

## PART C – Decision under Appeal

The decision under appeal is the reconsideration decision of the Ministry of Social Development and Social Innovation (the ministry) dated 29 May 2017 that denied the appellant designation as a person with disabilities (PWD). The ministry determined that the appellant did not meet all of the required criteria for PWD designation set out in the *Employment and Assistance for Persons with Disabilities Act*, section 2. Specifically, the ministry determined that the information provided did not establish that the appellant's severe physical impairment, in the opinion of a prescribed professional,

(i) directly and significantly restricts his ability to perform daily living activities (DLA) either continuously or periodically for extended periods; and,

(ii) as a result of those restrictions, he requires help to perform those activities.

The ministry determined that the appellant satisfied the other 3 criteria: he has a severe physical, though not a severe mental, impairment; he has reached 18 years of age; and his impairment in the opinion of a medical practitioner is likely to continue for at least 2 years.

The ministry also found that it has not been demonstrated that the appellant is one of the prescribed classes of persons who may be eligible for PWD designation on the alternative grounds set out in section 2.1 of the *Employment and Assistance for Persons with Disabilities Regulation*. As there was no information or argument provided by the appellant regarding alternative grounds for designation, the panel considers that this matter not to be at issue in this appeal.

## 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. The appellant's PWD Designation Application dated 12 January 2017. The Application contained:
  - A Self Report (SR) completed by the appellant.
  - A Medical Report (PR) dated 31 January 2017, completed by two medical practitioners (MPs), one a specialist in cardiovascular surgery who has known the appellant for 8 years and seen him 2-10 times in the last year, and the other by the appellant's general practitioner (GP) who has known the appellant for 34 years and seen him 2-10 times in the past year.
  - An Assessor Report (AR) dated 31 January 2017, completed by the same MPs.
2. The appellant's Request for Reconsideration dated 03 May 2017, to which are attached an advocate-prepared questionnaire in which the surgeon indicates whether he agrees or disagrees with a number of statements regarding the appellant's impairment (the "reconsideration questionnaire" or RQ) and 2 other letters from medical specialists (see below).

In the PR, the MPs diagnose the medical conditions related to the appellant's impairment as: Marfan's Syndrome since 1982, aortic dissection and repair x2 (September 2009), depression (onset September 2009), aortic regurgitation (onset September 2009) and thoracoabdominal aneurism (onset 2014).

The panel will first summarize the evidence from the PR, the AR and the RQ as it relates to the PWD criteria at issue in this appeal.

### General background

In the MR, the MPs indicate that the appellant's impairments are likely to continue for two years or more, commenting, "Permanent. Has had 2 surgeries – needs aortic valve replacement and thoracoabdominal aneurism resection. The medical treatment will only keep him stable."

In the MR, under Health History, the MPs write:

"Patient has severe Marfan's Syndrome, with aortic dissection, aortic valve disease, poor cardiac function, activity limiting shortness of breath. Has reactive depression, severe that interferes with thinking, decision-making, and causes social isolation."

And:

"Has developed 6 cm thoracoabdominal aneurysm. Be requiring aortic valve replacement and then thoracoabdominal aneurysm resection."

Under Additional Comments, the MPs write, " Pre-op – aortic valve replacement. Following recovery from this, he requires thoracoabdominal aneurysm resection."

The MPs indicate that the appellant has not been prescribed any medication and/or treatments that interfere with his ability to perform DLA.

In the AR, when asked what are the appellant's impairments that impact his ability to manage DLA, the MPs write: "Marfan's Syndrome with heart and vessel disease. Depression, Anxiety disorder."

RQ:

The GP indicates that he agrees with the statement that the appellant had surgery on 15 March 2017 (heart valve replacement) and is having another surgery on 17 May 2017 (thoracic abdominal aortic dissection repair). This latter surgery has a recovery period of 6-12 months.

*Mental impairment and communications*

In the MR, the MPs indicate that the appellant has no difficulties with communication. In the AR, the MPs assess the appellant's ability as satisfactory for speaking and reading and as good for writing and hearing.

MR:

The MPs indicate that the appellant has significant deficits with cognitive and emotional function in the following areas: emotional disturbance, motivation, impulse control, attention or sustained concentration, and other (anger).

AR:

The MPs assess the degree to which the appellant's mental impairment restricts or impacts his functioning in the following areas as:

Major impact: emotion, impulse control.

