PART C – Decision under Appeal

The decision under appeal is the reconsideration decision of the Ministry of Social Development and Social Innovation (the ministry) dated 01 December 2016 that denied the appellant designation as a person with disabilities (PWD). The ministry determined that the appellant did not meet all of the required criteria for PWD designation set out in the *Employment and Assistance for Persons with Disabilities Act*, section 2. Specifically, the ministry determined that the information provided did not establish

A) that the appellant's impairment in the opinion of a medical practitioner is likely to continue for at least 2 years, and

B) that he has a severe mental or physical impairment that in the opinion of a prescribed professional

(i) directly and significantly restricts his ability to perform daily living activities (DLA) either continuously or periodically for extended periods; and,

(ii) as a result of those restrictions, he requires help to perform those activities.

The ministry determined that the appellant met the other criterion: he has reached 18 years of age.

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 the appellant, a ministry worker attended the hearing as an observer.

The evidence before the ministry at reconsideration consisted of the following:

1. The appellant's PWD Designation Application dated 19 February 2016. The Application contained:
   - A Self Report (SR1) completed by the appellant.
   - A Physician Report (PR) dated 04 March 2016, completed by the appellant's general practitioner (GP) who has known the appellant since April 2015 and seen him 2-10 times in the past 12 months, with a consult letter dated 29 August 2014 from a dermatologist attached.
   - An Assessor Report (AR) dated 13 March 2016, completed by a registered psychologist (RP) who has known the appellant for approx. 2 years and seen him 2-10 time in the last year, with an attached letter dated 14 March 2016.
   - Medical reports (see below).
2. The appellant's signed Request for Reconsideration dated 18 July 2016, attached to which were further medical reports/letters.

In the PR, the GP diagnoses the medical conditions related to the appellant's impairment as spinal stenosis in the cervical region (onset 2010), spinal stenosis in the lumbar region (onset 2006), and psoriasis (onset ~1991). In the AR, the RP describes the appellant's impairments as considerable back/neck pain, which limits mobility and impacts mood ("Intermittent depression. At times negative mood states are exacerbated by rather serious psoriasis (significantly affecting self image)."

The panel will first summarize the evidence from the PR and the dermatologist's letter, and from the AR and the RP's letter, as it relates to the PWD criteria at issue in this appeal.

Duration

PR:
Asked whether the appellant's impairment is likely to continue for 2 years or more, the GP writes "uncertain." The GP explains: "neurosurgery pending – mid-2016 anticipated according to patient although I don't have confirmation from specialist. Decompression surgery has been offered to [patient]."

Severity/health history

Physical impairment

PR:
Under Health History, the GP reports:

- Psoriasis/arthritis: "Presently not impaired as he is on treatment [prescription medication] through specialist – see consult [by dermatologist]."
- Cervical spinal stenosis: "ongoing pain; worsened with activity; unable to perform labour

tasks [secondary to] worsening of symptoms."
- Lumbar spinal stenosis: "intermittent back pain, sensory changes; unable to perform previous labour/heavy work [secondary to] worsening symptoms.

The GP indicates that the appellant has not been prescribed any medication and/or treatments that interfere with his ability to perform DLA, commenting, "Ongoing re skin. May be able to decrease or stop medications after spinal decompression."

As to functional skills, the GP reports that the appellant can walk 2 - 4 blocks unaided, can climb 2 - 5 steps unaided, is limited to lifting under 5 lbs., and there is no limitation in remaining seated.

Under additional comments the GP writes:

> "Unable to work in areas of previous employment (see below) [secondary to] pain and neurological symptoms of pain right arm and back paresthesias and numbness.
> Activity worsens above.
> Surgery to decompress cervical spine pending and in the future may require same in lumbar spine."

The GP goes on to review the appellant's previous work history, noting that he will need retraining.

AR:
Regarding mobility and physical ability, the RP assesses the appellant as follows (comments in parenthesis): independent for walking indoors, walking outdoors, climbing stairs, standing, lifting (very limited), and carrying and holding (very limited).

Consult letter from dermatologist:
In her letter, the dermatologist confirmed the diagnosis of psoriasis, noting that the appellant has had this condition since age 20. He was started on a prescription medication six years ago. On examination, there were numerous well demarcated erythematous silvery scaly papules and plaques on the extensor aspects of the skin. The prescription medication was applied for and prescribed, with the risks, benefits and complications of treatment discussed.

