically: meal preparation, management of medications and management of finances.
- The appellant is periodically restricted with the DLA personal self care, basic housework, daily shopping, mobility inside and outside the home, and social functioning. Regarding the "periodic" restriction, the GP wrote that "…one day he feels good and normal and other days he feels disabled, exhausted, cannot perform well." With respect to the degree of restriction, the GP wrote that "…in good days, the restrictions are mild but when it is bad days for him, restrictions are severe."
- It is unknown whether the appellant is restricted with the DLA use of transportation.
- The appellant is assessed as taking significantly longer than typical with walking indoors and walking outdoors.
- The appellant is independent with all of the tasks of some DLA, specifically: "paying rent and bills" DLA (including banking and budgeting), and medications DLA (filling/refilling prescriptions, taking as directed, and safe handling and storage).
- For the DLA personal care, the appellant takes significantly longer than typical with all tasks, specifically dressing (note: "has to sit to dress, when flexed, cannot bend"), grooming (note: "discomfort when lift arm"), bathing (note: "slower and have to hold on wall"), toileting, feed self/ regulating diet (note: "have to move slow because moving faster can cause irritation"), transfers in/out of bed (note: "has to prep hip and sit with leg over side and push himself up"), transfers on/off of chair.
- Regarding the basic housekeeping DLA, the appellant takes significantly longer with both basic housekeeping (note: "when pain's involved, he cannot do it") and laundry (note: "have to pull- illegible").
- For the shopping DLA, the appellant is independent with reading prices and labels, making appropriate choices, and paying for purchases and takes significantly longer than typical with

going to and from stores (note: “getting in and out of vehicle is hard”) and carrying purchases home (note: “has to make sure he bags less and bags are lighter”).

- For additional comments, the GP wrote that the appellant’s “…musculoskeletal and joint illness makes him slow in all his activities in general. For cognition and judgment and insight, not affected. Needs wall handle to hold while getting out of tub and to hang on to wall.”
- Regarding the meals DLA, the appellant is independent with meal planning and safe storage of food and takes significantly longer with food preparation (note: “has to stand in –illegible- and take breaks in between”) and cooking (note: “sits while stove’s on”).
- For the transportation DLA, the appellant is independent with the task of using transit schedules and arranging transportation and takes significantly longer with getting in and out of a vehicle (note: “takes longer getting out and this puts added pain to hips and legs”).
- For additional comments, the GP wrote that the appellant “…is greatly affected from motion point of view while his cognition and financial management and dealing with his medication is fine although he lacks the financial resources to do that.”
- In the additional information to the AR, the GP wrote that the appellant’s “…disability affects his motor function to great extent although it is mostly periodic, but still affects his job and so he was financially unsupported and insecure and that made him lacking for the resources to maintain his life requirements, medication.”

In his self-report, the appellant wrote that:

- The doctor recommends that he works part-time, light duty.
- At home, his disability is making it harder to take care of himself and to get the chores done.

In the letter dated August 25, 2016, the GP wrote that:

- The appellant has”… episodes of weakness, numbness, tingling beside easily and progressively fatigued in the muscle groups that he is using for his daily activities and at work as well.”
- If the appellant goes to work for 2 to 3 weeks continuously, he would start feeling progressive weakness, numbness and fatigue and he would need 2 to 3 months afterwards to recover and feel fine to return to his work again.
- These episodes started to be more frequent in terms of being shorter times of working periods and lengthening time of recovery, in addition to worsening in intensity.
- The appellant feels progressively fatigued with lifting heavy things and walking as well.

In the letter dated September 2, 2016, the appellant’s previous employer wrote that the appellant sustained a hip injury and he was no longer able to complete his job and his employment was terminated. The appellant would be capable of a less strenuous position.

Need for Help

Asked to describe the assistance needed with DLA in the PR, the GP responded “…he needs another person in his daily activities like housework, cleaning, ironing, firewood…” In the AR, the GP reported that, with respect to the assistance provided by other people, the appellant receives help from health authority professionals and community service agencies as the appellant “…said that health care professionals and community services supported him to great extent.” In the section of the AR for identifying assistance provided through the use of assistive devices, the GP did not indicate that the appellant routinely uses any of the listed items and wrote that “…he needs wagon to carry things from stores.”

