

PART C – Decision under Appeal

The decision under appeal is the Ministry of Social Development and Social Innovation (the “ministry”) reconsideration decision of October 11, 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:

- Operative report dated July 28, 2006
- Radiology and Ultrasound Report cervical spine and dorsal spine dated July 8, 2008
- Letter from a neurologist dated March 25, 2015
- Computed tomography report of head and neck dated April 9, 2015
- X-ray right knee dated May 24, 2015
- Medical Report - Persons with Persistent Multiple Barriers (“PPMB Report”) completed by a general practitioner dated September 10, 2015
- EMG/Nerve Conduction Study dated October 15, 2015
- Letter from a neurologist and movement disorders specialist (the “Movement Disorders Specialist”) dated April 14, 2016
- The appellant’s PWD application form consisting of the appellant’s self-report form dated April 21, 2016 (“SR”), a physician’s report (“PR”) completed by a general practitioner (the “physician”) dated May 5, 2016 and an assessor’s report (the “AR”) completed by a registered nurse (the “nurse”) dated April 27, 2016
- Magnetic resonance imaging of cervical spine dated July 30, 2016
- Letter from the Movement Disorders Specialist dated August 18, 2016
- The appellant’s Request for Reconsideration (“RFR”) form dated September 26, 2016 with attached typed statement from the appellant

### Diagnoses

- In the PR the physician diagnosed the appellant with dystonia of his left arm, date of onset March 2010. In the PR the physician indicates that he has been the appellant’s general practitioner for 3 months and has seen the appellant 2 to 10 times in the past 12 months.
- In the AR the nurse indicates that the appellant had dystonia to his left hand. The nurse indicates that she has met with the appellant once for the purposes of an assessment to complete the AR.
- The PPMB Report indicates that the appellant’s primary medical condition is mono neuropathy left hand.

### Physical Impairment

- The Operative Report dated July 28, 2006 indicates that the appellant had prior right ankle exploration right peroneal tendon and tenosynovectomy right peroneal tendon that were well tolerated.
- In the Health History section of the PR, the physician indicates that the appellant is left-handed, has not been able to control his three fingers, is not able to hold a glass of water or cup, and is not able to write as before. The physician indicates that the appellant is 6’1” and weighs 100 kg.
- In terms of physical functioning, the physician reported in the PR that the appellant can walk 2 to 4 blocks unaided on a flat surface, can climb 5+ steps unaided, can lift 5 to 15 pounds and has no limitation with respect to remaining seated.

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- In the AR the nurse indicates that the appellant is independent with walking indoors, walking outdoors and climbing stairs, noting that walking outdoors taking significantly longer than typical. The nurse indicates that the appellant requires periodic assistance from another person with lifting and carrying and holding. The nurse explains that the appellant reports pain in his feet 2 to 3 times per week that makes walking difficult and he can only walk 10 minutes then needs to rest 10 minutes but this can only be repeated two times then the appellant needs to rest for at least a day until his foot pain subsides. . The nurse indicates that the appellant wears down shoes very quickly which contributed to increased pain in his foot. The nurse indicates that the appellant states that he is unable to stand still at all due to back pain and that he has to keep moving or sit down, that he is able to lift about 20 pounds but has difficulty bending due to back pain. The nurse also indicates that the appellant has difficulty carrying anything due to spasms and dystonia in his left hand and that he gets help from friends whenever needed.
  - The EMG/Nerve Conduction Study indicates that the appellant is struggling with left hand tremor and involuntary flexion movements of his fingers which likely represents some type of dystonia.
  - The Radiology and Ultrasound Reports indicate that the appellant has minimal spondylosis in his cervical spine and dorsal spine.
  - The X-ray of right knee dated May 24, 2015 indicates that the appellant has mild degenerative changes in his right knee.
  - In his letter dated March 25, 2015 the neurologist indicates that the appellant reported inability to use his left hand and that with walking he notices that his medial three fingers take flexed posturing but he denied feeling tremors, stiffness or any other associated symptoms. The neurologist indicates that on examination he was not able to appreciate any convincing focal finding except that the appellant was keeping his medial three fingers on his left hand flexed but then often while expressing himself and walking the neurologist noted that the appellant was quite appropriately and smoothly moving them. The neurologist indicates that when requested to perform fine motor movement the appellant was able to execute the movements without difficulty. The neurologist states that one could consider the possibility of Alien hand syndrome but he was not convinced of that. The neurologist noted that the appellant had previously suffered a fall and states that it may be worthwhile to investigate with a baseline CT brain to rule out the possibility of structural abnormality that can sometimes present with odd features. The neurologist also recommended baseline lab test given the appellant's long history of alcohol abuse.
  - The computed tomography of head and neck dated April 9, 2015 indicate a normal noncontrast CT of head with no demonstrated abnormality.
  - In his April 14, 2016 letter, the Movement Disorders Specialist indicates that a trial of a medication for his dystonia syndrome management was tolerated but that the appellant did not experience any improvement in his condition so another medical was going to be tried.
  - The MRI cervical spine dated July 30, 2016 indicates that no significant intracranial abnormality was demonstrated and that the appellant has mild multilevel degenerative disc disease.
  - In her letter dated August 28, 2016 the Movement Disorders Specialist states that the appellant's longstanding mild dysarthria, challenges with short-term recall, pigeon-toed posturing of the lower extremities and bilateral pes cavus in association with the development of distal left upper extremity dystonia-dystonic tremor syndrome remain unexplained. She states that she suspects that the appellant has a type of cerebral palsy that has become more

