

PART C – Decision under Appeal

The decision under appeal is the Ministry of Social Development and Social Innovation (the “ministry”) reconsideration decision of March 15, 2017, which found that the appellant did not meet three of five statutory requirements of section 2 of the *Employment and Assistance for Persons With Disabilities Act* (“EAPWDA”) for designation as a person with disabilities (“PWD”). The ministry found that the appellant met the age requirement and that in the opinion of a medical practitioner the appellant’s impairment is likely to continue for at least two years. However, the ministry was not satisfied that:

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

PART D – Relevant Legislation

EAPWDA, section 2

Employment and Assistance for Persons with Disabilities Regulation (“EAPWDR”), section 2

PART E – Summary of Facts

The information before the ministry at the time of reconsideration included the following:

- The appellant's PWD application form consisting of the appellant's self-report form dated September 16, 2016 ("SR"), a medical report dated September 21, 2016 ("MR") and an assessor's report dated November 7, 2016 ("AR") both completed by the appellant's general practitioner (the "physician").
- Exercise Stress Test dated May 18, 2016
- Myocardial Perfusion Scan dated May 26, 2016
- Chest x-ray report dated June 8, 2016
- Echocardiogram report dated June 18, 2016
- Consult report from an internal medicine specialist dated July 25, 2016
- Radiological Consultation dated August 9, 2016
- Hospital Discharge Summary dated September 9, 2016
- Cardiac Catheterization Laboratory Report dated September 13, 2016
- Diagnostic Report dated September 16, 2016
- Outpatient Clinic Notes dated September 19, September 22, and October 20, 2016 (the "2016 Outpatient Notes")
- Cardiac Function Clinic consult report dated November 17, 2016 (the "Cardiac Function Clinic Note")
- Outpatient Clinic Notes dated January 4 and January 26, 2017 (the "2017 Outpatient Notes")
- The appellant's Request for Reconsideration ("RFR") form signed by the appellant on March 3, 2017

Diagnoses

- In the MR the physician (who has been the appellant's general practitioner since May 9, 2016 and seen him 2-10 times in the past since May 9, 2016, diagnosed the appellant with pulmonary hypertension (onset June 2016), severe RV enlargement / severe LA enlargement (onset June 2016), coronary artery disease (onset January 2015), heart failure – LVEN = 17% NXHA Class III (onset June 2016), hypertension (onset unspecified) and emphysema-mild (onset September 2016).
- For Section B – Mental or Physical Impairment in the AR, the physician states that the appellant's physical or mental impairments that impact his ability to manage DLA are pulmonary hypertension, heart failure, and coronary artery disease.
- The 2016 Outpatient Notes indicate that the appellant has severe idiopathic pulmonary atrial hypertension, severe left ventricular systolic dysfunction, myocardial infarction ("MI"), systemic hypertension, c-spine injury following a prior car accident and prior traumatic amputation of finger and toe.
- The 2017 Outpatient Notes indicate that the appellant has severe idiopathic pulmonary arterial hypertension, severe left ventricular systolic dysfunction, MI in January 2015, systemic hypertension, c-spine injury following a prior car accident and prior traumatic amputation of the finger and toe.

Physical Impairment

- In terms of physical functioning, the physician reported in the MR that the appellant can walk 1 to 2 blocks unaided on a flat surface, can climb 2 to 5 steps unaided, can lift 15 to 35 pounds and has no limitations with respect to remaining seated.
- In the Health History portion of the MR the physician indicates that the appellant has severely elevated right ventricular systolic pressure on ECHO, MI – January 2015 treated medically, severe dyspnea after walking 1 block, or one flight of stairs, severe pulmonary hypertension, heart failure with reduced ejection fraction ++, marked right ventricle enlargement, severe right atrial enlargement and severe *[illegible]* wall regurgitation
- In the AR the physician indicates that the appellant is independent with walking indoors, standing and carrying and holding, but takes significantly longer with walking outdoors (1 -2 blocks then needs to rest), climbing stairs (2 to 5 steps then needs a rest) and lifting (shortness of breath). The physician comments that the appellant is worse when bending down, noting severe shortness of breath.
- In the SR the appellant states that he had a heart attack in January 2015, has pulmonary arterial hypertension, coronary artery disease, heart failure/enlargement and emphysema. He states that he cannot go up and down ladders any more and cannot do any physical work without “*running out of wind*”. He indicates that he sleeps poorly due to constant shortness of breath and that his medication prescribed to slow his heartbeat makes him tired all the time.
- The October 20, 2016 Outpatient Clinic Note indicates that the appellant’s symptoms are “fairly stable”, that he could walk one block on level ground before stopping secondary to dyspnea and can climb 1 flight of stairs before stopping. It also indicates that the appellant reported that when he was chopping wood one-week prior, he developed an episode of central chest pain that resolved when he rested.
- The Cardiac Function Clinic Note indicates that the appellant reported that his breathing had improved.
- The January 26, 2017 Outpatient Clinic Note indicates that the appellant reported significant improvement in his shortness of breath and that he can walk up to 4 blocks without needing to stop, can do up to 2 flights of stairs but needs to stop because of shortness of breath and central chest pain.

