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 January 17, 2017, which held that the appellant did not meet 3 of the 5 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 a medical practitioner has confirmed that the appellant's impairment is likely to continue for at least 2 years.

However, the ministry was not satisfied 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 those restrictions, in the opinion of a prescribed professional, the appellant requires an assistive device, the significant help or supervision of another person, 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

On November 24, 2016, the ministry received:

1) The appellant's PWD application comprised of a Physician Report (PR) and an Assessor Report (AR), both completed by the appellant's general practitioner (GP) of 3 years and dated October 12, 2016, and the appellant's Self-report (SR) dated July 24, 2016.
2) A July 16, 2013, 9 page Psychology Assessment ("the psycho-educational assessment").
3) An undated 2-page handwritten statement from the appellant's father, who also acts as the appellant's advocate.

The appellant's request for PWD designation was denied on December 2, 2017. On February 1, 2017, the ministry received:

4) The appellant's Request for Reconsideration on January 11, 2017, which included a 3-page typewritten submission signed by the appellant and his father.

Information Provided on Appeal and Admissibility

On February 20, 2017, the Tribunal received:

5) The appellant's Notice of Appeal (NOA) which included argument but no additional evidence.

On March 27, 2017, the appellant provided a 65-page appeal submission comprising:

6) A 7-page March 13, 2017 questionnaire ("the questionnaire"), completed by the GP on March 22, 2017, to which a copy of the ministry's reconsideration decision and the appellant's 3-page reconsideration submission are attached for the GP's reference.
7) 20 pages of Clinic History reports from two neurologists. The earliest report is dated November 15, 2013, and the most recent December 9, 2016. The reports provide background family and medical history and describe changes in the frequency and nature of seizure activity over this period.
8) Copies of two 2015 tribunal decisions.

On March 28, 2017 the tribunal received:

9) A 2-page January 26, 2016 Memorandum ("the Memorandum") from a Certified School Psychologist, addressing the appellant's previously reported slow processing speed and need for academic accommodation.

At the hearing, the appellant and his grandmother provided further description of the impacts of his seizures and hearing impairment. The appellant also provided information about a recent problem with the functioning of his cochlear implant.

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 ministry did not object to the admission of the information provided on appeal.

The panel determined that, with the exception of the information about a recent deterioration in the cochlear implant function, the oral testimony of the appellant and his grandmother, the 20 pages of Clinic History, and the Memorandum comprised information that corroborated and substantiated the information available at reconsideration. Accordingly, this information was admitted under section 22(4) of the EAA as information in supported of the information and records at reconsideration.

The panel determined that oral testimony respecting a recent deterioration in the functioning of the cochlear implant is new information that does not corroborate or support the information at reconsideration. The panel also determined that the information provided by the GP in the questionnaire substantially conflicts with the information he previously provided, as the GP now identifies significant risks and the need for assistance in a number of functional areas that were previously reported as independently managed by the appellant. Admission of the above information would place the panel in the position of making an independent decision as to whether or not the new information satisfied the legislative criteria, a role that exceeds the panel's legislated authority to determine the reasonableness of the reconsideration decision. The initial assessment of the new information from the GP and the reduced functioning of the cochlear implant should be by the ministry as decision-maker of the first instance. Accordingly, the panel has not admitted this information under section 22(4) of the EAA as it does not support the records and information available at reconsideration.

At the hearing, the ministry relied on its reconsideration decision.

Details of the admissible written and oral testimony are included in the summary below. The arguments of both parties are set out in Part F of this decision.

Summary of relevant evidence

Diagnoses

In the PR, the GP diagnoses the appellant with epilepsy and deafness.

Physical Impairment

The GP provides the following information.

- Ongoing seizure activity, deafness bilateral with cochlear implants (oral and written submissions from the appellant and his father confirm that the appellant has one cochlear implant in his left ear).
- The appellant independently manages all listed areas of mobility and physical ability. He is able to walk 4+ blocks and climb 5+ step unaided, and has no limitation with lifting or remaining seated.

In his SR, the appellant reports that he was born deaf, and that a cochlear implant gives him partial hearing on his left side. He is unable to hear directionally which, in some circumstances, places him in danger of physical injury or worse. He cannot distinguish language and some other sounds in background noise situations, which makes him appear unresponsive and can endanger his wellbeing. He does not wear the external device at night, he cannot hear when asleep, making fire a constant worry.

