

## PART C – Decision under Appeal

The decision under appeal is the Ministry of Social Development and Social Innovation (the Ministry) reconsideration decision dated January 30, 2017, 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 that the evidence establishes that:

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

## PART D – Relevant Legislation

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

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

## PART E – Summary of Facts

The evidence before the Ministry at the time of the reconsideration decision included the PWD Application comprised of a self report (SR), prepared by the Appellant and dated September 1, 2016, a Physician Report (PR) dated September 1, 2016 and completed by the Appellant's General Practitioner (GP), who indicates that she has seen him 2 to 10 times in the past year, and an Assessor Report (AR), also dated September 1, 2016, and completed by the GP, in which she indicates that she has known the Appellant for more than 6 months.

The evidence also included the following document:

- 1) Request for Reconsideration (RFR) signed on January 25, 2017 which included:
  - A three page appended letter signed by the Appellant explaining why he disagreed with the Ministry's decision, and
  - A one page letter from the Appellant's GP dated August 24, 2016 and addressed to whom it may concern certifying that the GP had examined the Appellant on that date and determined that he has chronic fatigue due to Celiac Disease.

### ***Additional Information submitted after reconsideration***

In his Notice of Appeal dated February 15, 2017, the Appellant wrote that the original Ministry decision denying him PWD status was due to "rushed and incomplete information provided by (his) doctor". As a result, he says that he took a lot of time and effort to try to clarify his condition, and that the Ministry disregarded the evidence he presented in his RFR.

The Ministry did not attend the hearing. After confirming that the Ministry had received notice of the time, date and place of the hearing at least two business days before the commencement of the hearing, as required under Section 85(2) of the *Employment and Assistance Regulation* (EAR), the panel heard the appeal in the absence of the Ministry pursuant to Section 85(b) of the EAR.

The Appellant summarized information contained in his SR and RFR and elaborated on the evidence contained therein, but did not introduce any new evidence at the hearing.

### ***Admissibility of Additional Information***

The panel considered the information in the Notice of Appeal to be argument in support of his appeal of the reconsideration decision.

### ***Diagnoses***

In the PR, the GP diagnosed the Appellant with Chronic Fatigue Syndrome (CFS) with an onset in the 1980's, and Celiac Disease (CD) also with an onset in the 1980's.

### ***Physical Impairment***

In the PR, the GP did not provide any information in the Health History section to indicate the severity of the medical conditions relevant to the Appellant's impairment. In the section of the PR dealing with the degree and course of impairment, the GP indicated that the impairment is likely to last for two years or more and in the following section of the form, which asks for an explanation, the GP wrote "unknown".

In the PR, the GP further indicated that the Appellant had not been prescribed any medication or treatments that interfere with his ability to perform DLA. The GP also reported that the Appellant can walk 2 to 4 blocks unaided, climb more than 5 steps unaided, has no limitation in the period of time that he can remain seated, and that his limitations in lifting are unknown, although she does indicate that he suffers from fatigue with repetitive lifting.

In the AR, the GP indicated that the Appellant “takes ... an undue amount of time to shower (and get dressed due to fatigue)” and that he needs a lot of time to complete all other DLA because he is limited by fatigue. In the section of the AR dealing with mobility and physical ability, the GP indicates that the Appellant is independent and requires no assistance with walking indoors and outdoors, climbing stairs, standing, lifting, or carrying and holding. She adds that he is “only limited in these activities by fatigue, otherwise independent”.

In the SR, the Appellant wrote that he has suffered from chronic physical and mental exhaustion and other impairments for most of his life, including irritable bowel syndrome, headaches, sharp pains in his hands and arms, shortness of breath, and occasional heart palpitations. He adds that these impairments have become progressively worse, most notably in the past 4 to 5 years. He says that in his youth he was diagnosed as being hypoglycemic and more recently with CFS, CD and gluten intolerance. He stated that he has eliminated gluten from his diet in the past 6 months and since then the decline in his health, which he attributes to side effects associated with eating gluten based foods, has slowed, but there has been no impact on his CFS as a result of his recent change in diet.

In his RFR, the Appellant acknowledges that his technical ability to move, balance and climb has not changed in any observable way, but that his ability to undertake physical activities is completely dependent on the “current state of energy and the pressure of the circumstance to which the need occurs”. He states that he does not require any assistance with DLA on the rare occasions when he is “unusually energetic” and when it is absolutely necessary, at which time he can walk short distances and climb stairs, but afterwards he must sit or recline for 30 to 90 minutes, usually with significant muscle pain, light headedness and overall discomfort, until he can move again.

