

PART C – Decision under Appeal

The decision under appeal is the Ministry of Social Development and Social Innovation (the ministry) reconsideration decision dated December 7, 2016 which found that the appellant did not meet three of the five statutory requirements of Section 2 of the *Employment and Assistance for Persons with Disabilities Act* for designation as a person with disabilities (PWD). The ministry found that the appellant met the age requirement and that his impairment is likely to continue for at least two years. However, the ministry was not satisfied the evidence establishes that:

- the appellant has a severe physical or mental impairment;
- the appellant's daily living activities (DLA) are, in the opinion of a prescribed professional, directly and significantly restricted either continuously or periodically for extended periods; and,
- as a result of these restrictions, the appellant requires the significant help or supervision of another person, the use of an assistive device, or the services of an assistance animal to perform DLA.

PART D – Relevant Legislation

Employment and Assistance for Persons with Disabilities Act (EAPWDA), Section 2

Employment and Assistance for Persons with Disabilities Regulation (EAPWDR), Section 2

PART E – Summary of Facts

With the 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 tribunal granted the appellant an extension of time to provide his written submission.

The evidence before the ministry at the time of the reconsideration decision included the appellant's Persons With Disabilities (PWD) Application comprised of the appellant's information and self-report dated June 23, 2016, a physician report (PR) dated June 13, 2016 and an assessor report (AR) dated June 22, 2016 and completed by a general practitioner (GP) who has known the appellant since May 10, 2016 from a "recent walk-in clinic visit."

The evidence also included the following documents:

- 1) Letter from an advocate to the GP enclosing a copy of parts of the PR and the AR completed by the appellant;
- 2) Letter dated November 4, 2016 from the appellant's advocate to the GP; and,
- 3) Request for Reconsideration dated November 4, 2016.

Diagnoses

In the PR, the GP diagnosed the appellant with Hepatitis C with an onset in 1991, right shoulder injury, with an onset in September 2015 and memory loss secondary to medication, with an onset in 2015. Asked to describe the mental or physical impairments that impact the appellant's ability to manage daily living activities (DLA), the GP wrote in the AR: "...Hep C- fatigue, arthritis both knees and ankles, right shoulder- rotator cuff tear possible surgery September 2016."

Physical Impairment

In the PR and AR, the GP reported:

- No indication whether the appellant requires any prostheses or aids for his impairment.
- Regarding the degree and course of impairment, the GP wrote: "awaiting surgical opinion for shoulder."
- In terms of functional skills, there is no indication how far the appellant can walk unaided on a flat surface and no indication how many stairs the appellant can climb unaided. The appellant can do "no lifting" and remain seated less than 1 hour.
- The appellant is assessed as being independent and also taking significantly longer than typical with walking indoors (note: "3 to 4 times longer- arthritis"), walking outdoors (note: "3 to 4 times longer- arthritis"), climbing stairs (note: "3 to 4 times longer, less than 10 steps"), and standing (note: "less than 5 minutes"). The appellant requires continuous assistance from another person with lifting and with carrying and holding, with an explanation of "light objects only." The GP commented "arthritis, knees and ankles."
- In the section of the AR relating to assistance provided, none of the listed assistive devices are indicated as applicable by the GP.
- For equipment required but not currently being used, the GP wrote: "...compression stockings, sleep apnea machine."

In the letter from the advocate, the GP agreed that the appellant stated that although his right shoulder was injured, he has pain that radiates to the left and he recently received a cortisone injection in his left to alleviate some pain; however, his restrictions have not improved. The GP wrote: "left shoulder pain increased, seeing specialist."

In his self-report, the appellant wrote that:

- He has had Hepatitis C for more than 20 years and he constantly feels tired.
- His right shoulder needs an operation and his left arm and shoulder are a source of almost constant pain.
- His knees are damaged and he takes medications to be able to move.
- He has tinnitus in both ears.

In the parts of the PR and the AR completed by the appellant, he wrote:

- He can walk 2 to 4 blocks unaided on a flat surface due to “pain in his knees and ankles (regular days)” and he can walk less than 1 block as he “currently has blood clots.”
- He can climb 5 or more stairs unaided or “less than 10 steps- pain in knees and ankles” and he also can climb no stairs as he “currently has blood clots.”
- He can do no lifting due to “pain in shoulders/arms.”
- He can remain seated less than 1 hour, “shift weight.”

In his Request for Reconsideration, the appellant wrote that:

- His right shoulder has been assessed for surgical repair, but his left shoulder needs repair as well and he has “a raft of other medical problems.”
- He has trouble sleeping due to pain in his shoulders. He has very little movement in his shoulders.
- His knees collapse on stairs so they need fixing too.
- The infectious disease specialist is supposed to test for how bad the cirrhosis is, but he has not done so yet.
- His tinnitus is extremely loud at times.