Mental Impairment

- In the MR the physician indicates that the appellant does not have any significant deficits with cognitive and emotional function.
- In the AR the physician indicates that the appellant’s ability to communicate in all areas is good, indicating that it is not affected. For question 4, cognitive and emotional functioning, the AR indicates that the appellant has no impacts to daily functioning and comments that there is no mental deficiency.

DLA

- In the MR the physician indicates that the appellant’s impairment does not restrict his ability to perform DLA of personal self care, meal preparation, management of medications, mobility inside the home, use of transportation, management of finances and social functioning. The physician indicates that the appellant’s impairment directly restricts the appellant’s ability to perform DLA of basic housework, daily shopping and mobility outside the home, commenting that the appellant has shortness of breath and fatigue with physical exertion.

- In the AR, the physician indicates that the appellant is independent with dressing, grooming, feeding self, regulating diet, transfers (in/out of bed), transfers (on/off chair) but requires continuous assistance with bathing, explaining that he needs help getting in and out of the bath tub. The physician indicates that the appellant uses assistive devices for laundry and basic housekeeping, explaining that the appellant's brother performs these tasks for him. The physician also comments that the appellant is able to do laundry but it takes extraordinary time. The physician indicates that with respect to shopping, the appellant is independent with reading prices and labels, making appropriate choices and paying for purchases but requires continuous assistance from another person with going to and from stores and carrying purchases home, noting that the appellant's brother usually does the shopping.
- In the AR the physician indicates that the appellant is independent with all aspects of meals, medications and transportation. With respect to paying rent and bills the physician indicates that the appellant does not have a bank account, requires continuous assistance with budgeting and that the appellant's brother pays his bills. The physician indicates that the appellant is independent with all aspects of social functioning and that he has good functioning with respect to his immediate and extended social networks.
- In the SR the appellant states that many days he has trouble getting out bed and is reliant on his brother to help him with "...meals, mobility, and other things that need getting done". He states that as a result of his inability to exert himself, activities take him up to 10 times longer to complete than a non-disabled person, and still often leave him short of breath despite going slowly and pacing himself. The appellant states that he has difficulty with personal care routines including taking a bath, bending and touching his legs or feet, getting out of bed is often difficult on some days and dressing is difficult due to his heart problem. He states that preparing and eating meals is difficult as he is unable to stand at the sink, counter or stove for long without feeling short of breath, that he has lost his appetite due to the medication and heart problems and that he is very limited in his ability to prepare meals for himself and clean up afterwards.
- In the SR the appellant states that he forgets to take medications on several occasions, and that household tasks including vacuuming, cleaning floors, doing dishes and putting them away, cleaning counters and the sink are not possible as they are too strenuous for him. He also states that shopping for personal needs is difficult as he is unable to walk around stores for longer periods of time, picking up items from shelves can be very uncomfortable and strenuous, and taking the groceries home can be very difficult, leaving him in pain, exhausted, and having to rest. The appellant states that he is very dependent on his brother for assistance with meals, housework, and shopping and these tasks would not get done without him.

Help

- In the MR the physician reports that the appellant does not require any prosthesis or aids for his impairment. The physician indicates that the appellant lives with his brother who helps with shopping and housework.
- In the AR the physician indicates that the appellant receives help from family, noting that the appellant's brother provides all help needed. The physician indicates that the appellant needs home care services for housekeeping, shopping, laundry and transportation.
- In the SR the appellant states that although he does not have continuous assistance on a daily basis from his brother, he would benefit from assistance with cooking and housework, shopping, counseling and emotional support on a daily basis, approximately 4 hours per day. He states that even with his brother's help he takes significantly longer, 10 times longer, than a normal non-disabled person in order to perform his DLA tasks like dressing himself, getting in and out of the bath tub, and basic mobility, as most activities are too strenuous for his heart.