Mental impairment

PR:
The GP assesses the appellant as having no difficulties with communications.

The GP indicates that the appellant has a significant deficit with cognitive and emotional function in the area of emotional disturbance (depression). The GP comments, "Has been on [anti-depressant prescription medication] since 2014. In remission – may be able to taper off."

AR:
The RP assesses the appellant's ability to communicate as good for speaking, reading, writing, and hearing.

Regarding cognitive and emotional functioning, the RP indicates that the appellant's mental impairment has the following impacts:

- Major impact: motivation and motor activity.
- Moderate impact: bodily functions, emotion, insight and judgment, attention/concentration, executive, and other emotional or mental problems.
- Minimal impact: consciousness, impulse control, memory, and language.
- No impact: psychotic symptoms and other neuropsychological problems

The RP comments: "at times a considerable decline in functioning (i.e. cognitive, motivational) during periods of depression."

RP's letter:
In his letter, the RP describes the circumstances under which he met with the appellant on a bi-weekly basis from August 2014 until mid-February 2016. He writes, "During our meeting the appellant generally presented in a mature manner, but clearly suffered with some rather significant medical concerns that at times appeared to impact his mood (i.e. intermittent periods of depressed affect). Given his chronic pain and mobility concerns, extreme psoriasis, and the accompanying mood issues, it is highly unlikely that he would be able to consistently maintain a normal level of functioning.

Ability to perform DLA

PR:
The GP indicates that the appellant's impairment does not directly restrict his ability to perform DLA.

The GP assesses the appellant as not restricted in all listed areas: personal self-care, meal preparation, management of medications, basic housework, daily shopping, mobility inside the home, mobility outside the home, use of transportation, management of finances, and social functioning.

AR:
The RP assesses the assistance required for managing DLA as follows (the RP's comments in parentheses):

- Personal care – independent in all aspects.
- Basic housekeeping – Independent in all aspects.
- Shopping – Independent in all aspects.
- Meals – independent in all aspects (May be some cognitive processing difficulties during periods on decreased affect).
- Pay rent and bills – independent in all aspects (May be some cognitive processing difficulties during periods on decreased affect).
- Medications – independent.
- Transportation – takes significantly longer than typical for getting in and out of a vehicle (mobility limitations); independent for using public transit and using transit schedules and arranging transportation.

The RP adds: "[The appellant's] general functioning is at times compromised considerably when in depressed state (low energy, some cognitive distortion, low frustration tolerance, self-esteem issues, etc.)."

With respect to social functioning, the RP assesses the appellant as independent for making appropriate social decisions and ability to develop and maintaining relationships; the appellant is assessed as requiring periodic support/supervision for interacting appropriately with others (depression related deficits – intermittent), ability to deal appropriately with unexpected demands, and ability to secure assistance from others.

The RP assesses the impact of the appellant's mental impairment on his immediate social and extended social networks as marginal functioning.

Help provided/required

PR:
The GP indicates that the appellant does not require any prostheses or aids to compensate for his impairment.

AR:

The RP does not describe the support/supervision the appellant requires that would help maintain him in the community or identify any safety issues.

The RP indicates that help is provided to the appellant by family.

The RP does not indicate that the appellant requires any of the listed aids to compensate for his impairment.

Self report

In his SR, the appellant describes his disability as follows:

1. Periodic psoriasis – if he stops taking his injections, his psoriasis would come back and also the arthritis. This would send him into a depressive state and the psoriasis would cover his body.
2. Severe neck pain, affecting mostly his left arm and now starting to move to his right arm.
3. Lower back pain, which is making his butt and legs tingle and affects is walking and trying to do everyday things.

He writes that all of these are getting progressively worse

Request for reconsideration

Under Reasons, the appellant writes that he will be getting an MRI on his lower back as the numbing of his buttocks is getting worse and he needs to get another bone fusion, This one on his lower back. He has no idea how this will turn out. Walking and standing is getting progressively worse – one flight of stairs.

