PART C – Decision under Appeal

The decision under appeal is the Ministry of Social Development and Social Innovation (the Ministry) reconsideration decision dated May 19, 2017, which found that the Appellant did not meet three of the five statutory requirements of Section 2 of the *Employment and Assistance for Persons with Disabilities Act* for designation as a person with disabilities (PWD). The Ministry found that the Appellant met the age requirement and that his impairment is likely to continue for at least two years. However, the Ministry was not satisfied 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,
- 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 August 8, 2016, a physician report (PR) dated October 31, 2016 and completed by the Appellant's general practitioner (GP) who has known the Appellant for five months and who has seen the Appellant 2 - 10 times in the past year, and an assessor report (AR) dated December 22 and 27, 2016 and completed by a physical therapist (Therapist).

The evidence also included the following documents:

1) Request for Reconsideration (RFR) signed by the Appellant on May 19, 2017 stating that his reason for the RFR is that:
   - He believes the Ministry has misinterpreted the reports and assessments and has based its decision on inaccuracies in the PR;
   - He requires help every day with his DLA;
   - Medication has "yet to change anything"; and
   - Each day his condition deteriorates and he needs more help with his DLA;
2) Follow-up Questionnaire (Questionnaire) dated April 3, 2017, prepared on behalf of the Appellant by a social services agency in the Appellant's community and addressed to the GP asking 12 questions as follows (*GP's response in italics*). Appellant states that:
   - He is only able to walk up to 5 - 10 minutes (1 - 1 1/2 blocks) at a time (*Disagree. It was reported [in] the [AR] [and self reported several times] that he could walk [more than] 10 - 15 minutes*)
   - He has to use a handrail or wall for support at all times when climbing stairs (*Disagree. While he may use handrails this does not constitute a significant aid especially as he does not have significant balance issues)*
   - He can lift a maximum of 15 lbs (*Unknown*)
   - He is only able to sit for 15 minutes at a time (*Disagree. We have had appointments [lasting longer than] 15 minutes on several occasions*)
   - He has to sit when getting dressed and that it takes him 3 times longer than normal to dress (*Unknown. With his excellent [range of motion] and ability, I would not think this likely, though a therapist could assess*)
   - If he takes a bath he needs assistance in getting out of the bath and has to use a bath bar (*Unknown. No difficulty with "get up and go" testing or gait, but therapist may provide more information*)
   - When getting out of a chair he has to use chair arms or other furniture for support (*Disagree. Patient is able to seat himself and rise from a chair without difficulty at the office*)
   - When doing laundry he is in continuous need of assistance as he is unable to carry the laundry basket or bend to transfer laundry from the washer to the dryer (U*nknown*)
   - He is in need of continuous assistance (with) housekeeping as he is unable to mop, sweep or vacuum floors (or) to bend to clean out a bathtub (*Unknown*)
   - When shopping he is only able to carry purchases that are less than 5 pounds (*Disagree. A previous question says he can lift up to 15 lbs.*)
   - When ... cooking and (preparing food) he needs to take frequent breaks due to limitations with prolonged standing (*Unknown. Patient previously stated he could walk [more than]15 minutes - this would suggest the ability to stand*)
   - When getting out of a vehicle he needs to use the door handles for support (*Unknown*)

3) Functional Capacity Evaluation Report (Evaluation Report) dated December 15, 2016 prepared by a registered kinesiologist which assessed the capabilities of the Appellant by measuring or

scoring a number of physical activities and movements (e.g. sitting, walking, standing, climbing) and which concludes that the Appellant is currently functioning at a sedentary activity level to a light strength demand level compared to a normal healthy adult of his age and that he met most of the demands associated with a light level of work.

Diagnoses

In the PR, the GP diagnosed the Appellant with rheumatoid arthritis with an unknown date of onset, and osteoarthritis with an unknown date of onset.

Physical Impairment

In the PR, the GP reported that, in terms of health history, the Appellant has non-erosive seropositive rheumatoid arthritis which causes pain in the joints and stiffness, particularly in the knees and feet. The GP also makes reference to the separate Evaluation Report (without quoting anything specific from that report). The GP also states that the Appellant's condition is chronic and is likely to continue for two years or more. In terms of functional skills, the GP reports that the Appellant can walk 4 blocks or more on a flat surface unaided, can climb more than 5 steps unaided and has no limitation as to how long he can remain seated. The GP does not indicate whether the Appellant has any limitations with respect to lifting.

