

## PART C – Decision under Appeal

The decision under appeal is the Ministry of Social Development and Social Innovation (the ministry) reconsideration decision dated November 24, 2016 that found that the appellant did not meet two 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 he has a severe mental impairment that, in the opinion of a medical practitioner, is likely to continue for at least two years. However, the ministry was not satisfied that the evidence establishes that:

- 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 appellant appeared emotionally distressed at the hearing, and the panel offered him an opportunity to take a recess if he needed a break.

The evidence before the ministry at the time of the reconsideration decision included the Person With Disabilities (PWD) Application comprised of the applicant information dated June 16, 2016, with no self-report provided, an unsigned and undated physician report (PR) completed by a general practitioner (GP) who has known the appellant since 2010 and has seen him 11 or more times in the past year, and an undated assessor report (AR) completed by a registered nurse (RN) who has known the appellant approximately 2 years, has seen him 2 to 10 times in the past year, and who filled out the form by way of an office interview and diagnostic and medical chart history.

The evidence also included the following documents:

- 1) Undated handwritten notes;
- 2) Letter dated June 12, 2014 from a gastroenterologist;
- 3) Letter dated January 25, 2016 from an eye physician and ophthalmic surgeon; and,
- 4) Request for Reconsideration dated October 25, 2016.

### ***Diagnoses***

In the PR, the appellant was diagnosed by the GP with diabetes and COPD [Chronic Obstructive Pulmonary Disease], date of onset 2015, chronic kidney disease with an onset in 2013, and anxiety with an onset in March 2016. In the AR, when asked to describe the mental or physical impairments that impact the appellant's ability to manage daily living activities, the RN wrote "shortness of breath, disabling anxiety, joint pain, dizziness with standing."

### ***Functional skills/abilities and Daily Living Activities (DLA)***

In the PR, the GP reported that:

- In terms of health history, the appellant has "...situational stress relating to unemployment has heightened anxiety, leading to difficulty making decisions, insomnia, fatigue and needing increased support with medical conditions."
- The appellant has been prescribed medications and/or treatments that interfere with his ability to perform DLA, described by the GP as "...needs regular blood sugar monitoring and food intake" and the anticipated duration of the medications/treatments is "lifelong."
- The appellant has no difficulties with communication, with a note: "...however increased anxiety is leading to memory lapse."
- Asked to indicate if the impairment directly restricts the appellant's ability to perform DLA, the GP responded "unknown."
- In the additional comments to the PR, the GP wrote: "too many stressors [leads to] inability to function to usual capacity."

In the AR, the RN reported that:

- The appellant has a good ability to communicate with speaking, a satisfactory ability with hearing, and a poor ability with reading and writing. The RN wrote: "difficulty concentrating and remembering."
- There are major impacts to cognitive and emotional functioning in the areas of bodily functions, consciousness, emotion, attention/concentration, psychotic symptoms, and other emotional or mental problems. There are moderate impacts in three areas: executive, memory and motor

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activity. There is a minimal impact in the area of language, with no assessed impacts for impulse control, insight and judgment, motivation, and other neuro-psychological problems. The RN wrote that that the appellant "...can only sleep in 3 to 4 hour intervals, diurnal rhythms totally disrupted, resulting in daytime drowsiness and sleep. Patient experiencing excessive situational anxiety resulting in decreased memory and concentration with mood disruption. Patient reports anxiety is so high he is unable to make grocery list, buy groceries on list, make purchase and carry groceries home. Patient has to rest 15 to 20 minutes on way home from grocery store to rest. Patient forgets items at grocery store. Paranoid thoughts about family."

