

PART C – Decision under Appeal

The decision under appeal is the Ministry of Social Development and Social Innovation (the Ministry) reconsideration decision dated March 22, 2017, which found that the Appellant did not meet four 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. However, the Ministry was not satisfied that the evidence establishes that:

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

PART D – Relevant Legislation

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

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

PART E – Summary of Facts

The evidence before the Ministry at the time of the reconsideration decision included the PWD Application comprised of the applicant information and self report (SR) dated November 28, 2016, a physician report (PR) dated September 7, 2016 and completed by the Appellant's general practitioner (GP) who has known the Appellant since June 2014 and who has seen the Appellant 2 - 10 times in the past year, and an assessor report (AR) dated October 9, 2016 and completed by a sports medicine physician (SMP) who has known the Appellant for almost a year and who has seen him 2 - 10 times in the past year.

The evidence also included the following documents:

- 1) Request for Reconsideration (RFR) signed on March 1, 2017 by the Appellant's GP stating that:
 - the Appellant had surgery for a complete left shoulder replacement;
 - recovery from the surgery will take "many months";
 - as of March 1, 2017 he has decreased functioning in his left arm "greatly affecting" his ability to do activities of daily living (DLA);
 - his right shoulder will also require repair and he has decreased functioning there;
 - he needs family members to help him with grocery shopping and he needs help cooking and cleaning; and
 - he definitely cannot work in physical labour at all.

- 2) Letter signed by the Appellant dated March 6, 2017 and accompanying the RFR stating the reasons for his RFR, providing details of a January 27, 2017 consultation with his orthopedic surgeon (OS), explaining who is helping him with his DLA, and indicating that he has a follow-up appointment with the OS in April 2017, and attaching:
 - a post-operative instructions note (POIN) from the health authority in the Appellant's community dated April 22, 2015;
 - copies of medical reports including X-ray, ultrasound and magnetic resonance imaging (MRI) test results dated between December 1, 2015 and February 12, 2016;
 - copies of several prescriptions for pain medication dated between November 1, 2016 and January 31, 2017; and
 - a copy of the Appellant's physiotherapy invoices for 8 physiotherapy visits at 1 to 3 week intervals between November 3, 2016 and February 28, 2017.

Diagnoses

In the PR, the GP diagnosed the Appellant with Bilateral Shoulder Osteoarthritis with an onset of June 2014, with the comment "Severe bilateral shoulder pain (with decreased) functional use of (left) arm and (left) shoulder."

Duration

With respect to the estimated duration of the Appellant's impairment, the GP indicated in the PR that it is not known whether his impairment is likely to continue for two or more years, and adds the following explanation: "He will require surgery to both shoulders and recovery from each operation (is) expected to be 4 to 6 months."

Physical Impairment

In the PR, the GP reported, in terms of health history, that the Appellant:

- has seen an orthopedic specialist and been diagnosed with bilateral shoulder glenohumeral arthritis which has become severe enough that he has no functional use of his left arm or hand and he therefore will require bilateral shoulder surgery;
- has surgery to his left shoulder booked for October 2016; and;
- has been told by his surgeon that he will need 4 to 6 months to recover.
- has “severe bilateral osteoarthritis to both shoulders” and his shoulder “will be immobilized for a period of time post surgery.”

In terms of functional skills, the GP also indicated in the PR that the Appellant can walk 4 or more blocks unaided on a flat surface, climb 5 or more stairs unaided, lift under 2 kg. (under 5 lbs), and is unlimited in how long he can remain seated.

In the AR, the SMP indicated that the Appellant:

- has pain and restriction on left more than right active and passive shoulder range of motion (ROM) with no sensory loss;
- has reduced strength on all rotator cuff testing;
- has bilateral shoulder and acromioclavicular moderate osteoarthritis and degenerative diffuse rotator cuff tendinopathies;
- has been getting regular ultrasound and guided subacromial and glen-humeral cortisone injections for pain management and to improve functionality;
- receives pain management in the form of non-steroidal anti-inflammatory drugs and an occasional narcotic;
- has pending bilateral (left arm) shoulder resurfacing hemiarthroplasty; and,
- he is independent in all aspects of mobility and physical ability, specifically: walking indoors and outdoors, climbing stairs, standing, lifting and carrying and holding.

