

## PART C – Decision under Appeal

The decision under appeal is the Ministry of Social Development and Social Innovation (“the ministry”) reconsideration decision dated April 19, 2017 in which the ministry found the appellant was not eligible for designation as a Person With Disabilities (“PWD”) because he did not meet all of the criteria in Section 2(2) of the *Employment and Assistance for Persons with Disabilities Act* (“EAPWDA”). The ministry was satisfied that the appellant has reached 18 years of age and that his impairment will continue for at least 2 years; however, based on the information provided in the PWD Designation Application (“PWD application”) and Request for Reconsideration (“RFR”), the minister was not satisfied that three other criteria were met:

- The appellant has a severe mental or physical impairment;
- The impairment, in the opinion of a prescribed professional, directly and significantly restricts his ability to perform daily living activities (“DLA”) either continuously or periodically for extended periods; and
- as a result of these restrictions, he requires help to perform DLA through an assistive device, the significant help or supervision of another person, or the services of an assistance animal.

## 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 reconsideration consisted of the following:

1. A PWD application comprised of:

- The *Applicant Information and Self-report* (“SR”) signed by the appellant on October 19, 2016.
- A *Physician Report* (“PR”) completed by a general practitioner (“the physician”) on December 7, 2016, who has known the appellant for 2 years and has seen him 11 or more times in the past 12 months; and
- An *Assessor Report* (“AR”) also completed by the physician on December 7, 2016, who indicates filling out the report via an office interview with the appellant, current and past chart information, and pain specialist consults.

The PWD application includes the following information:

### ***Diagnoses***

#### PR and AR

- The appellant is diagnosed with Degenerative disc disease and Generalized anxiety with dates of onset before 2010. Under *Health History*, the physician wrote that the appellant injured his back approximately 10 years ago and has had chronic lower back pain ever since. The physician noted that the appellant has “osteoarthritis changes” in his lower spine, and indicates in both reports that the appellant’s back pain is periodically worse at times. In addition to anxiety, the physician reported that the appellant suffers from alcoholism which may have been a coping mechanism.

### ***Functional Skills***

#### PR

The physician provided the following information regarding any functional limitations:

- The appellant can walk 1 to 2 blocks unaided on a flat surface;
- can climb 5 or more steps unaided;
- can lift 15 to 35 pounds;
- can remain seated for 1 to 2 hours;
- has no difficulties with communication, and
- has significant deficits with 3 out of the 12 listed areas of cognitive and emotional function: Emotional disturbance (anxiety), Motivation, and Attention/ sustained concentration. No explanation/ comments were provided.

## AR

The physician provided the following information for *Mental or Physical Impairment (Abilities)*:

- The appellant has a good ability to communicate in all of the areas listed: Speaking, Reading, Writing, and Hearing;
- He is independent with 4 out of 6 functions under *Mobility and Physical Ability*: Walking indoors, Walking outdoors, Climbing stairs, and Standing. He requires periodic assistance from another person with the 2 remaining areas: Lifting, and Carrying/ holding [Comments: "at times lower back pain affects lifting and carrying"].
- In indicating whether a mental impairment impacts the appellant's *Cognitive and Emotional Functioning*, the physician checked *No impact* for 12 of the 14 listed areas: Bodily functions, Consciousness, Impulse control, Insight/ judgment, Attention/ concentration, Executive, Memory, Motor activity, Language, Psychotic symptoms, Other neuro-psychological problems, and Other emotional/ mental problems.
- The physician indicates a *Moderate impact* for the 2 remaining areas: Emotion and Motivation.

## SR

The appellant described the following impacts to his functions:

- He is unable to walk, stand, or lift, even with steroid or cortisone medications, which he also takes for the lack of feeling in his feet.
- He is unable to control emotions due to constant pain.
- He has poor penmanship, eyesight, and cognitive skills.
- He has trouble sleeping, loses his appetite, and has lost 30 pounds due to the stress of trying to cope with daily life.

## ***Daily Living Activities (DLA)***

## PR

- The physician checked *No*, the appellant has not been prescribed medication/ treatments that interfere with his ability to perform DLA.
- He indicates no restrictions for 8 out of 10 DLA: Personal self-care, Meal preparation, Management of medications, Basic housework, Daily shopping, Mobility inside the home, Use of transportation, and Management of finances.
- He indicates the appellant has periodic restrictions with Mobility outside the home and Social functioning [Comments: "Sometimes back pain more severe than other times, affecting walking"; and "Sometimes anxiety causes (him) to be reclusive"].