Medical reports

1. Consult report from a neurologist dated 13 March 2012, who summarizes his findings by writing that the only electrophysiological abnormality is some mild to moderate slowing of

motor conduction across the elbow segment. This does not correlate with the appellant's physical description of symptoms, and therefore may be an incidental finding. Clinically there is an impression that he may have some radiculopathy at the C-5 or C-6 level, based on his distribution of sensory symptoms and the mildly decreased right's brachioradialis reflex compared with the left. The absence of electrophysiological confirmation of radiculopathy does not exclude this diagnosis should it remain a clinical consideration.

2. Diagnostic imaging report of a CT scan of the cervical spine dated 03 May 2012. The report notes degenerative disc narrowing from C2 to C7, with severe degenerative disc narrowing at C5-C6 and very severe tight foraminal encroachment related to Luschka and osteophytes.
3. Radiology report dated 25 September 2015. Impression: multilevel degenerative disc disease. Small central disc herniation at C4-5. Small left foraminal disc herniation C5-6. Tiny left posterolateral disc herniation C6-7. No other focal disc herniation noted. Mild spinal stenosis C4-5 and C6-7 with mild to moderate spinal stenosis C5-6 with cord flattening and C5-6. No myelopathic signal change. Right C4-5 and bilateral C5-6 bony foraminal narrowing.
4. Letter from a neurosurgeon dated 07 October 2015. The neurosurgeon writes that at that time the appellant is not inclined to have surgery but if his left arm pain becomes too severe the situation can be reviewed. At the present time his left arm pain is well treated with a prescription analgesic. From the limited investigation it appears that the appellant has a congenitally narrow spine from L4 to S1.
5. Radiology report dated 05 Oct 2015. Impression: Moderate to severe spinal stenosis L4-5 and L5-S1 secondary to congenitally small canal and concentric disc bulging. No discrete disc herniation.
6. Radiology report dated 19 August 2016. Impression: multilevel spinal stenosis most marked at L4-5 and L5-6 with critical spinal stenosis.

Notice of Appeal

In his Notice of Appeal, dated 02 September 2016, the appellant writes:

> "Physical health conditions have progressed/worsened since the original application & reconsideration.
> I am now seeking community advocacy support to adequately report & display my physical health impairments."

Information submitted before the hearing

In a letter dated 12 January 2017, the appellant's GP writes that she has been the appellant's family physician for the past 18 months. She continues:

> "During that time I have been involved in the assessment of the appellant's chronic pain which has been significant and kept him from working as well as doing some activities of daily living as described in his self report.
>
> It has taken time to identify that he has had both severe cervical spine and lumbar spine stenosis (narrowing of the spinal canal with pressure on the spinal nerves). Surprisingly,

at a young age, he is candidate for decompression surgery to open up the nerves in his neck and lower spine. He had cervical spine decompression surgery last year which has relieved his symptoms by about 80 percent. Although variable, most days he has numbness and discomfort of his buttock area into the legs and needs to sit down to relieve his symptoms after walking about half a block. This has prevented him from being able to apply for and undertake any type of work as he must change positions frequently to relieve his symptoms. He has not been able to exercise.

He is awaiting decompression surgery to his lower spine but this could be 6-12 months away with a 6-18 month recovery time. It is uncertain what his response to surgery will be and what sort of work he will be able to do after he recovers and spends time in conditioning himself.

Certainly at this point in time and for the next two years or more years he is unable to undertake work due to his medical problems. Assuming he has his surgery within 6-12 months I am unable to comment further on what his ongoing restrictions will be in approx. 2019-2020 when he should have stabilized and recovered from the procedure he is waiting for."

In an undated submission, the appellant provides a Self Report (SR2) on how his physical and mental health conditions impair his functioning and negatively impact his daily living activities, forcing him to seek daily assistance from others.

In describing the severity of his impairment, the appellant writes:

"With a diagnosis of both cervical and lumbar spinal stenosis, I experience constant physical pain, throbbing, numbness in my middle to lower back, buttocks, hips, legs, and feet, as well as an clumsiness and balance disturbances. This pain – in the form of sharp, shooting pains, cramping, and tingling sensations – quickly worsens when walking even short distances (1+ block) and requires that I sit immediately (for minutes at a time) to allow the painful sensations to subside.

