PART C – Decision under Appeal

The decision under appeal is the Ministry of Social Development and Social Innovation (the ministry) reconsideration decision dated March 2, 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 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 appellant attended the hearing with a representative who translated the proceedings into his native language.

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 October 3, 2016, a physician report (PR) and an assessor report (AR) both dated October 7, 2016 and completed by a general practitioner (GP). In the supplemental AR, the GP clarified that she has known the appellant for 1 year and has seen him 2 to 10 times in that period.

The evidence also included the appellant's Request for Reconsideration dated February 17, 2017 with the following documents attached:

- Handwritten statement by the appellant's family; and,
- Copy of the PR and the AR with changes made to the GP's assessments and comments added by the GP.

Diagnoses

In the PR, the GP diagnosed the appellant with anxiety with an onset in 2015, developmental disability (cognitive) since birth, and acute MI [myocardial infarction], 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: "cognitive impairment, anxiety, intellectual inability." In the supplemental AR, the GP added: "…physical impairment- de-conditioned due to recent MI."

Physical Impairment

In the PR and AR, the GP reported:

- With respect to the health history, "2015- MI- currently stable."
- The appellant does not require any prostheses or aids for his impairment.
- In terms of functional skills, the appellant can walk 4 or more blocks unaided on a flat surface, climb 5 or more stairs unaided, lift 7 to 16 kg. (15 to 35 lbs), with no limitation to the time he can remain seated.
- The appellant is assessed as requiring periodic assistance from another person with walking indoors and walking outdoors, with no explanation or description provided by the GP. The appellant is independent with the other aspects of mobility and physical ability, including climbing stairs, standing, lifting, and carrying and holding.
- In the section of the AR relating to assistance provided, none of the listed assistive devices are indicated as applicable and the GP noted "N/A," or not applicable.

In the supplemental PR and AR the GP added with respect to mobility and physical ability, the appellant "…is de-conditioned; able to do 'light' exercise- mobility, etc."

Mental Impairment

In the PR and AR, the GP reported:

- With respect to the health history, that the appellant "…claims that he suffers from learning disability that prevents him to be able to learn English and, as a result, he is unable to find employment. He has poor memory, poor concentration, his intellectual ability is also very poor. He needs constant reminders even with activity of daily living. He has documentation from specialist from [his country of origin]. He also has features of anxiety disorder."
- The appellant has no difficulties with communication.
- The appellant has significant deficits with cognitive and emotional function in the areas of consciousness, executive, language, memory, emotional disturbance, and attention or

sustained concentration. The GP wrote "ongoing but complicated with inability to speak English."

- In the additional comments, the appellant "…has very low cognitive ability."
- The GP indicated that for English the appellant is unable to communicate in speaking, reading or writing and has good hearing. The GP noted that the appellant "…is able to speak, read, and write in his native language."
- With respect to daily impacts to the appellant's cognitive and emotional functioning, the GP assessed the appellant with no major impacts. There are moderate impacts to cognitive and emotional functioning in the areas of emotion, attention/concentration, executive, and memory, and minimal impacts in the areas of consciousness, impulse control, and insight and judgment." The GP did not provide further comments.
- The appellant is independent and requires no support or supervision in all areas of social functioning, specifically: making appropriate social decisions, developing and maintaining relationships, interacting appropriately with others, dealing appropriately with unexpected demands, and securing assistance from others.
- The appellant has good functioning in both his immediate and extended social networks.
- Asked to describe the support/supervision required which would help maintain the appellant in the community, the GP provided no comments.

In his self-report, the advocate wrote on the appellant's behalf:

- He has learning disabilities and suffers from severe panic attacks.
- He is unable to concentrate because of his cognitive problems, poor memory and difficulty to process information. He has trouble to follow discussions and a very short attention span.
- He gets lost easily and is often accompanied by others.
- He is affected by his disabilities on a daily basis.
- He attended a special school back in his country of origin. He always struggled with basic reading, but really was unable to do any math, and his writing is extremely poor.
- He has been living in Canada for several years but he was unable to learn basic English skills.
- Since he suffered a heart attack in October 2015, his mood is fluctuating and he is depressed.
- He has become totally reclusive and, from time to time, paranoid. His self-esteem and confidence is non-existent and he barely goes outside his home.

