

PART C – Decision under Appeal

The decision under appeal is the Ministry of Social Development and Social Innovation (the ministry) reconsideration decision dated November 4, 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

With the oral consent of the appellant, an observer from the advocate's office attended but did not participate in the hearing.

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 May 30, 2016, a physician report (PR) and an assessor report (AR), both dated May 30, 2016 and completed by a general practitioner (GP) who has known the appellant since 2014.

The evidence also included the appellant's Request for Reconsideration dated October 13, 2016, with attached submission by an advocate that included argument on behalf of the appellant and a letter dated October 24, 2016 from the GP who completed the PR and the AR.

Diagnoses

In the PR, the GP diagnosed the appellant with osteoarthritis knees and hips, with an onset in 2014, diabetes Mellitus and peripheral diabetic neuropathy, with an onset in 2010, and left leg neurapraxia [peripheral nerve injury] due to hip dislocation in July 2014. There was no diagnosis of a mental disorder. Asked to describe the mental or physical impairments that impact the appellant's ability to manage daily living activities, the GP wrote in the AR: "...nerve damage and weakness left leg, OA [osteoarthritis], diabetes."

Physical Impairment

In the PR and AR, the GP reported that:

- In terms of health history, the appellant has "...restricted ability to do physical work. Left leg nerve pain and symptoms following traumatic left hip dislocation July 2014. OA of knees and hips. Diabetic neuropathy both feet."
- The appellant requires an aid for his impairment, and the GP wrote that he "...requires a cane. Able to get around without but should have better stability."
- In terms of functional skills, the appellant can walk 1 to 2 blocks unaided, lift 2 to 7 kg. (5 to 15 lbs.), with no ability to climb stairs unaided and no limitation with remaining seated.
- The appellant is not restricted with his mobility inside the home but he is restricted with his mobility outside the home, with no indication if the restrictions are continuous or periodic. In terms of the degree of restriction, the GP wrote: "...neurological weakness left leg and ankle. Nerve damage after hip dislocation 2014."
- In the additional comments to the PR, the GP wrote that the appellant's "...major problem is the permanent nerve damage in the left leg following left hip dislocation July 2014 after falling. This is permanent. Concomitant OA DM [diabetes mellitus] neuropathy complicates problem."
- The appellant is assessed as being independent with walking indoors and using an assistive device and taking significantly longer than typical with walking outdoors, with the note: "should use a cane." Although the GP indicated that the appellant takes significantly longer than typical with climbing stairs, he also wrote "cannot climb stairs." The GP reported both that the appellant is independent with standing and also that he uses an assistive device and he takes significantly longer than typical. The appellant is independent with lifting and carrying and holding. For comments, the GP wrote that "...physical impairment with mobility."
- In the section of the AR relating to assistance provided, the appellant routinely uses a cane as an assistive device, with the comment that he "...should be using a cane." For equipment that is required but is not currently being used, the GP wrote "cane."

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In the letter dated October 24, 2016, the GP who completed the PR and the AR wrote that the appellant has recently been diagnosed with advanced stage prostate CA [cancer]. The appellant is awaiting further investigations to gauge the extent of remote bone metastases and local invasion of the cancer. The GP wrote that this is “..an additional disabling condition, medically precluding him from doing employment searches at this time.”

In his self-report, the appellant wrote that:

- He has pain, weakness and stiffness. He has arthritis and a dislocated hip.
- His left knee is very painful and weak. He has arthritis in his shoulder and elbow.
- He is unable to get around properly and he falls easily. When he gets up in the middle of the night, he has to use chairs and walls to hang on to.
- He needs to use a cane and he feels like he should use a walker soon.
- He tires easily because of the 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 executive and impulse control, and the GP commented: “...poor medication compliance with DM management. Issues with problem-solving ability.”
- The appellant is not restricted with his social functioning.
- 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 one moderate impact in insight and judgment. There is a minimal impact to executive and no impacts to the 12 remaining listed areas. The GP wrote that “...evidence of poor compliance with medical management in the past. Struggles to problem solve.”
- 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, with no further comments provided by the GP.