Additional information provided

In his Notice of Appeal dated March 24, 2017, the appellant states that he doesn't feel that the ministry properly assessed his disabilities. He states that the amount of medical documentation may have been confusing or overwhelming and he would like the chance to explain himself.

Prior to the hearing the appellant provided a questionnaire completed by the physician dated April 15, 2017 (the "Submission") in which the physician confirms the diagnosis set out in the PR. The physician states that the appellant is able to walk 1-4 blocks at a very slow pace and needs to stop and that he is able to go up 2 flights of stairs but needs to stop due to severe shortness of breath and chest pain. The physician indicates that the appellant needs to take frequent breaks lasting 2-3 minutes during the day with walking, stairs, and chopping wood. The physician indicates that the appellant's level of functioning is significantly reduced and that one or more of his medical conditions significantly restricts his ability to perform DLA at all times. The physician indicates that the appellant is significantly restricted with most of his DLA, such as walking 1-4 blocks, stairs (2 flights), chopping wood, cleaning house, lifting up to 15 pounds, basic housework, shopping and laundry. The physician indicates that the appellant needs helping with bathing, laundry, basic housekeeping, and mobility outside the house.

Admissibility of New Information

The ministry did not object to the Submission. The panel has admitted the Submission as it is evidence in support of information and records that were before the ministry at the time of reconsideration, in accordance with section 22(4) of the *Employment and Assistance Act*. In particular, the Submission relates to information at reconsideration respecting the appellant's impairment, his ability to perform DLA, and substantiates the help needed.

The appellant did not attend the hearing. Having confirmed that the appellant was notified of the hearing, the panel proceeded with the hearing pursuant to EAR section 86(b).

PART F – Reasons for Panel Decision

The issue on this 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 the appellant does not have a severe physical or mental impairment, that in the opinion of a prescribed professional the appellant's impairment does not directly and significantly restrict him from performing DLA either continuously or periodically for extended periods, and that as a result of those restrictions the appellant does not require help to perform DLA?

The relevant legislation is as follows:

EAPWDA:

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).

EAPWDR section 2(1):

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

Severe Physical Impairment

The ministry's position, as set out in its reconsideration decision, is that a diagnosis of a serious medical condition does not in itself determine PWD eligibility or establish a severe impairment. The ministry's position is that the information provided is not evidence of a severe physical impairment. In particular, the ministry indicates that it reviewed all the medical information provided and that the information provided subsequent to the PWD application speaks largely to the appellant's medical conditions as listed by the physician. The reconsideration decision indicates that the Outpatient Clinic note dated October 20, 2016 indicates that the appellant reports he can walk a block on level ground before stopping secondary to dyspnea and can climb 1 flight of stairs before stopping. The ministry notes that he use of the term "he reports" suggests the statement is based on the appellant's self-report as opposed to the medical assessment of the doctor that dictated the Outpatient Clinic note. The reconsideration decision also indicates that the supplementary medical documentation does not speak to the appellant's physical functioning outside of his abilities with walking and climbing stairs, his ability to perform DLA, or help required with DLA.

The ministry's position is that although the physician indicates in the Health History portion of the MR that the appellant has severe dyspnea after walking 1 block, or one flight of stairs, the January 26, 2017 Outpatient Clinic note indicates that the appellant can walk up to 4 blocks without needing to stop, and can do up to 2 flights of stairs but he needs to stop because of shortness of breath and central chest pain. The ministry's position is that the Outpatient Clinic note represents the most current assessment by a medical practitioner of the appellant's abilities with walking and climbing stairs and that the ability to walk up 4 blocks and climb 2 flights of stairs is not considered indicative of a severe impairment of physical functioning.