In the RFR the Appellant also stated that, when she completed the PR and the AR, his GP had indicated to him that she did not have time to fill out the reports and that the AR was completed after he had left her office.

At the hearing, the Appellant explained that the fatigue that he experiences as a result of CFS is not just sleepiness; it is an issue that affects his brain, body, muscles and organs. He has been dealing with it since his early teens, and it has gotten progressively worse over time. He indicated that he has short bursts of energy lasting two to three hours, about once a week, when he can “do anything” and on those occasions he will go shopping or to the laundromat. However he occasionally runs out of energy before he gets home again, which he said can be very dangerous. He also said that after an energetic episode he usually has to rest and sleep for 2 to 3 days.

The Appellant also explained that he had been diagnosed as hypoglycemic in his youth and he tried to improve his diet by eating more healthily, including eating more grains and whole wheat breads. Unfortunately this was not what he should have been eating because he was subsequently diagnosed as a Celiac and the change in diet actually contributed to his disabilities. Since realizing that he had CD he went on a gluten free diet about a year ago and since then his health has improved somewhat.

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At the hearing the Appellant also stated that he couldn't understand why the Ministry thought that his impairment was not severe, particularly because of the evidence he had given in his SR and RFR, and because his GP had written nine times in her reports that he suffered from CFS.

### ***Mental Impairment***

In the PR, the GP reported that the Appellant has difficulties with communication, indicating "slurred speech with increased fatigue" and "poor short term memory". The GP also indicated significant deficits with cognitive and emotional functioning in the areas of consciousness, memory and attention and sustained concentration. She did not elaborate, and the section of the form prompting the physician for comments is blank. The GP also indicated that the Appellant does not have any deficiencies in the other eight areas of cognitive and emotional functioning. In the "Additional Comments" section of the PR the GP stated that the Appellant describes CFS, which he has suffered for most of his life, and that as result he has difficulty concentrating.

In the AR, the GP reported that the Appellant has good speaking, hearing and reading abilities and satisfactory writing abilities, adding "slurred speech when tired". In the section of the AR where the assessor is asked to indicate the degree to which the applicant's mental impairment restricts or impacts his functioning, the GP states that there is no impact in 7 areas, that 3 areas are minimally impacted (bodily functions, executive and memory), and that attention/concentration is moderately impacted. The GP identifies no major impacts, and indicates that the Appellant might have minimal impacts in the area of learning disabilities. In the comments section the GP writes "Poor short term memory. Has what he describes as brain fog. Has trouble focussing. Forgets over learned facts - had to drop out of school".

In the SR the Appellant refers to his mental (as well as physical) fatigue, and that mental fatigue has kept him from any mental activity that extends beyond "a couple of hours" and has contributed to his inability to pursue higher education or employment.

In his RFR, the Appellant indicated that he is introverted but not anti-social, and that he is content to have just a few friends. He also explained that he is finding it increasingly difficult to communicate with close friends and family because he is "unable to focus on a conversation" and "tend(s) toward rambling/slurring and incoherency."

At the hearing, the Appellant said that people have indicated to him that they assumed he was impaired by alcohol when his speech is slurred, but that he doesn't drink.

He also said that his GP had not assessed his mental impairment impacts on his functioning accurately, and that in each case the ratings should have been "one tick to the right". In other words, for those areas in which the GP had reported that his mental impairment had "no impact" on his functioning, she should have reported "minimal impact", and where she indicated "minimal impact" she should have indicated "moderate impact", etc.

### ***Restrictions in the Ability to Perform DLA***

In the AR, the GP indicated that the Appellant was independent with respect to all DLA but commented that it takes him a lot of time for him to complete his DLA due to fatigue. With regard to social functioning, the GP did not provide an assessment of the support/supervision required for the

5 listed areas (make appropriate social decisions, etc.) but indicates that the Appellant finds it difficult to deal with large groups because of his fatigue, although he is able to relate to people well one-on-one and considers himself sociable. The GP also indicates that he has good functioning within both his immediate and his extended social networks.

The Appellant does not indicate that he experiences any specific restrictions with DLA in his SR.