Moderate impact: consciousness insight and judgment, attention/concentration, executive, motivation, and other emotional or mental problems.

Minimal Impact: memory, motor activity, and language.

No impact: bodily functions and other neuropsychological problems.

The MPs comment, "easily agitated, poor impulse control, poor planning skills, poor focus.

Under Additional Comments, the MPs write, "Emotionally labile – interferes with social and vocational function."

*Daily Living Activities*

*Moving about indoors and outdoors/mobility and physical ability*

PR:

The MPs indicate that the appellant is able to walk less than 1 block unaided on a flat surface, can climb 2 to 5 steps unaided, is limited to lifting 25 kg and can remain seated for less than 1 hour.

AR:

The MPs assess the appellant's mobility and physical ability as follows:

- Walking indoors – independent.
- Walking outdoors – independent but limited, rests every 25 m.
- Climbing stairs – uses assistive device – needs handrails.
- Standing – independent, limited to 30 min.
- Lifting – independent, limited to 25 kg.
- Carrying and holding – Independent, limited to 25 kg.

RQ:

The GP agrees that the appellant

- Is able to lift only up to 10 pounds maximum; currently he is able to lift only 5 pounds (doctor's orders),
- Is able to sit only for less than 30 minutes at a time,
- Is able to stand only for less than 10 minutes,
- On a flat surface is able to walk only 100 yards.

*Daily living activities requiring physical effort*

AR:

The MPs assess the assistance required to perform DLA as follows (their comments in parentheses):

- Personal care – independent and takes significantly longer than typical for dressing, grooming, bathing, toileting, feeding self, transfers in/out of bed, and transfers on/off chair (Takes 2-3x normal for personal care).
- Basic housekeeping – continuous assistance from another person required for laundry and basic housekeeping (Mostly done by roommate).
- Shopping – independent for reading prices and labels, making appropriate choices, and paying for purchases; independent and taking significantly longer than typical for going to and from stores and carrying purchases home (Limited mobility, takes 2-3x normal).
- Meals – independent for meal planning and safe storage of food; independent and takes significantly longer than typical for food preparation and cooking (Takes 2-3x as long as normal).
- Pay rent and bills – independent in all aspects.
- Medications – independent in all aspects.
- Transportation – independent and takes significantly longer than typical for getting in and out of a vehicle and using public transit (2-3x longer than expected); independent for using transit schedules and arranging transportation.

The MPs comment, “There are times when he is unable to leave the house but he continuously is slow to move.”

RQ:

The GP agrees that the appellant needs continuous assistance or is unable to do the following due to his health conditions and limitations:

- Laundry
- Basic housekeeping (roommate was doing, now his parents do for him)
- Going to and from stores (unable, done by parents)
- Carrying purchases home (unable over 5 pounds)
- Food preparation
- Cooking (family does for him)

The GP disagrees that the appellant is unable to do the following:

- Meal planning
- Budgeting
- Paying rent and bills
- Using public transit

## *Social functioning*

AR:

In terms of support supervision required for social functioning, the MPs provide the following information (their comments in parenthesis):

- Making appropriate social decisions – no assessment provided (Often makes inappropriate decisions).
- Ability to develop and maintain relationships – periodic support/ supervision required (Difficult to maintain family support).
- Interacting appropriately with others – no assessment provided (Easily angered, emotionally labile, takes medication as needed).
- Ability to deal appropriately with unexpected demands – no assessment provided (Poor ability to compromise).
- Ability to secure assistance from others – Independent.

The MPs assess how the appellant's mental impairment impacts his relationship with his immediate social network and his extended social network as marginal functioning.

The MPs provide no additional comments, including the identification of any safety issues.

RQ:

The GP disagrees with the statement that the appellant has difficulty putting his thoughts into words when speaking to others. The GP comments, "He is emotionally labile, may be inappropriate but able to express himself."

The GP does not indicate whether he agrees or disagrees with regard to the following statement regarding social functioning: "isolates self, unable to ask for assistance from others, easily angered, difficulty maintaining supports, poor ability to compromise, anxious/overwhelmed by unexpected demands."

## Help required

PR:

The MPs indicate that the appellant does not require any prostheses or aids for his impairment.

AR:

The MPs do not indicate that the appellant routinely uses any of the listed equipment or devices to compensate for his impairment or describe any equipment that is required but not currently used. The MPs indicate that the appellant does not have an assistance animal.

The MPs indicate that the appellant is provided assistance from family and friends.