The reconsideration decision also notes that in the MR the physician indicates that the appellant can walk 1 to 2 blocks unaided on a flat surface, can climb 2 to 5 steps unaided, is limited in lifting to 15 to 35 pounds and has no limitation with how long he can remain seated. The ministry's position is that although the AR indicates that that the appellant takes significantly longer than typical with walking outdoors, has to rest after climbing 2 to 5 steps and has shortness of breath with lifting, the AR indicates that the appellant is independent with walking indoors, standing and carrying/holding. The ministry's position is that the physician does not describe how much longer than typical the appellant takes with walking outdoors, climbing stairs and lifting, so it is difficult to establish a severe impairment of physical functioning based on the assessments provided.

The appellant's position is that he has severe pulmonary hypertension, right ventricular enlargement, coronary artery disease, heart failure, and emphysema which leave him extremely limited in his ability to exert himself at all times. The appellant's position is that the ministry has not reasonably considered his disabilities in light of all the medical information provided. In particular, the appellant notes that in the PR, the physician uses the word "severe" five times in describing his medical conditions, and the physician notes that the appellant has severe dyspnea after walking 1 block, or one flight of stairs. The appellant's position is that while he is forced to perform many DLA independently he is always doing so through pain or discomfort.

Panel Decision

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

To assess the severity of an impairment one must consider the nature of the impairment and the extent of its impact on daily functioning as evidenced by functional skill limitations and the degree to which performing DLA is restricted. The legislation makes it clear that the determination of severity is at the discretion of the minister, taking into account all of the evidence. However, the legislation is also clear that the fundamental basis for the analysis is the evidence from a prescribed professional. The panel notes that employability is not a criterion for designation with PWD.

The MR indicates that the appellant can walk 1 to 2 blocks unaided on a flat surface, can climb 2 to 5 steps, is limited to lifting 15 to 35 pounds and has no limitations with respect to remaining seated. The information in the AR indicates that the appellant is independent with walking indoors, standing and carrying and holding but takes significantly longer with walking outdoors, climbing stairs and lifting, needing to rest after 1-2 blocks or 2 to 5 steps.

While the appellant states that it takes him up to 10 times longer to perform DLA the physician does not describe how much longer than typical it takes the appellant requires with walking outdoors, climbing stairs, or lifting items. While the physician indicates in the PR that the appellant has severe dyspnea after walking one block or going up one flight of stairs, the more recent information contained in the January 26, 2017 Outpatient Clinic Note indicates that the appellant can walk up to 4 blocks without needing to stop and a can climb 2 flights of stairs before needing to stop due to chest pain.

The panel also notes that in the MR and the AR, the physician indicates that the appellant does not require any aids or prosthesis for his impairment.

The information provided by the physician in the Submission confirms the diagnosis provided in the MR. The physician indicates that the appellant is able to walk 1-4 blocks at a very slow pace and needs to stop and that he can go up 2 flights of stairs but needs to stop due to severe shortness of breath and chest pain. The physician indicates that the appellant needs frequent rest breaks lasting 2-3 minutes but he does not provide information on how many breaks the appellant needs throughout the day.

Although the physician uses the word "severe" at least five times to describe the appellant's impairment, an assessment of severity requires more than the use of the word "severe". There are several inconsistencies between the reports of the physician, the 2016 Outpatient Notes and the January 26, 2017 Outpatient Clinic Note regarding the appellant's functional skills. In considering all of the medical evidence it appears that the appellant's functional skills have varied with respect to his ability to walk and climb stairs. However, considering the recent information contained in the January 26, 2017 Outpatient Clinic Note and the information in the Submission it appears that the appellant can walk up to 4 blocks unaided on a flat surface and can climb 2 flights of steps, that he can lift 15 to 35 pounds, has no limitations with being seated and that he chops wood. While the evidence indicates that the appellant needs to take breaks due to shortness of breath and chest pain the panel finds that the ministry was reasonable in determining that the information provided does not establish that the appellant has a severe physical impairment.

Severe Mental Impairment

The ministry's position is that the information provided does not establish that the appellant has a severe mental impairment. In particular the ministry notes that in the MR the physician indicates that the appellant does not have any difficulties with communication and does not have any significant deficits with cognitive and emotional functioning and in the AR the physician indicates that the

appellant is not restricted with social functioning, has good ability with all listed areas of communication and no impacts to all listed areas of cognitive and emotional functioning.

The appellant did not argue that he has a severe mental impairment.