In the supplemental PR and AR the GP added:

- The appellant also has a significant deficit with cognitive and emotional functioning in the area of "low intellect" or "low IQ."
- For additional comments to the PR: "although he is able to speak and write in his native language, he was not able to learn basic English due to his low intellect. He was assessed in [his country of origin], but I do not have documentation."
- Regarding impacts to cognitive and emotional functioning, the GP added comments that the appellant "…has a very low cognitive ability. His is able to communicate in his native tongue but unable to speak/communicate in English. He needs constant assistance from his family and friends with ADL. This has been ongoing."
- For social functioning, the appellant requires continuous support/supervision with the aspect of dealing appropriately with unexpected demands, and the GP noted: "he is very anxious to deal with unexpected events."
- The appellant has marginal functioning in his extended social network.
- The support/supervision required to maintain the appellant in the community is described as "…needs help with majority of aspects. The family is helping."

Daily Living Activities (DLA)

In the PR and the AR, the GP reported:

- The appellant has not been prescribed any medication and/or treatment that interfere with his ability to perform DLA. The GP did not provide any comments.
- In the additional comments to the PR, the appellant "…was able to work as a manual worker until he had MI, now he has all the symptoms mentioned."
- The appellant requires periodic assistance from another person with walking indoors and walking outdoors.
- The appellant is independent with all of the assessed tasks of the personal care DLA and the basic housekeeping DLA.
- Regarding the shopping DLA, the appellant is independent with carrying purchases home but requires periodic assistance from another person with going to and from stores, reading prices and labels, making appropriate choices, and paying for purchases. There is no explanation or description provided by the GP.
- For the meals DLA, the appellant is independent with meal planning and safe storage of food and requires periodic assistance from another person with the tasks of food preparation and cooking. There is no explanation or description provided by the GP.
- The appellant requires continuous assistance from another person with all tasks of the pay rent and bills DLA, including budgeting and banking.
- For the medications DLA, the appellant requires continuous assistance from another person with filling/refilling prescriptions and periodic assistance with the tasks of taking as directed and safe handling and storage.
- Regarding the transportation DLA, the appellant is independent with getting in and out of a vehicle and using public transit. He requires periodic assistance from another person with using transit schedules and arranging transportation. There is no explanation or description provided by the GP.

In the supplemental PR and AR the GP added:

- Although the appellant has not been prescribed any medication that interferes with his ability to perform DLA, "…he is on medication for his heart issues" and the anticipated duration is "indefinitely."
- Regarding the degree and course of the impairment, the GP added that the appellant's "cognitive inability to get employment is permanent. He is also unable to work physically due to the recent history of MI."
- The appellant requires continuous assistance from another person with both tasks of the basic housekeeping DLA, including laundry.
- The appellant requires continuous assistance with all tasks of the shopping DLA, and the GP wrote that the appellant "…is unable to understand and comprehend the healthy diet choices, needs help with this."
- The appellant requires periodic assistance from another person with all of the tasks of the meals DLA, and the GP added that the appellant "…needs help with diet- planning and food preparation."
- The appellant requires continuous assistance from another person with all of the tasks of the medications DLA. There are no comments provided by the GP.
- The appellant requires continuous assistance with using public transit and using transit schedules and arranging transportation as part of the transportation DLA. The GP did not provide further comment for this DLA.
- The GP added comments to the AR that the appellant is "…unable to plan/communicate. Unable to budget. Rent is paid by his ex-wife."
- For additional information, the GP added that the appellant "…has very low intellectual abilities. He was able to perform manual labor before but he got de-conditioned after MI. He doesn't

comprehend the necessity to exercise and lead a healthy lifestyle. He is limited to work only for [employers who speak his native language]."

