

PART C – Decision under Appeal

The decision under appeal is the Ministry of Social Development and Social Innovation (the ministry) reconsideration decision dated March 9, 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 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 November 2, 2016, a physician report (PR) and an assessor report (AR) dated November 4, 2016 and completed by a general practitioner (GP) who has known the appellant since December 2015 and has seen him 11 or more times in the last year.

The evidence also included the appellant's Request for Reconsideration dated February 14, 2017 with an attached "Letter of Appeal."

Diagnoses

In the PR, the GP diagnosed the appellant with Parkinson's disease, with an onset in May 2016 and HTN, with an onset in December. Asked to describe the mental or physical impairments that impact the appellant's ability to manage daily living activities (DLA), the GP wrote: "patient states memory failing; physically weak, especially right side body."

Physical Impairment

In the PR and AR, the GP reported:

- With respect to the health history, "1) Parkinson's: poverty of movement, weakness, unable stand too long, fatigue, shaking- unable to hold (illegible)- restricted sleep; and 2) HTN."
- The appellant does not require any prostheses or aids for his impairment.
- Regarding the degree and course of impairment, "ongoing progression Parkinson's disease- hypertension controlled."
- In terms of functional skills, the appellant can walk 2 to 4 blocks unaided on a flat surface, lift 7 to 16 kg. (15 to 35 lbs), and remain seated 1 to 2 hours. It is unknown how many stairs the appellant can climb unaided as he "avoids stairs."
- The appellant is assessed as being independent with walking indoors and walking outdoors, and taking significantly longer than typical with climbing stairs (note: "avoids if possible"), standing, lifting, and carrying and holding, with a note to "see previous" and "all Sx [symptoms] secondary to Parkinson's disease."
- In the section of the AR relating to assistance provided, none of the listed assistive devices are indicated as applicable and the GP noted "does not use any above."

In his self-report, the appellant wrote that:

- The right hand side of his body is weak, i.e. arm and leg.
- It is difficult to do anything because he is right-handed.

In his Request for Reconsideration, the appellant wrote:

- Describing the progression of his symptoms until December 4, 2014 when he had difficulty shaving and brushing his teeth.
- He was not able to drive because his right hand was weak and he could not properly feel the sensation of the object in his hand.
- He took a vacation from his work but his symptoms got worse. He started having tremors, which started in the tip of the fingers in his right hand and spread down to his right knee and leg.
- He started dragging his right foot when walking and his right leg was getting weaker.
- He started experiencing trouble sleeping and not getting enough sleep.
- In February 2016 he tried to re-enter the workforce with part-time employment, but he could not keep up with the demands and he could not stand for more than half an hour.
- He takes the medication prescribed for Parkinson's disease but his health condition has not

improved at all.

- He starting having muscle spasm attacks at least twice a day.

Mental Impairment

In the PR and AR, the GP reported:

- The appellant has no difficulties with communication.
- The appellant has significant deficits with cognitive and emotional function in the areas of memory and emotional disturbance, and the GP wrote “patient states memory failing; anxiety because of disease.”
- The GP indicated that the appellant has a good ability to communicate with speaking, reading and hearing. The GP noted that the appellant has poor writing and commented “very poor because of Parkinson’s disease.”
- With respect to daily impacts to the appellant’s cognitive and emotional functioning, the GP assessed the appellant with a major impact in the area of motor activity. There are moderate impacts to cognitive and emotional functioning in the areas of bodily functions (which include sleep disturbance) and memory, and minimal impacts in the remaining areas. The GP commented “All secondary to Parkinson’s disease.”
- 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 Request for Reconsideration, the appellant wrote that Parkinson’s is a neurological disorder triggered due to lack of production of the protein Dopamine in the brain, which is a neurotransmitter that plays a number of roles such as movement, sleep, memory and learning to name a few.

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 appellant is independent with walking indoors and walking outdoors.
- The appellant is independent with all of the tasks of all but one listed DLA, specifically he is independent with the personal care DLA, the basic housekeeping DLA, the shopping DLA, the pay rent and bills DLA, the medications DLA, and the transportation DLA. With respect to personal care, basic housekeeping and shopping, the GP wrote “all challenging because of Parkinson’s disease- poverty of movement.”
- For the meals DLA, the GP did not provide an assessment for the need for assistance with the tasks, but wrote “does not cook- buys ordered foods.”