In the AR, the Therapist reported that the Appellant stated that he has difficulty sleeping and only sleeps 3 to 4 hours a night. In addition, the Therapist states that the Appellant has difficulty with tasks involving repetitive bending and lifting and that weight-bearing activities and transitional movements are especially challenging. The Therapist concludes that, based on the findings of her interview with the Appellant, pain appears to be the limiting factor affecting his mobility, and that the Appellant states that activities that require prolonged standing and walking, lifting and carrying 5 - 15 lbs., and wrist mobility are difficult to complete and that both knees buckle with prolonged standing, the right more than the left.

In the Evaluation Report, the kinesiologist states that the Appellant experiences difficulty with lifting and carrying more than 25 - 50 lbs and that during lifting an object from the waist to over his head he had to stop "due to difficulties at 15 lbs. for 2 repetitions". The kinesiologist also reported that the Appellant was capable of sitting for a combined total of one hour and 14 minutes, that he could stand for a combined total of one hour and 46 minutes (with maximum sustained standing of 30 minutes) and could walk for a combined total of 11 minutes (with sustained waking of 15 minutes on a treadmill, including assessment and warm up). The kinesiologist concluded that the Appellant could meet most of the demands associated with light level work.

In the SR, the Appellant wrote that he cannot stand or walk for more than 15 minutes, bend or lift objects of any weight without great pain and he has a hard time getting in and out of the bath tub.

In the Questionnaire, the GP disagrees with the Appellant's contention that he can only walk to 5 - 10 minutes (1 - 1 1/2 blocks) at a time, that he has to use a handrail or wall for support at all times when climbing stairs, that he is only able to sit for 15 minutes at a time, that he has to use chair arms or other furniture for support when getting out of a chair, and that he is only able to carry purchases that are less than 5 pounds when shopping.

Mental Impairment

In the PR the GP reported that the Appellant had no difficulties with communication and no significant deficits with cognitive and emotional function.

In the AR the Therapist rated the Appellant's communication abilities (speaking, reading, writing and hearing) as satisfactory. With respect to cognitive and emotional functioning, the Therapist stated that the Appellant's mental impairment had a moderate impact on bodily functions ("sleep disturbance" was circled on the form), minimal impact on consciousness, impulse control, attention/concentration, memory, motivation, motor activity and visual problems, and no impact on emotion, insight and judgement, executive functions, language, psychotic symptoms or other emotional or mental problems. The Therapist also stated that the Appellant had good functioning with respect to his relationship with his immediate social network and marginal functioning with respect to extended social networks, noting that the Appellant does not go out much "due to pain and limited mobility".

The Appellant did not identify any mental impairments in the 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.

The GP also reported in the PR that the Appellant is independent with respect to his management of finances, but that he has continuous restrictions with personal self care DLA, meal preparation DLA, basic housework DLA, daily shopping DLA, mobility inside and outside the home, and use of transportation DLA. The GP states that he does not know whether the management of medications activity is restricted. Where asked to provide additional comments as to the extent of any of the restrictions the GP writes "Current high (clinical) disease activity (index) [CDAI 26] which may improve with treatment." In response to the question "What assistance does your patient need with DLA?" the GP writes "Possible benefit of equipment for (rheumatoid arthritis) from occupational therapy and/or assistance from home care".

In the AR, the Therapist reported that the Appellant is independent with respect to all aspects of mobility and physical ability except for standing (walking indoors and out of doors, climbing stairs, lifting, and carrying and holding), the tasks of personal care (except for bathing and transferring in and out of a chair), laundry, shopping, meal planning and safe storage of food, all aspects of the pay rent and bills DLA, all aspects of the medications DLA and using transit schedules and arranging transportation. The Therapist indicates that the Appellant requires periodic assistance from another person with the tasks of bathing (*assistance in/out tub*), transferring in and out of a chair (takes significantly longer), basic housekeeping (*difficulty with tasks involving repetitive bending/lifting i.e. laundry, vacuuming, shoveling*), food preparation, cooking (*need sitting breaks, inability to tolerate prolonged standing*) and getting in and out of a vehicle, with no DLA requiring continuous assistance.

In the SR, the Appellant wrote that great pain prevents him from doing household chores like getting in and out of the bath tub, mowing the lawn, cooking, doing dishes and cleaning.