In his RFR, the Appellant stated that he is almost always in a state of exhaustion and fatigue. On those occasions when he is clear-headed and physically energized, he states that he is perceived as someone who has no impairments. He says that this unimpaired state is of “extremely limited duration” and, when he is away from home, he has learned to return home at the first sign of exhaustion. He explains that a typical 24 hour day has limited meaning to him because he sleeps 4 to 12 hours at a time, usually experiencing deep sleep, but still wakes up exhausted. Often he has to sleep again within an hour or two. He loses track of time and the day of the week, and consequently cannot make or keep appointments. He states that throughout the day there are “short moments” when he is alert and able to function normally, and it is at these times that he completes his DLA. Some DLA are only undertaken on an irregular basis; for example, he is only able to shower about once a week and only goes to the laundromat or grocery store about once a month. He states that sometimes there are extended periods of time “measured in multiple hours” when he is able “to maintain focus and fulfill larger tasks or go further distances”, but if he overextends himself he quickly succumbs to exhaustion, often for 2 to 3 days.

At the hearing, the Appellant argued that in the section of the AR dealing with DLA impacts, there was an obvious contradiction made by the GP. While she had indicated that all DLA were completed independently, she had not ticked the boxes under the heading “Takes significantly longer than typical” even though in the comments section she had written “Needs a lot of time to do this. Limited by fatigue.” In addition, despite the inconsistencies, the Appellant argues that the Ministry has ignored the GP’s comments in its reconsideration decision and “only looked at the check marks”. He explained that when he is not well it takes a great deal of his will power to do the simple things like dressing, cleaning and cooking.

At the hearing, the Appellant also indicated that the GP had run out of time when completing the AR, and that he had left her to complete it in his absence. When he picked it up he mailed it to the Ministry without reviewing what she had said, and he now regretted not reviewing it before mailing it on to the Ministry.

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

In the PR, the GP indicated that the Appellant did not require any prosthesis or aids for his impairment.

In the AR, the GP wrote that the Appellant lives alone and that he does not have any assistance provided by other people, that he does not use any assistive devices and that he does not have an assistance animal.

The Appellant does not indicate any need for help with DLA in the SR.

In his RFR, the Appellant states that most of the time he could use help with cooking and cleaning. He relies on pre-cooked meals and puts up with “a bit of dirt and dust and longer intervals between

shopping and laundry”. He explains that he is only able to do basic DLA and only for short periods of time, cumulatively equivalent to a few full days out of the month.

At the hearing, the Appellant said that he lives alone. He also stated that it is not true that he does not require the assistance of a device or another person. He said that he uses a grocery cart when shopping and he can push the cart when he feels fine but when he isn't feeling well he leans on the cart and uses it as a walker. He also said that he had approached a social services agency in his community about an assistive device and was told that he would not qualify for one unless he had been designated as a PWD.

He indicated that he usually finds it very difficult to cook, which is why he often relies on pre-cooked meals. He said that a meal service like “meals on wheels” would be helpful but he hasn't been able to find a service like that in his community. He indicated that he is receiving a \$40 per month dietary supplement from the Ministry.

At the hearing he also indicated that he thought that he would benefit from a scooter because the nearest bus stop is 90 meters from his home and, while he has a drivers licence and a vehicle, his insurance costs are high and he no longer feels safe driving. He also said that he doesn't think he can ride his bike any more. He explained that he did not have a guide animal but does have a pet cat who is an important companion to him.

## 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 and that her DLA are not, in the opinion of a prescribed professional, directly and significantly restricted either continuously or periodically for extended periods and that 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, as a result of any restrictions.

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.

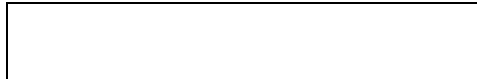
(4) The minister may rescind a designation under subsection (2).

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 ...

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### **Severity of Physical Impairment**

The Appellant takes the position that he has a severe physical impairment and that his GP did not ask him any questions or take the time and effort to accurately describe the nature of his impairments. He explained that he tried to get his GP to provide an additional letter further clarifying his impairments and impact on his DLA, but was not successful. He also stated that he has been trying to find a new family physician but has not been able to find one.

He further contends that only he can accurately assess his disability, and that anything his GP says will be the result of what he has told her. The Appellant also feels that the Ministry ignored the fact that his GP commented in a number of places in the PR and the AR that he suffered from severe fatigue. In addition, the Appellant feels that the ministry ignored his arguments in the RFR, wherein he had addressed the key points made by the Ministry in its original decision and "rebutted each issue", and that the Ministry neglected to take them into account in reassessing the nature and extend of his physical impairment in the reconsideration decision.

The Ministry's position, as set out in the reconsideration decision, is that the evidence as a whole does not support a finding that the appellant has a severe physical impairment. In particular, the Ministry argues that the evidence provided failed to demonstrate the degree or frequency in which his ability to manage mobility and physical ability is affected by fatigue. The Ministry acknowledges that



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the Appellant experiences some limitations as a result of fatigue but it is not satisfied that the information provided is evidence of a severe impairment.

