

PART C – Decision under Appeal

The decision under appeal is the Ministry of Social Development and Social Innovation (the ministry) reconsideration decision dated October 20, 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 ministry did not attend the hearing. After confirming that the ministry was notified, the hearing proceeded under Section 86(b) of the Employment and Assistance Regulation.

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 February 10, 2016, a physician report (PR) and an assessor report (AR), both dated February 19, 2016 and completed by a general practitioner (GP) who has known the appellant for 2 years.

The evidence also included the following documents:

- 1) X-ray report dated December 20, 2011 for the appellant's chest;
- 2) X-ray report dated August 3, 2012 for the appellant's left ankle;
- 3) Medical imaging report dated January 20, 2014 for the appellant's bilateral hands;
- 4) Medical imaging report dated July 25, 2014 for the appellant's left hand;
- 5) Medical imaging report dated July 27, 2014 for the appellant's left tibia and fibula;
- 6) Medical imaging report dated August 21, 2014 for the appellant's lower left extremity;
- 7) Medical imaging report dated January 24, 2016 for the appellant's left tibia and fibula;
- 8) Medical imaging report dated January 29, 2016 for the appellant's left knee and left femur;
- 9) Medical imaging report dated February 11, 2016 for the appellant's right ankle, right foot and bilateral hands;
- 10) Medical imaging report dated March 10, 2016 for the appellant's lumbar spine;
- 11) Letter dated April 14, 2016 from an orthopaedic surgeon;
- 12) Off Work Note dated April 14, 2016 due to the appellant's "left ankle pain/arthritis;"
- 13) Letter dated September 28, 2016 from an orthopaedic surgeon;
- 14) Note dated October 20, 2016 from the GP; and,
- 15) Request for Reconsideration dated September 21, 2016 with attached letter from the appellant.

Diagnoses

In the PR, the GP diagnosed the appellant with OA [osteoarthritis] left hip, left knee, previous fractures both ankles, left femur. 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: "...patient states he has ongoing pain in both ankles, feet and hips, which reduces his mobility."

Physical Impairment

In the PR and AR, the GP reported that:

- In terms of health history, the appellant has "...pain in both feet, ankles and hips."
- The appellant does not require any prostheses or aids for his impairment.
- In terms of functional skills, the appellant can walk less than 1 block unaided, climb 5 or more steps unaided, lift 2 to 7 kg. (5 to 15 lbs.), and remain seated less than 1 hour.
- In the additional comments to the PR, the GP wrote that X-Rays are included.
- The appellant is assessed as being independent with walking indoors, walking outdoors, climbing stairs, and standing. The appellant requires periodic assistance from another person with lifting, with no further notes provided, and he requires continuous assistance with carrying and holding.
- In the section of the AR relating to assistance provided, none of the listed assistive devices are

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- indicated as applicable by the GP and he wrote that the appellant "...did use cane in past."
- For equipment required but not currently being used, the GP wrote: "...might use cane- he feels not needed now."

The most recent Medical imaging reports indicate:

- January 24, 2016- "again seen are chronic deformities of the distal tibia and fibula, likely the site of prior trauma. The appearance is unchanged. A discrete fracture line is not appreciated. The ankle mortise is stable. There is no radiopaque foreign body."
- January 29, 2016- "There is deformity identified within the mid left fibular diaphysis likely relating to remote healed fracture as per history. There is heterotopic calcification identified within the medial mid soft tissues adjacent to the prior fracture. No acute fracture or malalignment. There is however moderate decreased joint space within the hip with subchondral sclerosis suggesting degenerative change."
- February 11, 2016- "Right foot and ankle: no fracture or dislocation identified. Mild degenerative arthritis is observed in the first MTP joint. Bilateral hands: Bone mineral density is normal. Mild degenerative arthritis is observed in the right first MCP joint. No evidence of significant arthritis elsewhere in the bilateral hands and wrists. No erosions identified."
- March 10, 2016- "Lumbar spine: Five lumbar type vertebral bodies are present. Moderate decreased disc space height at L4-5 and L5-S1 with associated small vertebral body osteophytes and early degenerative facet changes at these levels. Vertebral body heights and pedicles are intact."