Need for Help

In the PR, the GP said that the Appellant did not require any prostheses for his impairment.

In the AR, the Therapist wrote that the Appellant's help with DLA is provided by his friends and his roommate, with the Therapist adding that she would recommend home care to aid in cooking and basic housekeeping, and that the Appellant does not have an assistance animal. The Therapist also stated that, while the Appellant does not use any assistive devices, he might benefit from having an assessment by an occupational therapist of the benefits of any prospective assistive devices, including a knee brace, a walking cane, a raised toilet seat and a bath bench.

Additional Information submitted after reconsideration

In his Notice of Appeal dated June 8, 2017, the Appellant wrote that the Ministry has not interpreted or reviewed all of the documents and the "the PR was filled with lies".

The panel considered the information in the Notice of Appeal to be argument.

At the hearing, the Appellant submitted the following additional documents:

1) Three page letter from a rheumatologist to the GP (Rheumatologist's Letter) referencing a referral visit on July 11, 2016 and providing information about:
   - **The Appellant's diagnosis** - in addition to the GP's diagnosis as presented in the PR (non-erosive, seropositive rheumatoid arthritis), other disease features/complications were evident, including numerous motor vehicle accident (MVA) and traumatic injuries "with a left orbital rim fracture in 1996 as well as (a) compound right forearm fracture treated with an (external fixator)". In addition, the rheumatologist described "chronic mechanical lumbar pain with intermittent radiculopathy into his right L3-4 dermatome", "bilateral (middle cerebellar peduncle) [MCP] and wrist swelling with associated secondary Raynaud's phenomenon in his left hand", asthma, contusions to the Appellant's left frontal lobe following an MVA in 1996-97 with 4 - 5 convulsions, left frontal headaches and gastroesophageal reflux disease;
   - **Recent history** - at the Appellant's previous evaluation by the rheumatologist on March 2, 2016 a treatment of Methotrexate was initiated. Despite tolerating the medication well, the Appellant reported an increase on pain and inflammation to his knees and feet, with morning stiffness lasting 1-2 hours daily.for which he takes 3 extra strength Tylenol 3-4 times a day;
   - **Physical examination results** - the Appellant's blood pressure, weight, body mass index and clinical health assessment questionnaire scores are provided without comment. The Appellant had no jaundice, clubbing, peripheral edema or lymphadenopathy. His skin evaluation was normal and an examination of his respiratory, cardiovascular and abdominal systems "was unremarkable". However, examination of his musculoskeletal system "was remarkable for Synovitis of his right wrist, 2^{nd} to 5^{th} MCP right side as well as bilateral ankles and 2^{nd} to 4^{th} as well as left 5^{th} MCP joint with tenderness in all above mentioned joints including right elbow, bilateral knees but excluding bilateral ankles and 4^{th} and 5^{th} (metatarsophalangeal) joints as well as left 2^{nd} MCP joint". The Appellant's CDAI was given as 26;
   - **Diagnostic studies** - a summary of the Appellant's blood analysis results is provided;
   - **Assessment and management plan** - the rheumatologist discussed various future treatment options with the Appellant. The consensus was to add Sulfasalazine to the existing drug treatment. In addition, a pneumonia vaccine, annual flu shots, more regular

use of Tylenol for pain management, a referral back to his GP for an assessment of his back pain , physiotherapy for his right knee, and cores strength training to help support his back was recommended ;
- **Diagnostic plan** - the rheumatologist recommended blood tests every 2 weeks for 6 weeks followed by monthly surveillance;
- **Therapeutic plan** - the rheumatologist provided the Appellant with verbal and written information about the side effects of the prescribed medication and indicated the dosages of each medication; and,
- **Follow-up arrangements** - the rheumatologist asked the Appellant to follow-up in 4 months or sooner should the need arise; and,

2) Two page hand-written letter from the Appellant's roommate, addressed to whom it may concern, informing the reader that:
   - Since 2014 the Appellant's physical and "partial mental" health has deteriorated substantially;
   - She drives him to appointments because he is unable to walk even a short distance;
   - She does all of the grocery shopping because he cannot manage carrying the groceries home or walking the short distance from the store;
   - The Appellant can cook for himself but only for short periods of time;
   - Most of the time she has to do the bending and transferring of loads when doing the laundry; and
   - She and her children now do all of the yard work.