## Self Report

In his SR, the appellant describes his limitations in performing DLA as follows:

- Mobility and physical ability – unable to walk ½ block before he has to rest, able to climb only up to 2 stairs at a time, able to stand or sit for only up to 30 minutes, and is limited to lifting and carrying 50 pounds maximum.
- Personal care – takes him two times longer than typical to get dressed due to pain, has no appetite causing difficulties with regulating diet, has to rest/sit up before getting out of bed

due to blood pressure which will cause him to faint.

- Basic housekeeping – relies on friends to assist with laundry as he has difficulties with bending and transferring laundry.
- Shopping – if he is suffering from an eye migraine it will affect his ability to read prices and labels; he can carry purchases only up to 50 pounds.
- Meals – he is unable to plan meals due to lack of food and resources
- Paying rent and bills – he is currently in financial difficulties and is unable to budget the amount he brings in a month.
- Medications – if he forgets to refill and take his medications, this has a serious effect on his health.
- Transportation – he has to use the seat and door for support to get in and out of vehicles, and this causes him severe pain; he is unable to take public transit due to pain levels and mobility issues.
- Social functioning – he isolates himself and only sticks to the people he knows. He has difficulties interacting appropriately with others as his anxiety/blood pressure causes him to react/lash out at others. His breathing also affects his speech and ability to get his thoughts out. He gets anxious and overwhelmed when dealing with unexpected demands. He has difficulty asking anyone for assistance.

### **Request for Reconsideration**

In addition to the RQ, the appellant attached the following:

- Letter from a cardiac, vascular and thoracic surgeon dated 22 August 2016. The surgeon writes that the appellant has been his patient for a number of years and that given that the appellant has Marfan's Syndrome, he has a really friable aorta. With these complications and ongoing problems with his condition, the surgeon thinks he is unsuitable for work under any form of stress. He should not encounter any situations where anxiety and stress will increase his blood pressure, as this will be detrimental to his friable aorta.
- An outpatient clinical note by a cardiologist dated 02 August 2016. The cardiologist describes the appellant's heart condition and history in detail. She then writes that she is writing in support of the appellant not being able to work. She states that his specific conditions and severe complications certainly would preclude him from performing his current job. She explains why his heart conditions put him at risk in that job and writes that she does not understand why it is not clear without a doubt that he is unable to do this work.

### **Notice of Appeal**

In his Notice of Appeal dated 02 June 2017, the appellant gives as reasons for appeal, "I disagree due to the fact that my doctors/surgeons/specialists state I should be on disability due to my multiple issues that have, and continue to have, effect on my life"

### **Information submitted before the hearing**

Prior to the hearing, the appellant's advocate provided a submission that contained 2 letters:

- A "To whom it may concern" letter dated 07 July 2017 from a nurse at the cardiac unit of a hospital confirming that the appellant was admitted to a hospital on 18 June 2017 for a surgical procedure and that he remains in hospital and the discharge date is yet to be determined.
- A "To whom it may concern" letter dated 10 July 2017 from the appellant's surgeon stating that the appellant had a thoracoabdominal aneurysm resection on 20 June 2017. He had a

postoperative complication of ischemic stroke and will be transferred to the rehabilitation facility when a bed is available. They do not know the length of time that he will require rehabilitation and when he will return to his baseline function.

The submission also included a number of photographs of the appellant in hospital.

### **The hearing**

At the hearing, the appellant was represented by his advocate, and his mother testified on his behalf.

The appellant's mother began by providing background to the appellant's medical condition, including his having two aneurysm resection surgeries in 2009.

The appellant's mother stated that the appellant was still in hospital recovering from an aneurysm resection surgery that took place on 20 June 2017. His mother explained that this surgery was originally set for 17 May 2017, but was delayed because the appellant had a chest infection. The surgery was scheduled to last six hours, but took 23 hours, as the aneurysm burst when the appellant was opened up, resulting in much bleeding, requiring the efforts of three surgeons to get the situation under control. During the course of the procedure, the appellant had a stroke and also suffered cracked ribs as a result of a seizure. As a result of the stroke, the appellant is still unable to speak and continues to experience seizures. She stated that his doctors do not know how long he will remain in hospital or what might be the long-term prognosis.