Additional information
In his Notice of Appeal dated October 6, 2016, the appellant expressed his disagreement with the ministry's reconsideration decision and wrote that the doctor's report says on a "good" day, which is considered 100%, but he only has 30% on a good day with mobility.

At the hearing, the appellant and his advocate stated that:

- The appellant's family encouraged work from a young age so he has worked his whole life and almost has an obsession with working. He has worked to the point that he could not walk and then he would stop working to rest his body and then return to work. His father wanted him to work instead of going to school so he only completed the early grades of education. He has never been afraid to work and he would work today if he could but he is unable to hold down a full-time job, he goes for days without food, and he uses the food bank consistently. He had to ask the ministry for 2 chords of emergency fire wood to heat his trailer.
- His hip started bothering him when he was a child and it has gotten worse over the years. In the 1990's, he lost the cartilage from head to toe and was told it was related to his poor sleep habits, such as getting a total of 6 hours sleep over a one-week period. He also had an accident that caused some of his problems. He had to take a year on medical EI and he received so many cortisone shots that he cannot have another one.
- He has tried since September 2016 to get proof of the loss of cartilage from the doctors' offices in another province but they have sent the wrong information and do not respond to requests. It has been suggested that he travel to the other province to get his records but he cannot afford to travel and he cannot afford the cost of having copies of the records made.
- He loses the feeling in his right side and loses strength in the left side since his nerves have gotten damaged and this causes the blood flow to get blocked. When he has numbness, he cannot flex his muscles so he has been losing muscle. He cannot flex the muscle in his left arm or his right leg but, since he is overweight, the doctor cannot see this.
- His neck now 'pops' and when his neck gets stressed out he cannot even stand when that happens and he has to lie down. He is not able to drive because of the problem with his neck and that is how he lost his business.
- He explained to the doctor about his daily living activities that if he is starving he will walk to the grocery store but he has to sit and rest and then walk again and that is the best that he can do. It might take a healthy person 10 to 12 minutes to walk to the grocery store but for him it takes about an hour.
- The more he does, the worse his physical condition gets. The doctor said there was no point to do X-rays of every joint since they know that the osteoarthritis is in his feet and everywhere in his body. The doctor told him that some people with his condition have to wear a neck brace all the time, but he still needs to work for the next 10 years.
- The doctor told him to get a part-time job answering phones but that does not seem realistic given that he only has a few years of education and he cannot do anything for too long, including sitting.
- The way that the doctor has written his condition in the notes is the best case scenario on his good days. The way that he explained his condition in his self-report is the way it actually is for him. It is hard for him to explain, but he does not have the strength to even lift up 5 lbs. He can lift 15 to 35 lbs. once but then he has to rest because of the pain. He cannot sit or stand for too long and he cannot walk for too far yet he has to do it even though the pain never goes away.

- He can feel the sciatica pain from his foot right through his right leg, through his hip and into his back and his neck. He used to be able to heal up after a period of rest but that does not work anymore.
- He does not take pain killers because they lead to other problems such as constipation and he cannot afford them. He went 8 months without his medications for high blood pressure and for his thyroid because he could not afford them. Pain medication does not really take the pain away fully, it just numbs the body. He takes over-the-counter pain medication sometimes but only for a maximum of 3 days at a time.
- He has pain 24 hours per day and he is never pain free.
- He has trouble dressing and he has to sit down to dress. He cannot wash the dishes for more than 10 minutes at a time because standing in front of the sink causes pain in his hip, neck and shoulders. He can stand in the room for 30 minutes but only 10 minutes when washing dishes.
- He waits until he absolutely has to do his laundry. He has to do everything a little at time.
- He has no family in the area to help and he does not have other support. He tends to stay home. At times, he would take help if it was available. He cleaned the cupboards in the trailer when he first moved but he has not done it since.
- He wants help to figure out how to get back to work but he does not know if he could be re-trained for non-physical work.
- His doctor is good but he is hard to talk to because of a language barrier.

The ministry relied on the reconsideration decision as summarized at the hearing. At the hearing, the ministry also clarified that there was a typographical error in the reconsideration decision when referring to the dates that the PR and the AR were completed, which should be April 18 and 26, 2016 respectively. The ministry noted that several months had passed from the date of the reports to the time of the reconsideration decision and acknowledged that the appellant's condition is a degenerative one that may have worsened since the time of the reports.