Daily Living Activities (DLA)

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

- The appellant has not been prescribed medications that interfere with his ability to perform DLA.
- The appellant is not restricted with several DLA, specifically: personal self care, meal preparation, daily shopping, use of transportation, management of finances, and social functioning.
- It is unknown if the appellant is restricted with the DLA management of medications.
- The appellant is not restricted with mobility inside the home and is restricted with mobility outside the home with no indication whether these restrictions are continuous or periodic.
- The appellant is periodically restricted with basic housework.
- In explaining “periodic” the GP wrote that the appellant “...struggles with basic housework during pain flare-ups. Cannot do stairs or steps.”

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- The appellant is independent with walking indoors and requires an assistive device (“should use a cane”) and takes significantly longer than typical with walking outdoors.
 - The appellant is independent with all of the tasks of several DLA, specifically: the personal care DLA (dressing, grooming, bathing, toileting, feeding self, regulate diet, transfers in/out of bed, transfers on/off of chair), the “paying rent and bills” DLA (including banking and budgeting) and the transportation DLA (getting in and out of a vehicle, using public transit, and using transit schedules and arranging transportation).
 - For the basic housekeeping DLA, the appellant requires periodic assistance from another person with housekeeping and is independent with doing laundry, described by the GP as “...housekeeping at the motel.”
 - 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 he “...gets assistance from friends” and “...secures a lot of help from friends with shopping and go to food bank. Tries to receive deliveries when possible.”
 - For the meals DLA, the appellant is both independent and requires periodic assistance from another person with the tasks of meal planning and food preparation, with a note “food bank.” The appellant is assessed as independent with the tasks of cooking and safe storage of food.
 - For the DLA medication, the appellant is independent with filling/refilling prescriptions and safe handling and storage and takes significantly longer than typical with taking as directed. The GP wrote: “...some compliance issues.”

In his self-report, the appellant wrote that:

- When he goes grocery shopping, he gets a little bit at a time as he cannot pack much at a time. He has to use the electric scooter when he buys more than a bag or two of groceries.
- He lives in a motel so the maid cleans his room once a week, which makes it easier on him.
- Friends give him a ride as it is hard for him to get around. He takes the bus when he has to.

Need for Help

When asked in the PR what assistance the appellant needs with DLA, the GP wrote: “...needs a cane. Occasional help with cleaning (has maid/housekeeper coming..... in once per week).” In the AR, the GP reported that, with respect to the assistance provided by other people, the appellant receives help from friends and “other” and the GP wrote “...housekeeping at motel. Regular help from friends and acquaintances.” In the section of the AR for identifying assistance provided through the use of assistive devices, the GP indicated a cane and wrote that the appellant “...should be using a cane.”

Additional information

In his Notice of Appeal dated November 15, 2016, the appellant expressed his disagreement with the ministry’s reconsideration decision and wrote that the decision does not take all of the information/evidence into consideration and makes a very unreasonable determination.

At the hearing, the appellant submitted a loan record for a quad cane dated October 12, 2016 and the advocate’s written submission on his behalf. The ministry also submitted a written submission.

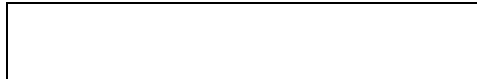
At the hearing, the appellant and his advocate stated that:

- The appellant’s condition has progressed to the point that he is not longer able to walk without

a cane.