The appellant reports that his epileptic seizures occur up to 6 times a month and cause him to collapse without warning. He cannot drive, operate machinery, cook, be employed, and do many other things as a result. He has grand mal and other epileptic events, all of which raise similar dangers. During a seizure he is unable to see, hear, or comprehend his environment. Epilepsy stopped his progress in school and he is now attending an alternative school trying to complete high school.

In his written submission, the appellant's father describes problems with sleep disturbance, consciousness (during seizure and recovery period), impulse control, attention/concentration (during and following a seizure), memory (processes more slowly and struggles with school work that was easy prior to onset of seizures 6 years ago), motor activity (lack of co-ordination during and after seizures for several hours). The appellant's previous general practitioner is reported as having stated that the appellant, in his opinion, is 90% disabled.

At their reconsideration submission, the appellant and his father describe the cochlear implant as an aid to hearing, not a cure for deafness, as it has significant limitations. It is not as good as hearing aids, for it both uses a microphone to receive sound and must then synthesize that sound electronically using internal software. The sound produced is nowhere close to natural hearing, like the sound produced with hearing aids, and is limited to daytime use. The appellant has great difficulty using a telephone due to background noise. The external device is not worn at night or when close to heavy moisture or water (ex. In the shower or bathing) and when not in use, the appellant is profoundly deaf. In addition to previously described safety risks, busy roads, parking lots, and the inability to judge the direction of car horns and emergency sirens are reported as some of the risks and impacts the appellant experiences.

The appellant has significant seizures every 7 to 10 days, without warning. More often than not, they are characterized by lengthy periods of unconsciousness. Recovery is slow, and the appellant cannot speak, often for minutes, and at times for up to 45 minutes following a seizure. Disorientation persists to upwards of 1 hour post-seizure. He often vomits, with occasional aspiration on vomit, and loses control of other bodily functions. The appellant has complete unawareness of having had a seizure. He has received cuts, scrapes and bruises on numerous occasions. Despite being heavily medicated, he remains an uncontrolled epileptic. He cannot ever be licensed to drive and lives in a rural area which is not served by public transit. He cannot swim or be near waterways without close supervision and a life preserver, is monitored for safety when showering, and cannot use a stove without aid due to danger to himself and others if he loses consciousness.

The most recent Clinic History report notes that as the appellant was progressing into generalized tonic clonic seizures and was taking longer periods to recover, his medication dosage was adjusted. The appellant continues to have seizure spells, having had 4-5 more spells in the 3-month interim since last seen. "…. seizure spells have not been lasting as long as before and [the appellant] recovers quite quickly. He also denies feeling side effects on the medications as well." The neurologist also noticed "improvement in his presentation."

At the hearing, the appellant's grandmother described the appellant's seizure history, stating that he has had 126 seizures to date, most of which were grand mal. He has had at least 20 injuries, including hitting his head, and quite often he vomits. She has also provided mouth-to-mouth resuscitation when he stopped breathing after a seizure. She is not comfortable leaving the appellant alone, noting that only 2 or 3 times was the appellant aware he was about to have a seizure. The appellant confirmed this, and described some of the warning signs. Hitting the tub if seizing when bathing is a major concern, so she asks the appellant to leave bathroom door unlocked so she can get to him. He is unconscious and has no motor skills control during seizures.

The appellant's grandmother stated that the appellant hears with his cochlear implant but is profoundly deaf without it. When in group settings, his hearing is like having a bad hearing aid. He had great difficulty hearing in a traditional classroom. He cannot hear someone if he is in another room or is 15 feet away from someone. Several times a day the appellant doesn't understand what she has said, and she will need to repeat herself. Not having directional hearing, the appellant cannot tell which direction train sound is coming from, if he hears the sound and won't know where horn honking comes from, if he recognizes it as a horn. She confirmed that the appellant does not wear the external device around water, adding that she keeps relative humidity up, and doesn't use dryer sheets to avoid static electricity as it bothers the appellant. She described the cochlear implant as a good device but that it has its limitations.

At the hearing, the appellant described some of the symptoms he felt on the two occasions he was aware he was going to have a seizures.