Admissibility of Additional Information

The panel considered the oral testimony on behalf of the appellant as corroborating the extent of his impairment as referred to in the PWD application that was before the ministry at reconsideration, and the panel admitted the written information 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 degenerative changes in his cervical spine, arthropathy of his right hip joint, hypothyroidism, hypertension and degenerative arthritic changes in his lumbar spine as well as osteoarthritis, which affects multiple joints including his cervical spine. The appellant argued that his disability is in his legs, hips, back, shoulders, arms and neck and he has some kind of pain 24 hours a day and this condition is getting worse with time. The appellant wrote in his self-report that in the last 2 to 3 years, he is losing strength more on the left side and he has numbness in both legs but more in his right leg. The appellant wrote in his self-report that his disability also is affecting his mental health as it makes it harder to block out the pain and affects his ability to see how to fix or make his life better. The appellant's position is that his severe physical and mental impairment directly and significantly restricts his ability to perform DLA on an ongoing basis and he needs help from another person.

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's physical functioning fluctuates but that most days he has functional skills at the higher end of the scale and, although all of his mobility and physical ability take him significantly longer, the GP does not indicate how much longer than typical it takes the appellant. The ministry wrote that the evidence of the GP regarding a

severe mental impairment is not consistent since the GP indicated no significant deficits with cognitive and emotional functioning yet he reported one major impact and 6 moderate impacts to his daily functioning and he reported periodic restrictions to social functioning but assessed the appellant as being independent in all aspects.

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 it is reported by the GP that his impairment impacts the appellant's ability to work consistently, employability is not a factor when determining the PWD designation. The ministry wrote that while the GP indicated that the appellant takes significantly longer than typical with many tasks of DLA, he has not explained how much longer than typical it takes the appellant and there is no indication that the appellant requires assistance with DLA. 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 2 to 4 months diagnosed the appellant with degenerative changes in his cervical spine, arthropathy of his right hip joint, hypothyroidism, hypertension and degenerative arthritic changes in his lumbar spine. In a letter dated October 6, 2015, a physician indicated that the appellant has a diagnosis of osteoarthritis, which affects multiple joints including his cervical spine, and this is a degenerative condition that will worsen with time. In the AR, the GP described the physical impairment that impacts the appellant's ability to manage daily living activities, as "…pain and weakness and limitation of movement in his hip, shoulder and back." In his self-report, the appellant wrote that he has some kind of pain 24 hours a day and in the last 2 to 3 years, he has lost strength more on the left side than the right side and he has numbness in both legs but more in his right leg. In the PR, the GP provided a health history that described that the appellant "…feels pains in his neck and lower back, popping sensation when he move his right hip joint, numbness on the back of his thigh, right leg and foot. He says all his symptoms are periodic, some days he feels good and energetic and some days cannot move, with no motivation and pain and numbness all over."

In the PR, the GP reported that the appellant does not require an aid for his impairment and the appellant's ability to walk unaided "…depends on his situation at that day" and "….most of the time he can do 4+ blocks," he can lift 7 to 16 kg. "…most of the time, but sometimes he cannot do that, depending on his condition that day," he can remain seated for 1 to 2 hours and "…sometimes he

needs to lay (sic) down, feeling that sitting is not enough." The GP reported that the appellant is periodically restricted with mobility inside or outside the home, with the note that it is "…periodic because one day he feels good and normal and other days he feels disabled , exhausted, cannot perform well." With respect to the degree of restriction, the GP wrote that "…in good days, the restrictions are mild but when it is bad days for him, restrictions are severe." At the hearing the appellant stated that the way that he explained his condition in his self-report is the way it actually is for him, with pain 24 hours a day, whereas the way that the doctor wrote his notes is the best case scenario on his good days. The appellant stated that it is hard for him to explain, but he does not have the strength to even lift up 5 lbs. most of the time and if he lifts 7 to 16 kg. once, he has to rest afterwards because of the pain. He cannot sit or stand for too long and he cannot walk for too far yet he has to do it even though the pain never goes away.