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 reconsideration decision states that the Rheumatologist's Letter was not attached to the Appellant's original application. In addition, the reconsideration decision correctly notes that the Appellant has indicated in Section 3 of the RFR that the following documents are attached to the RFR: "1) Letter to (GP) [3 pages], 2) Letter from (rheumatologist) [1 page], 3) (Evaluation Report) [12 pages]. Included in the appeal package is a copy of the 3 page Questionnaire, which is presumably the "Letter to (GP) [3 pages]" referred to in Section 3 of the RFR, and the 12 page Evaluation Report but no "Letter from (rheumatologist) [1 page]". In its reconsideration decision, the Ministry states that the 1 page letter from the rheumatologist is not included with the RFR. The Appellant insisted at the hearing that the Rheumatologist's Letter was provided by him directly to the Ministry with the RFR. While it is in the Appellant's best interest to provide the Ministry with as much information about his medical impairments as possible, the panel notes that Appellant refers to the letter from the rheumatologist as a *1 page* letter in his RFR, whereas the Rheumatologist's Letter provided by the Appellant at the hearing is a *3 page* letter. Therefore the panel gives little weight to the Appellant's insistence that the Ministry had been provided with a copy of the Rheumatologist's Letter before the reconsideration decision was made. However, the panel further notes that in the reconsideration

decision the Ministry found that it was reasonable for it to assume that the GP and the Therapist had both read the Rheumatologist's Letter and had based their assessments in part upon the information provided therein.

With respect to the Appellant's roommate's 2 page letter, the panel notes that it supports the evidence regarding restrictions in performing DLA included in the the SR, the PR and the AR.

Therefore, the panel admitted both documents presented at the hearing as being in support of information and records that were before the Ministry at the time of the reconsideration decision, in accordance with Section 22(4)(b) of the EAA, but gives little weight to the Rheumatologist's Letter.

The Ministry did not object to the admissibility of the Appellant's/Ministry's additional information presented at the hearing.

Oral Evidence at the Hearing

At the hearing, the Ministry asked to have an observer present. After confirming with the Appellant that he had no objection to the observer attending, the panel admitted the Ministry observer to the hearing.

At the hearing, the Appellant stated that the Ministry has overlooked some of the information presented in his PWD application; specifically the Ministry did not consider the information in the Rheumatologist's Letter and some of the information in the PR and the AR. He indicated that the GP seems to be saying one thing in the PR and something else in the Questionnaire. He referred the panel to Section E of the PR and pointed out that the GP stated that the the Appellant's DLA are continuously restricted for all DLA listed, except for social functioning, and that the form states that "continuous assistance refers to needing significant help most or all of the time for an activity". The Appellant then contrasted the assessments in this section of the PR with the assessments provided in the Questionnaire. He stated that the GP had told him when he was completing the PR that he (the GP) "just looks at tick boxes and does not read the comments", which the Appellant thinks is why the GP's comments sometimes conflict with the boxes that were ticked and why additional information is not provided.

Regarding the AR, the Appellant identified other discrepancies. He drew the panel's attention to the page of the AR that identifies mobility and physical ability impairments pointed out that the Therapist had checked boxes on the form that indicated that he was independent with respect to walking indoors and outdoors, climbing stairs, lifting and carrying and holding but in the comments section the Therapist had stated that the Appellant was unable to do these activities for a prolonged period of time. With respect to climbing stairs, the Therapist had stated that the Appellant was independent but that he needed to use railings, and the Appellant argued that the stair railing is an assistive device.

The Appellant explained that the Evaluation Report was prepared following a referral from the Ministry because it wanted to assess his capacity for employment. When he was being assessed for the Evaluation Report, the Appellant was told by the kinesiologist that the same rehabilitation services organization could complete the AR on the Appellant's behalf, which was why he decided to have that organization, rather than the GP or anyone else, complete the AR.

The Appellant also explained that he did not have a family physician and the GP was a doctor at a clinic he had attended on previous occasions. He stated that the GP was a different doctor from the one who had looked after him when he used to visit the clinic more than a year ago (i.e. more than 5 months before the PR was prepared in December 2016). Regarding any relationship between the

MVAs and his rheumatoid arthritis, the Appellant stated that he though that the arthritis might be at least partly a result of the MVAs but that the GP had assured him that there was no connection between the two.