On my worst days (10-15 days/month), I cannot get out of bed because it feels like I am holding a 100 pound backpack with pressure right on my lower back. In this condition, I must stay in bed until my prescribed medications kicks in (often 10-20 minutes). Without medication, I do not leave my bed until required to for an appointment, to make a simple meal, or go to the washroom.

My depression also serves to significantly impact my ability to care for myself. On my worst days (roughly, 10-15 days/month) I cannot get out of bed unless it is to eat and go to the bathroom. I do take medication for this; however, on my worst days, it is not as effective as I require.

If I engage in strenuous activity – such as walking for 1-2+ blocks, lifting and carrying groceries or laundry, and completing housecleaning tasks – I am in extreme pain for the next 2-3 days. Even while sitting for 1 hour to compose this letter, the centre of my back is throbbing from my aggravated nerves."

The appellant goes on to describe how his impairment restricts his ability to perform DLA. For example, for personal care the appellant writes:

"On my worst day, I cannot get out of bed due to my physical pain and my frequent

depressive states. If forced out of bed, it takes me roughly 10 minutes to do so – ensuring that I do not pull or strain a muscle in my back with swift movements. On my worst days, I do not shower. When I do, I must hold onto the tub or wall to get in or out to ensure my balance and to avoid any quick or unexpected movements. To wash my lower body, I must lean against the wall or sit in the tub as I cannot bend forward to reach my lower extremities. When getting dressed even on my best day, I must always sit to put on my pants, socks or shoes – having to pull my feet up onto my knee or on furniture because I cannot stand and balance on 1 foot or bend forward. At my worst (10-15 days/month), my depression is so severe that I lack all motivation for personal care or hygiene and am unable to get out of bed. I do take medication for depression but, on my worst days, it is not as effective as needed."

The appellant provides similar descriptions on how his impairment restricts his ability to perform the DLA of preparing meals, shopping for personal needs, moving about indoors and outdoors, and using public transportation, describing his limitations on his worst days (10-15 days/month).

Regarding his mental health, the appellant writes:

"In terms of my mental health, I am negatively impacted by my depression on a daily basis. While my medication does assist me, it is not entirely effective on my worst days. Roughly 10-15 days of the month, it is all I can do to make a simple meal (cereal) and return to my bedroom. My mental health largely affects my ability to socialize and interact with others and causes me to pull away from friends and family for days of a time. Being alone is all that I can handle, which becomes quite unsafe for me because I rely on my family for daily assistance."

In terms of help required with DLA, the appellant writes:

"I rely on my brother for regular transportation each week for appointments and errands like grocery shopping and laundry. My brother also gives me weekly meals as my physical and mental health impairments make it difficult to prepare my own meals. I rely on my mother for transportation – often, because I end up stranded in areas of the city after attempting to walk longer distances (3-5+ blocks). She provides me with meals that can be microwaved as my impairments negatively impact my nutritional care. Without my family, I cannot effectively care for my basic needs as these supports are so significant in helping me to cope with the challenges of daily life."

The hearing

At the hearing, the appellant stated that his condition had worsened since his original application. He explained that there was some improvement with the pain in his neck and shoulder area since his surgery last summer; however the pain in his lower back and his legs was worse. He explained that this was the first time that he had had to submit the kind of paperwork needed by the ministry and that recently he was fortunate to have found person from an advocacy organization to help him describe his current condition. He referred the panel to the description of the severity of his impairment, his limitations in performing DLA, and the help he requires as written up in his submission on appeal.

The appellant advised the panel that he was now scheduled for surgery for his lower back on 22

February 2017, much sooner than he had anticipated, but there is always the possibility that the surgery could be cancelled.

The ministry stood by its position at reconsideration.

Admissibility of additional information

Section 22(4) of the *Employment and Assistance Act* (EAA) provides that panels may admit as evidence (i.e. take into account in making its decision) the information and records that were before the minister when the decision being appealed was made and "oral and written testimony in support of the information and records" before the minister when the decision being appealed was made – i.e. information that substantiates or corroborates the information that was before the minister at reconsideration. These limitations reflect the jurisdiction of the panel established under section 24 of the EAA – to determine whether the ministry's reconsideration decision is reasonably supported by the evidence or a reasonable application of the enactment in the circumstances of an appellant. That is, panels are limited to determining if the ministry's decision is reasonable and are not to assume the role of decision makers of the first instance. Accordingly, panels cannot admit information that would place them in that role.