## AR

The physician provided the following information for DLA:

- The appellant is independent with all areas for 6 of the 8 listed DLA: Personal care, Basic housekeeping, Meals, Pay rent and bills, Medications, and Transportation.

### *Shopping*

- He is independent with all areas of Shopping with the exception of Carrying purchases home [requires periodic assistance from another person. Comment: "At times back pain worse, making carrying more difficult"].

### *Social Functioning*

- He is independent with all areas of Social Functioning with the exception of Able to develop/maintain relationships [requires periodic assistance. Comment: "(He) is an alcoholic which makes it difficult for him to socialize"]. The physician checked that the appellant has marginal functioning with both his immediate and extended social networks. No safety issues were identified.

## SR

- The appellant reported an inability to maintain relationships due to constant pain. He stated that he is miserable and offends people around him including his family and nobody likes him. He feels isolated in his community and seldom leaves his house, and he is also alienated from close family members. He wrote that he used to be outgoing and enjoyed the outdoors but now he is so frustrated and unable to put up with pain that he just doesn't try.
- He wrote that he has great anxiety when shopping or in group situations and always feels like he is being judged.
- He stated that he cannot manage money or stick to a budget and has been in debt. He cannot complete any forms without help nor can he use a computer - "no patience".
- He indicates that he does not do his own laundry and he needs help in making meals and cleaning his room.
- He indicates that he did not complete high school and had only labour-related jobs which he can no longer do, and he doubts he could handle any work involving physical or cognitive activities.

### ***Need for Help***

## PR

- The physician check marked *No*, the appellant does not require any prostheses or aids for his impairment.

## AR

- The physician indicates the appellant lives with family and receives help from his mother.
- The physician left blank the section for *Assistance provided through the use of assistive devices*.
- He check marked *No*, the appellant does not have an assistance animal.

## SR

- In addition to needing help with specific DLA as noted above, the appellant indicates that he has seen a forensic psychiatrist and has been to mental health “but no solution.”

2. A Request for Reconsideration (“RFR”) signed by the appellant on March 20, 2017 in which he requested an extension of time. He subsequently provided the following documents:

- *Medical Report - Employability* signed by the physician on November 15, 2016 indicating that the appellant has moderate lumbar spine osteoarthritis. The physician checked that the condition is episodic in nature [Comments: “Every few months has severe pain but lives with some degree of pain at all times”].
- *Chart Summary* from a pain specialist showing 13 entries from October 2015 to February 2017:
  - The first entry, dated October 8, 2015 indicates that the physician referred the appellant for a pain clinic consult for review of his chronic lower back pain. At that time the appellant was having constant pain that was progressively disabling *to the point that he is really not able to do much at all*. The specialist noted that pain is increased by standing at the counter and with prolonged sitting, and that increased activity will sometimes improve the pain. The pain specialist listed various conditions and diagnoses including neck pain, bilateral neuropathy, mild scoliosis, degenerative disc disease [mild at most locations on the spine but severe at L2-3], mild to severe stenosis, and mild to moderate osteoarthritis. Treatment includes injections and medications and the appellant was helped by previous injections in 2012. An objective assessment indicated the appellant “is able to walk on his heels and toes without difficulty. Deep squat and stand is normal.” The pain specialist noted the appellant’s psycho-social history: “ongoing severe anxiety and depression with associated alcoholism, which will affect his pain as well.”
  - Subsequent entries describe treatment with pain blocks and injections and indicate that these treatments have varying degrees of success and can sometimes provide up to 5 months of relief from severe lower back pain. Between December 2016 and February 2017 [the time period for the appellant’s PWD application and ministry’s assessment of the information], the pain specialist noted that the appellant obtains more relief from injections than from pain blocks. In the most recent note of February 9, 2017 the appellant was reported to be “doing quite well at present.” Several of the entries indicate the appellant’s *Functional Score* which had increased to 49/70 by January 19, 2017.

- Undated letter to the physician from the appellant's mother in which she provided additional information about the appellant's impairments for the reconsideration of the ministry's decision. She wrote that he has difficulties with communication, daily functioning, and executive, and that he has learning disabilities. She described the appellant's problems with family responsibilities and working on his own, indicating that she assisted him with his family and that he experienced financial difficulties including bankruptcy because he was unable to complete paperwork. She wrote that he is still being contacted for failing to pay creditors; is estranged from family and friends; and there are no advocacy offices in his home community. [Panel Note: The second page of the letter is missing from the ministry's record/ appeal materials. The appellant's mother read it into the record at the hearing].