Mental Impairment

The GP reports:

- No significant deficits with cognitive and emotional function in any of the 11 specified areas, including "memory", but also notes "very mild memory impairment."
- No cognitive or motor difficulties with communication. Sensory difficulties with communication are described as "unable" to hear.
- Ability to speak, read, write is good
- No impacts on daily functioning are reported for any of the 14 listed areas, though visual spatial problems are identified.

The psycho-educational assessment describes cognitive functioning and academic skills. The psychologist notes that the intelligence assessment was developed for a hearing population, and that language-reduced subtests, such as perceptual reasoning tasks, should be used as the best indicator of cognitive potential. Cognitive functioning results ranged from high average (perceptual reasoning, immediate recall of information he heard) to low average (processing speed), with general memory skills being average. Academic achievement results were average. As grand mal seizure activity is associated with decrease in processing speed and attention, it is likely that his relatively slower speed of processing is secondary to seizure activity. Given his medical condition and slower speed of information processing, he will benefit from adaptations to curriculum, tests and assignments. Given maternal family history of mental illness, current seizure activity, and limited social engagement, he is at risk for developing problems related to social and emotional functioning.

The Memorandum reports that until recently the appellant was treated with a medication which seemed to significantly interfere with the appellant's processing speed, and that he has just started a new medication. The Memorandum encourages incorporation of the previous psycho-educational assessment recommendations, and describes accommodations respecting provincial exams that the

appellant qualifies for, including additional time and software.

DLA

The GP reports that epileptic medications interfere with the appellant's ability to perform DLA.

In the PR, the GP ticks the "no" box when asked if the impairment directly restricts the ability to perform DLA, but also indicates that the ability to use transportation is continuously restricted ("moderate") and that social functioning is restricted ("mild").

Move about indoor/outdoors

- Walking indoors and outdoors, climbing stairs, standing, lifting, carrying and holding are managed independently.

Personal care

- Dressing, grooming, bathing, toileting, feeding self, regulate diet, and transfers (in/out of bed and on/off chair) are managed independently.

Basic Housekeeping

- Both listed tasks – laundry and basic housekeeping – are managed independently, though continuous assistance is also indicated for basic housekeeping.

Shopping

- Going to and from stores requires continuous assistance from another person.
- Reading prices and labels, making appropriate choices, paying for purchases, and carrying purchases home are managed independently.

Meals

- Meal planning, food preparation, cooking, and safe storage of food are managed independently.

Paying Rent and Bills

- All listed tasks – banking, budgeting, and pay rent and bills – are managed independently.

Medications

- All listed tasks are managed independently – filling/refilling prescriptions, taking as directed, and safe handling and storage.

Transportation

- Getting in and out of a vehicle, using public transit and using transit schedules/arranging transportation are crossed out.

Social Functioning

- One aspect of social functioning – appropriate social decisions – requires periodic support/supervision. The remaining four aspects are managed independently.
- Good functioning with immediate and extended social networks.

Need for Help

The GP reports that the appellant needs assistance with driving. Assistance is provided by family and the appellant uses a cochlear implant.

PART F – Reasons for Panel Decision

Issue on Appeal

The issue on appeal is whether the ministry's decision to deny the appellant 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. In particular, was the ministry reasonable in determining that:

- a severe physical or mental impairment was not established;
- the appellant's DLA are not, in the opinion of a prescribed professional, directly and significantly restricted either continuously or periodically for extended periods; and
- as a result of those restrictions, in the opinion of a prescribed professional, the appellant does not require an assistive device, the significant help or supervision of another person, or the services of an assistance animal to perform DLA?

The appellant does not argue that he is eligible for PWD designation under section 2.1 of the EAPWDR and the ministry determined that he is not in any of the classes of persons set out in that section.

Relevant Legislation

EAPWDA

2 (1) In this section:

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

"daily living activity" has the prescribed meaning;

"prescribed professional" has the prescribed meaning.

(2) The minister may designate a person who has reached 18 years of age as a person with disabilities for the purposes of this Act if the minister is satisfied that the person has a severe mental or physical impairment that

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

EAPWDR

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.

(3) The definition of "parent" in section 1 (1) applies for the purposes of the definition of "dependent child" in section 1 (1) of the Act.

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).