In his self-report, the advocate wrote on the appellant's behalf that:

- He cannot follow simple instructions such as where to go, the bus schedule, or to get on/off at a bus station. He has a fear of being lost, barely speaks English, and is unable to ask for help.
- Most of the time, he must be accompanied to shop, to doctors' appointments, bank, ministry office, etc. as he easily gets lost.

Need for Help

With respect to the assistance provided by other people, the GP reported that the appellant receives help from his family and friends. The GP noted that "help is available." 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 and wrote "N/A," or not applicable.

Additional information

In his Notice of Appeal dated March 12, 2017, the appellant expressed his disagreement with the ministry's reconsideration decision and wrote that he requires a substantial amount of help with the DLA and he is restricted inside and outside of his home.

Prior to the hearing, the appellant provided the following additional documents:

1) X-Ray report dated February 2, 2017 for the appellant's lumbar spine; and,
2) Ultrasound report dated February 2, 2017 for the appellant's kidneys and bladder.

At the hearing, the appellant's son stated that:

- The appellant is living alone and has been trying to look for a job for a long time. He has a big language barrier. He's helped the appellant search for a smaller job.
- Since the appellant's health has gotten worse, he does not trust that the appellant can take care of himself.
- He went to the appellant's place and found that the stove was still on from when the appellant was cooking. He cannot do things on his own, like cooking.
- He has to call the appellant to find out if he has taken his pills because he sometimes forgets to take them.
- He tries to help the appellant as much as he can but he also has to take care of a young family himself and it is difficult.
- The appellant cannot speak English, not even the basics. He is not able to take the bus because he cannot even ask anyone how to get somewhere.
- When he goes to the appellant's place, he often just sits and watches television. He is so depressed, he cannot support himself.
- Sometimes he brings the appellant food and pays his bills.
- There is no improvement. He is getting worse. He has no friends. He does not go outside even to go on walks.
- He has to take the appellant to the store because if someone asks him something, the appellant does not know what to say.
- The appellant needs supervision for his appointments. He is afraid that if there was an emergency, the appellant would not be able to communicate.
- Although he speaks with the appellant in their native language, the appellant will sometimes not respond. He is not sure if the appellant is ignoring him, is becoming slow, or is being passive. He often has to repeat what he says to the appellant.
- The appellant has been in Canada for several years. He has worked part-time or piece work at

manual jobs. He usually works within the community because communication has always been a barrier. Sometimes he would take the appellant to his work.
- The man that the appellant was working for retired. Up to 2015, the appellant was working part-time and "here and there" jobs.
- The appellant was hospitalized for 5 days after his heart attack. He takes 6 different medications for high blood pressure and for his heart.

At the hearing, the appellant and his advocate stated that:
- If language was not a barrier, the appellant could not do manual labor jobs because of his physical issues. The medications for his heart make him very tired.
- For a non-physical job, he could sit in a chair but without speaking English, he does not know what he could do.
- If he lifts a little, he feels like he is going to pass out.
- He has depression but he cannot take anti-depressants because of his heart issues.
- He has a CPAP machine but he does not use it because he finds it uncomfortable.
- The appellant did not tell the doctor his problems because he wants to be a "macho man," and he usually only gets 10 minutes for the appointment.
- He was functioning before because his wife was doing everything for him, all the cooking and cleaning, but she left a year ago and he is having trouble.
- It has been very difficult, but they finally found a GP who speaks the appellant's native language.
- The GP said that she is not a psychiatrist and it is too difficult to get the documentation from his country of origin to show he was diagnosed with a learning disability. Two of his siblings also have this learning disability. They went to a special school for children with disabilities. It is difficult to have mental health testing done in the appellant's native language.
- The appellant's son prepares his medications and puts them in a box. He cannot take them by himself because he does not know which medication is which. He forgets sometimes too.
- The appellant also has carpal tunnel syndrome and it is painful to grip items.
- The appellant had numerous surgeries in his country of origin but all of the documentation would have to be translated, which is too costly. He has had his appendix removed, surgery for the carpal tunnel and his kidneys do not function well.
- The appellant has numerous medical conditions and, overall, he is not functioning well. Without his family, the appellant would be in a group home. There would be garbage everywhere and he would not be eating.
- It is very difficult to be on a low income. He cannot afford to go out for a coffee. His accommodation cost $440 per month. His son is paying for his medications. He has to call his son to bring him food because he does not have enough. He can cook a simple meal but that is all. He is not drinking or smoking. His eyes are not good and he had to pick up eye glasses at the dollar store. He goes to thrift shops for his clothing.
- The advocate completed the appellant's self-report for him, based on her knowledge of his situation.
- The supplemental PR and AR were delivered to the ministry and it was pointed out to the ministry that the GP's additional comments and new assessments were completed in ink of a different color so that they would be easily recognized.