3. The ministry's *Persons with Disabilities Designation Denial Decision Summary* and denial letter of February 23, 2017.

#### *Additional submissions*

Subsequent to the reconsideration decision, the appellant filed his *Notice of Appeal* dated April 5, 2017 in which he provided his argument on appeal and stated that he is dependent on his mother for most of his DLA and there is no advocate in his home community and he has no way of driving to other communities.

On May 19, 2017, a letter from the appellant's mother was faxed to the tribunal office. As his advocate, she provided argument on appeal and stated that in her opinion, the appellant has other mental disorders including developmental disabilities and personality disorders that were undetected by the physician's assessment and that the appellant has learning disabilities and was diagnosed with dyslexia in grade 6. She indicated that the appellant has difficulty with communication in the areas of reading and writing and that standing is a real problem for him even with a cushioned mat to stand on.

The appellant's mother provided the following information for DLA:

- The appellant can perform the DLA [listed in the PR] independently but she has to help him with reminders of cleanliness and housework as he fails to notice when these things need attention, and housekeeping is not important to him due to his low self-esteem.
- He likes to cook but he often requires help to follow a recipe and he needs to sit down if his back bothers him.
- He is also able to do laundry but leaves clothes in the dryer and forgets they are there.
- He cannot stick to a budget or keep track of where his money goes and his parents have had to assist him financially.
- He has serious problems with Social Functioning and seldom leaves the house except for appointments or to shop. He has no friends and is estranged from family members. He resists participating in volunteer work and social gatherings and although he has attended group sessions pertaining to employment or mental health he does not stay with these programs as he usually feels defeated or has his feelings hurt. In addition, he can be verbally abusive and disruptive when he is frustrated.

With the exception of dyslexia and other medical conditions not mentioned in the medical reports submitted for the PWD application, the ministry had no objections to the submission. The panel does not admit the diagnoses of dyslexia, learning disabilities, developmental disabilities or personality disorders as these conditions were not before the minister at the reconsideration. The panel finds that the information on functional skills and DLA provides additional corroborating detail on the appellant's self-reported restrictions and admits those submissions under section 22(4)(b) of the *Employment and Assistance Act* as evidence in support of the information and records that were before the minister when the decision being appealed was made.

### *Oral submissions*

The appellant attended the hearing with his mother who acted as his advocate. He provided further argument on appeal and the panel will consider the arguments of both parties in *Part F - Reasons for Panel Decision*. The appellant stated that on a bad day, such as yesterday, he could only walk up 3 steps and had to sit down half way up the stairs and while the pain clinic injections help his mobility they do not work as well as treatments he had at the hospital.

In response to questions from the panel regarding his mental health, the appellant stated that he was taking medication for anxiety but the physician has now "dropped him". He explained that he received a letter from the physician's office stating that they no longer want him as a patient because he missed 2 or more appointments. He stated that the physician took 4-5 months "both times" to complete the PWD medical reports and then "breezed through the forms" [the appellant indicated he had previously applied for PWD but did not go through with an appeal the first time that he was denied].

He stated that he "re-did mental health intake the other day" but he "could not stay there". He explained that he is in so much pain that it causes delusions that make him suddenly jump out of bed. He reported that he had seen the forensic psychiatrist within the past 6 months and they sent an assessor to his community whom he saw 4-5 times; however, they told him that he was not eligible for any further service from them.

Regarding his good days and bad days, he reported that he has 6 bad days and 1 good day in a week. He has trouble sleeping due to pain and wakes up after 2 hours. He stated that he tries to be proud and go to the store for his mom but yesterday he could not move, so he "sat in the car and cried". Regarding assistive devices, the appellant stated that he has walking sticks and a walker but he is "not at the walker stage because (he) doesn't go anywhere." At the hearing, the ministry re-affirmed its argument and stated that the decision was based on the information that was provided in the application.

The panel finds that the oral submissions provide additional background information on the application process and mental health assessments for the appellant's anxiety disorder that was before the minister at reconsideration, as well as additional corroborating detail on the self-reported severity of his conditions. The panel admits the oral testimony under section 22(4)(b) of the *Employment and Assistance Act* as evidence in support of the information and records that were before the minister at the time the decision being appealed was made.



