

## PART C – Decision under Appeal

The decision under appeal is the Ministry of Social Development and Social Innovation (the ministry) reconsideration decision dated October 14, 2016 which found that the appellant did not meet the five statutory requirements of Section 2 of the *Employment and Assistance for Persons with Disabilities Act*, all of which must be met in order for the ministry to grant designation as a person with disabilities (PWD). The ministry found that the appellant met the age requirement. However, the ministry was not satisfied that the evidence establishes that:

- the appellant's impairment is likely to continue for at least two years;
- 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 consent of both parties, the hearing was conducted as a written hearing, pursuant to section 22(3)(b) of the *Employment and Assistance Act*.

The evidence before the ministry at the time of the reconsideration decision included the Persons With Disabilities (PWD) Application comprised of the applicant information and self-report dated April 5, 2016, a physician report (PR) dated April 14, 2016 and an assessor report (AR) dated June 9, 2016, both completed by a general practitioner (GP) who has known the appellant since June 2002 and has seen him 2 to 10 times in the past year.

The evidence also included the appellant's Request for Reconsideration dated September 27, 2016 including a typed statement by the appellant.

### **Diagnoses**

In the PR, the GP diagnosed the appellant with left knee pain, partial ACL [anterior cruciate ligament] tear, post meniscectomy. In the AR, asked to describe the mental or physical impairments that impact the appellant's ability to manage daily living activities, the GP responded "...left knee pain, using crutches most of the day to do daily living activities."

### **Duration**

In the PR, regarding the degree and course of the impairment, the GP did not indicate either a "yes" or "no" response to the question whether the appellant's impairment is likely to continue for two years or more and wrote "uncertain at this time. Physiotherapy was recommended but he was not able to continue because of cost."

In his Request for Reconsideration, the appellant wrote:

- His orthopedic surgeon understands his disability far better than his family doctor as it is in his area of specialization.
- According to his orthopedic surgeon, there is good reason to believe that his disability will continue for two years or more from today.

### **Physical Impairment**

In the PR and AR, the GP reported that:

- In terms of health history, the appellant had an initial injury in early 2015 and he had a meniscectomy in the summer of 2015 and "...he continued to have ongoing pain which limits his ability to work. He is limited due to pain when walking. He is currently using crutches to help ease the pain when he is walking. He developed some atrophy of his left leg muscles. There is some laxity of his ACL from partial tear."
- The appellant requires an aid for his impairment, and the GP wrote that the appellant "is currently using crutches."
- In terms of functional skills, the appellant can walk 2 to 4 blocks unaided (note: "when in pain"), climb 5 or more stairs unaided, lift 7 to 16 kg. (15 to 35 lbs.), with no limitation with the time remaining seated.
- The appellant is restricted periodically with mobility inside the home and restricted continuously with mobility outside the home. Regarding the periodic restrictions, the GP wrote that when the appellant is in pain, he needs to use crutches.

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- In the additional comments to the PR, the GP wrote that the appellant is limited with his mobility due to pain that he experiences after walking 3 blocks.
  - The appellant is assessed as independent with walking indoors, climbing stairs and standing (note: “for short period”), and uses an assistive device for walking outdoors (“uses crutches”), lifting and carrying and holding (note: “unable to carry when using crutches”).

In his self-report, the appellant wrote:

- His knee is not weight-bearing, which means he cannot stand without crutches.
- He has not been able to walk without crutches for a year.
- He cannot go outside and be physically active because he is supposed to be at home with his leg elevated.

In his Request for Reconsideration, the appellant wrote:

- He cannot stand for more than 5 minutes an hour, and has to be seated for roughly 23 hours a day.
- He requested that his orthopedic surgeon amputate his leg because then he would not be in pain when he moves about. The orthopedic surgeon explained that the appellant should wait and pursue other options first.
- He needs to use either: a wheelchair, a bike, or his crutches to get around daily.
- He must calculate how he will get to any location and where he will sit down along the way. If there is no other option, he will sit on the dirty pavement.