Mental Impairment

In the PR and AR, the GP reported:

- Regarding the degree and course of impairment, the GP wrote: “unknown if memory loss is permanent.”
- The appellant has no difficulties with communication.
- There is no indication whether the appellant has significant deficits with cognitive and emotional function.
- The appellant has a satisfactory ability to communicate in speaking (note: “poor memory, forgets words mid-sentence”) and writing, and poor ability with reading (note: “poor vision, headaches”) and hearing (note: “hearing loss, tinnitus”).
- There is no indication whether there are impacts to the appellant’s cognitive and emotional functioning.
- There is no indication whether there are impacts to the appellant’s social functioning.

In his self-report, the appellant wrote that he has many problems including depression. He sleeps all the time and he has to write everything down and he forgets what he wrote.

In his Request for Reconsideration, the appellant wrote that:

- He has depression but he is afraid to take anti-depressants because of the “crazy black mood swings.”
- He thinks it was the drugs given to him for his Hepatitis C that caused short term memory loss.

Daily Living Activities (DLA)

In the PR and the AR, the GP reported:

- There is no indication whether the appellant has been prescribed any medication and/or treatment that interfere with his ability to perform DLA.
- The appellant is independent and takes significantly longer than typical (3 to 4 times longer) with walking indoors and walking outdoors.
- The appellant is independent with all of the assessed tasks of the DLA “pay rent and bills” (including banking and budgeting, which are “done online”), and the medications DLA (filling/refilling prescriptions, taking as directed, and safe handling and storage). The GP noted: “all [medications] sorted by time and day for ease of use.”
- For the personal care DLA the appellant is independent with dressing and grooming and also takes significantly longer than typical with these tasks (note: “3 to 4 times longer”). The appellant is independent with bathing (note: “shower only”) and also takes significantly longer than typical. The appellant is independent with toileting, feeding self and regulate diet (note: “skips meals”). He is independent and takes significantly longer than typical with transfers on/off of chair and “takes 3 times longer due to pain- shoulders, arms, legs, sleep in chair frequently.” The appellant requires continuous assistance with transfers in/out of bed and he “takes 3 times longer due to pain- shoulders, arms, legs, sleeps in chair frequently.” The GP provided additional comments that “pain causes longer time to dress, difficulty with t-shirts/ sweaters, sleeps in chair frequently. Poor memory secondary side effect to medications.”
- For the basic housekeeping DLA, the appellant is independent with laundry (note: “light loads only”) and is also independent with basic housekeeping and takes significantly longer than typical (note: “takes frequent breaks”).
- Regarding the shopping DLA, the appellant is independent with most tasks (going to and from stores, making appropriate choices, and paying for purchases), and requires continuous assistance from another person with the tasks of reading prices and labels (note: “very difficult, poor vision, uses magnifying glass”) and carrying purchases home (note: “uses cart, unable to carry purchases”).
- For the meals DLA, the appellant requires continuous assistance from another person with the tasks of meal planning, food preparation, cooking and safe storage of food (note: “poor memory- forgets to store food sometimes”). The GP also wrote: “buys canned and pre-cooked foods- ease of preparation” and “poor memory- difficulty to cook from recipe, can’t stand for prolonged periods while cooking.”
- Regarding the transportation DLA, the appellant is independent with getting in and out of a vehicle and also takes significantly longer than typical. The GP noted “takes longer due to pain.” The appellant is independent with using public transit and using transit schedules and arranging transportation.

In the letter from the advocate, the GP agreed that:

- The appellant stated that his friend helps him put on his shirts. He is not able to lift his arms in order to do this for himself.
- The appellant stated that he requires help to carry his groceries. He is not able to carry due to the pain in his shoulders.

Need for Help

With respect to the assistance provided by other people, the GP did not indicate in the AR whether the appellant receives help. In the section of the AR for identifying assistance provided through the

use of assistive devices, the GP did not indicate any of the listed items as being required by the appellant. For equipment required that is not currently being used, the GP wrote: “compression stockings, sleep apnea machine.”

Additional information

In his Notice of Appeal dated December 15, 2016, the appellant expressed his disagreement with the ministry’s reconsideration decision and wrote that he is disabled. He suggested that the fact that both his left and right shoulder need to be operated on but only one shoulder will be done at a time is being ignored.