In the SR, the Appellant wrote that:

- severe osteoarthritis in both shoulders brings on excruciating pain and limits his mobility;
- he is going to have shoulder replacement surgery in both shoulders starting with his left shoulder in October 2017 from which he has been told it will take 6 to 8 months to recover;
- following his 100% recovery from the left shoulder surgery his right shoulder will be replaced;
- living with severe osteoarthritis is very difficult because it causes constant aching pain all day long;
- post surgery he also expects his DLA to be negatively impacted because his arm will be in a sling for at least 3 months; and
- his surgeon has told him that he will have to see a physiotherapist to get his shoulder movement back and that the physiotherapy itself will be painful.

Mental Impairment

In the PR, the GP did not diagnose a mental health condition and reported that the Appellant has no difficulties with communication or significant deficits with cognitive and emotional function and no restrictions in his social functioning.

In the AR, the SMP reported that the Appellant has good communication skills, and in the section of the AR where the prescribed professional is asked to identify any mental impairments through impacts to cognitive and emotional functioning he wrote “N/A”. In the section of the AR dealing with

the Appellant's social functioning, the SMP indicates that the Appellant requires periodic supervision in dealing appropriately with unexpected demands, adding "unable to (deal with unexpected demands) if requires moderate job task duties (> 10 lbs)" and "currently requires help from (personal caregiver) for tasks > light force or tasks requiring full shoulder ROM".

The Appellant did not reference any mental impairment in his SR.

Restrictions in the Ability to Perform DLA

In the PR, the GP reported that the Appellant has not been prescribed any medication or treatments that interfere with his ability to perform DLA, although the GP noted the Appellant takes pain medication every 4 to 6 hours.

The GP also reported in the PR that the Appellant is independent with management of medications, mobility inside and outside the home and management of finances, but that he has continuous restrictions with personal self care DLA, meal preparation DLA, basic housework DLA, daily shopping DLA, and use of transportation DLA. No explanation as to the extent of any of the restrictions is provided. Where asked to explain what assistance the Appellant needs with DLA, the GP writes "(decreased) functional use of (left) arm /(left) hand, limited by pain".

In the AR, the SMP reported that the Appellant is independent with respect to all aspects of mobility and physical ability (walking indoors and out of doors, climbing stairs, standing, lifting, and carrying and holding), the tasks of feeding and diet regulation, transfers in and out of chairs and bed, shopping (except for carrying purchases home), meal planning, food preparation and safe storage, all aspects of the pay rent and bills DLA, all aspects of the medications DLA and all aspects of the transportation DLA. The SMP assumes that the Appellant requires periodic assistance from another person with the tasks of dressing, grooming, bathing and toileting and continuous assistance with the tasks of laundry, basic housekeeping, carrying purchases home, and cooking (note: "Assumed, should have ergonomic evaluation [by an occupational therapist] for confirmation"). No additional comments or descriptions are provided of the type and amount of assistance required.

In his SR, the Appellant wrote that because he does not have the full range of motion in both shoulders it is very challenging to perform DLA such as cleaning, eating, taking a shower and driving.

Need for Help

In the PR, where asked if the Appellant requires any prostheses for his impairment, wrote "he will be in a shoulder sling post-operation".

In the AR, the SMP wrote that the Appellant's help with DLA is provided by his family, without further explanation, and that he does not have an assistance animal.

In the SR, the Appellant stated that family members have to come to his home "to help with cooking and other things around the house".

Additional Information submitted after reconsideration

In his Notice of Appeal (NOA) dated April 3, 2017, the Appellant wrote that he has experienced a major decrease in function in his left shoulder following shoulder replacement surgery which greatly affects his ability to perform DLA, and he is awaiting shoulder replacement surgery for his right shoulder. He also stated that both elbow humeri have osteophytosis and calcification and that he is waiting for an appointment with a radiologist.

Admissibility of Additional Information

Section 22(4) of the *Employment and Assistance Act* (EAA) provides that panels may admit as evidence (i.e. take into account in making its decision) the information and records that were before the minister when the decision being appealed was made and “oral and written testimony in support of the information and records” before the minister when the decision being appealed was made – i.e. information that substantiates or corroborates the information that was before the minister at reconsideration. These limitations reflect the jurisdiction of the panel established under section 24 of the EAA – to determine whether the Ministry’s reconsideration decision is reasonably supported by the evidence or a reasonable application of the enactment in the circumstances of an Appellant. That is, panels are limited to determining if the Ministry’s decision is reasonable and are not to assume the role of decision-makers of the first instance. Accordingly, panels cannot admit information that would place them in that role.