### ***Mental Impairment***

In the PR and AR, the GP reported:

- The appellant does not have difficulties with communication.
- The appellant has no significant deficits with cognitive and emotional function.
- The appellant is not restricted with social functioning.
- The appellant has a good ability to communicate in all areas, specifically: speaking, reading, writing and hearing.
- There is one minimal impact to the appellant’s cognitive and emotional functioning in the area of emotion. There were no impacts to the remaining areas of functioning, and no further comments provided by the GP.
- For social functioning, the appellant is independent in all areas, specifically: making appropriate social decisions, developing and maintaining relationships, interacting appropriately with others, dealing appropriately with unexpected demands, and securing assistance from others
- The appellant has good functioning in both his immediate and extended social networks.

In his self-report, the appellant wrote:

- He struggles to feel good about himself because he worries that he will be disabled for life, and some days he feels depressed.
- He does not see his friends and family often because he is not able to do most activities, and the social isolation he experiences leaves him struggling emotionally, and he is lonely.

In his Request for Reconsideration, the appellant wrote:

- It is isolating on his social life to not be able to walk, hike, swim, dance, or do anything that requires a body to move.

- When he stays isolated inside his home all day, it “wrecks” his mind.

### **Daily Living Activities (DLA)**

In the PR and AR the GP indicated that:

- The appellant has not been prescribed any medication and/or treatments that interfere with his ability to perform daily living activities.
- The appellant is not restricted with the DLA personal self care, meal preparation, management of medications, use of transportation, management of finances, and social functioning.
- The appellant is continuously restricted with basic housework, daily shopping, and mobility outside the home. Regarding the degree of restriction, the GP commented “...mild moderate depending on his pain.”
- The appellant is periodically restricted with mobility inside the home. The GP commented that “when in pain, needs to use crutches.”
- In the additional comments to the PR, the GP wrote that the appellant is “limited in his mobility due to pain that he experiences after walking 3 blocks. This has affected his ability [to] work and his ability to do basic needs like shopping or running errands like banking and socializing.”
- With respect to the assistance required, the appellant is independent with all of the tasks of several DLA, specifically: the personal care DLA, the meals DLA, the pay rent and bills DLA, and the medications DLA.
- The appellant is independent with walking indoors, and he uses crutches as an assistive device for walking outdoors as well as with the tasks of going to and from stores and carrying purchases home when shopping, and he uses crutches when using public transit.
- For the basic housekeeping DLA, the appellant requires periodic assistance with laundry and basic housekeeping. The GP provided no further comments.
- Regarding the shopping DLA, the appellant is independent with reading prices and labels, making appropriate choices and paying for purchases..
- For the meals DLA, the GP noted that the appellant is “unable to stand for long periods.”

In his self-report, the appellant wrote that:

- He cannot work at his job which requires him to be able to walk.
- His room-mates resent him for not being able to vacuum, sweep and mop the house because of his disability.
- To be in pain every time he moves, he chooses not to go grocery shopping, see friends, and do most of the things that make life worth living, until the pain of hunger or loneliness is greater than the pain in his leg.

In his Request for Reconsideration, the appellant wrote:

- He cannot shop for personal needs, use public transport, keep his home clean, move about indoors and outdoors, and prepare meals without assistance.
- When shopping, he has to be on crutches or he has to sit down as he cannot stand for longer than 5 minutes per hour.
- He cannot clean his house without assistance as taking out the trash and vacuuming often requires that he stand for longer than 5 minutes. The same is true for preparing meals and moving indoors and outdoors.
- When he uses public transport, he has to sit down on the sidewalk if there is no bench and if all the seats are taken, he often ends up getting off the bus.