In his Request for Reconsideration, the appellant wrote that:

- He can no longer button or unbutton his shirt, tie shoelaces or floss his teeth. It is difficult to shave because his right hand has no strength. He uses his left hand to guide his right hand to do the task.
- He has asked his landlord to button his shirt and put on his tie.
- Because of his tremor, he cannot hold a fork and knife properly.
- He wants to live independently until such time the he cannot function to clean and feed himself.

Need for Help

With respect to the assistance provided by other people, the GP reported that the appellant receives help from his friends and community service agencies and he has “no family” in the local area. 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 “does not use any above.”

Additional information

In his Notice of Appeal dated March 23, 2017, the appellant expressed his disagreement with the ministry’s reconsideration decision and wrote that Parkinson’s significantly affects ability to do daily tasks- cannot button shirt, tie shoes, etc.

At the hearing, the appellant stated that:

- Although the ministry wrote that he does not have a severe impairment, he cannot function normally and cannot work.
- He cannot pick things up, and cannot handle calculators, a computer mouse or a pen.
- Regarding the restrictions to his DLA, he tries to challenge himself every day as he has been independent ever since he was 16 years old. Now he needs help buttoning his shirt and he has to ask his landlord for help.
- When he applied for a job, there was concern about liability. He said his shaking was because he was cold because employers do not want the liability of someone with Parkinson’s disease.
- He wants to live independently but he will ask for help if he really needs it and the landlord will help him. The landlord lives upstairs since he is in a basement suite.
- He cannot lace his shoes. He calls his landlord who comes and helps.
- He does not cook because he cannot handle a knife without use of his right hand.
- All days are the same- there are no days that are worse than the others. He has an inability to sleep for any length of time and he is happy if he gets 2 to 3 consecutive hours of sleep. He is like a switch that goes on and off. Sleep is very important to him and the lack of sleep affects his activities.
- He can walk ½ block before he gets tired and has to sit down to rest. His doctor said he could walk 2 to 4 blocks unaided and he could in November 2016. He can walk with shuffling his feet but he gets tired easily and he has to sit down.
- He uses an umbrella a lot, like a cane, to support himself when he walks and stands. He uses the umbrella for walking outside but he leans on the walls when walking inside. He goes to the mall every day and uses his umbrella for walking in the mall. He will take the bus if it is raining.
- He avoids stairs and can climb 3 steps maximum. There are 3 steps for him to get to his basement suite.
- He had symptoms since 2012 but his doctor focused more on his high blood pressure. He developed a tremor and was encouraged to see a doctor about that and was diagnosed last year with Parkinson’s disease.
- The store where he gets ready-made foods is 2 blocks from his residence and it takes a while but he walks to the store.
- He saw his doctor the second week of March 2017 but he did not provide any letter to confirm that his condition has deteriorated.
- It was suggested that he use shoes with no laces but he does not have the money to buy shoes right away. He needs to save to be able to get these things.
- He has trouble holding money because he cannot pick it up with his right hand. Sometimes the sales clerk will need to help him get his money.

- Based on his research and understanding, Parkinson's disease is a neurological disorder and he does not know about the mental conditions.
- Safety is an issue. He hopes that his condition will be controlled but his condition could be a hazard at work. When he was working part-time, about 10 to 15 hours per week, he almost passed out doing the job because he got so tired. Writing and other instruments fell out of his right hand. He cannot stand for more than ½ hour.

The ministry relied on the reconsideration decision, as summarized at the hearing.

Admissibility of Additional Information

The ministry did not object to the admissibility of the appellant's oral testimony. The panel considered the information from the appellant as being in support of, and tending to corroborate, the impact from medical conditions referred to in the PWD application and the Request for Reconsideration, which were before the ministry at reconsideration. Therefore, the panel admitted this 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 acknowledged that Parkinson's is a serious long-term degenerative disorder but noted that determining a severe physical impairment requires weighing the evidence provided against the nature of the impairment and its reported functional skill limitations. The ministry wrote that, in this case, the evidence does not sufficiently describe or portray a severe impairment. The ministry acknowledged that the appellant experiences some degree of restriction due to his impairment, but the ministry was not satisfied that the combination of his functional skills, mobility and physical abilities exhibits a severe physical impairment.