The panel acknowledges that, during the lengthy time between when the appellant submitted his PWD application in March 2016 and when the reconsideration decision was made on 01 December 2016, his condition had changed, with some improvement in the neck and shoulder area due to surgery in the summer and a worsening of the situation in the lower back, with resulting implications for how and to what degree his functioning is restricted. These changes are reflected in the appellant's self-report (SR2) and the GPs letter submitted on appeal and the panel must consider their admissibility as evidence.

At the hearing, the ministry objected to the admissibility of SR2 and the GP's letter, arguing that the information in these submissions was not in support of the information before the ministry at reconsideration.

On reviewing SR2, the panel notes that the appellant describes restrictions in his ability to function on his "worst days (10-15 days/month)," while there is no such reference to worst days in the original application. Also, his descriptions of his restrictions and the need for assistance from his brother and mother are not consistent with those provided by the GP in the PR, who indicated that he was not restricted in performing any DLA, and by the RP in the AR, who despite indicating that assistance is provided by family, assess the appellant as independent in performing almost all DLA tasks. In addition, the appellant's description that when walking even short distances (1+ block) he needs to sit (for minutes at a time) to allow his pain to subside is not consistent with the GP's assessment that he is able to walk 2-4 blocks unaided. As the descriptions in SR2 cannot therefore be said to corroborate or substantiate the information before the ministry at reconsideration, the panel finds that SR2 is not admissible as evidence under section 22(4) of the EAA.

As to the GP's letter submitted at on appeal, for the same reasons as discussed above the panel does not admit as evidence that part of the letter describing the appellant's need to sit down to relieve his symptoms after walking about half a block and the reference that his condition has

kept him from doing some activities of daily living as described in the self-report.

The panel finds that the GP’s discussion of the appellant's prognosis in the letter tends to corroborate her comments regarding duration in the PR. The panel therefore admits this information as evidence. (See however Part F, Reasons for Panel Decision, below under Duration)

PART F – Reasons for Panel Decision

The issue in this appeal is whether the ministry decision that determined that the appellant did not meet four of the five statutory requirements of Section 2 of the *EAPWDA* for designation as a person with disabilities (PWD) is reasonably supported by the evidence or is a reasonable application of the legislation in the circumstances of the appellant. The ministry found that the appellant met the age requirement. However, the ministry was not satisfied that the evidence establishes that:

- in the opinion of a medical practitioner, his impairment is likely to continue for at least two years;
- the appellant has a severe physical or mental impairment;
- the appellant's ability to perform 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.

The following section of the *EAPWDA* applies to this appeal:

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 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.

The following section of the EAPWDR applies to this appeal:

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.

Duration

The appellant's position

The appellant's position is that on appeal his GP wrote: "Certainly at this point in time and for the next two years or more years he is unable to undertake work due to his medical problems." In providing this information, the GP has confirmed that he meets the duration criterion.

The ministry's position

In the reconsideration decision, the ministry noted that in the PR, the appellant's impairment is likely to continue for two years or more, writing: "uncertain" and "neurosurgery pending – mid-2016 anticipated according to patient although I don't have confirmation from specialist. Decompression surgery has been offered to [patient]." The position of the Ministry is that, based on information provided by the GP, the ministry cannot establish that, in the opinion of a medical practitioner or nurse practitioner, the appellant's impairment is likely to continue for at least 2 years

Panel decision

The legislation requires that the minister be satisfied that in the opinion of the medical practitioner or a nurse practitioner the applicant's impairment is likely to continue for at least 2 years. In the panel's view, the 2 year period begins at the time of application, in this case in March 2016, when the medical practitioner is asked the question in the PR. The panel notes that the medical practitioner is asked to

provide an opinion as to likelihood, rather than certitude.

In the PR, the GP did not provide such an opinion, writing instead, “uncertain.” In her letter on appeal, the GP wrote, “He is awaiting decompression surgery to his lower spine but this could be 6-12 months away with a 6-18 month recovery time. It is uncertain what his response to surgery will be and what sort of work he will be able to do after he recovers and spends time in conditioning himself.” The panel notes that under a best-case scenario, with the appellant's surgery now scheduled for 22 February 2016 and 6-month (or even a 12-month) recovery period, he would be “recovered” before the end of the 2-year period, before March 2018. However, the panel considers it reasonable that the ministry would expect a firm opinion from the medical practitioner, rather than making an arbitrary determination within a range of best and worst case scenarios.