***Need for Help***

In the PR, asked to describe the assistance the appellant needs with DLA, the GP wrote “he needs someone to help him with grocery shopping and housecleaning, i.e. vacuuming.” In the AR, the GP reported that, with respect to the assistance provided by other people, the appellant is helped by family and friends. In the section of the AR for indicating the assistance provided through the use of assistive devices, the GP identified crutches and wrote that the appellant “uses crutches with most of his activities of daily living, especially outdoors.”

***Appellant’s additional information***

In his Notice of Appeal dated October 26, 2016, the appellant expressed his disagreement with the ministry’s reconsideration decision and wrote that the decision is based on weak evidence. He needs to get stronger evidence for his case from his surgeon’s office, and this will take a couple of months as he is extremely busy. He requested time to prepare his evidence.

The panel notes that the Tribunal provided a 3-month extension of time for the appellant to forward a written submission on the appeal, and no further information was forthcoming.

The ministry relied on its reconsideration decision as the ministry’s submission in the appeal.

## 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 designation as a person with disabilities (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 appellant does not have a severe mental or physical impairment that, in the opinion of a medical practitioner, is likely to continue for at least 2 years. The ministry also found that his daily living activities (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 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 is in a prescribed class of persons or that the person has a severe mental or physical impairment that

(a) in the opinion of a medical practitioner or nurse 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).

The EAPWDR provides 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.

## **Part 1.1 — Persons with Disabilities**

### **Alternative grounds for designation under section 2 of Act**

2.1 The following classes of persons are prescribed for the purposes of section 2 (2) [persons with disabilities] of the Act:

- (a) a person who is enrolled in Plan P (Palliative Care) under the Drug Plans Regulation, B.C. Reg. 73/2015;
- (b) a person who has at any time been determined to be eligible to be the subject of payments made through the Ministry of Children and Family Development's At Home Program;
- (c) a person who has at any time been determined by Community Living British Columbia to be eligible to receive community living support under the Community Living Authority Act;
- (d) a person whose family has at any time been determined by Community Living British Columbia to be eligible to receive community living support under the Community Living Authority Act to assist that family in caring for the person;
- (e) a person who is considered to be disabled under section 42 (2) of the Canada Pension Plan (Canada).

### *The positions of the parties*

#### *Appellant's position*

The appellant's position is that according to his orthopedic surgeon, who understands his disability better than his family doctor, there is good reason to believe that his disability will continue for two years or more from today. The appellant's position is that he has a severe physical impairment as a result of pain in his left knee that is not weight-bearing and has caused him to have to walk with crutches for a year. The appellant argued that he cannot stand for more than 5 minutes an hour, and he requested that his orthopedic surgeon amputate his leg so he would not be in pain when he moves about. The appellant's position is that he has a severe mental impairment as he is sometimes depressed because he struggles to feel good about himself since he worries that he will be disabled for life, and he does not see his friends and family often because he is not able to do most activities. The appellant's position is that his physical and mental impairments directly and significantly restrict his ability to perform DLA on an ongoing basis because he cannot work at his job which requires him to walk, and he chooses not to go grocery shopping, see friends, and do most of the things that make life worth living, until the pain of hunger or loneliness is greater than the pain in his leg. The appellant argued that he cannot shop for personal needs, use public transport, keep his home clean, move about indoors and outdoors, and prepare meals without assistance since he has to be on crutches or sit down as he cannot stand for longer than 5 minutes per hour. The appellant argued that he needs to use either: a wheelchair, a bike, or his crutches to get around daily.

#### *Ministry's position*

The ministry's position, as set out in the reconsideration decision, is that the appellant's GP had not confirmed in the PR that the appellant's impairment will continue for two years or more since he wrote "uncertain at this time." The ministry found that there is not sufficient evidence from the GP to demonstrate a severe physical impairment, noting that the GP indicated that the appellant is able to walk 2 to 4 blocks unaided (note: "when in pain"), climb 5 or more steps unaided, lift 15 to 35 lbs., with no limitation with the time remaining seated. The ministry determined that the assessments provided by the GP also refer to his inability to work, which is not considered for the PWD designation, and speak to a moderate rather than a severe physical impairment. The ministry also found that there is insufficient evidence to establish that the appellant has a severe mental impairment as required by Section 2(2) of the EAPWDA as there is a minimal impact to cognitive and emotional functioning in the area of emotion and no restrictions with communication or social functioning.