Panel Decision

The physician has not provided any diagnosis of a mental impairment. In the MR the physician indicates that the appellant does not have any significant deficits with cognitive and emotional function and indicates that the appellant does not have any difficulties with communication. In the AR, the physician indicates that the appellant's ability to communicate in all areas is good, and is not affected. The 2016 Outpatient Notes and the 2017 Outpatient Notes and other supplemental medical information relate to the appellant's physical condition and do not speak to a mental impairment.

Given that there is no diagnosis of any mental impairment and as the physician indicates that the appellant is not affected by a mental impairment, the panel finds that the ministry was reasonable in determining that the information provided does not establish that the appellant has a severe mental impairment.

Significant Restrictions to DLA

The ministry's position, as set out in the reconsideration decision, is that the information provided by the physician does not establish that the appellant has a severe impairment that, in the opinion of a prescribed professional, directly and significantly restricts the appellant's ability to perform DLA. The reconsideration decision notes that the physician indicated that the appellant has not been prescribed any medications or treatments that interfere with his ability to perform DLA.

The ministry's position is that although the physician indicates restricted to some areas of DLA, the information provided indicates that the appellant is not restricted with the majority of listed areas. In particular, the reconsideration decision indicates that while the physician in the MR indicates that the appellant's impairment directly restricts his DLA of shopping, the AR indicates that he is independent with three of five listed areas of shopping.

The ministry also notes that although the physician indicates that the appellant requires an assistive device for laundry and basic housekeeping, he does not describe the type of assistive device needed. In addition, although the physician indicates that the appellant takes an extraordinary time with laundry, the physician does not describe how much longer than typical it takes.

The reconsideration decision also indicates that although the appellant does not have an open bank account, that is not indicative of restrictions with banking due to a physical or mental impairment and that the statement that the appellant's brother pays the bills does not establish that the appellant requires assistance with paying bills.

The appellant's position is that he has severe medical conditions that cause him to be extremely disabled and unable to complete his DLA. The appellant's position is that the medications prescribed to slow his heartbeat cause decreased energy levels and make him tired all the time. In the SR, he states that he is reliant on his brother to help him with meals and mobility and that it takes him up to 10 times longer to complete DLA than a non-disabled person and still leave him short of breath despite going slowly and pacing himself. The appellant states that personal care, meal, management of medications, housework, shopping moving about indoors and outdoors are all difficult

for him. The appellant's position is that the information provided by the physician and the doctor, in combination with the SR demonstrates that his DLA are directly and significantly restricted.

Panel Decision

The legislation – s. 2(2)(b)(i) of the EAPWDA – requires that the minister be satisfied that in the opinion of a prescribed professional, a severe mental or physical impairment directly and significantly restricts the appellant's ability to perform DLA either continuously or periodically for extended periods. The term "directly" means that there must be a causal link between the severe impairment and the restriction. The direct restriction must also be significant. Finally, there is a component related to time or duration. The direct and significant restriction may be either continuous or periodic. If it is periodic it must be for extended periods. Inherently, any analysis of periodicity must also include consideration of the frequency. All other things being equal, a restriction that only arises once a year is less likely to be significant than one, which occurs several times a week. Accordingly, in circumstances where the evidence indicates that a restriction arises periodically, it is appropriate for the ministry to require evidence of the duration and frequency of the restriction in order to be "satisfied" that this legislative criterion is met.

The panel notes that in the MR, the physician indicates that the appellant has continuous restrictions with DLA of basic housework and daily shopping. The physician also indicates that the appellant has restrictions to mobility outside the home but has not checked off the box to indicate whether the restriction is continuous or periodic. With respect to the degree of restriction, the physician comments that the appellant has shortness of breath and fatigue with physical exertion. The AR indicates that the appellant is independent with the majority of aspects of DLA but that the appellant requires continuous assistance from another person with bathing, going to and from stores, carrying purchases home and budgeting. The physician also indicates that the appellant uses an assistive device for laundry and basic housekeeping but does not indicate the type of assistive device, and explains that the appellant's brother does the laundry and housekeeping.

The panel notes that there are numerous inconsistencies in the information provided as between the MR, AR and the SR. For example, in the PR the physician indicates that the appellant is not restricted with personal self-care, but in the AR the physician indicates that the appellant requires continuous assistance with bathing. In the PR the physician indicates that the appellant does not require any prostheses or aids for his impairment but in the AR, as noted above, the physician indicates that the appellant uses an assistive device for laundry and basic housekeeping but does not provide information on the type of assistive device.