The GP writes in her letter submitted on appeal, “Certainly at this point in time and for the next two years or more years he is unable to undertake work due to his medical problems.” However, this opinion relates to the appellant’s ability to work. Employability is not a criterion for PWD designation and is not necessarily a function of the presence or absence of a severe impairment significantly restricting the ability to perform DLA to the degree that help is required.

Accordingly, the panel finds that the ministry was reasonable in determining that the information provided did not establish that the appellant met the duration criterion.

Severity of impairment

Physical impairment

The appellant’s position

The position of the appellant is that, as he has been diagnosed with cervical and lumbar spinal stenosis with accompanying pain and numbness in his limbs affecting his mobility and lifting ability, and the resulting need for corrective surgeries, it was unreasonable for the ministry to have determined that he does not have a severe physical impairment.

The ministry’s position

In the reconsideration decision, the ministry reviewed the information provided by the GP in the PR and by the RP in the AR. The ministry noted in particular the GP’s assessments that appellant can walk 2 - 4 blocks unaided, can climb 2 - 5 steps unaided and is limited to lifting under 5 lbs. The ministry stated that these assessments are not considered indicative of a severe impairment of physical functioning. The ministry also referred to the GP's comments that the appellant is unable to work in areas of previous employment, and stated that for the purposes of determining eligibility for PWD designation an applicant’s employability or ability to work is not taken into consideration. In addition, the ministry noted that while the RP commented that the appellant “suffers considerable back/neck pain which limits mobility,” he also indicates that the appellant is independent with all areas of mobility and physical ability.

Based on the assessments provided by the GP and RP and the supplementary medical documents included with the PWD application/reconsideration, the ministry acknowledged that although the

appellant is limited with regard to his ability with lifting, a severe impairment of his physical functioning has not been established.

Panel decision

A diagnosis of a serious medical condition does not in itself determine PWD eligibility. Under the legislation, eligibility for PWD hinges on an "impairment" and its severity. An "impairment" is more than a diagnosed medical condition. An impairment is a medical condition that results in restrictions to a person's ability to function independently, appropriately, effectively or for a reasonable duration.

To assess the severity of impairment one must consider the nature of the impairment and the extent of its impact on daily functioning, as evidenced by functional skill limitations and the degree to which the ability to perform DLA is restricted. The legislation makes it clear that the determination of severity is at the discretion of the minister, taking into account all of the evidence. However, the legislation is also clear that the fundamental basis for the analysis is the evidence from a medical practitioner and a prescribed professional – in this case, the appellant's GP and RP. The legislation requires that for PWD designation, the minister must be "satisfied" that the person has a severe mental or physical impairment.

For the minister to be "satisfied" that the person's impairment is severe, the panel considers it reasonable for the ministry to expect that the information provided by the medical practitioner and prescribed professional presents a comprehensive overview of the nature and extent of the impacts of the person's medical conditions on daily functioning.

The GP diagnosed the appellant with cervical and lumbar spinal stenosis and with psoriasis. With regard to the latter, the GP notes that the appellant is "presently not impaired as he is on treatment" through a dermatologist. As to the spinal stenosis in the cervical area, the GP notes, "ongoing pain; worsened with activity; unable to perform labour tasks [secondary to] worsening of symptoms," and for the lumbar region "intermittent back pain, sensory changes; unable to perform previous labour/heavy work [secondary to] worsening symptoms." As the ministry noted, employability or the ability to work is not a criterion for PWD designation.

Regarding the impacts of these medical conditions on daily functioning, the GP assessed the appellant as able to walk 2 - 4 blocks unaided, climb 2 - 5 steps unaided, limited to lifting under 5 lbs., with no limitation to remaining seated. Except for the limitation with regard to lifting, the panel considers the other assessments to be in the moderate range and finds the ministry was reasonable in determining that these assessments did not establish a severe physical impairment. In terms of other reported impacts, the panel notes an inconsistency within the PR, between the above assessments and the GP indicating that the appellant is not restricted in his ability to perform DLA, including not being restricted for mobility inside the home or outside the home or for other DLA requiring physical effort such as basic housework or daily shopping.