- The assistance that the appellant needs with daily living activities is not due to lack of wanting to be more independent, but rather because he needs the assistance.
- It hurts when he walks and his ankle is very weak. It is scary to walk without a cane. He cannot go anywhere without the cane. His condition is getting worse.
- He is too scared to go out at night. He once stepped in a hole because he did not see it and when he fell he could not get back up again. He has fallen a couple of time before and it takes days and days for him to get better.
- It is scary to shower and he only does it when he has to. He leans against the wall for support.
- He is always sore. The pills the doctor prescribed help a little but pretty much every time he moves something hurts.
- He cannot bend easily so putting on his socks and shoes is not easy and he has to force himself to get it done.
- He can take the bus most of the time and it will get him close to where he needs to go.
- He is stubborn about not asking for help. If he has to get to someplace further away, he has someone he can call. He gets rides to many appointments.
- When standing he needs something to lean on. He cannot stand on his left leg. If he twists his leg a certain way it is very painful.
- He is in the process of getting treatment for his cancer. He does not know yet, but the doctor said he is likely looking at 2 years of chemotherapy. The diagnosis was a shock and it seems like he is dealing with “one thing after another” and he is “stressed to the max.”
- He always has a sense that he needs to urinate. Lately he has been getting headaches, which he does not usually get.
- He is not taking anti-depressant medications. He has pills to help him sleep and he cannot sleep without them. He has to prop himself up with pillows to get comfortable enough to sleep. He has osteoarthritis in his right shoulder and it is difficult to find the right position to be comfortable.
- He has arthritis in all his joints and it has become more painful lately. His hands have started going numb. His leg from the knee to the ankle is going numb. He cannot feel anything in some of his toes. His DM is “over the roof.”
- He had to get a new cane because he wore the rubber off the bottom of the other one. He likes the new one because it stabilizes him better and it stands on its own so he does not have to bend to pick it up.
- He has always had a bad memory but it seems to be getting worse. He has left the key in his door and he has to write everything down to remember.
- He gets flare-ups of pain depending on the way he moves, if he moves in a certain way.
- For a typical day he watches television and looks out the window. He used to be an active person but he cannot ride a bike anymore or walk on the beach.
- He tries to cook as much as possible for himself and will make soups and stews. Sometimes people will help him by bringing food.
- There is a maid at the motel who comes once a week and cleans the bathroom.
- He may need help more than once a week but if he can do it by himself, he will do it. He does his laundry a little bit at a time in the bathroom.
- He used to be in really good shape and he misses working.

The ministry relied on the reconsideration decision, as summarized at the hearing.



Admissibility of Additional Information

The ministry did not object to the admissibility of the loan record and did not raise an objection to the oral testimony on behalf of the appellant. The panel considered the loan record for the quad cane and the appellant's oral testimony as information that corroborates the extent of his impairment and use of an assistive device, 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

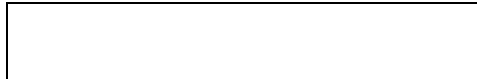
2 (1) For the purposes of the Act and this regulation, "**daily living activities**" ,

(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 osteoarthritis knees and hips, DM, peripheral diabetic neuropathy, left leg neurapraxia due to hip dislocation and advanced stage prostate cancer. The appellant argued, through his advocate, that the ministry did not take all of the information/evidence into consideration, including the information in his self-report that he falls easily, has trouble walking, needs a cane and feels that he should use a walker soon, and friends give him rides when he needs, since the evidence shows that the appellant has great difficulty with mobility and needs assistance through an assistive device and from others. The appellant argued that the physician's statement that the appellant has a restricted ability to do physical work was interpreted incorrectly by the ministry by only considering his ability to work in employment and not the physical 'work' required in everyday life. The appellant argued that although the physician indicated that the appellant can walk 1 to 2 blocks unaided, he also wrote that the appellant requires a cane and specified the need for an assistive device a total of 4 times and the appellant's condition has progressed to the point that he is no longer able to walk without a cane. The appellant argued that the physician has made it clear that, with his description of the appellant's problems, his inability to climb stairs and comment 'physical impairment with mobility,' the appellant has a severe impairment.

The appellant stated that he also has mental impairments, but the focus is primarily on his physical impairments. The appellant's position is that his severe physical and mental impairment directly and

significantly restricts his ability to perform DLA, including mobility, on an ongoing basis and he needs an assistive device or the significant assistance of another person. The appellant argued, on the basis of the court decision in *Hudson v. EAAT, 2009 BCSC 1461*, that the ordinary meaning of the plural “activities” dictates that there must be evidence from a prescribed professional indicating a direct and significant restriction on at least two DLA, but there is no requirement that more than two DLA be significantly restricted.