In his written submission received January 12, 2017, the appellant wrote about how difficult it is to find a family doctor and, without one, how challenging it is to have a doctor take the time to consider all the medical information. The appellant added that his orthopedic surgeon who will be fixing his left and right shoulder is away until the end of the month. The surgery for his right shoulder is set but he is waiting for imaging of the left shoulder. The treatment for his Hepatitis C did not go well as the medications gave him constant tinnitus and wiped out his short term memory. This was supposed to clear up but it has already been over a year since the treatment.

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

The panel considered the information in the appellant’s Notice of Appeal and his written submission as argument on his behalf.

PART F – Reasons for Panel Decision

The issue on appeal is whether the ministry's reconsideration decision, which found that the appellant is not eligible for designation as a PWD, was reasonably supported by the evidence or was a reasonable application of the applicable enactment in the circumstances of the appellant. The ministry found that the evidence does not establish that the appellant has a severe mental or physical impairment and that his DLA are, in the opinion of a prescribed professional, directly and significantly restricted either continuously or periodically for extended periods. Also, as a result of those restrictions, it could not be determined that the appellant requires the significant help or supervision of another person, the use of an assistive device, or the services of an assistance animal to perform DLA.

The criteria for being designated as a PWD are set out in Section 2 of the EAPWDA as follows:

Persons with disabilities

2 (1) In this section:

"assistive device" means a device designed to enable a person to perform a daily living activity that, because of a severe mental or physical impairment, the person is unable to perform;

"daily living activity" has the prescribed meaning;

"prescribed professional" has the prescribed meaning.

(2) The minister may designate a person who has reached 18 years of age as a person with disabilities for the purposes of this Act if the minister is satisfied that the person 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 he has a severe physical impairment as his doctor diagnosed him with Hepatitis C and a right shoulder injury and agreed that although the appellant's right shoulder was injured, he has pain that radiates to the left and the appellant is seeing a specialist. The appellant argued that he has had Hepatitis C for more than 20 years and he constantly feels tired, his right shoulder needs an operation and his left arm and shoulder are a source of almost constant pain and he has little movement in his shoulders, his knees are damaged and collapse on stairs, and he has tinnitus in both ears, which is extremely loud at times. In his Request for Reconsideration, the appellant also wrote that he has several medical problems and the infectious disease specialist is supposed to test for how bad the appellant's cirrhosis is, but he has not done so yet. The appellant argued that he has many problems including depression, but he is afraid to take anti-depressants because of the crazy black mood swings and he thinks it was the Hepatitis C treatment that has caused short term memory loss. The appellant's position is that his severe physical impairment, combined with a mental impairment, directly and significantly restricts his ability to perform DLA on an ongoing basis and he needs an assistive device or the significant assistance of another person.

Ministry's position

The ministry's position, as set out in the reconsideration decision, is that there is insufficient evidence to establish that the appellant has a severe physical or mental impairment as required by Section 2(2) of the EAPWDA. The ministry wrote that the GP did not indicate how far the appellant can walk or how many stairs he can climb unaided and he reported that the appellant is independent with walking indoors and outdoors and climbing stairs with the comment "less than 10 steps," which is not indicative of a severe impairment of physical functioning. The ministry wrote that while the GP indicated that the appellant cannot lift, he provided comments that the appellant can lift "light objects only" or do his laundry with "light loads only" which are not consistent with no lifting. The ministry wrote that the GP reported that the appellant has memory loss but no difficulties with communication and there is no indication of significant deficits to cognitive and emotional functioning or any impacts to social functioning. As to DLA, the ministry's position is that the information from the prescribed professional does not establish that the appellant's impairment significantly restricts his DLA either continuously or periodically for extended periods of time.

The ministry wrote that the GP indicated that the appellant takes longer than typical with some tasks of DLA without indicating how much longer it takes the appellant and for those tasks that take 3 times longer than typical, this is not considered a significant restriction with these tasks. The ministry wrote that the GP also indicated that the appellant is independent in many of these areas. The ministry wrote that some of the comments by the GP are inconsistent with an assessment of the need for continuous assistance with tasks, such as "forgets to store food sometimes" in relation to the continuous assistance required with safe storage of food as part of the meals 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.

Panel Decision

Severe Physical Impairment

A diagnosis of a serious medical condition does not in itself determine PWD eligibility or establish a severe impairment. An "impairment" is a medical condition that results in restrictions to a person's

ability to function independently or effectively.

To assess the severity of an impairment the ministry must consider the nature of the impairment and the extent of its impact on daily functioning as evidenced by functional skill limitations and the degree to which the ability to perform DLA is restricted. In making its determination the ministry must consider all the relevant evidence, including that of the appellant. However, the legislation is clear that the fundamental basis for the analysis is the evidence from a “prescribed professional” – in this case, the GP.