Similarly in the AR, the RP assesses the appellant as independent for walking indoors, walking outdoors, climbing stairs, and standing, as well as for lifting and carrying and holding while noting "very limited."

Considering these assessments and the inconsistency discussed above within the PR, the panel

finds the ministry was reasonable in determining that the information provided did not establish a severe physical impairment.

Mental impairment

The appellant's position

The position of the appellant is that he suffers from severe depression. Even though he takes prescription antidepressant medication, as his RP writes, "Given his chronic pain and mobility concerns, extreme psoriasis, and the accompanying mood issues, it is highly unlikely that he would be able to consistently maintain a normal level of functioning." This is substantiated by his GP identifying a significant deficit in cognitive and emotional functioning in the area of emotion and the RP assessing major impacts of his mental impairment in 2 areas of daily functioning and moderate impacts in 6 areas. Given his evidence, the ministry was unreasonable in determining that he does not have severe mental impairment.

The ministry's position

In reviewing the information provided in the PR and AR, the ministry noted that the GP does not indicate significant deficits for the majority of listed areas of cognitive and emotional functioning and indicates that he is not restricted with social functioning. The ministry also noted that in the AR the RP does not describe the frequency or duration of periods of depression and that while the RP indicates major impacts to cognitive and emotional functioning in the areas of motivation and motor activity, and moderate impacts to attention/concentration and executive, the GP does not indicate significant deficits to cognitive and emotional functioning in these areas. The ministry therefore found that it is difficult to establish a severe impairment of mental functioning based on the RP's impact assessments.

The ministry also noted that although the GP indicates that the appellant is not restricted with social functioning, the RP indicated the need for periodic support/supervision for interacting appropriately with others, dealing appropriately with unexpected demands, and being able to secure assistance from others, but did not describe the frequency or duration of such support. The ministry further noted that, while describing how the appellant's mental impairment impacts his relationship with his immediate social network as marginal functioning, the RP indicated that he is provided assistance by his family.

Based on these assessments, the ministry found that a severe impairment of mental functioning had not been established

Panel decision

The panel notes that the GP has not diagnosed a mental health condition as an impairment. While she identified a significant deficit in cognitive and emotional functioning in the area of emotion, she commented, "Has been on [anti-depressant prescription medication] since 2014. In remission – may be able to taper off." The panel also notes that both the GP and the RP assessed the appellant as having no difficulties in communication. Further, as the ministry noted, while the GP assessed the appellant with no restriction in social functioning, the RP assessed the appellant is requiring

support/supervision in three areas, but did not provide any information as to the frequency and duration, and type and degree of such support supervision.

In making his assessments on the impact of the appellant's mental impairment on daily functioning, including the assessment of major impacts on motivation and motor activity, the RP commented "at times a considerable decline in functioning (i.e. cognitive, motivational) during periods of depression." However, as the ministry noted, there is no description of the frequency of these periods of depression, making it difficult for the ministry to determine the severity of these impacts.

Considering the GP's assessments and the lack of information provided by the RP, the panel finds the ministry was reasonable in determining that the information provided did not establish a severe mental impairment

Direct and significant restrictions in the ability to perform DLA

The appellant's position

At the hearing, the appellant acknowledged that the assessments provided by his GP and RP were incomplete, as his prescribed professionals did not describe how much he was restricted in performing DLA on his worst days, which occur 10-15 days/month. He referred the panel to the self-report submitted before the hearing.

The ministry's position

In the reconsideration decision, the ministry reviewed the assessments provided by the GP and the RP. The ministry noted that in the PR, the GP indicates that the appellant is not directly restricted in his ability to perform daily and that he is not restricted with all listed areas of DLA. The GP also wrote "None" with regard to the assistance the appellant needs with DLA.

The ministry also reviewed in detail the assessments provided by the RP in the AR, concluding that the RP indicated that the appellant is independent with the majority of listed areas of DLA.