The panel noted that references in the NOA to osteophytosis and calcification in both elbow humeri were health conditions which were previously identified in the January 5, 2016 X-ray test results which accompanied the RFR and were therefore included among the information and records that were before the minister when the decision being appealed was made. Therefore the panel admitted the additional written testimony pursuant to Section 22(4) of the EAA and considered the information in the NOA to be argument.

At the hearing, the Appellant stated that he has major osteoarthritis in two deteriorating shoulders resulting in “chronic pain 24/7”. He explained that on October 17, 2016 he had shoulder replacement surgery in his left shoulder, that the shoulder replacement surgery for his right shoulder cannot proceed until he has fully recovered from the surgery to his left shoulder, and that recovery from the initial surgery has taken longer than expected. Recovery includes having to take physiotherapy on a bi-weekly basis, which involves training his arm how to operate again. In the meantime he has no functioning in either of his arms.

The Appellant also confirmed that the follow-up appointment with the orthopedic surgeon referred to in the Appellant’s March 6, 2017 letter, at which the Appellant expects to receive a new estimate of the time it will take to recover from the first surgery and which was scheduled for April 2017, has now been deferred till May 2017. The Appellant confirmed that he has not asked his GP or the orthopedic surgeon to provide the Ministry with a written update on his prognosis, but has been told by the orthopedic surgeon that recovery from the first operation will take “a year or more”.

The Appellant stated that he cannot use his left arm at all until he has recovered from the surgery, and that he can only lift up to between 3 and 5 lbs with his right arm after receiving a cortisone injection, which he receives every two months. He also stated that although he is supposed to be attending physiotherapy every two weeks, he can only afford to attend on a monthly basis. At the hearing, the Appellant’s representative (Representative), who is a relative of the Appellant and spoke

on the Appellant's behalf at the hearing, stated that the Representative had acquired some equipment and videotaped a physiotherapy session so that between physiotherapy appointments the Appellant could perform rehabilitation exercises at home.

The Representative also explained that the Appellant's impairments have not just been a problem over the past 6 months (since the initial surgery). He stated that the Appellant was in constant pain before the surgery and would take pain killers and receive periodic cortisone shots to address his symptoms. The Representative explained that he has had to step in and assist the Appellant with many DLA, including helping him shower and dress every day and driving him everywhere and carry his groceries. He stated that recovery from the initial surgery was originally expected to be no more than 6 months, but it is now more than 6 months beyond the date of the surgery and the Appellant has still not recovered. The Representative stated that the Appellant cannot work or do physical activity. He pointed out that in the RFR the GP asked the Ministry to reconsider its decision and stated that "recovery from (the initial surgery) will take many months."

At the hearing, the Ministry relied on its reconsideration decision and stated that the Ministry must operate under the legislation and does not have the authority to make decisions outside the criteria established in the EAA and the EAR. The Ministry explained that it is required by legislation to rely on the opinion of prescribed professionals and "has to look at what the doctor has given us" with respect to duration and severity of impairment, impact on DLA, and help needed. The Ministry explained that ability to work was not a criteria assessed in determining PWD eligibility, but that the federal government, through the Canada Pension Plan (CPP) may provide the Appellant with a disability pension if he applies and qualifies for it, and that if he is receiving a CPP disability pension he would automatically qualify for some additional assistance from the Ministry.

PART F – Reasons for Panel Decision

The issue on the appeal is whether the Ministry's reconsideration decision, which found that the Appellant is not eligible for designation as a person with disabilities (PWD), was reasonably supported by the evidence or was a reasonable application of the applicable enactment in the circumstances of the Appellant. The Ministry found that the evidence does not establish that the Appellant has a severe mental or physical impairment that is likely to continue for two or more years and that his DLA are not, 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 ...

Duration

The Appellant's position is that recovery from his first shoulder surgery has taken more than the 4 to 6 months estimated by the GP in the PR, that once he has recovered from the first surgery he will require similar surgery to his right shoulder which might well require the same duration of rehabilitation, and that his orthopedic surgeon has told him that recovery from the first surgery will take a year or more.

The Ministry's position is that it has not been established that the Appellant's impairment is likely to continue for at least 2 years in the opinion of a medical practitioner or a nurse practitioner.