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 although the letter dated October 24, 2016 indicated a diagnosis by the GP of a serious medical condition, specifically advanced stage prostate cancer, the diagnosis itself does not establish a severe impairment, which must be evidenced by limitations/restrictions in physical functioning, mental functioning, ability to perform DLA and the help required with DLA, and the GP has not described how the additional diagnosis may worsen the appellant’s pre-existing medical conditions as described in the PWD application. The ministry argued that the GP indicated that the appellant can walk 1 to 2 block unaided, or without the assistance of another or an assistive device, he can lift 5 to 15 lbs., he has no limitation with how long he can remain seated, and he is independent with standing, and cannot climb any stairs unaided. The ministry argued that the GP wrote that the appellant “should use a cane” but does not state that the appellant requires a cane for walking outdoors as the appellant has been assessed as walking 1 to 2 blocks unaided.

The ministry wrote that while it is reported by the GP that the appellant has “restricted ability to do physical work,” employability is not a factor when determining the PWD designation and the GP did not report an inability to do any physical work. The ministry argued at the hearing that a parallel cannot be drawn between the necessity to be present at a job day in and day out, within specific time frames, performing what is usually the same tasks, in addition to performing all daily living tasks, with the ability to perform DLA at a time and convenience to the appellant. The ministry wrote that although the GP indicated significant deficits with cognitive and emotional functioning in the areas of executive and motivation, he reported minimal impact to his daily functioning in executive and no impact with motivation, and no restrictions with social functioning.

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 the GP indicated that the appellant is independent in performing a majority of his DLA and for those tasks of DLA that require periodic assistance from another person, specifically carrying purchases home, meal planning and food preparation, the GP does not describe the frequency or the duration of the assistance required. The ministry argued that receiving assistance with housework from a maid while living in a motel and the appellant’s statement that “this makes it easier on me” is not considered indicative of restrictions with basic housekeeping. 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 since 2014, diagnosed the appellant with osteoarthritis knees and hips, DM and peripheral diabetic neuropathy, and left leg neurapraxia due to hip dislocation in July 2014. In the letter dated October 24, 2016, the GP wrote that the appellant has recently been diagnosed with advanced stage prostate cancer and the appellant is awaiting further investigations to gauge the extent of remote bone metastases and local invasion of the cancer. At the hearing, the appellant stated that he is in the process of getting treatment for his cancer and he does not know yet, but the doctor said he is likely looking at 2 years of chemotherapy. In the letter, the GP also wrote that this is “...an additional disabling condition, medically precluding him from doing employment searches at this time”; however, the GP did not elaborate on the impacts to the appellant’s physical functioning and, instead, placed an emphasis on the appellant’s inability to search for employment.

In the health history portion of the PR, the GP also wrote that the appellant has “...restricted ability to do physical work.” The appellant argued, through his advocate, that the ministry interpreted the GP’s statement incorrectly as the ministry only considered his ability to work in employment and not the physical ‘work’ required in everyday life. However, Section 2(1)(a) of the EAPWDR provides a definition of DLA to mean a closed list of specific activities and the requirement in Section 2(2)(b) of the EAPWDA is that a prescribed professional provide an opinion that the ability to perform these specific activities is directly and significantly restricted. The panel finds that the ministry reasonably considered the GP’s statement at its face value and did not attempt to extrapolate to determine whether this may also relate to the appellant’s ability to perform some of the tasks of the listed DLA, and the ministry pointed out that employability is not a relevant criterion for PWD designation.