In the letter dated April 14, 2016, the orthopedic surgeon wrote that:

- The appellant's left ankle is becoming more painful- particularly with ambulation.
- There is also some left hip/ thigh pain.
- Exam reveals a limp on the left side with ambulation. The left leg examination showed a leg length discrepancy, with a shorter left leg- almost 4 cm.
- There is also limited range of motion of the left ankle.
- X-ray of the left ankle and knee showed no significant abnormality of the knee. There are degenerative changes in the ankle along with disfigurement of the bony cortices indicating previous trauma as well as likely the external fixator pin tracks.

In the letter dated September 28, 2016, the orthopedic surgeon wrote that:

- The appellant was involved in a MVA [motor vehicle accident] 30 years ago sustaining a left femur and distal tibia fracture.
- Now he has significant left ankle pain and post-traumatic arthritis.
- There is deformity of the left distal tibia.

In his self-report, the appellant wrote that:

- He is in a lot of leg/ hip pain.
- He cannot walk/ sit.
- He cannot sleep through the night.
- He cannot lift anything.

In the letter with the Request for Reconsideration, the appellant wrote that:

- During the last 6 months, his health has become worse and he completely depends on his daughter for assistance.

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- His legs are getting weak and he is not able to walk any distances. He requires a walking stick to assist him with walking.
 - Lifting and carrying anything has become a problem as his arms and hands hurt.
 - Due to a lot of pain, he is no longer able to sit for long periods of time.
 - His doctor referred him to see two more specialists in October and November in regard to his pain as his condition is worse.

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 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 two moderate impacts in motivation and motor activity, with minimal or no impacts in the remaining 12 areas of functioning. There were no further comments provided by the GP.
- 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 his immediate social network and marginal functioning in his extended social network, with no further comments provided by the GP.

In his self-report, the appellant wrote that it is hard to concentrate due to daily pain.

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 independent with walking indoors and walking outdoors.
- The appellant is independent with all of the assessed tasks of several DLA, specifically: the “pay rent and bills” DLA (including banking and budgeting), the medications DLA (filling/refilling prescriptions, taking as directed, and safe handling and storage), and transportation (getting in and out of a vehicle). Regarding the tasks of using public transit and using transit schedules and arranging transportation, the GP wrote that the appellant’s “...daughter transfers with private vehicle.”
- For the personal care DLA the appellant is independent with dressing, grooming, bathing, toileting, feeding self, regulate diet, and transfers on/off of chair, while requiring periodic assistance from another person with transfers in/out of bed. The GP did not provide a description or explanation of the periodic assistance required with this task.
- For the basic housekeeping DLA, the appellant requires continuous assistance from another person with laundry and is independent with basic housekeeping, described by the GP as “...done by daughter.”
- 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 did not provide a description or explanation of the periodic assistance required.

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- For the meals DLA, the appellant requires continuous assistance from another person with the tasks of meal planning, food preparation and cooking, as well as periodic assistance with safe storage of food. The GP did not provide a description or explanation of the periodic assistance required with this task.

In the Off Work Note dated April 14, 2016, the orthopaedic surgeon wrote that the appellant will not be able to work due to his left ankle pain/ arthritis.

In the note dated October 20, 2016, the GP wrote that the appellant is not able to work. His condition is worse and he is awaiting more specialist appointments.

Need for Help

In the AR, the GP reported that, with respect to the assistance provided by other people, the appellant receives help from family. In the section of the AR for identifying assistance provided through the use of assistive devices, the GP did not indicate any of the listed items as being required by the appellant. The GP wrote that the appellant "...did use cane in past." For equipment required but not being used, the GP wrote that the appellant "...might use cane- he feels not needed now."

Additional information

In his Notice of Appeal dated November 11, 2016, the appellant expressed his disagreement with the ministry's reconsideration decision and wrote that the GP filled out the PWD application without consideration of his health condition. Presently, he is unable to walk more than 1 block and he is under huge depression. His health is getting worse.