Mental Impairment

At reconsideration, the appellant's father indicated that he did not take issue with the ministry's conclusion that he is not significantly mentally challenged. However, on appeal, he argues that, the recently received January 26, 2016 Memorandum is evidence of a severe mental impairment.

The ministry notes that a mental health condition is not diagnosed, the GP reports no impacts to 13 of the 14 listed areas of cognitive and emotional functioning, and a "very mild memory impairment" in the remaining area. Additionally, while the appellant is reported as needing periodic support/supervision with one aspect of social functioning, the other four aspects are reported as being managed independently, and the restrictions in the ability to manage social functioning is described as mild. Based on the medical assessments and the additional information, the ministry concludes that a severe impairment of the appellant's mental functioning has not been established.

Panel Decision

The appellant is not diagnosed with a mental disorder by the GP. Aside from a very mild memory impairment, no deficits with cognitive and emotional functioning are identified by the GP. Although a mild restriction is reported for one aspect of social functioning, the appellant is reported by the GP as having good functioning with immediate and extended social networks. The psycho-educational assessment identifies areas of above average, average and low average cognitive and educational functioning, and that the appellant's low average processing speed is likely due to seizures. In the Memorandum, it is reported that medication the appellant had been taking seems to have also significantly interfered with his processing speed, though it is unclear what changes, if any, have resulted from discontinuing that medication. The need for academic accommodation is also confirmed in the Memorandum. While recognizing that the appellant's cognitive functioning is profoundly temporarily impaired due to his seizures, as described by the appellant's father and grandmother, and that the appellant requires academic accommodation due to a slow processing speed (and also due to his physical hearing impairment), the appellant is otherwise not reported as having significant deficits with cognitive, emotional and social functioning. Therefore, the panel finds that the ministry has reasonably viewed the information as not establishing a severe mental impairment.

Physical Impairment

The appellant's position is that he is severely impaired by the combination of his deafness, which requires the use of an assistive device, and untreatable epilepsy. The appellant argues that the ministry failed to address the additional information in his reconsideration submission, instead placing overarching reliance on the GP's reports, which are vague, general, and inadequate, and that the ministry reached its conclusions respecting all of the legislated criteria in the face of evidence to the contrary. The advocate also argues that unlike most tribunal cases, the appellant is impaired by two physical conditions.

The ministry's position is that the GP's assessment of functional skills and independence with all listed areas of mobility and physical ability is not indicative of a severe physical impairment. The ministry concludes that, although the appellant has a hearing impairment requiring the assistance of a cochlear implant, the information from the GP, the psychologist, and self-reports does not establish a severe impairment of the appellant's physical functioning.

Panel Decision

The appellant is diagnosed with two serious physical medical conditions - deafness and seizures. With the use of a cochlear implant, the appellant has partial hearing in his left ear, though he does not have directional hearing and his hearing is much worse when there is background noise or at a distance of 15 feet. The appellant's hearing impairment is reported as restricting transportation but no other limitations on the appellant's ability to manage physical DLA tasks are described by the GP. While unpredictable, the appellant has approximately one seizure a week. The most recent information from the appellant's neurologist is that the seizure spells have not been lasting as long as before and that the appellant recovers quite quickly. Aside from when he is having and recovering from a seizure when his physical ability is temporarily completely impaired, the information, including the physical functional skills and mobility and physical ability assessments by the GP, is that the appellant is physically capable of walking, climbing stairs, lifting, and carrying and holding without any noted limitation in terms of distances, weight, or duration and without any assistance. The panel finds that the ministry has reasonably viewed the available information as establishing that the appellant has a hearing impairment requiring the assistance of a cochlear implant but that a severe impairment of physical functioning has not been established.

Restrictions in the ability to perform DLA

The appellant argues that his ability to perform DLA is significantly restricted every day as a result of his deafness and seizures. His need for transportation and supervision for personal safety are significant restrictions on his ability to perform a range of DLA. Epileptic seizures are both periodic as they are sporadic, and continuous as he remains an uncontrolled epileptic. That the GP has not identified "consciousness" as problem can only be characterized as an error or omission, and the descriptions of a "moderate" degree of restriction with the need for assistance with driving and independence in all areas of mobility and physical ability are not accurate representations of the appellant's functioning.