Regarding mental impairment, the Appellant stated that he can no longer socialize because of the pain he suffers if he goes out for too long. He also stated that his motivation has been adversely affected by his impairment and that he cannot communicate as effectively as he used to.

The Appellant also explained that, while the Ministry paid for the original PR and AR, he had to pay $100 for the Questionnaire. He stated that the information in the AR is no longer accurate in that his situation has worsened since the AR was completed in December 2016. Regarding the assistive devices that the Therapist had suggested the Appellant investigate (a knee brace, a walking cane, a raised toilet seat and a bath bench), he had not taken any action.

At the hearing, the Ministry relied on its reconsideration decision and emphasized that Ministry does not have the resources to independently assess an applicant for severe impairment, impact on DLA and need for help but has to rely on the information provided by the prescribed professionals in the PR and the AR. The Ministry explained that the information provided was inconsistent and incomplete. For example, the Ministry pointed out that the PR states that restrictions are continuous but does not provide any detail by way of explanation. If the prescribed professionals do not provide consistent assessments or information in sufficient detail to allow the Ministry to make a decision, the Ministry must still make a decision based on what information has been provided. In this case the Ministry found insufficient evidence of a severe impairment resulting in a significant impact on the Appellant's DLA.

The Ministry stated that, based on the information presented by the Appellant at the hearing, the Appellant's GP might not have recorded the full significance of the impairment, but the Ministry must rely on the information it has at the time that the reconsideration decision is made.

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 PWD, was reasonably supported by the evidence or was a reasonable application of the applicable enactment in the circumstances of the Appellant. The Ministry found that the evidence does not establish that the Appellant has a severe mental or physical impairment and that his/her 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 ...

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Severity of Physical Impairment

In its reconsideration decision, the Ministry was not satisfied that the information provided establishes a severe physical impairment. The Ministry finds that the information provided by the GP and the Therapist speaks to a moderate rather than a severe impairment. The Ministry found that it was reasonable for it to assume that the GP and the Therapist had both read the Rheumatologist's Letter and had based their assessments in part upon the information provided therein. The Ministry's position is that it must rely on the information submitted with the application for a PWD designation, and in this case the information was incomplete and inconsistent.

The Appellant's position is that, while he acknowledges that the information in the PR, AR Questionnaire and other documents submitted by him is inconsistent, the evidence shows that he has a severe physical impairment.

Panel Decision

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 prescribed professionals* – in this case the Appellant's GP and Therapist.

Section 2(2)(b)(i) of the EAPWDR requires that a mental or physical impairment directly and significantly restrict the person's ability to perform DLA either continuously, or periodically for extended periods. In the PR, the GP has indicated that the Appellant has continuous restrictions with personal self care DLA, meal preparation DLA, basic housework DLA, daily shopping DLA, mobility inside and outside the home, and use of transportation DLA. However, the panel notes that the information provided by the GP in the PR is not complete in that he does not indicate the degree or extent of these continuous restrictions. The GP does state that the Appellant's current high CDAI might improve with treatment, but there is insufficient evidence that the Appellant has pursued all avenues of treatment, including an assessment by an occupational therapist of the benefits of any prospective assistive devices, as recommended by the Therapist.

In the AR, the Therapist has indicated that the Appellant's episodes of impairment are periodic and not continuous (as assessed by the GP), and occur with respect to DLA involving standing (walking indoors and out of doors, climbing stairs, lifting, and carrying and holding), bathing and transferring in and out of a chair. No additional comments or descriptions are provided as to the type, frequency or duration of the periodic impairments. The panel finds that the Ministry was reasonable in determining that in order to assess whether the periodic impairments were for extended periods it would need to know how often and for how long the episodes occur.

The panel further notes that there are a number of inconsistencies with respect to the Appellant's functional skills. For example, in the PR the GP indicated that the Appellant can walk more than 4 blocks unaided, in the AR the Therapist states that the Appellant can walk for up to 10 minutes independently, in the Evaluation report the kinesiologist states that the Appellant's estimate of his maximum tolerance to walking is 15 to 20 minutes (whereas the kinesiologist upon testing the Appellant found that he could walk for a combined total of 11 minutes with sustained waking of 15 minutes on a treadmill, including assessment and warm up), and in the Questionnaire the Appellant is quoted as stating that he can only walk for 5 to 10 minutes and for 1 to 1 1/2 blocks. Therefore, the panel finds that the Ministry was reasonable in finding inconsistencies in the assessments of the degree and frequency of impairment among the PR, the AR, the Questionnaire, and the Evaluation Report.