The ministry relied on the reconsideration decision, as summarized at the hearing. At the hearing, the ministry stated that the appellant's application weighed heavily on language barrier and his inability to work, neither of which is taking into consideration for designation as a PWD. The ministry also stated that when making the reconsideration decision the adjudicator usually reviews and considers all the evidence provided by the appellant at reconsideration. The ministry could not point to a specific

reference to the supplemental PR or AR to show that the additional information from the GP had been considered by the ministry at reconsideration.

Admissibility of Additional Information

The ministry did not object to the admissibility of the appellant's additional documents. The panel considered the information in the X-Ray and the Ultrasound report as relating to the appellant's lumbar spine and his kidneys and bladder, respectively, which were not diagnosed by the GP and were not issues before the ministry at reconsideration. The appellant's oral testimony regarding problems with his kidneys and carpal tunnel syndrome also relates to issues that were not before the ministry at reconsideration. Therefore, the panel did not admit the additional documents or these references in the oral testimony, in accordance with Section 22(4)(b) of the *Employment and Assistance Act.*

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).

Severe Physical Impairment

In the reconsideration decision, the ministry was not satisfied that the information provided establishes a severe physical impairment. The ministry noted the GP reported that the appellant has no physical impairments and he can walk 4 or more blocks unaided, climb 5 or more steps unaided, lift 15 to 35 lbs. and he has no limitation with remaining seated. The ministry also noted that the GP assessed the appellant as requiring periodic assistance walking indoors and outdoors, but provided

no further explanation.

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 or for a reasonable duration. 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. 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.

Therefore, the ministry reasonably considered the impacts of the appellant's diagnosed medical conditions on his daily functioning. In the PR, the GP diagnosed the appellant with acute MI in 2015, and assessed the appellant at the top end of the scale for functional skills, being able to walk 4 or more blocks unaided, climb 5 or more steps unaided, lift 15 to 35 lbs. and with no limitation for the time period he can remain seated. The GP assessed the appellant as requiring periodic assistance from another person with walking indoors and outdoors but did not provide an explanation of when he requires assistance, particularly since he can walk 4 or more blocks unaided. In the supplemental AR, the GP added "…physical impairment- de-conditioned due to recent MI" and, with respect to mobility and physical ability, the appellant "…is de-conditioned; able to do 'light' exercise- mobility, etc." While there is no indication in the reconsideration decision that the ministry considered this additional comment by the GP, the panel finds that it does not result in a change to the assessment or provide the detail to indicate any limitations associated with "light" exercise or mobility.

For the ministry to be "satisfied" that an impairment is severe, the panel considers it reasonable for the ministry to expect that the information provided by the medical practitioner and prescribed professional presents a comprehensive overview of the nature and extent of the impacts of the medical conditions on daily functioning, including by providing the explanations, descriptions or examples in the spaces provided in the PR and in the AR forms.