The ministry comments that legislation requires that DLA restrictions be both significant and either continuous or periodic for extended periods, and that while not specifically required by legislation, information respecting the frequency and duration of restrictions is valuable in determining the significance of the restrictions.

The ministry notes that in the PR, no restrictions are identified for the majority of the listed DLA – the exception being a "mild" degree of restriction with social functioning and a "moderate" restriction respecting the DLA transportation, relating to the appellant's inability to drive. The ministry also notes that in the AR, no restrictions are identified for the listed tasks of transportation, and that lack of public transit in an applicant's community is not a factor when considering PWD eligibility. The ministry also notes that continuous assistance is required for basic housework and going to and from stores, despite the GP reporting that there are no restrictions with housekeeping or shopping in the PR.

Relying on the medical opinion and expertise from the medical practitioner and other prescribed professionals, the ministry concludes that based on the information provided by the GP, psychologist and self-reports, there is not enough evidence to confirm that the appellant has a severe impairment that, in the opinion of a prescribed professional, directly and *significantly* restricts his ability to perform DLA *continuously or periodically for extended periods.*

Panel Decision

The legislative requirement respecting DLA set out in section 2(2)(b) of the EAPWDA is that the minister be satisfied that as a result of a severe physical or mental impairment a person is, in the opinion of a prescribed professional, directly and significantly restricted in the ability to perform DLA either continuously or periodically for extended periods. Consequently, while other evidence may be considered for clarification or support, the ministry's determination as to whether or not it is satisfied, is dependent upon the evidence from prescribed professionals. DLA are defined in section 2(1) of the EAPWDR and are listed in both the PR and the AR sections of the PWD application with the opportunity for the prescribed professional to check marked boxes and provide additional narrative. DLA, as defined in the legislation, do not include the ability to work.

The GP and the psychologists who completed the psycho-educational assessment and the Memorandum are prescribed professionals.

The psychologists' information does not specifically address the appellant's ability to perform the prescribed DLA, as PWD eligibility was not the purpose of the assessment or Memorandum. The psycho-educational assessment does however note that the appellant is at risk for developing problems related to social and emotional functioning, as well as one low average result for cognitive functioning (processing speed), and problems with processing speed are confirmed in the Memorandum. However, as discussed below, these limitations do not appear to have resulted in significant limitations in terms of cognitive, emotional or social functioning.

In the PR, the GP reports a "moderate" restriction with the DLA transportation, and the need for assistance described as "Driving" and a mild restriction with social functioning, and that the appellant independently manages all other DLA. The GP also ticked the "No" box in response to being asked "Does the impairment directly restrict the person's ability to perform Daily Living Activities."

In the AR, where specific DLA tasks are listed, the GP reports that the appellant independently manages all listed aspects of mobility and physical ability (relates to the DLA "move about outdoors and indoors"), and puts a strike mark through the areas on the application where assistance would be indicated. The GP also reports that, with the exception of one aspect of the DLA shopping (going to and from stores) and one aspect of social functioning (appropriate social decisions), the appellant independently manages all listed DLA tasks. As the ministry notes, respecting basic housekeeping, the appellant is reported as both independent and requiring continuous assistance, and the panel finds that there is no explanation as to why the appellant would require continuous assistance for this task relating either to physical or mental functioning. The GP also put a strike mark through the areas

on the application form where asked for additional comments ("including a description of the type and amount of assistance required and identification of any safety issues") and through the listed tasks for the DLA transportation.

The panel finds that the ministry has reasonably viewed the information from the prescribed professionals as indicating that the appellant is independent in the majority of listed areas of the prescribed DLA, and that based on this level of independence, the ministry reasonably concluded 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.

Help to perform DLA

The appellant's position is that he needs constant supervision from another person for safety reasons because of his seizures and that he relies on his cochlear implant, which is an assistive device.

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

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 DLA.

The establishment of direct and significant restrictions with DLA is a precondition of the need for help criterion. As the panel found that the ministry reasonably determined that direct and significant restrictions in the appellant's ability to perform DLA have not been established, the panel also finds that the ministry reasonably concluded that it cannot be determined that the appellant requires help to perform DLA as required by section 2(2)(b)(ii) of the EAPWDA.

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 a reasonable application of the applicable enactment, and therefore confirms the decision. The appellant is not successful on appeal.