clinically apparent as he has aged.

- In the SR the appellant states that he has dystonia of the left hand, left and right foot birth defect. He states that the dystonia of the left hand is a physical disability that causes severe involuntary, uncontrollable muscle spasms in the left hand and that three fingers of his left hand, digits 3 through 5 lock into a grip and that he only has the use of his index finger and thumb.
- In the RFR the appellant states that he is left-hand dominant and the locking of his fingers affects his ability to perform DLA as he is unable to grasp onto his clothing, that he has poked himself in the eye when cleansing his face, he has cut himself when shavings, jabbed his toothbrush into his gums causing bleeding and swelling. He states that his mobility is affected due to foot deformities and surgery and that walking is uncomfortable and walking more than 2 blocks is extremely painful and he needs to stop and rest frequently. The appellant states that the physician completed the PR but his family physician has left the city in which the appellant resides so the physician replaced him and completed the PR without much input from him. The appellant states that he has tried several different medications with no benefit or relief of his sporadic left hand spasms.

### Mental Impairment

- In the PR, the physician indicates that the appellant does not have any difficulties with communication. The physician indicates that the appellant has significant deficits with cognitive and emotional function in the areas of emotional disturbance and motivation.
- In the AR, the nurse indicates that the appellant's ability to communicate with reading and hearing is good, that his speaking is satisfactory and that his writing is poor, explaining that he has difficulties with writing due to his left hand locking up.
- In the AR the nurse indicates that for cognitive and emotional functioning, the appellant has major impact to bodily functions, attention/concentration, executive, memory, and motivation; moderate impact to emotion and other neuropsychological problems, minimal impact to consciousness and minimal impact to impulse control, insight and judgment, motor activity, language, psychotic symptoms and other emotional or mental problems. The nurse indicates that the appellant reports anxiety when under pressure, that he has depression from unresolved grief after his father passed away, that he has poor short term memory and that he has to make shopping lists or he forgets what to buy at the store. The nurse indicates that the appellant states that he has learning difficulties and trouble with problem solving and comprehension.
- In the SR and the RF, the appellant states that he has depression, low motivation/interest and poor concentration/attention.

### DLA

- In the PR the physician indicates that the appellant has not been prescribed any medication and/or treatments that interfere with his ability to perform DLA.
- In the PR the physician indicates that the appellant is continuously restricted with respect to personal self care, meal preparation and mobility outside the home, has periodic restrictions with respect to basic housework and that he is not restricted with management of medications, daily shopping, mobility inside the home, use of transportation, management of finances and social functioning. The physician indicates that the appellant has back pain and cannot walk long distance.