- The appellant requires periodic assistance with walking indoors and walking outdoors, and the RN wrote: "significant short of breath with greater than 1 to 2 blocks."
- The appellant is independently able to perform every assessed task of the personal care DLA. Regarding the tasks of feeding self and regulate diet, the RN wrote that the appellant "...finds vegetables expensive and difficult to prepare to adhere to diabetic diet." For transfers on/off of chair, the appellant "...gets dizzy from lying to standing."
- For the basic housekeeping DLA, the appellant takes significantly longer than typical with doing laundry (note: "patient has to carry clothes") and he requires periodic assistance from another person with basic housekeeping.
- The RN provided additional comments that the appellant "...would like grab-bar on side of bed to assist to standing to prevent dizziness and falls. Patient has difficulty walking with heavy clothes to the Laundromat and must take rests."
- Regarding the shopping DLA, the RN did not provide an assessment of whether the appellant is independent, requires periodic or continuous assistance, uses an assistive device or takes significantly longer than typical with the listed tasks: going to and from stores, reading prices and labels, making appropriate choices, paying for purchases, and carrying purchases home.
- For the meals DLA, the appellant requires continuous assistance with the tasks of meal planning, food preparation and cooking, with no additional explanation or description provided. There is no assessment for the task of safe storage of food.
- For the pay rent and bills DLA, the appellant takes significantly longer than typical with budgeting (note: "patient owes a lot of money to bank"), with no assessment for banking and pay rent and bills.
- Regarding the medications DLA, the appellant is independent with taking his medication as directed and uses an assistive device for safe handling and storage [note: "...carries medicine in (illegible) tin"]. There was no assessment provided for the task of filling/refilling prescriptions, and the RN wrote "pick up from pharmacy 1 time per month."
- With the transportation DLA, the appellant is independent with getting in and out of a vehicle and requires periodic assistance from another person with using public transit (note: "needs help to get on/off bus due to pain and shortness of breath") and with using transit schedules and arranging transportation, with no further comments provided.
- For additional comments, the RN wrote that the appellant "...was laid off and did not get EI. Patient's ex-wife doesn't work and "loses" money, children don't have enough money."
- For social functioning, the appellant requires periodic support/supervision with interacting appropriately with others (note: "patient is too distracted"), and he requires continuous support/supervision with dealing appropriately with unexpected demands, and securing assistance from others (note: "patient has very little supports for assistance").
- The appellant has very disrupted functioning with both his immediate (note: "estranged from ex-wife who has custody of daughters- isolates them from him") and extended social networks (note: "patient feels very isolated since lost community of friends when lost job.")

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- Asked to describe the support/supervision required that would help to maintain the appellant in the community, the RN left this section of the AR incomplete.

In the Request for Reconsideration, the appellant wrote:

- Add diagnosis of depression- suicidal (no attempts), not sleeping.
- Chronic low back/right hip/right groin pain.
- Significant difficulty sitting and very slow walking.

### ***Need for Help***

The RN reported in the AR that the help required for DLA is provided by health authority professionals and community service agencies, and the RN referred to a cultural community center. For help required where none is available, the RN wrote: "...transit pass; support food preparation for diabetic diet." None of the listed assistive devices are indicated by the RN to be required by the appellant. For equipment required but not currently being used, the RN wrote that the appellant "would like a grab-bar to ambulate from bed to standing. Patient lives on second floor with no elevator- supportive living." The appellant does not have an assistance animal.

### ***Additional Information***

In his Notice of Appeal dated November 30, 2016 the appellant expressed his disagreement with the ministry's reconsideration decision and wrote that the decision is not a reasonable application of the law or a reasonable decision based on the evidence.

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

- He has a family problem. He has been working so hard but when he applied for EI, he was denied.
- For about 5 months he was working until late, he would get home and only have a short time to sleep before having to go back to work.
- He worries about his children.
- He cannot concentrate.
- He takes pills two times per day. He takes pills 30 minutes before he eats to help with heartburn and carries them with him in a tin, which is the item referred to in the AR as an assistive device. He also takes anxiety medication.
- He gave some money to his wife for his daughter but his wife did not give it to his daughter, so he will not give her anymore. They are fighting.
- He has considered ending his life because of his circumstances.
- The joints throughout his body are sore.
- He has to cook his food by himself because he does not know anyone who can cook his type of ethnic food and he cannot eat other types of food all the time. He tries to cook but often forgets whether he has already put an ingredient in, such as salt, and then adds some or gets mixed up and mistakenly puts in sugar instead, and may have to throw it out and start over again.
- He can do his cleaning for about 15 to 20 minutes and then he has to take a break and leave it until the next day.
- The nurse asked him questions about his daily living and gave the report to the doctor. He is concerned that he may not have been fully understood by the nurse. He did not talk to the doctor.



***Admissibility of Additional Information***

The panel admits the oral testimony under section 22(4)(b) of the *Employment and Assistance Act*, finding that it corroborates and adds detail to the information provided by the physician and the assessor (the RN) which was before the ministry at the time of the reconsideration.

The ministry relied on its reconsideration decision. At the hearing, the ministry clarified that the appellant is able to re-apply for PWD designation at any time if his appeal is not successful.