In the PR, the GP who had known the appellant for a short time for a walk-in clinic visit, diagnosed the appellant with Hepatitis C and a right shoulder injury and agreed in the November 4, 2016 advocate letter that although the appellant’s right shoulder was injured, he has pain that radiates to the left. When asked to describe the mental or physical impairments that impact the appellant’s ability to manage DLA, the GP wrote in the AR: “...Hep C- fatigue, arthritis both knees and ankles, right shoulder- rotator cuff tear possible surgery September 2016.” The appellant added in his written submission that the surgery for his right shoulder is set but he is waiting for imaging of the left shoulder and his orthopedic surgeon who will be performing the surgery is away until the end of [January 2017]. Regarding the degree and course of impairment, the GP wrote: “awaiting surgical opinion for shoulder” and, in the advocate letter of November 4, 2016, the GP wrote that the appellant is still waiting to see a specialist. Although an extension of time was granted to the appellant, there was no additional information provided by the orthopedic surgeon on the appeal regarding the dates for the surgeries or the prognosis following the surgeries. The appellant wrote that he has “a raft of other medical problems” as his knees collapse on stairs so they need fixing too, the infectious disease specialist has yet to test for how bad the cirrhosis of his liver is, and his tinnitus is extremely loud at times.

While the appellant described a number of medical conditions, the panel finds that the ministry was reasonable in determining that there was insufficient evidence to show that these conditions have all been diagnosed by a medical professional or that they are causing a severe impairment in the appellant’s physical functioning. In the PR, the GP provided no indication whether the appellant requires any prostheses or aids for his impairment, particularly given the fatigue from Hepatitis C and the arthritis in the appellant’s knees and ankles. In terms of functional skills, there is no indication how far the appellant can walk unaided on a flat surface and no indication how many stairs the appellant can climb unaided. In the parts of the PR and the AR completed by the appellant, he wrote that he can walk 2 to 4 blocks unaided on a flat surface due to “pain in his knees and ankles (regular days)” and he can walk less than 1 block as he “currently has blood clots,” which is inconsistent in the absence of any explanation. The appellant wrote that he can climb 5 or more stairs unaided or “less than 10 steps- pain in knees and ankles” and he also can climb no stairs as he “currently has blood clots,” which is again inconsistent. There was no additional information provided by the GP or a specialist to clarify the extent of or impact from blood clots. In the AR, the GP assessed the appellant as being independent and also taking significantly longer than typical with walking indoors (note: “3 to 4 times longer- arthritis”), walking outdoors (note: “3 to 4 times longer- arthritis”), climbing stairs (note: “3 to 4 times longer, less than 10 steps”), and standing (note: “less than 5 minutes”), with no indication of a need for assistance from another person or the use of an assistive device with these activities.

The GP reported in the PR that the appellant can do “no lifting” and he can remain seated less than 1 hour. In the AR, the GP indicated that the appellant requires continuous assistance from another person with lifting and with carrying and holding, with an explanation of “light objects only,” and he

commented “arthritis, knees and ankles.” In the parts of the PR and the AR completed by the appellant, he wrote that he can do no lifting due to “pain in shoulders/arms” and he can remain seated less than 1 hour, with the comment: “shift weight.” As there is no explanation by the GP of what are considered “light objects,” or whether the lifting restriction is with one arm or with both arms, the panel finds that the ministry was reasonable to determine that it is uncertain if this is a significant restriction.

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 lack of detail regarding the impact from some of the appellant’s medical conditions and the unexplained inconsistencies in the evidence with respect to the appellant’s overall 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 diagnosed the appellant with memory loss secondary to medication, with an onset in 2015, and wrote: “unknown if memory loss is permanent.” In his submission, the appellant wrote that the treatment for his Hepatitis C did not go well since the medications wiped out his short term memory and this was supposed to clear up but it has already been over a year since the treatment. The appellant also wrote that he has depression but he is afraid to take anti-depressants because of the “crazy black mood swings;” however, the GP did not diagnose depression and did not elaborate on the impacts due to the appellant’s memory loss. The GP provided no indication whether the appellant has significant deficits with cognitive and emotional function or whether there are any impacts to the appellant’s daily cognitive and emotional functioning, including memory and language.

The GP reported in the PR that the appellant has no difficulties with communication and, in the AR, that the appellant has a satisfactory ability to communicate in speaking (note: “poor memory, forgets words mid-sentence”) and writing, and poor ability with reading (note: “poor vision, headaches”) and hearing (note: “hearing loss, tinnitus”). The poor ability with reading and hearing are attributed by the GP to the appellant’s physical health conditions of poor vision and tinnitus and there is no indication of an impact due to a mental impairment. The GP also provided no indication of impacts to the appellant’s social functioning.