Additional information was provided by the appellant on the appeal as he and his advocate stated that, if language was not a barrier for him, he could still not do manual labor jobs because of his physical issues. The appellant stated that the medications for his heart make him very tired and if he lifts a little, he feels like he is going to pass out. The GP reported that the appellant has not been prescribed any medications that interfere with his ability to perform DLA, and did not change this report in the supplemental PR but added a comment that the appellant has been prescribed medications for his heart issues. However, the GP also assessed the appellant in the AR as independent with both lifting and carrying/holding, and able to lift up to 35 lbs.

Given the GP's report of a high level of functional skills and independent 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

In the reconsideration decision, the ministry was not satisfied that the information provided was sufficient evidence of a severe mental impairment. The ministry noted that the GP reported significant deficits with cognitive and emotional functioning in the areas of consciousness, executive thinking, language, memory, emotion, and attention or concentration and wrote "ongoing but complicated with inability to speak English" and that the appellant has a learning disability. The ministry pointed out that the GP provided an assessment that these deficits have minimal to moderate impact on the appellant's daily functioning, and there are no major impacts. The ministry acknowledged that the appellant reported a higher level of impairment in his self-report, but

highlighted that this has not been reported by the GP. The ministry referred to the comments that the appellant is unable to find work because of his inability to learn English and wrote that employability is not a factor when determining the PWD designation.

The ministry reasonably considered the impacts of the appellant's diagnosed medical conditions on his daily functioning. In the PR, the GP diagnosed anxiety and developmental disability (cognitive) within the 'mental disorders' category of the PR, and reported that the appellant has significant deficits to cognitive and emotional functioning in the areas of consciousness, executive, language, memory, emotional disturbance, and attention or concentration. The GP commented that the deficits are ongoing "but complicated with inability to speak English" and, in the supplemental PR, the GP added "low intellect" as another deficit and commented that the appellant has "low IQ." The panel finds that the ministry reasonably found a lack of sufficient evidence of a severe mental impairment in part due to the assessment in the AR of mostly minimal and moderate impacts to the appellant's daily functioning, with no major impacts, and this assessment was not changed in the supplemental AR. The GP added comments that the appellant "…has a very low cognitive ability," but did not change the assessment of a moderate impact in this area of the appellant's functioning.

Considering the two "social functioning" DLA that are specific to mental impairment – make decisions about personal activities, care or finances (decision making), and relate to, communicate or interact with others effectively (relate effectively), the panel finds that the ministry reasonably concluded that there is insufficient evidence to establish that the appellant is significantly restricted. Regarding the 'decision making' DLA, the GP reported in the AR that the appellant independently manages several decision-making components of DLA, specifically: personal care (regulate diet), meals (meal planning and safe storage of food), and making appropriate social decisions. For those components for which the appellant requires periodic assistance from another person, specifically: shopping (reading prices and labels and making appropriate choices), medications (taking as directed and safe handling and storage), and transportation (using transit schedules and arranging transportation), there is no explanation or description provided by the GP to allow the ministry to determine that the assistance is required periodically for extended periods of time. For the tasks of budgeting and paying rent and bills, the GP assessed a need for continuous assistance from another person, without providing an explanation or description of his need for assistance with these tasks.

In the supplemental AR, the GP changed the assessments of a number of components from a need for periodic assistance to a need for continuous assistance (reading prices and labels, making appropriate shopping choices, taking medications as directed, safe handling and storage, and using transit schedules and arranging transportation) and from being independent to a need for periodic assistance (meal planning and safe storage of food). While there is no indication in the reconsideration decision that the ministry considered these modifications in the GP's assessment, the panel finds that there is no explanation by the GP of the reason for the alterations and that little weight can be ascribed to this information in the absence of an appreciation of whether the appellant's condition has deteriorated since the time of the PWD application in October 2016, or an error was made by the GP in the first assessment. At the hearing, the appellant's advocate argued that the appellant was not forthcoming with the GP about his limitations and that the GP under-assessed his need for assistance, but this has not been confirmed by the GP.