## PART F – Reasons for Panel Decision

The issue on the appeal is whether the ministry's reconsideration decision, which found that the appellant is not eligible for PWD designation, 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 appellant has a severe mental impairment but his DLA are not, 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, 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 person with disabilities (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) of the EAPWDR defines DLA for a person who has a severe physical or mental impairment as follows:

### **Definitions for Act**

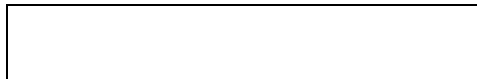
2 (1) For the purposes of the Act and this regulation, "**daily living activities**" ,

(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.

At reconsideration, the ministry was satisfied that the information provided is sufficient evidence of a severe mental impairment under Section 2(2) of the EAPWDA.

### **Direct and Significant Restrictions in the ability to perform DLA**

The appellant's position is that his severe mental impairment directly and significantly restricts his ability to perform DLA on an ongoing basis to the extent that he requires the significant assistance of another person. The appellant, through his advocate, argued that the ministry did not properly consider that the appellant is directly and significantly restricted in the two DLA that specifically apply to a person with a severe mental impairment, as set out in Section 2(1)(b) of the EAPWDR: making decisions about personal activities, care or finances, and relating to, communicating, or interacting with others effectively. The advocate noted that the ministry made a decision about the appellant's social functioning, but there is no category for social functioning in the legislation as the EAPWDR instead includes specific activities regarding making decisions and relating to others. The advocate argued that there is no requirement in the legislation that the medical practitioner provide evidence that the ability to perform DLA is directly and significantly restricted as it is sufficient that a prescribed professional provides this opinion, and the RN is a prescribed professional. The advocate argued that at least two DLA are directly and significantly restricted, meeting the requirement as articulated in the court decision in *Hudson v. Employment and Assistance Appeal Tribunal (EAAT)*, 2009 BCSC 1461.

The ministry's position is that the information from the prescribed professionals does not establish that the appellant's severe mental impairment significantly restricts his DLA either continuously or periodically for extended periods. Regarding the need for continuous assistance with meals as reported by the RN, the ministry noted the absence of information on the type or degree of assistance required. Regarding periodic assistance for other DLA, the ministry argued that no additional information is provided to explain the degree, the frequency, or the type of assistance that is required and overall, the help that is required remains unclear. Similarly, where the appellant is reported to take significantly longer with various activities, the ministry noted there is no information to explain how much more time is required, and the RN reported that the appellant is able to independently manage many areas of several DLA. The ministry further argued that there was no information provided to explain the type or degree of assistance the appellant requires with social functioning and it therefore could not be established that social functioning is significantly restricted.

#### *Panel Decision*

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 and the RN are both 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, a 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 has known the appellant since 2010 and made a mental health diagnosis in the PR of anxiety with an onset in March 2016. In the Request for Reconsideration, the appellant wrote that there is also a diagnosis of depression- suicidal with "no attempts." The GP reported that the appellant has been prescribed medications and/or treatments that interfere with his ability to perform DLA, and added that the appellant "...needs regular blood sugar monitoring and food intake," relating to his diabetes diagnosis, and the anticipated duration of the medications/treatments is "lifelong."

Despite having seen the appellant 11 or more times in the past year, when asked to indicate if the appellant's impairment directly restricts his ability to perform DLA, the GP responded "unknown" and did not provide an assessment for any of the listed DLA, including social functioning. While there is no requirement that the GP provide information regarding restrictions to DLA, as argued by the appellant's advocate, given that the GP has known the appellant for more than 5 years and has seen him frequently in the past year, the panel finds that the ministry was reasonable in placing weight on the response of "unknown" by the GP. The panel finds that the ministry reasonably determined that the GP's response that it is not known whether the appellant's impairment directly restricts his ability to perform DLA provides no information on the significance of his restrictions, especially in the area of social functioning which, for the purposes of this section of the PR, is defined to include "daily decision making" as well as "interacting, relating and communicating with others." The GP wrote in the additional comments to the PR, that "too many stressors [leads to] inability to function to usual capacity," but the GP did not provide any information about how, or in which specific areas, the appellant's ability to function is restricted. There was no additional information provided from the GP on the appeal to clarify the GP's opinion regarding restrictions to DLA, particularly with respect to the two DLA specific to a person with a severe mental impairment.