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 that the GP's assessment did not find evidence of a mental disorder because the GP indicated that the Appellant does not have any significant deficits with cognitive and emotional functioning. In the AR, the Ministry noted that the Therapist indicated moderate impacts to bodily functions (sleep disturbance) and minimal impacts to consciousness, impulse control, attention/concentration, memory, motivation, motor activity and other

neuropsychological problems (visual). On balance the Ministry found that, based on the GP's and the Therapist's assessments, the cumulative impact on cognitive and emotional functioning was not indicative of a severe impairment to mental functioning.

At the hearing, the Appellant stated that he can no longer socialize because of the pain he suffers if he goes out for too long, that his motivation has been adversely affected by his impairment, and that he cannot communicate as effectively as he used to.

Panel Decision

The panel finds that the evidence shows that most of the cognitive and emotional functions are not significantly impacted by the Appellant's mental impairment. Therefore the panel finds that the Ministry reasonably determined/did not reasonably determine 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 that he is only able to walk up to 5 - 10 minutes (1 - 1 1/2 blocks) at a time, he has to use a handrail or wall for support at all times when climbing stairs, he can only lift a maximum of 15 lbs, he is only able to sit for 15 minutes at a time, he has to sit when getting dressed and it takes him 3 times longer than normal to dress, if he takes a bath he needs assistance in getting out of the bath and has to use a bath bar, when getting out of a chair he has to use chair arms or other furniture for support, when doing laundry he is in continuous need of assistance as he is unable to carry the laundry basket or bend to transfer laundry from the washer to the dryer, he is in need of continuous assistance with housekeeping as he is unable to mop, sweep or vacuum floors or to bend to clean out a bathtub, when shopping he is only able to carry purchases that are less than 5 pounds, when cooking and preparing food he needs to take frequent breaks due to limitations with prolonged standing, and when getting out of a vehicle he needs to use the door handles for support.

The Ministry's position is that the information provided does not establish that the Appellant's ability to manage DLA is *significantly* restricted either continuously of periodically for extended periods of time, and that, as a result, he requires *significant* assistance form others to complete them. The Ministry further notes that the GP has indicated in the PR that the Appellant could possibly benefit from an assessment by an occupational therapist of his need for equipment for rheumatoid arthritis and/or assistance from home care and that this suggests that his diagnosis of rheumatoid arthritis is relatively new and development of a treatment plan is in its early stages.

In its reconsideration decision, while the Therapist identifies the need for periodic assistance with some of the Appellant's DLA, the Ministry notes that the nature, frequency and duration of the assistance required is not described. In addition, the Ministry notes in its reconsideration decision that the Therapist indicates that the Appellant takes significantly longer with transfers on and off chairs, cooking and getting in and out of a vehicle. However, how much longer the Appellant takes is not described. As a result, the Ministry found that it cannot be determined that the extra time taken represents a significant restriction to the Appellant's ability to manage these activities.

The Ministry also points out that, while the GP notes that the Appellant has continuous restrictions with managing a number of DLAs, the Therapist does not indicate that the Appellant either requires continuous assistance or is unable to manage any DLA.

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 Therapist 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 the prescribed professional is instructed in the PR to describe the extent of the restrictions on DLA in the comments section of the PR. The additional commentary provided by the GP in this section of the PR is that the Appellant's current high CDAI might improve with treatment and that he could possibly benefit from an assessment by an occupational therapist of his need for equipment for rheumatoid arthritis and/or assistance from home care, but there is no additional information identifying the extent of restrictions on the majority of DLA which have been identified as being subject to continuous restrictions.

In addition, the panel notes that the evidence as to whether or not there are limitations to the Appellant's physical functioning is not consistent: in the PR the GP states that almost all DLA are continuously restricted without further elaboration, while in the AR the Therapist states that the Appellant is able to perform almost all DLA independently.

Therefore, 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 her 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 require help every day with his DLA, that he has to rely on his roommate to drive him to appointments because he is unable to walk even a short distance, that she does all of the grocery shopping because he cannot manage carrying the groceries home from the store, that most of the time she has to do the bending and transferring of loads when doing the laundry; and that she and her children now do all of the yard work. In addition, the Appellant states that he can cook for himself but only for short periods of time.

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 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.