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

Therefore, the ministry reasonably considered the impacts of the appellant's diagnosed medical conditions on his daily functioning, beginning with the assessments provided in the PR and in the AR. In the PR, the GP diagnosed the appellant with Parkinson's disease, characterized by "poverty of movement, weakness, unable stand too long, fatigue, shaking- unable to hold (illegible)- restricted sleep" and HTN that is "controlled." The ministry acknowledged that the appellant experiences weakness, shaking and fatigue; however, the ministry noted that the degree and frequency to which he experiences this is not explained by the GP. The panel considers this rationale to be reasonable as Parkinson's disease is known to be progressive, and the GP has not provided a clear picture of the current degree of, or any variability in, the appellant's "poverty of movement." The ministry considered that the GP assessed the appellant in the moderate level of the scale for functional skills, being able to walk 2 to 4 blocks unaided, lift 15 to 35 lbs., remain seated 1 to 2 hours, and the ministry pointed out that there is no assessment of the appellant's capability for climbing stairs as he "avoids stairs." At the hearing, the appellant stated that he avoids stairs if possible and can climb 3 steps maximum as he must climb these stairs from his basement suite.

The ministry also considered that the GP assessed the appellant as independent with walking indoors and walking outdoors, and that he takes significantly longer than typical with climbing stairs, standing, lifting, and carrying and holding. The ministry noted that while the GP commented that the symptoms are related to Parkinson's disease, the GP did not indicate how much longer than typical it takes the appellant with these activities. The ministry considered that the appellant does not require any aids or assistive devices for his impairment, such as a cane or a walker as a mobility aid.

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 In his Request for Reconsideration, describing the progression of his symptoms, including that he started dragging his right foot when walking and his right leg was getting weaker. The ministry considered the appellant's description and acknowledged that it seems that the appellant's condition has worsened since the GP provided the assessment November 2016, but the GP had not provided a re-assessment to confirm the deterioration. At the hearing, the appellant stated that he can only walk ½ block before he gets tired

and has to sit down to rest. The appellant stated that he uses an umbrella, like a cane, to support himself when he walks outside and when he stands. The panel notes that an umbrella does not fall within the definition of an “assistive device” in Section 2(1) of the EAPWDA, being “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.” The appellant stated that his doctor said he could walk 2 to 4 blocks unaided, which was accurate in November 2016. The appellant stated that he has an inability to sleep for any length of time, he is happy if he gets 2 to 3 consecutive hours of sleep, and the lack of sleep affects his activities. The appellant stated that he saw his doctor the second week of March 2017, but that the GP did not provide any letter to confirm that the appellant’s condition had deteriorated.

In his Request for Reconsideration, the appellant wrote that In February 2016 he tried to re-enter the workforce with part-time employment, but he could not keep up with the demands and he could not stand for more than half an hour. At the hearing, the appellant stated that he cannot function normally and cannot work as he cannot pick things up, and cannot handle calculators, a computer mouse or a pen, and there is a safety hazard for him at work. The appellant placed an emphasis on his inability to work, and the panel finds that the ministry reasonably determined that employability is not a consideration for eligibility for PWD designation as employability is not a criteria in section 2(2) of the EAPWDA nor is it listed among the prescribed daily living activities in section 2 of the EAPWDR.

Given the GP’s report in the PR and the AR of a mid level of functional skills and independent physical functioning, with no revised assessment provided by the GP on the appeal, as well as the appellant’s emphasis on his inability to work, 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 did not diagnosis a “mental condition” in the PR. The ministry noted that the GP reported a significant deficit with cognitive and emotional functioning in the area of memory, but indicated that this only has a moderate impact on his daily functioning, and a significant deficit in anxiety has a minimal impact on the appellant’s daily functioning. The ministry wrote that the GP reported that the appellant is independent in all aspects of social functioning, with good functioning in both his immediate and extended social networks. The ministry also pointed out that a large majority of the appellant’s application related to his physical impairments only.