As to DLA, the ministry's position is that the information from the prescribed professional does not establish that the appellant's impairments significantly restrict his DLA either continuously or periodically for extended periods of time. The ministry noted that although the GP assessed the appellant as being continuously restricted with some listed DLA, the GP assessed the degree of restrictions as "mild moderate" depending on his pain, and the frequency and duration of the periods of limitation are not described to allow the ministry to determine that these limitations represent a significant restriction to the appellant's overall level of functioning. 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**

#### **Duration**

Section 2(2)(a) of the EAPWDA requires that a medical practitioner or a nurse practitioner provide an opinion that the appellant's impairment is likely to continue for at least two years. In response to the



question in the PR whether the appellant's impairment is likely to continue for two years or more, the GP did not indicate either "yes" or "no" and wrote: "uncertain at this time. Physiotherapy was recommended but he was not able to continue because of cost." The appellant wrote in his Request for Reconsideration that according to his orthopedic surgeon, who understands his disability better than his family doctor, there is good reason to believe that his disability will continue for two years or more from today. Despite being provided with an extension of time to submit further information on the appeal, the appellant did not forward an update to the information provided by the GP in the PR, or additional information from his orthopedic surgeon. As there was no further information provided, the panel finds that the ministry's determination that the medical practitioner had not confirmed that the appellant's impairment will continue for two or more years from the date of the application, as required by Section 2(2)(a) of the EAPWDA, was reasonable.

### **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 appellant's GP.

The GP, who has known the appellant since June 2002, diagnosed the appellant with left knee pain from a partial ACL tear, post meniscectomy. The appellant had the meniscectomy in the summer of 2015 and "...he continued to have ongoing pain which limits his ability to work. He is limited due to pain when walking. He is currently using crutches to help ease the pain when he is walking. He developed some atrophy of his left leg muscles. There is some laxity of his ACL from partial tear." The appellant requires an aid for his impairment, and the GP wrote that the appellant "is currently using crutches," which, together with the GP's comment that the duration of the appellant's impairment is "uncertain," suggests that the appellant's use of crutches may be temporary. The appellant is restricted periodically with mobility inside the home as he needs to use crutches when he is in pain, and restricted continuously with mobility outside the home.

In his self-report, the appellant wrote that he has not been able to walk without crutches for a year and, in his Request for Reconsideration, he wrote that he needs to use either: a wheelchair, a bike, or his crutches to get around daily. The panel notes that a bicycle does not fall within the definition of an assistive device as set out in Section 2(1) of the EAPWDA as "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." The GP also reported in the PR that the appellant can walk 2 to 4 blocks without the assistance of an assistive device or another person and that this limitation is "when in pain." In the additional comments to the PR, the GP wrote that the appellant is limited with his mobility due to pain that he experiences after walking 3 blocks. The GP reported that the appellant can climb 5 or more stairs without the assistance of an assistive device or another person, lift 15 to 35 lbs., and he has no limitation with the time remaining seated.

In his self-report, the appellant wrote that his knee is not weight-bearing, which means he cannot

stand without crutches. However, in the AR the GP assessed the appellant as being as independent with walking indoors, climbing stairs and standing (note: “for short period”). The GP indicated that the appellant uses crutches for walking outdoors and lifting and carrying and holding, and he is “unable to carry when using crutches.”