In the letter dated November 14, 2016 attached to the Notice of Appeal, the appellant's daughter wrote that:

- Her mother has PWD designation by reason of serious dementia and her parents are in deep depression.
- There was misinformation in the PWD application because the specialist reports were not reviewed by the GP. Her father is unable to walk more than one block, he constantly uses an assistance walking device cane. At the present time, her father is using a wheelchair because he is experiencing sharp pain with movement.
- Her father needs a constant support worker.

Prior to the hearing, the appellant submitted the following additional documents:

- 1) Undated joint submission in which the appellant and an advocate made arguments that are set out in Part F- Reasons for Panel Decision;
- 2) Copy of business card for the GP;
- 3) Visit history report from January 10, 2014 through October 25, 2016;
- 4) Medical Imaging Report dated April 20, 2016 for the left ankle and indicating that there is a deformity related to the distal tibia and fibula related to healed fractures. The findings indicate increased metabolic activity within the bone. Osteomyelitis is not excluded;
- 5) Letter dated September 21, 2016 in which an orthopaedic surgeon wrote that:
 - The appellant continues to have an increasing amount of pain.
 - He is barely able to walk at this point and is unable to stand for long periods of time.
 - Working certainly is not possible for now.
 - X-rays show increasing changes in terms of post-traumatic arthritis.

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- A referral has been made for a possible ankle fusion, which is the only option to achieve any kind of predictable pain relief;
- 6) Letter dated September 28, 2016 in which an orthopaedic surgeon made a referral to another orthopaedic surgeon;
 - 7) Patient Medical History and Expense Reports printed November 17, 2016 for the period January 1, 2012 through November 17, 2016;
 - 8) Letter dated November 2, 2016 in which an orthopaedic surgeon wrote that:
 - The appellant complains of severe anterior ankle pain 9 out of 10 severity, which is exacerbated by increased weight-bearing activity.
 - He gets night pain that disturbs his sleep.
 - He currently takes Tylenol on a prn [as needed] basis.
 - He also has some left hip and thigh pain.
 - He thinks the appellant will have a hard time returning to his previous occupation due to his pain symptoms.
 - At the present time, the appellant does not want to have surgery.
 - 9) Letter dated November 22, 2016 to the GP in which the appellant and his daughter wrote that:
 - The appellant cannot walk without medical walking devices. He recently began looking for a wheelchair;
 - The appellant's daily walking trip is not more than 100 yards and even for that distance he needs a supportive person for assistance.
 - To get out of the house, the appellant needs a wheelchair and in order to walk in the house he needs a cane.
 - The appellant wants to pursue surgery to replace his ankle.
 - 10) Loan record dated November 22, 2016 from the Canadian Red Cross for a cane and a basic wheelchair;
 - 11) Pharmacy print-outs for pain relief and anti-depressant medications; and,
 - 12) Letter dated November 22, 2016 in which the GP wrote that the appellant has decided he wants surgery as his ankle pain has deteriorated and his quality of life is not good.

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

- The specialist that the appellant saw had said the PWD application documents had not been completed in a correct manner because a few things were not known.
- The distance that the appellant can walk was incorrect.
- His lack of mobility affects his daily living activities.
- His health has decreased since the time the application was filled out.
- The appellant has lots of pain in his legs, which were broken multiple times, and he is constantly taking pain killers.
- The appellant is unable to do lots of things. The appellant's wife has dementia and there is lots of stress from that.
- The appellant has leg and hip problems, which are shown in the X-rays. His spine also has arthritis and he is unable to do many things.
- He cannot put pressure on his legs.
- He is unable to work because of the pain in his leg, hip and back. The specialist has said positively that the appellant cannot work. They have offered surgery to replace many joints and the appellant cannot work. He needs ankle and hip joint replacements.
- The appellant cannot sleep, he cannot stand up from his bed, and go to the washroom. He needs help with all of these things.