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- In the AR the nurse indicates that the appellant is independent with all aspects of personal care but takes significantly longer with dressing, grooming, bathing and feeding self, explaining that he has difficulty with buttons, zippers, tying up laces, that his hands shake when brushing his teeth or cutting toe nails. The nurse indicates that the appellant reports difficulty getting in and out of the bathtub and has come close to slipping due to his inability to hold on. The nurse also indicates that the appellant has difficulty feeding himself due to shaking of his left hand and poor grip and that he is unable to use his right hand.
  - With respect to basic housekeeping the nurse indicates that the appellant is independent with laundry but takes significantly longer as he is unable to fold clothes and takes longer to load and washer and dryer. The nurse indicates that he requires periodic assistance from another person with basic housekeeping, noting that he needs help with washing floors and making the bed.
  - With respect to shopping, the nurse indicates that the appellant is independent with reading prices and labels, but requires periodic assistance with going to and from stores, paying for purchases and carrying purchases home, explaining that he needs help carrying groceries and that he gets embarrassed paying for purchases when his hands shake. She notes that he drops or fumbles.
  - With respect to meals the nurse indicates that the appellant is independent with meal planning, cooking and safe storage of food, noting that it takes significantly longer than typical with cooking. The nurse indicates that the appellant requires periodic assistance from another person with food preparation as he is unable to hold onto hot pots and has difficulty using any knives, peelers and other cutlery with his left hand.
  - The nurse indicates that the appellant is independent with all aspects of paying rent and bills, medications and transportation.
  - With respect to social functioning, the nurse indicates that the appellant is independent with making appropriate social decisions, developing and maintaining relationships, interacting appropriately with others and securing assistance from others but requires periodic support/supervision with dealing appropriately with unexpected demands explaining that the appellant states that he gets easily frustrated and will just give up on it. The nurse indicates that the appellant has marginal functioning with respect to his immediate and extended social networks noting that the appellant is estranged from family and has poor motivation and minimal friends.
  - In the SR, the appellant states that his personal hygiene and self care is affected due to his inability to cleanse himself thoroughly due to inability to wipe self thoroughly after toileting. He states that shaving is a big safety issue due to cutting self and that he has frequently jabbed his toothbrush into his gums causing bleeding. He states that dressing is difficult due to his inability to grasp clothing tightly in order to put on and pull up and that buttoning shirts and pants is extremely difficult. The appellant states that meal preparation and cooking is a significant safety issue due to knife use; lifting heavy hot pots and pans or packing a cup of coffee or glass of water can result in spillage or breakage. The appellant states that housework is difficult due to his inability to hold onto a broom or vacuum and laundry is only done "as needed" and is never folded. He has trouble holding onto dishes, glasses and silverware and shopping is difficult due to inability to grasp and hold items. Paying for purchases is difficult due to spasms and walking is uncomfortable due to birth defect as his left foot goes inward and right foot goes outward.

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- In the PR, the physician indicates that the appellant does not require any prosthesis or aids for his impairment. The physician indicates that the appellant does not need assistance with DLA.
  - In the AR the nurse indicates that the appellant receives assistance with DLA from friends. She comments that the appellant has not seen a grief counselor or mental health counselor and has no desire to do so. The nurse indicates that the appellant requires a bath bar in his tub area. She indicates that he does not have an Assistance Animal.

### **Additional information provided**

In his Notice of Appeal dated October 14, 2016, the appellant states that he disagrees with the ministry's reconsideration decision because he has uncontrolled/unexplained tremors in his left hand that severely affect his ability to attend to DLA and they continue to worsen.

### **Admissibility of New Information**

The ministry did not object to the information in the Notice of Appeal. The panel has admitted the information in the Notice of Appeal as it is information in support of information and records that were before the ministry at the time of reconsideration, in accordance with section 22(4)(b) of the *Employment and Assistance Act*. In particular, the additional information provides further explanation about the appellant's medical condition and impacts on his DLA.

Having confirmed that the appellant was notified of the hearing the appeal proceeded in his absence, pursuant to section 86(b) of the *Employment and Assistance Regulation*.