*Panel Decision*

Section 2(2)(a) of the *EAPWDA* provides that when addressing the issue of a severe physical or mental impairment in the context of a person applying for a PWD designation, that person must be found to have a severe physical or mental impairment that, in the opinion of a medical practitioner or a nurse practitioner, is likely to continue for at least 2 years. 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 which results in restrictions to a person’s ability to function independently or effectively.

To assess the severity of an impairment, the Ministry must consider both 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 panel notes that, when asked to indicate the severity of the Appellant’s medical conditions in the PR, the GP reported that the Appellant has suffered from chronic fatigue for most of his life. The Appellant provides more detail regarding the nature and impact of chronic fatigue on his ability to function normally in his SR and the RFR. He explains in both his SR and the RFR that over time his overall energy levels have been decreasing and that the amount of time it takes him to recover has been increasing, to the point where over the past 3 to 4 years it has “effectively (shut him) down”.

The panel further notes that in reaching its reconsideration decision, the Ministry failed to weigh any of the evidence provided by the Appellant in his RFR. The only reference to the Appellant’s evidence in the reconsideration decision is as follows: *“You provide self reported details in your application and your Request for Reconsideration regarding your condition and impairment. The information provided is considered in conjunction with the (PR) and the (AR)”*.

Typically, a medical condition will present with a range of degree of impacts on daily functioning. In his RFR, the Appellant has described how “the majority of the time (he is) neither very mobile, nor clearheaded.” and “while (he is) exhausted, (he) can do nothing else but sit immobile and ‘rest,’ generally for hours, even days...”. From his testimony at the hearing, these frequent periods of incapacity (or rare and brief periods of activity) are the essence of his impairment. Yet in the PR and AR, the GP does not explain the impairment in these terms, nor does she describe how often, for how long or under what circumstances his functioning is limited in this way.

The prescribed professionals who are authorized to complete the PR is either a physician registered and licenced to practice in British Columbia, or a nurse practitioner licenced to practice in British Columbia. A medical practitioner or a nurse practitioner completing the PR, in this case the GP, has the opportunity to indicate clearly the degree and course of the applicant’s impairment and to provide additional information that the prescribed professional considers relevant to the understanding of the significance and severity of the applicant’s medical condition. In this case, in relation to the course and degree of the Appellant’s impairment, the GP has written “unknown”, and with regard to additional information, the GP indicates that the result of his chronic fatigue is that “he has difficulty

concentrating and unable to hold a steady job”.

Similarly in the AR, the prescribed professional, who in this case is also the GP, is asked to identify “the applicant’s (mental and) physical impairments that impact his/her ability to manage DLA (*brief summary*)”. In this case the GP left that section of the AR blank and in the section dealing with physical ability, the GP reported that the Appellant was independent in all areas.

While in the SR and RFR the appellant has cast some light on how his impairment restricts his daily functioning, the panel finds that it is reasonable for the ministry to assess the severity of the appellant’s impairment by expecting the prescribed professional, in this case the GP, provide a clear picture of the nature and extent of the appellant’s impairment, with any information provided by the appellant supplementing that framework. In the panel’s view, the information provided by the appellant in the SR and RFR cannot replace what the legislation makes clear must be provided by a medical practitioner or a nurse practitioner.

Therefore, as the Ministry must, under the legislation, give primary consideration to the opinion of a medical practitioner or nurse practitioner, and as the the information provided by the GP does not clearly describe the impacts of the appellant’s medical condition on daily functioning, the panel finds that the ministry reasonably determined that a severe physical impairment had not been established.

### **Severity of Mental Impairment**

The GP reported in the PR that the Appellant has difficulty with communications because he has slurred speech and poor short term memory when he experiences increased fatigue. However, for the sections of the AR assessing impacts to cognitive and emotional functioning, the GP indicated that the Appellant’s mental impairment has no impact on seven of ten cognitive and emotional functions

The Appellant’s position is that he has experienced chronic mental exhaustion for most of his life and that his symptoms of mental fatigue have drastically increased in the past 4 to 5 years.

The Ministry’s position as set out in the reconsideration decision is that a mental diagnosis has not been provided by the GP and upon review of the relevant information in the PR and the AR there is not sufficient evidence to support a finding of a mental impairment that severely limits the Appellant’s ability to function independently.