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- The appellant's daughter has a young family and her mother has severe dementia so she is not able to help her father as much as he needs.
 - The appellant had not seen any doctor for many years and now he has many problems, which the specialists have confirmed.
 - The appellant uses a cane for walking and his daughter takes him longer distances in the wheelchair.
 - The appellant is awaiting surgery because he is so much pain. He was afraid to pursue surgery but now he realizes there is no other way.
 - The appellant's lower back is painful and he has difficulty lifting his left arm. He is not able to lift anything.
 - The appellant's daughter does all the cooking, laundry, and grocery shopping for the appellant and his wife. She does everything that needs to get done.
 - The appellant can take care of his personal care on his own.
 - The appellant has depression because his wife is sick. He also feels badly because he relies so much on his daughter.
 - When he had the fractures over 30 years ago, they were discussing amputation but decided to put metal reinforcement and there are remnants of bone in his leg. He used crutches after the surgery and then, after the fractures healed, he did not need them anymore.
 - He has trouble walking up stairs and long distances because his health is getting worse.
 - The GP has referred him to specialists and they have no complaints about the way he completed the reports because it was a misunderstanding. It was the specialist who said that the assessment was not accurate.
 - They are currently awaiting an appointment to clarify the surgery option. He is afraid of surgery.

The ministry relied on the reconsideration decision.

Admissibility of Additional Information

The panel considered the additional documents and the appellant's oral testimony as information that corroborates the extent of his impairment and clarifies his use of assistive devices, as referred to in the PWD application and the Request for Reconsideration, 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

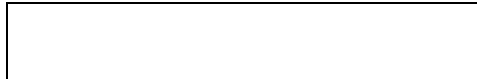
2 (1) For the purposes of the Act and this regulation, "**daily living activities**" ,

(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 in his left hip, left knee, and previous fractures of both ankles and his left femur. The appellant argued in the Request for Reconsideration that during the last 6 months, his health has become worse, his legs are getting weak and he is not able to walk any distances, and he requires a walking stick to assist him with walking. The appellant argued that lifting and carrying anything has become a problem as his arms and hands hurt and, due to a lot of pain, he is no longer able to sit for long periods of time. The appellant argued in his written submission that he has symptoms of a broken tibia and fibula, which include inability to walk and put any weight on the leg, use of wheelchair for outdoor and a cane for indoor mobility, deformity and instability in the leg, loss of feeling in the foot, suspicion of compartment syndrome and developing blood clots. The appellant argued that as a result of an absence of proper medical treatment in his country of origin and due to improper healing of the bone, his left leg is 4 centimeters shorter and he has lost ankle motion caused by traumatic arthritis and he expects many future complications. The appellant argued at the hearing that although he is afraid of surgery he is now considering ankle and hip replacements because he is in so much pain and there is no other way to secure relief.

The appellant argued in his written submission that he has a severe mental impairment due to a deep depression not only from his inability to continue healthy and wealthy living style because of his

illness but also because of his wife's dementia, and he is "on the border of suicide." The appellant argued that he is affected by sadness throughout the day, nearly every day, loss of interest in and enjoyment of favorite activities, feelings of worthlessness, excessive and inappropriate feelings of guilt, anxiety, trouble making decisions and concentrating, irritability, fatigue, aches and pains, sleep disturbance, change in appetite, and restlessness. 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, namely his daughter. In his written submission, the appellant argued that prescribed pain medications cause fatigue and decreased reaction time and, when he has severe pain of 10 on a scale of 10, it is impossible for him to work, as confirmed by the specialist.

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 does not require and aid for his impairment and he can walk less than one block unaided, or without the assistance of another or an assistive device, he can climb 5 or more steps again unaided, he can lift 5 to 15 lbs., and remain seated less than one hour. The ministry wrote that the self-report of the appellant that he cannot walk and he cannot lift anything did not correlate with the GP's assessment that he can walk less than one block unaided and lift 5 to 15 lbs. and that he is independent with walking indoors and outdoors, climbing stairs and standing. The ministry wrote that the GP indicated that the appellant has used a cane in the past but that the appellant felt it was not needed at the time of the application. The ministry wrote that while it is reported several times in the application that the appellant cannot work, the PWD application is not intended to assess employability or vocational abilities and a medical barrier to his ability to engage in paid employment is not a legislated criterion for severity. The ministry wrote that the additional x-ray reports and physician reports identified some deformities but wording such as "moderate", "minimal" and "mild" are used to describe the severity of the appellant's conditions throughout these reports.