Panel Decision

Section 2(2)(a) of the EAPWDA requires that, for the Ministry to be able to designate a person as a PWD, it must be satisfied that, among other things, that person's severe mental or physical impairment is likely to continue for at least 2 years in the opinion of a medical practitioner or nurse practitioner. In this case the Appellant's medical practitioner is his GP, and the GP has indicated in the PR that it is not known whether the Appellant's impairment is likely to last 2 years or more. In the RFR, the GP says that recovery will take many months. However, the panel finds that there is no evidence that the Ministry had information from a medical practitioner or a nurse practitioner at the time of the reconsideration decision that the Appellant's impairment was likely to last 2 years or more and there was no additional information provided by the GP regarding the duration of the Appellant's impairment on appeal. Therefore the panel finds that the Ministry reasonably determined that an

impairment likely to last at least 2 years has not established pursuant to Section 2(2)(a) of the EAPWDA.

Severity of Physical Impairment

The Appellant's position is that he has a severe physical impairment.

The Ministry's position is that the information submitted with the Appellant's PWD application is not indicative of a severe impairment of physical functioning. In addition, the Ministry argues that the supplementary medical documents submitted with the Appellant's RFR do not speak to his physical functioning. The Ministry points out that the Appellant is still within the post-operative period following surgery to his left shoulder, and that GP does not describe expectations of long-term limitations to the functionality of the Appellant's left arm, nor does he describe the nature of any impacts relating to possible long-term decreased functionality in the Appellant's right arm.

Panel Decision

The panel acknowledges that a diagnosis of a serious medical condition does not in itself determine PWD eligibility or establish a "severe" impairment. Section 2(2) of the EAPWDA requires that in determining whether a person may be designated as a PWD the Ministry must be satisfied that the individual has a severe physical or mental impairment.

An "impairment" is a medical condition which results in restrictions to a person's ability to function independently or effectively. To assess the severity of an impairment, the Ministry must consider both the nature of the impairment and the extent of its impact on daily functioning as evidenced by functional skill limitations and the degree to which the ability to perform DLA is restricted. In making its determination the Ministry must consider all the relevant evidence, including that of the Appellant. However, the legislation is clear that the fundamental basis for the analysis is the evidence from a prescribed professional – in this case the Appellant's GP and his SMP.

The panel finds that the ministry reasonably considered the impacts of the appellant's diagnosed medical conditions on his daily functioning based on all of the evidence it had at the time of the reconsideration decision, including assessments that he is independent in all aspects of his mobility and physical ability and, other than lifting, is at the top end of the scale for functional skills. The GP assessed the Appellant as able to lift up to 5 lbs with his right arm and the SMP assessed the Appellant as independent with lifting and carrying and holding, with no need for the assistance of another person or an assistive device. The panel further notes that the Ministry considered the Appellant to still be in the post-operative period following surgery to his left arm, and that a prescribed professional has not provided an update as to the length of time it might be expected for the Appellant to recover functionality in his left arm, whether the Appellant might eventually expect full recovery or, if not, the extent to which his impairment might be reduced following full recovery for the surgery.

Therefore the panel finds that the Ministry's determination that there is not sufficient evidence to establish that the Appellant has a severe physical impairment which directly and significantly restricts the Appellant's ability to perform daily living activities either continuously, or periodically for extended periods pursuant to Section 2(2) of the EAPWDA, was reasonably supported by the evidence before the Ministry at reconsideration.

Severity of Mental Impairment

In its reconsideration decision, the Ministry found no evidence of a severe mental impairment. The Ministry did note that the SMP indicated in the AR that the Appellant requires periodic support or supervision with being able to deal appropriately with unexpected demands, but does not describe the frequency or duration of the periodic support or supervision required, but rather explains that the Appellant currently requires help from a personal caregiver for “light force tasks” or tasks requiring full range of shoulder movement, which the Ministry concludes is “not indicative of support / supervision for social functioning”.

The Appellant did not identify a mental impairment.

Panel Decision

The panel finds that the Ministry reasonably concluded that there was a lack of evidence of a severe mental impairment as there is no mental health diagnosis and no evidence of significant impacts to the Appellant’s cognitive and emotional or social functioning. The panel notes that, in describing the periodic support required by the Appellant in being able to deal with unexpected demands, the SMP provides an explanation which identifies help provided by a personal caregiver in support of the Appellant’s physical rather than cognitive or emotional functioning . The panel finds that the Ministry reasonably determined that the evidence shows that none of the Appellant’s cognitive and emotional functions are impacted. Therefore the panel finds that the Ministry reasonably determined that a severe mental impairment was not established pursuant to Section 2(2) of the EAPWDA.