At the hearing, the ministry relied on the reconsideration decision.

## 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 impairments do not directly and significantly restrict her 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.

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### **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. The ministry notes that in the PR the physician indicates that the appellant can walk 2 to 4 blocks unaided, can climb 5+ steps unaided, can lift 15 to 35 pounds and has no limitation on how long he can remain seated. The ministry notes that the information in the AR indicates that the appellant is independently able to manage walking indoors, walking outdoors and climbing stairs although walking outdoors takes significantly longer than typical. The ministry also notes that the AR indicates that the appellant requires periodic assistance from another person with lifting and carrying and holding. The ministry's position is that the information provided demonstrates that the appellant experiences limitations to his physical functioning due to dystonia and back and feet pain. However, the ministry determines that the assessments provided by the physician and the nurse speak to a moderate rather than a severe physical impairment.

The appellant's position is that the information provided demonstrates that he has a severe physical impairment due to left hand dystonia, back pain and birth defect in his foot and that his conditions are continuing to worsen. The appellant's position is that the information provided by the neurologist, the Movement Disorders Specialist, MRI report, EMG/Nerve Conduction Study and Radiology and Ultrasound Reports provide further confirmation that he has a severe physical impairment.

#### *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. Likewise the use of the word "severe" in and of itself



does not establish a severe impairment.

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.

In the PR the physician indicates that the appellant can walk 2 to 4 blocks unaided, can climb 5+ steps unaided, can lift 15 to 35 pounds and has no limitation on how long he can remain seated. The AR indicates that the appellant is independently able to manage walking indoors, walking outdoors, and climbing stairs although walking outdoors takes significantly longer than typical. The AR also indicates that the appellant requires periodic assistance from another person with lifting and carrying and holding.

While the appellant indicates that his condition is getting worse there is no information from the physician confirming that information and while the physician may not have a full appreciation of the appellant's daily functioning and his struggles, the legislation is clear that the fundamental basis for the analysis is the evidence from a prescribed professional.

While the Movement Disorders Specialist has tried several medications to see if they might benefit the appellant's dystonia and indicates, in her letter dated August 18, 2016 that the appellant's dystonic tremor syndrome remains unexplained, the letter from the neurologist indicates that on examination he was not able to appreciate any convincing focal finding except that the appellant was keeping his medial three fingers on his left hand flexed but then often while expressing himself and walking the neurologist noted that the appellant was quite appropriately and smoothly moving them. The neurologist indicates that when requested to perform fine motor movement the appellant was able to execute the movements without difficulty. The neurologist states that one could consider the possibility of Alien hand syndrome but he was not convinced of that. While both the Movement Disorders Specialist and the neurologist's letter indicate that the appellant's dystonic tremor remain unexplained, the information from the neurologist raises further questions as to the cause of the appellant's uncontrollable left hand movements and there does not appear to be any further testing to indicate the extent to which the appellant is actually able to control his finger movement and perform fine motor movement. However the testing performed by the neurologist appears to indicate better movement and more ability to control the appellant's symptoms than reported by the nurse.

Based on the available evidence and given the significant degree of independence with DLA and functional mobility, the panel finds that the ministry reasonably determined that the information provided speaks to a moderate rather than severe physical impairment.

### **Severe Mental Impairment**

The ministry's position is that based on the information provided the ministry cannot determine that the appellant has a severe mental impairment. The ministry notes that the physician does not diagnose a medical condition giving rise to an impairment although in the PR, the physician notes that the appellant experiences significant deficits with his cognitive and emotional functioning in the areas of emotional disturbance and motivation. The ministry notes that the information provided by the nurse in the AR indicates that the appellant's impairment impacts his cognitive and emotional functioning with five major impacts in the areas of bodily functions, attention/concentration, executive,

memory and motivation, two moderate impacts in the areas of emotion and other neuropsychological problems, one minimal impact in the area of consciousness and no impacts in the remaining areas. The ministry notes that the nurse in the AR indicates that the appellant has depression from unresolved grief from his father passing away, that he has difficulty sleeping and is tired all the time and suffers from anxiety.