The ministry wrote that the GP did not diagnose a mental condition and indicated the appellant has no significant deficits with cognitive and emotional functioning. The ministry wrote that a large majority of the appellant's application related to his physical impairments and the appellant did not mention any mental impairment in his self-report. 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 large majority of his DLA, including those activities that involve ambulation, and the appellant does not require an aid for his impairment. The ministry wrote that while it is evident that the appellant benefits from help from family members (laundry is "done by daughter"), the evidence suggests it is in the nature of the duty of family members to help each other when in need but it does not necessarily establish that such help is required as a result of the impairment since the appellant is assessed as independent in other activities that involve ambulation and lifting. 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 and the specialists.

In the PR, the GP, who had known the appellant for 2 years, diagnosed the appellant with osteoarthritis left hip, left knee, previous fractures both ankles, left femur. When asked in the AR to describe the mental or physical impairments that impact the appellant's ability to manage daily living activities, the GP wrote: "...patient states he has ongoing pain in both ankles, feet and hips, which reduces his mobility." At the time of the PWD application in February 2016, the GP reported in the PR that the appellant did not require an aid for his impairment and, in the AR, that he used a cane in the past and that he "...might use cane- he feels not needed now." At the time of the appellant's Request for Reconsideration on September 21, 2016, the appellant wrote that during the last 6 months, his health had become worse, his legs were getting weak and he was not able to walk any distances, and he required a walking stick to assist him with walking. In the letter dated September 21, 2016, which was not available at reconsideration, an orthopaedic surgeon wrote that the appellant "...continues to have an increasing amount of pain" and that "...he is barely able to walk at this point and is unable to stand for long periods of time." The specialist also wrote that the X-rays show increasing changes in terms of post-traumatic arthritis and that a referral has been made for a possible ankle fusion, which is the only option to achieve any kind of predictable pain relief. The GP wrote, in a letter dated November 22, 2016, that the appellant has decided he wants surgery as his ankle pain has deteriorated and his quality of life is not good.

In a letter dated November 2, 2016, another orthopaedic surgeon wrote that the appellant complains of severe anterior ankle pain 9 out of 10 severity, which is exacerbated by increased weight-bearing activity and the appellant also has some left hip and thigh pain. At the hearing, the appellant and his daughter stated that the appellant uses a cane for walking indoors and short distances outdoors and his daughter takes him longer distances in a wheelchair. While the GP reported in the PR that the appellant can walk less than 1 block unaided and climb 5 or more steps unaided and, in the AR, that the appellant is independent with walking indoors and outdoors, climbing stairs, and standing, the panel finds that the more recent evidence of the medical specialists indicates that the appellant's condition has deteriorated and that he now requires an assistive device for his mobility both indoors and outdoors, as the appellant argued at reconsideration.

In the PR, the GP reported that the appellant is able to lift 5 to 15 lbs., and remain seated less than 1 hour. In the AR, the GP indicated that the appellant requires periodic assistance from another person with lifting and he requires continuous assistance with carrying and holding. In his Request for Reconsideration, the appellant wrote that lifting and carrying anything has become a problem as his arms and hands hurt and, due to a lot of pain, he is no longer able to sit for long periods of time.

Given the information regarding the deterioration in the appellant's condition, as confirmed in the

additional letters by the orthopaedic surgeons and the GP, which are consistent with the information provided by the appellant at reconsideration, the panel finds that the ministry's conclusion that there was insufficient evidence of a severe impairment of physical functioning was not reasonable. Therefore, the panel finds that the ministry unreasonably 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 and the GP reported that the appellant has no significant deficits with cognitive and emotional function, no difficulties with communication, and no impacts to his social functioning. Although the appellant argued that he has a severe mental impairment due to a deep depression not only from his inability to continue healthy and wealthy living style because of his illness but also because of his wife's dementia, and he is "on the border of suicide," the GP reported in the AR that there are no major impacts to the appellant's cognitive and emotional functioning and only two moderate impacts in motivation and motor activity, with minimal or no impacts in the remaining areas of functioning. There were no additional letters from the GP or mental health specialists submitted on appeal to confirm a mental disorder diagnosis or to indicate that there has been a change in his mental health condition since the time of the PWD application.

Given the absence of a definitive mental health diagnosis and evidence of significant impacts to the appellant's cognitive, emotional and social functioning, the panel finds that the ministry reasonably determined that a severe mental impairment was not established under Section 2(2) of the EAPWDA.