Regarding the DLA of 'relating effectively', the GP reported in the AR that the appellant is independent in his ability to develop and maintain relationships and interact appropriately with others and he has good functioning in his immediate social network (family, friends) and his extended social network (neighborhood contacts, acquaintances, storekeepers, public officials, etc.). The GP reported that the appellant has no difficulties with communication (other than a lack of fluency in English) and indicated that the appellant "is able to speak, read and write in his native language."

In the supplemental AR, the GP added comments that the appellant "…is able to communicate in his native tongue but unable to speak/communicate in English. He needs constant assistance from his family and friends with ADL." The emphasis of the oral testimony at the hearing was on the appellant's inability to work in a sedentary job due to his lack of proficiency with and ability to learn English, and the panel finds that the ministry reasonably determined that a language barrier, per se, and employability are not considerations for eligibility for PWD designation as they are not criteria in section 2(2) of the EAPWDA nor are they listed among the prescribed daily living activities in section 2 of the EAPWDR.

The GP changed the assessment, in the supplemental AR, to marginal functioning in the appellant's extended social network and, with respect to the support/supervision required to maintain the appellant in the community, the GP wrote "…needs help with majority of aspects. The family is helping;" however, the appellant remains independent with all but one aspect of his social functioning, with an unexplained change in the assessment from being independent to requiring continuous support/supervision with dealing appropriately with unexpected demands. The panel finds that the ministry reasonably concluded that the reports by the GP did not reflect the extent of the restrictions outlined by the advocate in the appellant's self-report, including that he suffers from "severe panic attacks," that there are major impacts to his concentration because of his cognitive problems, his memory, and his ability to process information. At the hearing, the appellant's advocate stated that the appellant has depression but he cannot take anti-depressants because of his heart issues. The appellant's son stated that often when he goes to the appellant's place, he finds the appellant just sitting and watching television, that he seems depressed and unable to support himself. The GP did not confirm that the appellant has depression or that he has become "totally reclusive" or paranoid.

Given the emphasis placed on the appellant's lack of proficiency with and ability to learn English and the resulting impact to his employability, and a lack of evidence of significant impacts to the appellant's cognitive, emotional and social functioning, the panel finds that the ministry reasonably determined that a severe mental impairment was not established under Section 2(2) of the EAPWDA.

Restrictions in the ability to perform DLA

In the reconsideration decision, the ministry was not satisfied that the appellant has a severe physical or mental impairment that, in the opinion of the prescribed professional, directly and significantly restricts DLA either continuously or periodically for extended periods of time.

According to the legislation, Section 2(2)(b) of the EAPWDA, the ministry must assess direct and significant restrictions to DLA in consideration of the opinion of a prescribed professional, in this case the appellant's GP. This does not mean that the other evidence is not factored in as required to provide clarification of the professional evidence, but the legislative language makes it clear that a prescribed professional's evidence is fundamental to the ministry's determination as to whether it is "satisfied." Therefore, the prescribed professional completing the assessments has 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 reconsideration decision, the ministry reviewed the information provided in the AR and noted that the GP assessed the appellant as independent with most activities and the periodic assistance required for some tasks of DLA has not been explained as requested in respect to the degree and duration of the support required with DLA. The ministry wrote that it is not clear if the restrictions identified are because of a mental impairment or mainly because of the appellant's low English literacy level given the fact that the GP reported no major impacts in cognitive functioning and that the appellant's social functioning is good.