## PART F – Reasons for Panel Decision

The issue on appeal is whether the ministry's reconsideration decision of April 19, 2017 which found that the appellant is not eligible for PWD designation, was reasonably supported by the evidence or was a reasonable application of the legislation in the circumstances of the appellant. Based on the information provided in the PWD application and RFR, the minister was not satisfied that three criteria in EAPWDA section 2(2) were met: The appellant has a severe mental or physical impairment; the impairment, in the opinion of a prescribed professional, directly and significantly restricts his ability to perform DLA either continuously or periodically for extended periods; and as a result of these restrictions, he requires help to perform DLA through an assistive device, the significant help or supervision of another person, or the services of an assistance animal.

The eligibility criteria for PWD designation are set out in section 2(2) of the EAPWDA as follows:

**2(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.

The "daily living activities" referred to in EAPWDA section 2(2)(b) are defined in section 2 of the EAPWDR:

### Definitions for Act

**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;

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.

### *Analysis*

The panel provides the following analysis and decision for each of the legislative criteria that the ministry determined were not met.

#### ***Severe mental impairment***

The appellant's position is that his anxiety disorder is severe because it restricts him from going out and maintaining relationships; and he also has constant pain that makes him unable to control his emotions. He argues that the physician "made no effort to look into mental impairment" and although he was prescribed anxiety medication, he no longer has any support or follow-up now that the physician has "dropped" him as a patient. While his mother sent the physician a letter describing additional psychological and cognitive impairments she reported that no reply was provided. The appellant argues that he also has severe cognitive deficits that cause him problems with penmanship and filling out forms, and poor communication skills in the areas of reading and writing.

The ministry's position is that the physician's information does not confirm a severe mental impairment. The ministry noted that although the physician stated that the appellant has used alcohol as a coping mechanism for his anxiety, he provided no further detail regarding the severity of these impairments. The ministry noted that the physician indicated no major impacts for any areas of cognitive and emotional functioning in the AR despite reporting significant restrictions in the PR. The ministry further noted that the appellant is reported as independent in almost all areas of Social Functioning and has marginal, as opposed to *very disrupted*, functioning with his social networks. The ministry also noted that the physician did not indicate that any supports are required to maintain the appellant in the community.

The ministry noted that the physician made no mention of a referral to a mental health specialist and argues that if the appellant's condition was considered severe, he would be expected to benefit from sessions with a mental health expert. The ministry argues that collectively, the information does not establish a severe mental impairment and with regard to the appellant's position that the physician did not conduct a proper assessment, the ministry stated at the hearing that it "can't do a lot if the client says that the doctor is not correct with the information provided."

#### ***Panel's decision - Severe mental impairment***

The panel finds that the ministry reasonably concluded that the information provided in the PWD application does not establish a severe mental impairment. While the appellant is diagnosed with generalized anxiety disorder and alcoholism as a coping mechanism, the presence of a serious medical condition does not, in itself, establish a severe impairment and evidence of significant functional restrictions is also required.

Regarding functional restrictions, the panel acknowledges the discrepancy between the information from the physician and the appellant's submissions. While it is unfortunate that the physician's information does not delve into the restrictions and impacts reported by the appellant and his mother, especially regarding communication and additional mental health/ neurological conditions, the panel does not find it unreasonable for the ministry to base its determination of severity on the information that was provided by the physician [or "lack of further detail"]. Further, as noted by the ministry, the

physician's indication in the PR of significant deficits with cognitive and emotional function was not corroborated by the information in the AR where the appellant's impairment is noted to have no impact on Attention/ concentration, and no *major* impact in any area of cognitive and emotional functioning.

Regarding Social Functioning, while the appellant reported severe restrictions in his ability to go out into the community, maintain relationships and participate in groups, in the PR, the physician indicated that Social Functioning was only periodically restricted as the appellant's anxiety "sometimes" causes him to be reclusive. As noted by the ministry, in the AR, Social Functioning was not described as "very disrupted", and the appellant was reported as independent with most areas and no supports were identified to help maintain him in the community.

The legislation requires evidence of a severe mental impairment that significantly impacts daily functioning. While the ministry highlighted the physician's lack of mention of a referral to a mental health specialist as a reason to find that the appellant's condition is not severe, the appellant's self-report which was before the minister at reconsideration clearly indicates that he had seen a forensic psychiatrist, and had "been to mental health" with "no solution." Unfortunately, a psychiatric assessment report or mental health worker case notes were not provided for the reconsideration to shed more light on the appellant's anxiety disorder and cognitive/ emotional functioning. The physician's information was the only information on the appellant's anxiety condition that came from a medical professional. Therefore, based on the information in the PR and AR, the panel finds that the ministry reasonably determined that a severe mental impairment under section 2(2) of the EAPWDA was not established.