Restrictions in the ability to perform DLA

Section 2(2)(b) of the EAPWDA requires that the ministry be satisfied that a prescribed professional has provided an opinion that an applicant's severe impairment directly and significantly restricts his ability to perform DLA, continuously or periodically for extended periods. In this case, the GP and the orthopaedic surgeons are the prescribed professionals. DLA are defined in Section 2(1) of the EAPWDR and are also listed in the PR and, with additional details, in the AR. Therefore, the prescribed professionals completing these forms have 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. Although the appellant argued in his written submission that prescribed pain medications cause fatigue and decreased reaction time, this has not been confirmed in the opinion of a prescribed professional. As previously discussed, while the GP reported in the AR that the appellant was independent with walking indoors and outdoors, the panel finds that the more recent evidence of the medical specialists indicates that the appellant's condition has deteriorated and that he now requires an assistive device for his mobility both indoors and outdoors.

However, in the AR, the GP indicated that the appellant is independent with performing all assessed tasks of the "pay rent and bills" DLA, the medications DLA, and transportation (getting in and out of a vehicle). For the personal care DLA, the GP assessed the appellant as being independently able to perform the tasks of dressing, grooming, bathing, toileting, feeding self, regulate diet, and transfers on/off of chair, and requiring periodic assistance from another person with transfers in/out of bed. The GP did not provide a description or explanation of the periodic assistance required with this task

of DLA in order to allow the ministry to determine that the periodic assistance is required for extended periods of time. At the hearing, the appellant stated that he can manage his personal care on his own.

For the basic housekeeping DLA, the GP reported in the AR that the appellant requires continuous assistance from another person with laundry, which is "...done by daughter," and the appellant is independent with performing the task of basic housekeeping. The panel finds that the ministry reasonably considered the assessment of a need for continuous assistance with laundry at the same time as being independent with the task of basic housekeeping, another relatively demanding physical activity that involves ambulation and lifting, in the absence of any detail provided by the GP to explain the distinction, to be inconsistent.

Regarding the shopping DLA, the GP reported that the appellant is independent with all but one task, as he requires periodic assistance from another person with the task of carrying purchases home, with no description or explanation provided by the GP of the extent of periodic assistance required. For the meals DLA, the GP indicated that the appellant requires continuous assistance from another person with the tasks of meal planning, food preparation and cooking, as well as periodic assistance with safe storage of food. Again, the GP did not provide a description of the periodic assistance required with safe storage of food to allow the ministry to determine that the periodic assistance is required for extended periods of time, or an explanation for the discrepancy between a need for assistance with tasks of the meals DLA that require lifting, standing and ambulating and independence with performing the physical task of basic housekeeping. At the hearing, the appellant's daughter stated that she does all the cooking, laundry, and grocery shopping for the appellant and his wife. However, the GP reported in the AR that the appellant remains independent with the tasks of going to and from stores, reading prices and labels, making appropriate choices, and paying for purchases when shopping. While the medical specialist indicated that the appellant's condition has deteriorated since the time of the PWD application, there was no further assessment provided on the appeal by a prescribed professional, either the GP or the orthopaedic surgeons, of the appellant's ability to perform specific DLA other than mobility.

Given an opportunity to update his assessment in the note dated October 20, 2016, the GP wrote that the appellant is not able to work. The appellant argued in his written submission that when he has severe pain of 10 on a scale of 10, it is impossible for him to work, as confirmed by the specialist. In the letter dated September 21, 2016, an orthopaedic surgeon wrote that working certainly is not possible for the appellant now. In the letter dated November 2, 2016, another specialist orthopaedic surgeon wrote that he thinks the appellant will have a hard time returning to his previous occupation due to his pain symptoms. The panel finds that the ministry reasonably determined 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 GP's assessment of the appellant's overall independence with DLA and a lack of detail to establish that the appellant requires periodic assistance for extended periods of time with some tasks, as well as the highlighted inconsistency in assessment regarding physically demanding tasks of DLA, the panel finds that the ministry reasonably determined that there was insufficient evidence from a prescribed professional of significant restrictions. 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.

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.