Given the absence of a definitive diagnosis of depression and a lack of evidence of significant impacts to the appellant’s cognitive, emotional and social functioning due to his memory loss secondary to medication, the panel finds that the ministry reasonably determined that a severe mental impairment was not established under Section 2(2) of the EAPWDA.

Restrictions in the ability to perform DLA

Section 2(2)(b) of the EAPWDA requires that the ministry be satisfied that a prescribed professional has provided an opinion that an applicant’s severe impairment directly and significantly restricts his ability to perform DLA, continuously or periodically for extended periods. In this case, the GP 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 have the opportunity to indicate which, if any, DLA are significantly restricted by the appellant's impairments either continuously or periodically for extended periods.

In the appellant's circumstances, the GP reported in the PR that the appellant has not been prescribed medication that interferes with his ability to perform DLA. For the move about indoors and outdoors DLA, the appellant is assessed by the GP as independent, taking 3 to 4 times longer than typical due to his arthritis. Despite the diagnosis of memory loss, the GP indicated that the appellant is independent with performing all of the assessed tasks of the "pay rent and bills" DLA (including budgeting and paying rent and bills), the medications DLA (including taking as directed), and the transportation DLA (including using transit schedules and arranging transportation). For the basic housekeeping DLA, the GP also assessed the appellant as being independent with doing his laundry (note: "light loads only") and with basic housekeeping. The appellant also takes significantly longer than typical with housekeeping (note: "takes frequent breaks"), although he does not require assistance from another person. For the personal care DLA, the GP assessed the appellant in the AR as being independently able to perform all but one task, being transfers in/out of bed, for which the appellant requires continuous assistance from another person. The GP provided additional comments that "pain causes longer time to dress, difficulty with t-shirts/ sweaters, sleeps in chair frequently. Poor memory secondary side effect to medications." In the advocate letter of November 4, 2016, the GP agreed that the appellant's friend helps him put on his shirts since he is not able to lift his arms in order to do this for himself.

Regarding the shopping DLA, the appellant is independent with most tasks and requires continuous assistance from another person with the tasks of reading prices and labels (note: "very difficult, poor vision, uses magnifying glass") and carrying purchases home (note: "uses cart, unable to carry purchases"). There was no information provided by the GP regarding the possible use by the appellant of corrective lenses to address his vision problem and to reconcile the appellant's ability to carry "light loads" of laundry. Given an opportunity to provide clarifying information in the November 4, 2016 advocate letter, the GP agreed that the appellant requires help to carry his groceries and he is not able to carry due to the pain in his shoulders.

The GP assess the appellant as requiring continuous assistance from another person with the tasks of meal planning, food preparation, cooking and safe storage of food (note: "poor memory- forgets to store food sometimes"). The GP also wrote: "buys canned and pre-cooked foods- ease of preparation" and "poor memory- difficulty to cook from recipe, can't stand for prolonged periods while cooking." The panel finds that the ministry reasonably determined that the GP's comment that the appellant "sometimes" forgets to store food is not consistent with requiring continuous assistance from another person with this task.

Considering the GP's assessment of the appellant's overall independence with DLA, with the exception of the meals DLA, as well as the highlighted inconsistency in assessment regarding physically demanding tasks of DLA, the panel finds that the ministry reasonably determined that there was insufficient evidence from a prescribed professional of significant restrictions. Therefore, the panel finds that the ministry reasonably concluded that the evidence is insufficient to show that the appellant's overall ability to perform his DLA is significantly restricted either continuously or periodically for extended periods, pursuant to Section 2(2)(b)(i) of the EAPWDA.

Help to perform DLA

Section 2(2)(b)(ii) of the EAPWDA requires that, as a result of direct and significant restrictions in the

ability to perform DLA, a person requires help to perform those activities. Help is defined in subsection (3) as the requirement for an assistive device, the significant help or supervision of another person, or the services of an assistance animal in order to perform a DLA.

With respect to the assistance provided by other people, the GP did not indicate in the AR whether the appellant receives help. In the section of the AR for identifying assistance provided through the use of assistive devices, the GP did not indicate any of the listed items as being required by the appellant; however, for equipment required that is not currently being used, the GP wrote: “compression stockings, sleep apnea machine.” While this reference suggests the appellant suffers from other medical conditions, such as sleep apnea, the GP did not provide diagnoses or detail of the impacts of these other conditions.

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.