In the MR, the physician indicates that the appellant is continuously restricted with DLA of shopping but in the AR the physician indicates that the appellant is independent with reading prices and labels, making appropriate choices and paying for purchases, but needs continuous assistance with going to and from stores and carrying purchases home. In the PR the physician indicates that the appellant is restricted with mobility outside the home but he does not provide any further information regarding the degree of restriction.

In the MR the physician indicates that the appellant is not restricted with management of finances but in the AR the physician indicates that the appellant requires continuous assistance with budgeting. However, the physician does not provide any further information to explain the degree and duration of support/supervision required.

Although the appellant states that it takes him up to 10 times longer than a non-disabled person to complete various DLA there is no information from the physician to confirm this information and the other supplemental medical information contained in the 2016 Outpatient Notes, the 2017 Outpatient Notes, Cardiac Function Clinic Note, and Diagnostic Report do not provide information regarding the appellant's ability to perform DLA. In the SR the appellant reports that he forgets to take medications on several occasions but in the AR, the physician indicates that the appellant is independent with all aspects of medications.

In the Submission the physician indicates that the appellant's level of activity is significantly reduced due to his impairment and that he is significantly restricted in DLA at all times. However, the physician has not provided any further information to indicate which DLA are restricted at all times, whether there has been any change in the appellant's condition since the physician completed the MR and the AR, and the physician has not provided any other information regarding the time it takes the appellant to complete DLA or the degree and duration of support/supervision required.

While the appellant states that he has difficulty with meal preparation, as he is unable to stand at the sink, counter or stove for long without feeling short of breath, the PR indicates that the appellant is not restricted with meal preparation. While the appellant states that he has lost his appetite due to the medication and heart problems, the MR indicates that the appellant has not been prescribed any medication and/or treatments that interfere with his ability to perform DLA.

The panel finds that while the information provided indicates that the appellant has difficulties with some aspects of some DLA, he is independent with the majority of aspects of DLA. In addition the information provided has numerous inconsistencies, which make it difficult to assess the appellant's ability to perform DLA. Based on all of the information provided, the panel finds that the ministry was reasonable in determining that the evidence is insufficient to show that the appellant's ability to perform his DLA is significantly restricted either continuously or periodically for extended periods as required by EAPWDR section 2(2)(b).

Help with DLA

The ministry's position is that as it has not been established that DLA are significantly restricted, it cannot be determined that significant help is required from other persons.

In the SR, the appellant states that he is reliant on his brother for help and that he would benefit from assistance with cooking, housework, shopping, counseling and emotional support on a daily basis, approximately 4 hours per day. In the RFR, the appellant states that, while his brother provides all help needed, this is a large amount of care. The appellant states that the physician has recommended home care services for housekeeping, shopping and laundry. The appellant's position is that he has a severe physical impairment, his DLA are restricted, and significant help is required in order to complete DLA and stop the decline in his personal health care.

Panel Decision

The MR indicates that the appellant does not require any prosthesis or aids for his impairment. The MR indicates that the appellant lives with his brother who helps with shopping and housework. The AR indicates that help is provided by the appellant's brother. The physician indicates that the appellant needs home care services for housekeeping, shopping and laundry and transportation, noting bus tickets or Handidart.

In the SR, the appellant states that he requires 28 hours of help per week but the information provided by the physician does not confirm the appellant's statement in this regard. Although the panel finds that the appellant requires some help with some aspects of DLA, a finding that a severe impairment directly and significantly restricts a person's ability to manage his DLA either continuously or periodically for an extended period is a precondition to a person requiring "help" as defined by section 2(3)(b) of the EAPWDA.

As the panel finds that the ministry was reasonable in determining that the appellant does not have a severe impairment that directly and significantly restricts his ability to manage his DLA either continuously or periodically for an extended period of time, the necessary precondition is not satisfied.

Accordingly, the panel finds that the ministry's decision that the appellant did not satisfy the legislative criteria of EAPWDA section 2(3)(b) was reasonable.

Conclusion

Having reviewed and considered all of the evidence and the relevant legislation, the panel finds that the ministry's decision finding the appellant ineligible for PWD designation is reasonable based on the evidence and is a reasonable application of the legislation in the circumstances of the appellant. The panel therefore confirms the ministry's decision and the appellant is not successful in his appeal.