In the AR, the GP assessed the appellant as taking significantly longer than typical with all mobility and physical ability, specifically: walking indoors, walking outdoors, climbing stairs, standing, lifting, and carrying and holding. The GP noted regarding lifting that the appellant : "can't lift items himself;" however, this is not consistent with the GP's assessment in the PR that he can lift 7 to 16 kg. "most of the time." The GP commented in the AR that "…all activities would take longer time to be done," with no explanation or description of how much longer than typical it takes the appellant. At the hearing, the appellant gave an example of walking from his trailer to the grocery store that he estimates would take a healthy person 10 to 12 minutes and it takes him about 60 minutes because of the rests he must take along the way, which would be 5 to 6 times longer than typical. However, the GP provided an assessment in the PR that the appellant does not require an aid for his impairment, such as a cane or a walker, and that "most of the time" he can walk 4 or more blocks unaided. The GP also indicated in the AR that the appellant does not routinely use any of the listed assistive devices and the panel finds that the ministry reasonably determined that the use of walls, stair railings, and chair arms are not considered assistive devices according to the definition provided in the EAPWDR. The appellant stated at the hearing that he does not take pain killers because they lead to other problems, such as constipation, and it is not clear if taking medication might ameliorate the pain sufficiently to improve the appellant's overall physical functioning.

Given the inconsistencies in the evidence of the appellant's physical functioning, with the GP assessing functional skill limitations at the high end of the range "most of the time" and the appellant stating that this relates only to his infrequent "good days" when he still feels pain, and the absence of detail from the GP regarding the frequency of exacerbations to the appellant's condition, the panel finds that the ministry reasonably determined that there was insufficient evidence of a severe impairment of physical functioning. Therefore, the panel finds that the ministry reasonably determined that there is not sufficient evidence to establish that the appellant has a severe physical impairment under Section 2(2) of the EAPWDA.

Severe Mental Impairment

In the PR, the GP did not diagnose the appellant with a mental disorder with the appropriate diagnostic code and the GP reported that the appellant has no difficulties with communication, no significant deficits with cognitive and emotional function, and he is independent in all aspects of his social functioning, with good functioning in both his immediate and extended social networks. Although the GP reported in the AR that the appellant has poor reading due to dyslexia, there were no notes provided to elaborate on the impacts from this condition other than mild dyslexia had been diagnosed when he was young. For the section of the AR assessing impacts to cognitive and emotional functioning, the GP indicated a major impact to motor activity as "…his illness has impacts

on his activity, motor activity is the most affected and then others are moderately affected as eating and toileting" and "…sometimes his mood is very low as well as his concentration and attention and especially remembering names," and moderate impacts to functioning are assessed to bodily functions, impulse control, attention/concentration, executive, and memory. In his self-report, the appellant wrote that his disability also is affecting his mental health as it makes it harder to block out the pain and it affects his ability to see how to fix or make his life better. The panel finds that, given the GP's assessment in the PR of no significant deficits to cognitive and emotional functioning, it is not conclusive that the daily impacts relate to a cognitive or an emotional functioning deficit as opposed to an impact from reduced physical functioning.

Given the absence of a definitive mental health diagnosis and the reports of no 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 is the prescribed professional. DLA are defined in Section 2(1) of the EAPWDR and are also listed in the PR and, with additional details, in the AR. Therefore, the prescribed professional completing these forms has the opportunity to indicate which, if any, DLA are significantly restricted by the appellant's impairments either continuously or periodically for extended periods.

In the appellant's circumstances, the GP reported in the PR that the appellant has been prescribed medication that interferes with his ability to perform DLA and the anticipated duration is "for life." The GP reported that the appellant is not restricted with some of the listed DLA, specifically: the meal preparation DLA, the management of medications DLA and the management of finances DLA. In the AR, the GP indicated that the appellant is independent with meal planning and safe storage of food and takes significantly longer with food preparation, with a note that the appellant "…has to stand in –illegible- and take breaks in between," and significantly longer with cooking with a note that he "…sits while stove's on," but the GP does not describe how much longer than typical it takes the appellant with these tasks or if this assessment relates to the appellant's condition on a good day or on one of his bad days. In the AR, the GP reported that the appellant is independent with all of the tasks of the "paying rent and bills" DLA and the medications DLA. For additional comments, the GP wrote that the appellant "…is greatly affected from motion point of view while his cognition and financial management and dealing with his medication is fine."