The ministry notes that the physician indicates that the appellant's social functioning is not restricted and that the nurse indicates that he does not require support/supervision with any aspects of social functioning with the exception of periodic assistance dealing appropriately with unexpected demands. The ministry also notes that while the nurse indicates that the appellant has marginal functioning with both his immediate and extended social networks, she does not indicate that he requires help in order to maintain in the community.

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

The appellant's position is that he has depression, low motivation/interest, poor concentration/attention, and that the information provided establishes that he has a severe mental impairment. The appellant's evidence is that he has depression from unresolved grief after his father passed away, that he has sleep difficulties, anxiety and gets frustrated very easily.

#### *Panel Decision*

The physician does not diagnose the appellant with a mental impairment in the diagnosis section of the PR although he does indicate that the appellant has significant deficits with cognitive and emotional functioning in the areas of emotional disturbance and motivation. In the AR, the nurse indicates that the appellant has major impacts in the areas of bodily functions, attention/concentration, executive, memory and motivation but this information is not consistent with the information provided by the physician. In particular the physician does not indicate any significant deficits in the areas of memory, executive, attention/concentration or motor activity. While the physician indicates the appellant has significant deficits in the area of emotional disturbance, the nurse indicates that the appellant has only moderate impact in the area of emotion.

While the nurse and the appellant report that the appellant suffers from depression and anxiety, these diagnoses are not confirmed by the physician.

Given the information from the physician that does not provide a diagnosis of any mental impairment and given the inconsistent information between the physician and the nurse and the significant degree of independence reported, and lack of support/supervision required with respect to social functioning, the panel finds that the ministry reasonably determined that the information provided is not evidence of a severe mental impairment.

#### **Significant Restrictions to DLA**

The reconsideration decision states that the minister is not satisfied that the appellant has a severe impairment that, in the opinion of a prescribed professional, directly and significantly restricts his ability to perform DLA continuously or periodically for extended periods. The reconsideration decision

indicates that in the PR the physician indicates that his impairment continuously restricts him from DLA of personal self-care, meal preparation and mobility outside the home, noting that he cannot walk long distances due to back pain. The ministry notes that in the AR, the nurse indicates that the appellant requires periodic assistance to manage aspects of DLA including basic housekeeping, going to and from stores, paying for purchases, carrying purchases home, and food preparation. The ministry acknowledges that the appellant has certain limitations resulting from dystonia of his left hand, back and foot pain but the frequency and duration of these periods is not described in order to determine if they represent a significant restriction to his overall level of functioning.

The ministry notes that the nurse indicates that the appellant takes significantly longer than typical to manage the following aspects of DLA: dressing, grooming, bathing, feeding self, laundry, food preparation and cooking. However the ministry's position is that how much longer than typical it takes the appellant to perform these DLA are not described in order to determine if they represent a significant restriction to his overall level of functioning. The ministry also notes that while the nurse indicates that he is unable to use his left hand when feeding self, she does not explain why the appellant has restrictions with his right hand.

The ministry's position, as set out in the reconsideration decision, is that the assessments provided are indicative of a moderate level of restriction and that the information provided does not establish that a severe impairment significantly restricts DLA continuously or periodically for extended periods.

The appellant's position is that the information provided with his PWD application demonstrates that he has a severe impairment that directly and significantly restricts his ability to perform DLA either continuously or periodically for extended periods. The appellant states that the Adjudicator writing the reconsideration decision makes several references regarding the use of his right hand and the appellant states that as confirmed by himself, the physician and the nurse, he is left-hand dominant and using his right hand to do tasks is extremely awkward and as much of a struggle as using his left hand with its deficiency.

The appellant's position is that the Supreme Court of BC decision in *Hudson v Employment and Assistance Appeal Tribunal*, 2009 BCSC 1461 supports his position as there is evidence indicating a direct and significant restriction on at least two DLA and there is confirmation from a prescribed professional that his impairment is severe and directly and significantly restricts his ability to perform DLA.