### ***Severe physical impairment***

The appellant's position is that his back conditions are severe because he is in constant pain and is unable to walk, stand, or lift even with steroid and cortisone medications. He tries to exercise but experiences too much pain. He argues that the physician did not assess him properly because he did not include the information from the pain specialist provided for his previous PWD application. He argues that he has bad days most of the time and on these bad days he can only climb 3 steps before he needs to sit down and rest.

The ministry was not satisfied that the level of physical capability described by the physician [able to walk 1 to 2 blocks, climb 5 or more steps, etc.] is indicative of a severe physical impairment. The ministry argues that severity was also not established because the physician did not provide detail on the degree of pain the appellant experiences or how frequently the appellant has "worse pain". The ministry noted that the physician did not indicate that the appellant requires aids for his impairment and argues that if his condition was considered severe, it is expected that he would benefit from even a basic aid such as a cane or grab bar.

The ministry further argues that a severe impairment is not established because the appellant was reported as largely independent with DLA and while some degree of restriction for walking was reported in the AR, the physician did not elaborate on the frequency and degree in which the appellant experiences pain, and he did not explain whether the appellant's medication helps him.

The ministry acknowledged that the appellant experiences some degree of restriction due to his impairment but argues that in weighing all of the evidence against the nature of the impairment and reported functional skill limitations, a severe physical impairment was not established. Regarding the pain specialist's chart notes provided for the reconsideration, the ministry argues that there is no

information in these notes that would suggest a severe impairment and, in fact, the most recent visit to the pain specialist [February 9, 2017] indicates that the appellant is “doing quite well at present.”

*Panel’s decision - Severe physical impairment*

The panel finds that the ministry reasonably determined a severe physical impairment has not been established by the information provided. As the ministry noted, the evidence from the physician, in the PR, is that the appellant’s physical functions are not severely restricted as he is able to walk 1 to 2 blocks, climb the maximum number of steps on the rating scale [5 or more steps unaided], lift the maximum weight indicated in the scale (15 to 35 pounds) and remain seated for 1 to 2 hours. While Mobility outside the home was reported as restricted in the PR [when the appellant’s pain “is more severe than other times”], and lifting and carrying were reported in the AR as restricted [“at times lower back pain affects lifting and carrying”] there was no information, as noted by the ministry, on how often these functions are restricted or for how long. There is certainly no medical evidence to confirm that the appellant has bad days 6 times per week as he indicated at the hearing.

While the pain specialist indicated in the initial consult of October 8, 2015 that the appellant has had progressively disabling pain “to the point that he is really not able to do anything at all”, a limited assessment was provided for specific functional skills and abilities [“pain increased by standing at the counter” and with prolonged sitting] and the pain specialist in fact stated that the appellant could walk on his heels and toes and squat and stand normally. While various treatments were reported by the pain specialist as having varying degrees of success, as noted by the ministry, the appellant was described as “doing quite well at present” in the most recent chart note from February 9, 2017. Furthermore, while the appellant stated at the hearing that he has “walking sticks”, there was no information from the physician to confirm that the appellant requires any prostheses or aids for his impairment

The legislation requires evidence of a severe impairment that results in significant restrictions to physical functions. While the appellant clearly has several back conditions that cause him chronic pain with episodes of “worse pain”, the information in the PR and AR indicates that he has only minimal restrictions with functional skills and is independent with the majority of physical functions listed on the forms. The panel therefore finds that the ministry reasonably determined a severe physical impairment under section 2(2) of the EAPWDA was not established.

### ***Restrictions in the ability to perform DLA***

The appellant's position is that his impairments significantly restrict his daily activities, especially on his bad days. He highlighted his inability to manage finances and paperwork, and stated that he has "great anxiety when shopping or in group situations" where he always feels that he is being judged. He emphasized his problems with social functioning characterized by his isolation and alienation from his family and community. He also noted that he does not do his own laundry and he often needs help with cleaning his room. His mother added that even though he is able to do activities independently he needs reminders for tasks involving cleanliness and housework as he neglects these due to his low self-esteem. She noted that although he can do laundry he forgets his clothes in the dryer, and while "meal preparation and cooking are things he loves to do", he often requires help to follow a recipe and he needs to sit down when his back bothers him. The appellant also submits that he "cannot do any work involving physical or cognitive activities" and he is dependent on his mother for most DLA.