Based on these assessments. The ministry found that there is not enough evidence to confirm that the appellant has a severe impairment that significantly restricts his ability to perform DLA continuously or periodically for extended periods

Panel decision

The panel notes that, according to the legislation, the direct and significant restriction in the ability to perform DLA must be a result of a severe impairment, a criterion that has not been established in this appeal. The legislation – section 2(2)(b)(i) of the *EAPWDA* – requires the minister to assess direct and significant restrictions of DLA in consideration of the opinion of a prescribed professional, in this case the appellant's GP or RP. This does not mean that other evidence should not be factored in as required to provide clarification of the professional evidence, but the legislative language makes it clear that the prescribed professional's evidence is fundamental to the ministry's determination as to whether it is "satisfied." And for the minister to be "satisfied," it is reasonable for the ministry to expect that a prescribed professional provides a clear picture of the degree to which the ability to perform

DLA is restricted in order for the ministry to determine whether the restrictions are “significant.”

As the ministry noted, in PR the GP indicates that the appellant is not directly restricted in his ability to perform DLA and that he is not restricted with all listed areas of DLA.

In the AR, the RP assesses the appellant as independent for walking indoors, walking outdoors and climbing stairs – that is, independent for the DLA of moving about indoors and outdoors. In terms of the other DLA requiring physical effort, the RP assesses the appellant as independent for all listed tasks except for getting in and out of a vehicle under the transportation DLA, where he is assessed as taking significantly longer than typical (“mobility limitations”). While the RP notes that for meals and paying rent and bills there “may be some cognitive processing difficulties during periods on decreased affect,” and provides a general comment that “The appellant's] general functioning is at times compromised considerably when in depressed state (low energy, some cognitive distortion, low frustration tolerance, self-esteem issues, etc.,” the RP has not provided any information as to the frequency or duration of the appellant's periods of depression.

The GP and the RP have indicated that the appellant does not require any aids to compensate for his impairment.

In addition to the above DLA, there are 2 somewhat overlapping DLA (the “social functioning” DLA) applicable to a person with a severe mental impairment (not established in this appeal): make decisions about personal activities, care or finances and relate to, communicate or interact with others effectively.

The GP assessed the appellant as not restricted for social functioning.

Regarding the decision-making DLA, the RP assessed the appellant as independent for all aspects of personal care, making appropriate choices within the DLA of shopping, meal planning within the DLA of meals, and for all aspects and paying rent and bills and medications. The RP assessed the appellant as independent with regard to making appropriate social decisions and requiring periodic support/supervision for dealing appropriately with unexpected demands and securing assistance from others.

In terms of the DLA of relating to others effectively, both the GP and the RP reported no difficulties with communication. The RP assessed the appellant as independent for developing and maintaining relationships and requiring periodic support/supervision for interacting appropriately with others, while assessing the impacts of the appellant's relationship with his immediate social network and extended social networks as marginal functioning.

As noted under the discussion above on severity of mental impairment, in making these assessments relating to the social functioning DLA, the RP provided no explanation or description regarding the periodic assistance of the support/supervision required.

Considering that a severe impairment has not been established, and taking into account the GP’s “not restricted” assessments and the level of independence reported by the RP, the panel finds that the ministry was reasonable in determining that the information provided does not establish that in the opinion of a prescribed professional the appellant's ability to perform DLA are directly and significantly

restricted either continuously or periodically for extended periods.

Help with DLA

The appellant's position

The position of the appellant is that he must rely on assistance from his family.

The ministry's position

The position of the ministry is that, as it has not been established that DLA are significantly restricted, it cannot be determined that significant help is required.

Panel decision

Section 2(2)(b)(ii) of the *EAPWDA* requires that, as a result of being directly and significantly restricted in the ability to perform DLA either continuously or periodically for extended periods, a person must also require help to perform those activities. That is, the establishment of direct and significant restrictions under section 2(2)(b)(i) is a precondition of meeting the need for help criterion. 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 appellant benefits from the (unexplained by the RP) assistance of family, as the ministry reasonably determined that direct and significant restrictions in the appellant's ability to perform DLA have not been established, the panel finds that the ministry reasonably concluded that under section 2(2)(b)(ii) of the *EAPWDA* it cannot be determined that the appellant requires help to perform DLA.

Conclusion

The panel finds that the ministry's reconsideration decision, which determined that the appellant was not eligible for PWD designation, was reasonably supported by the evidence, and therefore confirms the decision. The appellant is thus not successful on appeal.