### *Panel Decision*

The panel notes that most of the Appellant’s cognitive and emotional functions are not impacted by his mental impairment. For those three functions where impacts are identified (consciousness, memory, and attention or sustained concentration) there is no additional information provided by the GP to allow the Ministry to assess the frequency and extent of the Appellant’s periodic mental impairments. (At the hearing, the Appellant explained that he experiences extreme fatigue most of the time, and that about once a week he has bursts of energy lasting 2 to 3 hours, at which times he can function normally both physically and mentally.)

As mentioned previously, to assess the severity of an impairment, the Ministry must consider both the nature of the impairment and the extent of its impact on daily functioning as evidenced by functional skill limitations. On those occasions when the Appellant experiences extreme fatigue, the GP reports

that he does not have any significant deficits in cognitive and emotional functioning with respect to executive functions (such as planning and organizing), language, perceptual psychomotor functions, psychotic symptoms, emotional disturbance, motivation, impulse control, or motor activity.

The panel concludes that, in the mental and physical impairment section of the AR, notwithstanding the Appellant's argument to the contrary, the GP intended to indicate that there was no impact to a particular function where she had ticked "No impact", that there was minimal impact where she had ticked "Minimal impact", etc., as there is no evidence to the contrary.

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 pursuant to Section 2(2) of the EAPWDA.

### **Restrictions in the ability to perform DLA**

The Appellant argues that the GP had not accurately reported the degree to which his impairment affected his ability to complete his DLA, and that the Ministry ignored the GP's assessment that most DLA take significantly longer to complete and the Appellant's evidence presented in his SR and RFR.

The Ministry's position as set out in the Reconsideration Decision is that it has not been established by the evidence of a prescribed professional that the appellant's ability to perform DLA has been directly and significantly restricted by his severe physical or mental impairments either continuously or periodically for extended periods as required by section 2(2) of the *EAPWDA*.

#### *Panel Decision*

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 her 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 professionals completing these forms have the opportunity to indicate which, if any, DLA are significantly restricted by the Appellant's impairments either continuously or periodically for extended periods, and to further elaborate so that the nature and extent of the restrictions to DLA are clear. Prescribed professionals are further encouraged to elaborate on the nature and extent of the limitations or restrictions in the instructions provided in those sections of the forms. For example, in Part C of the AR the assessor is instructed to identify whether assistance is required in each case with respect to the full range of DLAs, and if the applicant is not independent, to describe the type and amount of assistance required.

The panel notes that the GP reported in the AR that the Appellant is independent in all aspects of his DLA, but that he is continually restricted in performing a few of them due to chronic fatigue. However, the GP does not indicated how much longer it takes to perform those duties

While the Appellant argues that his impairment has a severe impact on his ability to complete his DLA, the panel notes that he has occasional bursts of energy and is able to complete all of his DLA without assistance on occasion. The panel notes that the legislation requires that an applicant's impairment must directly and significantly restrict that person's ability to perform DLA *either continuously, or periodically for extended periods in the opinion of a prescribed professional*. While

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all evidence is taken into account, the panel also recognizes that the legislation makes it clear that the fundamental basis for the analysis is the evidence from a prescribed professional, in this case the Appellant's GP.

Considering the absence of evidence from the GP, as the prescribed professional, of the need for assistance with DLA, the panel finds that the Ministry reasonably concluded that there is not enough evidence to establish that the Appellant's impairment *significantly* restricts his ability to manage his DLA either continuously or periodically for extended periods, thereby not satisfying the legislative criterion of Section 2(2)(b)(i) of the EAPWDA.

### **Help with DLA**

The Appellant argued that he needs an assistive device to assist with ambulation, such as a scooter, because while he still drives when he can, it is dangerous. However, he was told by a social service agency that he did not qualify for a scooter.

In its reconsideration decision, the Ministry states that it cannot be determined that significant help is required because it has not been established that DLA are significantly restricted.

### *Panel Decision*

Section 2(2)(b)(ii) of the EAPWDA requires that, *as a result of direct and significant restrictions* in the ability to perform DLA, a person requires help to perform those activities. Help is defined in subsection (3) as the requirement for an assistive device, the significant help or supervision of another person, or the services of an assistance animal in order to perform a DLA.

The panel notes that the prescribed professional has not indicated that any assistive devices are required by the Appellant, that a scooter has not been confirmed as required by a prescribed professional. Therefore 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 under Section 2 of the EAPWDA, was reasonably supported by the evidence and was a reasonable application of the EAPWDA in the circumstances of the Appellant, and therefore confirms the decision. The Appellant's appeal, therefore, is not successful in his appeal.