The ministry reviewed the GP's assessment for the need for periodic assistance from another person with some tasks of DLA, including those of shopping, meals, medications and transportation, and reasonably concluded that without a description of the frequency and duration of these periods, the ministry was not satisfied that this assessment in these tasks represents a significant restriction. The GP assessed the need for continuous assistance from another person with the DLA of paying rent and bills and with the task of filling/refilling prescriptions as part of the medications DLA, without providing an explanation or description of his need for assistance with these tasks. In the supplemental AR, the GP added a comment regarding the appellant's need for continuous assistance with the DLA of pay rent and bills that the appellant is "…unable to plan/communicate. Unable to budget. Rent is paid by his ex-wife," and the panel finds that the ministry reasonably concluded that it is not clear if the restrictions identified are because of a mental impairment or mainly because of the appellant's low English literacy level. As previously discussed, the GP changed the assessments of a number of tasks of DLA from a need for periodic assistance to a need for continuous assistance and from being independent to a need for periodic assistance and the panel finds that in the absence of an explanation by the GP of the reason for the alterations, little weight can be placed on this information.

Regarding the 'move about indoors and outdoors' DLA, the appellant is assessed by the GP as requiring periodic assistance with walking indoors, yet able to walk 4 or more blocks unaided, and no explanation provided for the need for assistance. As previously discussed, the GP added a comment in the supplemental AR, that the appellant "…is de-conditioned; able to do 'light' exercise- mobility, etc.," and the panel finds that it does not result in a change to the assessment or provide the detail to indicate any limitations associated with "light" exercise or mobility. In the supplemental PR, the GP also added a comment regarding the degree and course of the appellant's impairment, that the appellant's "…cognitive inability to get employment is permanent. He is also unable to work physically due to the recent history of MI." At the hearing, the appellant, his son and the advocate placed emphasis on the appellant's inability to work as a result of his lack of English literacy, as previously discussed.

In his self-report, the advocate wrote on the appellant's behalf that most of the time the appellant must be accompanied in the community because he cannot follow simple instructions such as where to go, the bus schedule, or to get on/off at a bus station, that he has a fear of being lost, barely speaks English, and is unable to ask for help. Given an opportunity to provide clarification at the hearing, the appellant stated that he could sit in a chair for a non-physical job but, without speaking English, he does not know what else he could do, and he also focused on his financial limitations, including that it is very difficult to be on a low income, he cannot afford to go out for a coffee, his accommodation cost $440 per month, his son is paying for his medications, and he has to call his son to bring him food because he does not have enough. At the hearing, the appellant's son focused on the appellant's language barrier to going out in the community and finding work, but also described the assistance he provides his father through reminding him to take his medication, bringing him food and paying his bills. The appellant's son stated that he prepares his medications and puts them in a box because his father does not know which medication is which, being unable to read English, and "he forgets sometimes too."

Given the emphasis placed on the appellant's lack of proficiency with and ability to learn English and the resulting impact to his employability, and the lack of evidence of significant impacts to the two "social functioning" DLA that are specific to a mental impairment, 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

In the reconsideration decision, the ministry held that, as it has not been established that DLA are significantly restricted, it cannot be determined that significant help is required. Section 2(2)(b)(ii) of the EAPWDA requires that, as a result of being directly and significantly restricted in the ability to perform DLA either continuously or periodically for extended periods, a person must also require help to perform those activities. That is, the establishment of direct and significant restrictions under section 2(2)(b)(i) is a precondition of meeting the need for help criterion. Help is defined in subsection (3) as the requirement for an assistive device, the significant help or supervision of another person, or the services of an assistance animal in order to perform a DLA.

While the GP indicated that the appellant receives help from friends and family, and the appellant's son described at the hearing the various ways in which he helps his father, as the ministry reasonably determined that direct and significant restrictions in the appellant's ability to perform DLA have not been established, the panel finds that the ministry also reasonably concluded that, under section 2(2)(b)(ii) of the EAPWDA, it cannot be determined that the appellant requires help to perform DLA.

Conclusion

The panel finds that the ministry's reconsideration decision, which determined that the appellant was not eligible for PWD designation pursuant to Section 2(2) of the EAPWDA, was reasonably supported by the evidence. The panel therefore confirms the ministry's decision. The appellant's appeal, therefore, is not successful.