In the AR, the RN reported that the appellant requires periodic assistance with the “move about indoors and outdoors” DLA, and wrote: “significant short of breath with greater than 1 to 2 blocks.” The RN linked these restrictions to the appellant’s physical impairment and provided no description or explanation of how often the appellant requires assistance, or if the assistance is for greater than 1 to 2 blocks. The RN reported that the appellant is independent with every assessed task of the personal care DLA and wrote that the appellant “finds vegetables expensive and difficult to prepare to adhere to diabetic diet” and that the appellant “gets dizzy from lying to standing;” however, the RN did not indicate a need for assistance with the tasks of feeding self, regulate diet, transfers in/out of bed, or transfers on/off of chair and did not explain how any of the reported restrictions are linked to the appellant’s severe mental impairment.

For the basic housekeeping DLA, the RN reported that the appellant takes significantly longer than typical with doing laundry (note: “patient has to carry clothes”) and requires periodic assistance from another person with basic housekeeping. The RN provided additional comments that the appellant “would like grab-bar on side of bed to assist to standing to prevent dizziness and falls. Patient has difficulty walking with heavy clothes to the Laundromat and must take rests.” The RN related the restrictions to the appellant’s physical impairment and provided no description or explanation of how often the appellant requires assistance with housekeeping, or for how long, or how much longer than typical it takes him to do laundry while carrying loads to and from the Laundromat. At the hearing, the appellant stated that he can do his cleaning for about 15 to 20 minutes and then he has to take a break and leave it until the next day. The ministry was not satisfied that the appellant has a severe physical impairment and the panel finds that the ministry reasonably determined that there is insufficient information provided by the prescribed professional to allow the ministry to determine that the periodic assistance required for basic housekeeping is for extended periods of time.

For the shopping DLA, the RN provided no assessment by way of check marks in the AR of whether the appellant is independent, requires periodic or continuous assistance, uses an assistive device or takes significantly longer than typical with the listed tasks, specifically: going to and from stores, reading prices and labels, making appropriate choices, paying for purchases, and carrying purchases home. The RN wrote in the section of the AR relating to impacts to cognitive and emotional functioning that the appellant “...reports anxiety is so high he is unable to make grocery list, buy groceries on list, make purchase and carry groceries home. Patient has to rest 15 to 20 minutes on way home from grocery store to rest. Patient forgets items at grocery store.” The panel finds that this narrative by the RN is evidence that the appellant requires continuous assistance or he is unable to effectively make appropriate choices or purchases as part of the shopping DLA and that he has to rest when bringing purchases home; however, it is not clear how much longer than typical it may take him carrying purchases home. There is no comment regarding the appellant’s ability to go to and from stores or read prices and labels as part of the shopping DLA.

For the meals DLA, the RN reported that the appellant requires continuous assistance with the tasks of meal planning, food preparation and cooking, with no additional explanation or description provided. There is no assessment provided by the RN for the task of safe storage of food. At the hearing, the appellant stated that he has to cook his food by himself because he does not know anyone who can cook his type of ethnic food, he tries to cook but often forgets whether he has already put an ingredient in and this causes him to have to throw the food out and start over again.

For the “pay rent and bills” DLA, the RN indicated that the appellant takes significantly longer than

typical with budgeting, with the note: “patient owes a lot of money to bank,” which does not describe how much longer than typical the appellant takes with budgeting. There is no assessment and no comment by the RN for the tasks of banking and pay rent and bills. Regarding the medications DLA, the appellant is reported as independent with taking his medication as directed and that he uses an assistive device for safe handling and storage. At the hearing, it was clarified that the appellant uses a tin to carry his medication with him to take prior to meals, and the panel finds that the tin does not fall within the definition of an assistive device as set out in Section 2 of the EAPWDA, namely “...a device designed to enable a person to perform a DLA that, because of a severe mental or physical impairment, the person is unable to perform.” There was no assessment provided by the RN for the task of filling/refilling prescriptions, and the RN wrote “pick up from pharmacy 1 time per month,” which is indicative of independence with this task.

With the transportation DLA, the appellant is independent with getting in and out of a vehicle and requires periodic assistance from another person with using public transit (note: “...needs help to get on/off bus due to pain and shortness of breath”) and with using transit schedules and arranging transportation, with no further comment provided. Again, the ministry was not satisfied that the appellant has a severe physical impairment and the panel finds that the ministry reasonably determined that there is insufficient information provided by the RN to allow the ministry to determine that the periodic assistance for these tasks of the transportation DLA is required for extended periods of time, as set out in the legislation.