In terms of health history, the GP also wrote in the PR that the appellant has “...left leg nerve pain and symptoms following traumatic left hip dislocation July 2014. OA of knees and hips. Diabetic neuropathy both feet.” The GP reported that the appellant requires an aid for his impairment, and wrote that the appellant “...requires a cane. Able to get around without but should have better stability.” In terms of functional skills, the GP indicated in the PR that the appellant can walk 1 to 2 blocks unaided, which is without the use of an assistive device or the assistance of another person, he can lift 5 to 15 lbs., has no limitation with how long he can remain seated, but he has no ability to climb stairs unaided. The GP also reported that the appellant is not restricted with his mobility inside the home and is restricted with his mobility outside the home, with no indication if the restrictions are continuous or periodic. In terms of the degree of restriction, the GP wrote: “...neurological weakness left leg and ankle. Nerve damage after hip dislocation 2014.” The appellant is assessed as being independent with walking indoors and using an assistive device and taking significantly longer than typical with walking outdoors, with the note: “should use a cane.” In the section of the AR relating to assistance provided, the GP reported that the appellant routinely uses a cane as an assistive device, with the comment that he “...should be using a cane” and, for equipment that is required but is not currently being used, the GP wrote “cane.”

At the time of the PWD application, the evidence of the GP was that the appellant requires a cane for mobility outside the home and “should use a cane,” which indicated that the appellant was not using a cane at that time. This is not consistent with the evidence of the appellant who wrote in his self-report, that he is unable to get around properly and he falls easily, he needs to use a cane and he feels like he should use a walker soon. At the hearing, the advocate stated that the appellant’s condition has progressed to the point that he is not longer able to walk without a cane and the appellant stated that he is having to use the quad cane at all times now.

Although the GP indicated that the appellant takes significantly longer than typical with climbing stairs, he also wrote “cannot climb stairs,” which is not consistent with taking longer to climb stairs. In explaining “periodic” in the PR, the GP wrote that the appellant “...struggles with basic housework during pain flare-ups. Cannot do stairs or steps,” and this may indicate that the appellant cannot climb stairs during pain flare-ups. The GP reported both that the appellant is independent with standing and also that he uses an assistive device, which is not consistent with being independent, and also that he takes significantly longer than typical with standing. The appellant is independent with lifting and carrying and holding. Given an opportunity to update and clarify his assessments regarding the appellant’s use of an assistive device, his ability to climb stairs, and his ability to stand, the GP did not address the appellant’s functional skills in his letter dated October 24, 2016.

As well, 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.

Given the GP’s emphasis on employability and some of the noted inconsistencies with the assessment of functional skills limitations, 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

The GP did not diagnose the appellant with a mental disorder, but reported that the appellant has significant deficits with cognitive and emotional function in the areas of executive and impulse control, and the GP commented: “...poor medication compliance with DM management. Issues with problem-solving ability.” With respect to impacts to cognitive and emotional functioning, the GP indicated in the AR that there are no major impacts and one moderate impact in insight and judgment. There is a minimal impact to executive and no impacts to the 12 remaining listed areas, including impulse control and motivation. The GP wrote that “...evidence of poor compliance with medical management in the past. Struggles to problem solve.” At the hearing, the appellant stated that he has always had a bad memory but it seems to be getting worse and he left the key in his door and he has to write everything down to remember. The GP did not identify memory as an area of significant deficit. The appellant stated at the hearing that the diagnosis advanced stage prostate cancer was a shock, it seems like he is dealing with “one thing after another” and he is “stressed to the max.” However, the GP did not provide further information regarding impacts to the appellant’s mental functioning in his letter dated October 24, 2016. The GP reported in the PWD application that the appellant has no difficulties with communication and he is not restricted with his social functioning, having good functioning in both his immediate and extended social networks.

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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

The appellant argued, on the basis of the court decision in *Hudson v. EAAT, 2009 BCSC 1461*, that there is no requirement that more than two DLA be significantly restricted; however, 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 ability to perform 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 not been prescribed medication that interferes with his ability to perform DLA. The GP reported that the appellant is not restricted with mobility inside the home and he is independent with walking indoors. For mobility outside the home, the GP indicated in the PR that the appellant is restricted, without indicating whether the restriction is periodic or continuous, and that he requires an assistive device ("should use a cane") and takes significantly longer than typical with walking outdoors.