In the PR, the GP indicated that the appellant is periodically restricted with the DLA personal self care DLA, the basic housework DLA, the daily shopping DLA, and the mobility inside and outside the home DLA since "…one day he feels good and normal and other days he feels disabled, exhausted, cannot perform well." With respect to the degree of restriction, the GP wrote that "…in good days, the restrictions are mild but when it is bad days for him, restrictions are severe." For the DLA personal care, the GP reported in the AR that the appellant takes significantly longer than typical with all tasks, but again does not describe how much longer than typical it takes the appellant with these tasks or whether this assessment relates to the appellant's ability on a good day or on a bad day. While the additional comment by the GP that the appellant "…needs wall handle to hold while getting out of tub" may suggest the need for an assistive device, there is no assessment by the GP that the appellant

requires an assistive device for the bathing task. At the hearing, the appellant stated that he has trouble dressing and he has to sit down to dress, he cannot wash the dishes for more than 10 minutes at a time because standing in front of the sink causes pain in his hip, neck and shoulders, and he waits until he absolutely has to do his laundry. The appellant stated that he has to do everything “a little at time.”

Regarding the basic housekeeping DLA, the GP assessed the appellant as taking significantly longer with both basic housekeeping and laundry; however the note by the GP regarding housekeeping that “…when pain’s involved, he cannot do it” may suggest a need for assistance but there is no indication by the GP how often the appellant is unable to do his housekeeping or that either periodic or continuous assistance is required. In the PR, when asked to describe the assistance needed with DLA, the GP responded “…he needs another person in his daily activities like housework, cleaning, ironing, firewood,” but no further description is provided of the extent of assistance required. For the shopping DLA, the GP indicated in the AR that the appellant is independent with reading prices and labels, making appropriate choices, and paying for purchases and takes significantly longer than typical with going to and from stores and carrying purchases home as the appellant’s “…musculoskeletal and joint illness makes him slow in all his activities in general” and “…cognition and judgment and insight not affected.” The appellant is assessed by the GP as taking significantly longer than typical with walking indoors and walking outdoors, but the GP’s notes do not describe how much longer it takes the appellant, as previously discussed. In the PR, the GP reported that it is unknown whether the appellant is restricted with the DLA use of transportation and, in the AR, that the appellant is independent with the task of using transit schedules and arranging transportation and takes significantly longer with getting in and out of a vehicle, with a note that the appellant “…takes longer getting out and this puts added pain to hips and legs,” but no indication how much longer it takes the appellant with this task.

In the additional information to the AR, the GP wrote that the appellant’s “…disability affects his motor function to great extent although it is mostly periodic, but still affects his job and so he was financially unsupported and insecure and that made him lacking for the resources to maintain his life requirements, medication.” Given an opportunity to update his assessment and provide more detail in the letter dated August 25, 2016, the GP wrote that the appellant has”… episodes of weakness, numbness, tingling beside easily and progressively fatigued in the muscle groups that he is using for his daily activities and at work as well.” The GP wrote that if the appellant goes to work for 2 to 3 weeks continuously, he would start feeling progressive weakness, numbness and fatigue and he would need 2 to 3 months afterwards to recover and feel fine to return to his work again. The GP wrote that these episodes started to be more frequent in terms of being shorter times of working periods and lengthening time of recovery, in addition to worsening in intensity.

In the letter dated September 2, 2016, the appellant’s previous employer wrote that the appellant sustained a hip injury and he was no longer able to complete his job and his employment was terminated, but the appellant would be capable of a less strenuous position. In his self-report, the appellant wrote that the doctor recommends that he works part-time, light duty and, at home, his disability is making it harder to take care of himself and to get the chores done. While the GP and the appellant emphasized the appellant’s inability to perform physical work for extended periods, 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.

Considering the evidence of the GP as the prescribed professional, the panel finds that the ministry reasonably determined that there was insufficient detail provided to establish that the appellant takes inordinately longer than typical with some tasks of DLA, and there was no information to specify how often he has "good days" when the restrictions to DLA are mild and not severe. 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 health authority professionals and community service agencies as the appellant "…said that health care professionals and community services supported him to great extent." In the section of the AR for identifying assistance provided through the use of assistive devices, the GP did not indicate that the appellant routinely uses any of the listed items and wrote that "…he needs wagon to carry things from stores."

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.