The panel considered that the ministry was referring to a “mental disorder” when pointing out the lack of a diagnosis of a mental condition, as the appellant provided information in his Request for Reconsideration, based on his research, that Parkinson’s is a neurological disorder triggered due to lack of production of Dopamine, which is a neurotransmitter that plays a number of roles in the brain such as facilitating movement, sleep, memory and learning. The GP wrote in the PR that the appellant “...states memory failing; anxiety because of disease.” In considering the impacts of the appellant’s medical conditions on his daily functioning, the ministry noted that, in the PR, the GP reported that the appellant has significant deficits to cognitive and emotional functioning in the areas of memory and emotional disturbance, which have moderate and minimal impacts, respectively, to his daily functioning. While the GP also assessed a major impact to daily cognitive and emotional functioning in the area of motor activity, he did not elaborate with an explanation or description of the impact on the appellant’s functioning, other than to refer to Parkinson’s disease.

The panel finds that the ministry reasonably concluded that there was a lack of evidence of a severe mental impairment in part due to the assessment of independence in the “social functioning” DLA that are specific to mental impairment. Regarding the ‘decision making’ DLA, the GP reported in the AR that the appellant independently manages all decision-making components of DLA, with the exception of meal planning and safe storage of food, as part of the meals DLA, with no assessment being provided by the GP for these tasks other than to comment that the appellant “does not cook-buys ordered food.” Regarding the DLA of ‘relating effectively’, the GP reported 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 and his extended social networks.

The GP reported that the appellant has no difficulties with communication and also indicated that the appellant has a good ability to communicate with speaking, reading and hearing, and that writing is “very poor because of Parkinson’s disease.” In his self-report, the appellant did not refer to impacts to his mental functioning, but to the weakness in the right side of his body. At the hearing, the appellant focused on the physical impacts from Parkinson’s disease, including his inability to grip effectively with his dominant right hand. While Parkinson’s disease has an impact to the appellant’s motor activity as part of cognitive and emotional functioning, the panel finds that the ministry reasonably considered that most of the appellant’s evidence referred to the impact to his physical functioning and that, although restricted, the impairment is not severe, as previously discussed.

Given the 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 did not assess the appellant as requiring periodic or continuous assistance in any areas of his DLA, and indicated that the appellant is capable of performing almost all his DLA independently. The ministry wrote that although the GP commented that the DLA are “all challenging” due to Parkinson’s disease, the GP does not describe the degree of challenge the appellant experiences, nor the frequency. The ministry wrote that the GP explained that the appellant does not cook and purchases ready-made meals, and the ministry does not consider this a significant restriction in the meals DLA. The ministry reviewed the information in the appellant’s Request for Reconsideration regarding the deterioration in his condition and that he is no longer able to perform tasks of the personal care DLA, but the ministry pointed out that there was no re-assessment provided by the GP or an explanation by the appellant of whether alternate methods would help him perform tasks. At the hearing, the appellant stated that while it was suggested by the ministry that he use shoes with no laces or shirts with no buttons, he does not have the money to buy

shoes right away, that he needs to save to be able to get these things.

As previously discussed regarding the degree of physical impairment, for the 'move about indoors and outdoors' DLA, the GP assessed the appellant as being independent with walking indoors and outdoors, able to walk 2 to 4 blocks unaided, and no need for an assistive device. Although the appellant stated at the hearing that his physical functioning has deteriorated since the application in November 2016 and he can only walk ½ block before he has to rest, the GP did not provide a revision to his assessment or a letter to confirm the worsening in the appellant's condition. As previously discussed with respect to the severity of the mental impairment, considering the two "social functioning" DLA that are specific to mental impairment – 'decision making' and 'relate effectively,' the panel found the ministry was reasonable to conclude that there was insufficient evidence that the appellant is significantly restricted with either.

In his Request for Reconsideration, the appellant wrote that he can no longer button or unbutton his shirt, tie shoelaces or floss his teeth, and it is difficult to shave because his right hand has no strength. The appellant wrote that he has asked his landlord to button his shirt and put on his tie. The appellant wrote that, because of his tremors, he cannot hold a fork and knife properly, but he wants to live independently until such time the he cannot function to clean and feed himself. At the hearing, the appellant stated that he also has trouble holding money because he cannot pick it up with his right hand and sometimes the sales clerk will need to help him. The panel finds that the ministry reasonably considered the appellant's information about his difficulty with tasks of the personal care DLA and reasonably concluded that the updated assessment of a need for assistance must be confirmed in the opinion of a prescribed professional.

Given the assessment by the GP of independence with all DLA with the exception of meals, for which there is no specific assessment of a need for assistance, 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 community service agencies and friends, and the appellant stated that his landlord helps him, 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.