The appellant's mother explained that, to help him ensure that he was healthy enough for his open-heart surgery on 15 March 2017, he returned home before that operation and stayed there after that surgery until he went in for the 20 June 2017 procedure. His mother described how, after the first surgery, he was unable to lift anything more than 5 lbs. and she did all the food preparation, shopping and housework for him. She also described how, with the constant body pain resulting from the Marfan's Syndrome and the ongoing stress of dealing with his heart condition, she felt that was not able to cope with reality and was always making bad decisions. For instance, once when he burned something cooking on the stove, with the temperature set too high, he would throw it into the sink in frustration, not clear it up and not turn off the gas burner; she would return home from work and find the burner still lit. She saw this not only as poor decision-making regarding the mess and the stove, but more fundamentally as a decision not to eat when he should.

The advocate's presentation went to argument (see Part F, Reasons for Panel Decision, below). In answer to questions, the advocate confirmed that the assessments provided by the GP in the RQ reflected the appellant's restrictions between the two surgeries. The advocate also confirmed that when the MPs assessed the appellant for the MR and AR in January 2017, he was able to lift 50-lbs./25 kg.

The ministry stood by its position at reconsideration.

## **Admissibility of new information**

The ministry noted that the testimony provided by the appellant's mother at the hearing regarding his current medical condition in hospital was not before the ministry at reconsideration and would have to be incorporated into a new PWD application. The position of the appellant, as put forward by his advocate, was that the information that he was expected to have aneurysm resection surgery scheduled for May 2017, was before the ministry at reconsideration and that therefore the letter from the surgeon submitted before the hearing and the testimony by his mother regarding the outcome of this surgery should be admitted as evidence in support of that 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 finds that the information provided by the surgeon in his letter before the hearing and by appellant's mother regarding his having a stroke and his current condition in the hospital presents a much changed picture of the appellant's medical condition compared to that which was before the ministry and reconsideration. This information cannot be said to substantiate or corroborate anything before the ministry at reconsideration, and as a result the panel does not admit it as evidence. (The panel finding this evidence inadmissible does not preclude the appellant from putting it before the ministry at some future date.)

The panel finds that the information provided by the appellant's mother regarding the help she provided the appellant when he was staying at home between the two surgeries and his state of mind during the time is in support of the information provided in the RQ and therefore admits this testimony as evidence pursuant to section 22(4) of the EAA.



## PART F – Reasons for Panel Decision

The issue in this appeal is whether the ministry decision that determined that the appellant did not meet two of the five statutory requirements of Section 2 of the *EAPWDA* for designation as a person with disabilities (PWD) is reasonably supported by the evidence or is a reasonable application of the legislation in the circumstances of the appellant. Specifically, the ministry determined that the information provided did not establish that the appellant's severe physical impairment, in the opinion of a prescribed professional,

(i) directly and significantly restricts his ability to perform daily living activities (DLA) either continuously or periodically for extended periods; and,

(ii) as a result of those restrictions, he requires help to perform those activities.

The ministry determined that the appellant satisfied the other 3 criteria: he has a severe physical, though not a severe mental, impairment; he has reached 18 years of age; and his impairment in the opinion of a medical practitioner is likely to continue for at least 2 years.

The following section of the *EAPWDA* applies to this appeal:

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 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 following section of the *EAPWDR* applies to this appeal:

2 (1) For the purposes of the Act and this regulation, "daily living activities",

(a) in relation to a person who has a severe physical impairment or a severe mental impairment, means the following activities:

(i) prepare own meals;

(ii) manage personal finances;

(iii) shop for personal needs;

(iv) use public or personal transportation facilities;

(v) perform housework to maintain the person's place of residence in acceptable sanitary condition;

(vi) move about indoors and outdoors;

(vii) perform personal hygiene and self care;

(viii) manage personal medication, and

(b) in relation to a person who has a severe mental impairment, includes the following activities:

(i) make decisions about personal activities, care or finances;

(ii) relate to, communicate or interact with others effectively.

(2) For the purposes of the Act, "**prescribed professional**" means a person who is

(a) authorized under an enactment to practise the profession of

- (i) medical practitioner,
- (ii) registered psychologist,
- (iii) registered nurse or registered psychiatric nurse,
- (iv) occupational therapist,
- (v) physical therapist,
- (vi) social worker,
- (vii) chiropractor, or
- (viii) nurse practitioner, or

(b) acting in the course of the person's employment as a school psychologist by

- (i) an authority, as that term is defined in section 1 (1) of the *Independent School Act*, or
- (ii) a board or a francophone education authority, as those terms are defined in section 1 (1) of the *School Act*,

if qualifications in psychology are a condition of such employment.