The ministry noted the physician's information that indicates the appellant is independent in almost every aspect of his DLA and does not require continuous assistance in any area. The ministry argues that the physician's information indicates that the appellant's back pain restricts him "at times", but not for extended periods as required by the legislation. The ministry argues that while the physician does not provide detail on the degree of restriction, the level of functional ability reported by the physician [able to lift 15 to 35 pounds, for example] would not significantly restrict the appellant's DLA and that the information provided, overall, does not establish that his impairment significantly restricts DLA continuously or periodically for extended periods as required by the legislation.

### ***Panel's decision - Restrictions to DLA***

Subsection 2(2)(b)(i) of the EAPWDA requires the minister to be satisfied that in the opinion of a prescribed professional a severe impairment directly and significantly restricts DLA either continuously, or periodically for extended periods. In this case, the prescribed professional is the physician that filled out the forms. DLA are defined in section 2(1) of the EAPWDR and are also listed in the PR, with additional details in the AR. Therefore, a prescribed professional completing these forms has the opportunity to indicate which, if any, DLA are significantly restricted by the appellant's impairments either continuously or periodically for extended periods.

The panel finds that the ministry reasonably determined the physician's evidence does not establish that the appellant's DLA are directly and significantly restricted either continuously, or periodically for extended periods. As noted by the ministry, the appellant was assessed as independent with the majority of DLA. In the PR the only restrictions noted were for Mobility outside the home [due to back pain affecting walking "at times"] and Social Functioning [due to anxiety "sometimes" causing the appellant to be reclusive]. In the AR, no restrictions were reported for any activities involving walking outdoors [Going to and from stores, and using transportation for example]. The only restrictions reported were for Carrying purchases home [when back pain is "worse"] and for one area of Social Functioning [difficulty with relationships due to alcoholism].

As noted by the ministry, there was no information on the frequency or duration of restrictions to establish that restrictions are significant and, also, periodic for extended periods where the medical condition is characterized by better days and worse days. Furthermore, the panel finds that the ministry reasonably concluded that the degree of functional limitation reported by the physician does not translate into significant restrictions with DLA. While the appellant and his mother noted significant restrictions for the DLA of Social Functioning, these were unfortunately not corroborated by

the physician's information which is paramount given that the legislation requires information about restrictions to be *in the opinion of a prescribed professional*. As the legislation requires evidence from a prescribed professional confirming significant restrictions to DLA either continuously or periodically for extended periods as the result of a severe impairment, and the physician indicates that the appellant is independent with the majority of DLA, the panel finds that the ministry reasonably determined that the criteria in subsection 2(2)(b)(i) of the EAPWDA were not met.

### ***Help to perform DLA***

The appellant argues that he needs his mother to help him with most DLA, and that he often does not have any help as he was not successful with mental health groups/ interventions and has "self-medicated with alcohol to deal with lack of help." The ministry's position is that as it has not been established that DLA are significantly restricted, it therefore cannot be determined that significant help is required from other persons. The ministry noted that the medical reports do not indicate that any assistive devices are required.

### ***Panel's decision - Help to perform DLA***

Subsection 2(2)(b)(ii) of the EAPWDA requires a prescribed professional to confirm that as a result of significant restrictions to DLA, the person requires help to perform an activity. Where another person is providing the help, the level of assistance or supervision required must be significant as set out in subsection 2(3)(b)(ii) of the EAPWDA. The physician's evidence confirms that the appellant does not use any assistive devices or an assistance animal but he does receive help from his mother. However, the panel found that the ministry reasonably determined the information provided does not confirm significant restrictions to DLA that are the result of a severe impairment. As restrictions to DLA are a precondition for needing help with DLA, and that precondition has not been met, the panel finds that the ministry reasonably determined the criterion under subsection 2(2)(b)(ii) of the EAPWDA was not met.

### ***Conclusion***

The panel finds that the ministry's reconsideration decision that determined the appellant is not eligible for PWD designation under section 2 of the EAPWDA was reasonably supported by the evidence. The panel confirms the decision pursuant to sections 24(1)(a) and 24(2)(a) of the *Employment and Assistance Act* and the appellant is not successful in his appeal.