The appellant wrote in his Request for Reconsideration, that the pain in his left knee is so severe that he requested that his orthopedic surgeon amputate his leg because then he would not be in pain when he moves about, and the orthopedic surgeon explained that the appellant should wait and pursue other options first. While the GP wrote in the PR that physiotherapy was recommended, the GP also reported that the appellant was not able to continue the physiotherapy because of cost. There was no further information provided regarding pain medications or the other treatment options recommended by the orthopedic surgeon and the effectiveness of these options in alleviating the appellant’s knee pain, short of amputation. Also, 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 absence of a consistent assessment by the GP of significant impacts to the appellant’s physical functioning, 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 and reported in the PR that the appellant has no significant deficits to cognitive and emotional functioning, but assessed the appellant with one minimal impact to cognitive and emotional functioning in the area of emotion. The GP assessed no impacts to the remaining areas of cognitive and emotional functioning. The appellant wrote that some days he is depressed because he struggles to feel good about himself since he worries that he will be disabled for life, and he does not see his friends and family often because he is not able to do most activities. The GP reported that the appellant is not restricted with social functioning, he is independent in all areas, and he has good functioning in both his immediate and extended social networks. The GP also indicated that the appellant has a good ability to communicate in all areas, specifically: speaking, reading, writing and hearing.

Given the absence of evidence from the GP 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 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 continuously or periodically for extended periods.

In the appellant’s circumstances, the GP reported that the appellant has not been prescribed any

medication and/or treatments that interfere with his ability to perform DLA. The GP reported in the PR that the appellant is not restricted with the DLA personal self care, meal preparation, management of medications, use of transportation, management of finances, and social functioning. With respect to the assistance required, the GP indicated that the appellant is independent with all of the tasks of several DLA, specifically: the personal care DLA, the meals DLA, the medications DLA, and the pay rent and bills DLA.

In the PR, while the GP indicated that the appellant is continuously restricted with basic housework, daily shopping, and mobility outside the home, the GP also assessed the degree of restriction as “mild moderate depending on his pain.” The appellant is periodically restricted with mobility inside the home, and the GP commented that “when in pain, needs to use crutches,” without providing a description of how often or for how long the appellant is in pain and the crutches are needed. In the PR, when asked to describe the assistance the appellant needs with DLA, the GP wrote “he needs someone to help him with grocery shopping and housecleaning, i.e. vacuuming.”

For the basic housekeeping DLA, the appellant requires periodic assistance with laundry and basic housekeeping and, again, the GP did not provide further comments to allow the ministry to determine that the periodic assistance is required for extended periods of time. The appellant wrote in his Request for Reconsideration that he cannot clean his house without assistance as taking out the trash and vacuuming often requires that he stand for longer than 5 minutes. The GP reported that the appellant is independent with walking indoors, and he uses crutches as an assistive device for walking outdoors as well as with the tasks of going to and from stores and carrying purchases home when shopping, and he uses crutches when using public transit. In his Request for Reconsideration, the appellant wrote that he has to be on crutches when he is shopping, or he has to sit down as he cannot stand for longer than 5 minutes per hour. The appellant wrote that when he uses public transport, if all the seats are taken, he often ends up getting off the bus.

In the additional comments to the PR, the GP wrote that the appellant is “limited in his mobility due to pain that he experiences after walking 3 blocks. This has affected his ability [to] work and his ability to do basic needs like shopping or running errands like banking and socializing.” In the PR, the GP reported that the appellant had an initial injury in early 2015, he had a meniscectomy in the summer of 2015, and “...he continued to have ongoing pain which limits his ability to work.” In his self-report, the appellant wrote that he cannot work at his job, which requires him to be able to walk. The panel finds that the ministry reasonably concluded that employability is not a criterion in section 2(2) of the EAPWDA nor is it listed among the prescribed DLA in section 2 of the EAPWDR.

Given the emphasis by the GP and the appellant on his inability to work, as well as the assessment by the GP of “mild-moderate” restrictions to DLA, and a lack of description of how often the appellant experiences exacerbations in his pain requiring his use of crutches with some tasks, the panel finds that the ministry was reasonable to conclude 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.

While the GP indicated that the appellant's family and friends provide help and the appellant uses crutches with most of his activities of daily living, especially outdoors, 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 since the evidence to not satisfy all of the criteria in 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.