In the PR, the GP reported that the appellant is not restricted with several DLA, specifically: personal self care, meal preparation, daily shopping, use of transportation, management of finances, and social functioning. In the AR, the GP indicated that the appellant is independent with performing all tasks of the DLA personal care, the meals DLA, the transportation DLA, the "paying rent and bills" DLA and social functioning. The appellant stated at the hearing that it is scary for him to shower and he leans against the wall for support, and that he cannot bend easily so putting on his socks and shoes is not easy and he has to force himself to get it done. The GP indicated that the appellant is independent in all aspects of personal care. While the GP reported in the PR that the appellant is not restricted with the shopping DLA, he indicated in the AR that 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 the appellant "...gets assistance from friends" and "...secures a lot of help from friends with shopping and go to food bank. Tries to receive deliveries when possible." In his self-report, the appellant wrote that when he goes grocery shopping, he gets a little bit at a time as he cannot pack much at a time and he has to use the electric scooter when he buys more than a bag or two of groceries. As the GP did not describe how often the appellant requires help with the task of carrying purchases home as part of the shopping DLA, and the appellant's evidence that he can pack a little at a time, the panel finds that the ministry reasonably determined that there is not sufficient information to show that the need for periodic assistance is for extended periods of time.

Although the GP indicated that the appellant is independent with all tasks of the meals DLA, he also reported that the appellant requires periodic assistance from another person with 2 of 4 tasks, with meal planning and food preparation with a note "food bank." At the hearing, the appellant stated that he tries to cook as much as possible for himself and will make soups and stews, and sometimes people will help him by bringing food. In the absence of information regarding how often the

appellant requires assistance with tasks of the meals DLA, the panel finds that the ministry reasonably concluded that there is insufficient information to establish that periodic assistance is required for extended periods of time. In the PR, the GP reported that it is unknown if the appellant is restricted with the DLA management of medications and, in the AR, that the appellant is independent with filling/refilling prescriptions and safe handling and storage and that he takes significantly longer than typical with taking his medication as directed due to "...some compliance issues." The GP did not provide further comment to allow the ministry to determine how much longer than typical it takes the appellant with one of 3 tasks of the medication DLA.

In the PR, the GP indicated that the appellant is periodically restricted with basic housework and, when explaining "periodic," the GP wrote that the appellant "...struggles with basic housework during pain flare-ups," without indicating how often the pain flare-ups occur. At the hearing, the appellant stated that he gets flare-ups of pain depending on the way he moves; if he moves in a certain way it will increase his pain. In the AR, the GP indicated that the appellant requires periodic assistance from another person with housekeeping and is independent with doing laundry, described by the GP as "...housekeeping at the motel." In his self-report, the appellant wrote that he lives in a motel so the maid cleans his room once a week, which "makes it easier" on him. When asked in the PR what assistance the appellant needs with DLA, the GP wrote: "...occasional help with cleaning (has maid/housekeeper coming..... in once per week)." The appellant stated at the hearing that he may need help more than once a week but if he can do it by himself, he will do it. He does his laundry a little bit at a time in the bathroom.

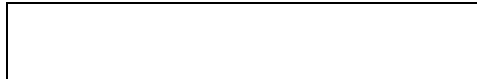
Considering the evidence of the GP, the panel finds that the ministry reasonably determined that while the appellant is restricted with the outdoor aspect of the move about indoors and outdoors DLA, there was not sufficient detail provided to establish that the appellant requires periodic assistance for extended periods of time with the tasks of basic housekeeping and carrying purchases home as part of the basic housekeeping and shopping 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 friends and "other" and the GP wrote "...housekeeping at motel. Regular help from friends and acquaintances." In the section of the AR for identifying assistance provided through the use of assistive devices, the GP indicated a cane and wrote that the appellant "...should be using a cane."

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.