The advocate argued that with respect to the two DLA that are specific to mental impairment – make decisions about personal activities, care or finances (*decision making*), and relate to, communicate or interact with others effectively (*social functioning*), there is sufficient evidence to establish that the appellant is significantly restricted in both. Regarding the decision making DLA, the panel finds that the RN provided little information to indicate that the appellant is directly and significantly restricted in the decision-making components of DLA, specifically: the RN did not provide an assessment for the feeding self/regulate diet task of the personal care DLA; there was no assessment for the safe storage of food aspect of the meals DLA; the appellant takes longer with the budgeting aspect of “pay rent and bills” DLA with no indication as to how much longer than typical it takes the appellant; also, there is no assessment for the “pay rent and bills” aspect of this DLA; and, for the medications DLA, the appellant is independent with taking his medication as directed and there is no assessment for a need for assistance with safe handling and storage.

With respect to the transportation DLA, while the appellant requires periodic assistance with using transit schedules and arranging transportation, there is no indication by the RN of how often or for how long the appellant requires assistance to allow the ministry to determine that the periodic assistance is required for extended periods of time, as set out in the legislation. As previously discussed, the panel finds that the RN provided narrative that the appellant requires continuous assistance or he is unable to effectively make appropriate choices or purchases as part of the shopping DLA; however, although he also requires continuous assistance with most aspects of the meals DLA, particularly meal planning, there is no explanation or description of the appellant’s restrictions in this area.

The RN did not provide an assessment of the appellant’s ability to make appropriate social decisions, which includes avoiding situations dangerous to self or others, and good social judgment. In the PR, the GP wrote that “situational stress relating to unemployment has heightened anxiety, leading to difficulty making decisions, insomnia, fatigue and needing increased support with medical conditions”;

however, there was no detail provided by the GP regarding which aspects of decision making are impacted by the appellant's anxiety- and the GP did not indicate whether the appellant has difficulty making decisions about personal activities, care, or finances- or to what extent the appellant is experiencing difficulty.

Regarding the DLA of social functioning, the RN provided little information in the AR to confirm that the appellant is directly and significantly restricted. The RN did not provide an assessment in the AR for the appellant's ability to develop and maintain relationships and, while she reported a need for periodic support/supervision with interacting appropriately with others, the comment "patient is too distracted" does not explain or describe how often or for how long the appellant requires support or supervision in this area. The RN assessed the appellant as requiring continuous support/supervision from another person with securing assistance from others and commented that the appellant "...has very little supports for assistance." At the same time, the RN indicated in the AR that the help required for DLA is provided by health authority professionals and a cultural community center as part of community service agencies.

The RN indicated that the appellant has very disrupted functioning in both his immediate social network (note: "estranged from ex-wife who has custody of daughters- isolates them from him") and his extended social network (note: "patient feels very isolated since lost community of friends when lost job"). However, when asked to describe the support/supervision required that would help to maintain the appellant in the community, the RN left this section of the AR incomplete. Therefore, the information in the AR does not provide a complete picture of the appellant's need for support in relating to others. In the PR, the GP noted that the appellant's increased anxiety is leading to memory lapse but the GP reported that the appellant currently has no difficulties with communication; however, in the AR the RN indicated that the appellant has a good ability to communicate with speaking, satisfactory hearing, and poor ability to communicate with reading and writing due to "difficulty concentrating and remembering."

Considering the lack of information from the appellant's long-time GP regarding restrictions to DLA, especially with respect to the two DLA specific to a severe mental impairment, and the lack of detail from the RN regarding the extent of restrictions with some tasks of DLA and regarding the nature and frequency of assistance required, the panel finds that the ministry was reasonable to conclude that there is insufficient evidence from the prescribed professionals 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**

The appellant's position is that he requires the significant assistance of another person to perform DLA.

The ministry's position is that because it has not been established that DLA are significantly restricted, it cannot be determined that significant help is required from other persons.

### ***Panel Decision***

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 RN reported in the AR that the help required for DLA is provided by health authority professionals and community service agencies and, for help required where none is available, the RN wrote: "...transit pass; support food preparation for diabetic diet." None of the listed assistive devices are indicated by the RN as being required by the appellant and, as previously discussed, the panel finds that a tin to carry medication does not meet the definition of an assistive device under the legislation.

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.