Restrictions in the ability to perform DLA

The Appellant’s position is he is unable to perform his personal care DLA, his meal preparation DLA, his basic housekeeping DLA or his transportation DLA because he has no use of his left arm pending full recovery from his initial shoulder surgery and can only lift between 3 and 5 lbs with his right arm. Furthermore, once he has recovered from the surgery to his left arm he will have surgery on his right arm and expects to have no use of his right arm for “a year or more” following that surgery.

The Ministry’s position is that it is not satisfied that the information provided by the Appellant at reconsideration demonstrates that he has a severe impairment which directly and significantly restricts his ability to perform his DLA.

In addition, the Ministry’s position is that the supplementary medical documents submitted with the Appellant’s RFR do not speak to his ability to perform DLA, and that the GP’s assessments of restrictions to DLA in the PR and the SMP’s assessments of restrictions in the AR were made prior to his left shoulder surgery.

Panel Decision

Section 2(2)(b) of the EAPWDA requires that the Ministry be satisfied that a prescribed professional has provided an opinion that an applicant’s severe impairment directly and *significantly* restricts his DLA, continuously or periodically for extended periods. In this case, the GP and the SMP are the prescribed professionals. DLA are defined in Section 2(1) of the EAPWDR and are also listed in the PR and, with additional details, in the AR. Therefore, the prescribed professionals completing these forms have the opportunity to indicate which, if any, DLA are significantly restricted by the Appellant’s impairments either continuously or periodically for extended periods, and to further elaborate so that

the nature and extent of the restrictions to DLA are clear. Prescribed professionals are further encouraged to elaborate on the nature and extent of the limitations or restrictions in the instructions provided in those sections of the forms. For example, in Part C of the AR the assessor is instructed to identify whether assistance is required in each case with respect to the full range of DLAs, and if the applicant is not independent, to describe the type and amount of assistance required.

The panel notes that at the time that the PWD application was submitted and prior to the Appellant's left shoulder surgery, the GP reported in the PR that the Appellant is continuously restricted with his personal care DLA, meal preparation DLA, basic housework DLA, daily shopping DLA, and use of transportation DLA, but does not describe the degree of restriction. In the AR, the SMP assessed the Appellant as independently able to perform all DLA except for the tasks of dressing, grooming, bathing and toileting DLA for which the SMP *assumes* the Appellant needs help, and that the Appellant required continuous assistance with the tasks of laundry, basic housekeeping, carrying purchases home, and cooking. Again, duration and frequency of the assumed periodic assistance is not explained. More significantly, the panel notes that the Ministry considered that the prescribed professionals' assessments of restrictions were made prior to the left shoulder surgery and that the Appellant may experience an increase in ability with the functionality of his left shoulder/arm/hand following the recovery period, with an associated decrease of restrictions to his ability to perform DLA.

The Ministry also reviewed the RFR signed by the Appellant's GP, which advised that the Appellant had surgery for a complete left shoulder replacement, that recovery from the surgery will take "many months," and that, as of March 1, 2017, the Appellant has decreased functioning in his left arm "greatly affecting" his ability to do activities of DLA. The GP wrote that the Appellant needs family members to help him with grocery shopping and he needs help cooking and cleaning and he definitely cannot work in physical labour. The panel finds that the Ministry reasonably determined that the GP does not describe expectations for long-term limitations to the functionality of the Appellant's left arm and that there is an emphasis placed by the GP on the Appellant's employability, which is not one of the criteria for the PWD designation.

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

Help with DLA

The Appellant's position is that he is unable to use his left arm because he has not recovered from his left shoulder surgery and is severely limited with his ability to use his right arm, and as a result he needs continuous help from family members to perform personal care DLA, meal preparation DLA, basic housework DLA, daily shopping DLA, and transportation DLA.

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

Panel Decision

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

The panel finds that the Ministry reasonably considered that the Appellant is still in the post-operative period following surgery to his left arm, and as a result any help he requires at this time might not be required once he has recovered from surgery. While the Representative provided information at the hearing about the ways that he is currently helping the Appellant, the panel finds that the Ministry reasonably determined that, as direct and significant restrictions in the Appellant's ability to perform DLA have not been established, it cannot be determined that the Appellant requires help to perform DLA as a result of those restrictions, as defined by Section 2(3)(b) of the EAPWDA.

Conclusion

Having reviewed and considered all of the evidence and relevant legislation, the panel finds that the Ministry's reconsideration decision, which determined that the Appellant was not eligible for PWD designation under Section 2 of the EAPWDA, was reasonably supported by the evidence and was a reasonable application of the EAPWDA in the circumstances of the Appellant, and therefore confirms the decision. The Appellant's appeal, therefore, is not successful.