The appellant's position is that the section 8 of the Interpretation Act must be taken into consideration that “[e]very enactment must be construed as being remedial, and must be given such fair, large and liberal construction and interpretation as best ensures the attainment of its objects”.

#### *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 applicant'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 of the restriction. 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 PR indicates that the appellant’s impairment continuously restricts him from DLA of personal self-care, meal preparation, and mobility outside the home, noting that he cannot walk long distances due to back pain. The AR indicates that the appellant requires periodic assistance to manage aspects of DLA including basic housekeeping, going to and from stores, paying for purchases, carrying purchases home, and food preparation. While the information provided indicate that the appellant has certain limitations resulting from dystonia of his left hand, back and foot pain the frequency and duration of these periods is not described.

In addition, the information between the PR and the AR is not consistent. The inconsistent information gives rise to questions regarding the appellant’s restrictions with DLA. For example, although the physician indicates that the appellant is continuously restricted with personal self care, the AR indicates that the appellant is independent with all aspects of personal care except that he takes significantly longer than typical with respect to dressing, grooming, bathing and feeding self. While the PR indicates that the appellant is continuously restricted with meal preparation, the AR indicates that the appellant is independent with meal planning, cooking, and safe storage of food he takes significantly longer than typical with cooking and requires periodic assistance from another person with food preparation. However the information from the nurse does not indicate how much longer than typical it takes or the frequency or duration of periodic assistance needed. While the appellant relies on the *Hudson* decision to support his position that because two DLA are restricted he should be found to meet the legislative criteria, the panel finds that the ministry was reasonably in determining that the information provided is not sufficient to determine if the appellant has a significant restriction to his overall level of functioning.

The panel finds that it is reasonable that as he is left hand dominant that some aspects of DLA would be difficult to complete with his right hand. At the same time, most people are able to use their non-dominant hand to perform or assist with many aspects of DLA. In addition, the EMG/Nerve Conduction Study indicates that the appellant reported that at his last job 10 years ago fabricating fiberglass bath tubs, he primarily used the tools with his right hand so it appears that the appellant was able to use his right hand for some work related tasks, including holding and using tools.

The AR indicates that the appellant is independent with many areas of DLA and has no restrictions at all with respect to paying rent and bills, medications, or transportation. The PR indicates that the appellant is not restricted with respect to his social functioning and the AR indicates that the appellant is independent with all aspects of social functioning except dealing appropriately with unexpected demands as he requires periodic support/supervision in this area as he gets easily frustrated and gives up.

While the ministry needs to interpret the legislation liberally in accordance with section 8 of the Interpretation Act, given the inconsistencies between the information in the PR and the AR and the lack of information with respect to the frequency and duration of the periodic assistance required, the

panel finds that the ministry reasonably determined that the appellant's impairment does not significantly restrict DLA either continuously or periodically for extended periods as required by EAPWDA section 2(2)(b)(i).

### **Help with DLA**

The ministry's position 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 difficulty perform DLA using his left hand and has difficulty walking long distances and that the information provided from the prescribed professional indicates that he requires help from another person to perform DLA that are restricted from his impairment.

### ***Panel Decision***

In the PR, the physician states that the appellant does not require assistance with DLA. In the AR, the nurse indicates that help is required from friends to perform DLA. The nurse indicates that the appellant has not seen a grief or mental health counselor and has no desire to do so. . The nurse indicates that the appellant needs a bath bar in his bathtub area. She indicates that the appellant does not have an assistance animal. The appellant states that he has difficulty with DLA but does not describe the assistance required from friends.

While the nurse indicates that help is required, the physician indicates that no help is required with DLA so the information provided is not consistent. The nurse indicates that the appellant requires a bath bar but the physician does not indicate that the appellant requires any assistive devices. In addition to these inconsistencies however, a finding that a severe impairment directly and significantly restricts a person's ability to manage her 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 reasonably determined 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 has not been satisfied.

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

### **Conclusion**

The panel acknowledges that the appellant has serious medical conditions that impact his functional ability and his ability to perform DLA. However, 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.

The panel therefore confirms the ministry's reconsideration decision and the appellant is not successful in his appeal.