## **Panel decision**

### Direct and significant restrictions in the ability to perform DLA

The panel notes that, according to the legislation, the direct and significant restriction in the ability to perform DLA must be a result of a severe impairment, a criterion established in this appeal. The legislation – section 2(2)(b)(i) of the EAPWDA – requires the minister to assess direct and significant restrictions of DLA in consideration of the opinion of a prescribed professional, in this case the appellant's surgeon and GP. This does not mean that other evidence should not be factored in as required to provide clarification of the professional evidence, but the legislative language makes it clear that a prescribed professional's evidence is fundamental to the ministry's determination as to whether it is "satisfied." And for the minister to be "satisfied," it is reasonable for the ministry to expect that a prescribed professional provides a clear picture of the degree to which the ability to perform DLA is restricted in order for the ministry to determine whether the restrictions are "significant."

In the reconsideration decision, the ministry found that it was not satisfied that the appellant's severe impairment, in the opinion of the prescribed professional, directly and significantly restricted his ability to perform the DLA set out in the legislation. In making this determination, the ministry reviewed the narratives and assessments provided in the MR and the AR (see Part E above). In particular, the ministry noted that the MPs indicated that the appellant has not been prescribed medications and/or treatments that interfere with his ability to manage DLA. The ministry also noted the comment of the MPs in the AR that "There are times when he is unable to leave the house but he continuously is slow to move," they do not describe how often this occurs or how long it lasts. As a result, the ministry was unable to determine how this impacts his overall level of functioning.

Referring to the assessments provided by the GP in the RQ, the ministry acknowledged that currently (i.e. at that time) the appellant's ability to perform some DLA was significantly restricted. However, as he was expected to recover from the surgeries in 6-12 months, and no further information was provided to suggest that he will not recover to at least the level of functioning demonstrated in the PWD application, the ministry was not satisfied that he will continue to require the level of assistance assessed by the GP once he has recovered. As a result, the ministry stated that it would rely on the assessments provided by the MPs in the PWD application.

The panel notes that the very first item in the RQ is the statement, to which the GP agreed, that the appellant had just had a surgery on 15 March 2017 and is having another one scheduled for 17 May 2017 and that this latter surgery has a recovery period of 6-12 months. There follow statements with which the GP is asked to agree or disagree regarding the appellant's restrictions – e.g. “[The appellant] states that he is only able to lift up to 10 pounds maximum. At this time he is only able to lift 5 pounds (doctors’ orders).” The panel finds the ministry was reasonable in concluding that the reduced level of functionality assessed by the GP in the RQ was thought to be temporary – relating to the period between the 2 surgeries, given that the first item in the RQ provides a context for the GP’s assessments, and the statements to which the GP is asked to agree or disagree are expressed in the present tense. This leaves the impression, not dispelled by any narrative at reconsideration, that his reduced level of functionality was a result of recovering from the first surgery and preparing for the next one, not as a result of a trend in overall deterioration of his impairment since the MR and AR were completed in January 2017. Indeed, at the hearing, the appellant's advocate confirmed that the assessments in the RQ reflected the appellant's restrictions between the two surgeries.

The panel also notes that the legislation requires that the minister be satisfied that a person has a severe impairment that in the opinion of a medical or nurse practitioner is likely to continue for at least 2 years. In the MR, the MPs confirmed that the appellant's impairment, as described in the MR and AR, was expected to continue for at least two years. In the RQ, the GP agreed that recovery period for the second surgery was expected to be 6-12 months, or less than the 2 years required under the legislation. As the GP has not indicated that the reduced level of functionality assessed in the RQ would continue for two years, the panel finds the ministry was reasonable in relying on the assessments provided in the MR and AR as describing a baseline level of the appellant’s functionality in determining whether the appellant met the “Direct and significant restrictions in the ability to perform DLA” criterion.

Regarding these assessments, the position of the appellant, as explained by his advocate at the hearing, is that the evidence provided by the MPs in the AR clearly demonstrates that he meets this criterion. In support of her argument, the advocate noted that the appellant is significantly restricted in his ability to move about indoors and outdoors, being able to walk less than one block and having to rest every 25m, requires continuous assistance from another person for laundry and basic housekeeping, and takes 2-3 times longer than typical for 13 tasks of the DLA of personal care, shopping, meals and transportation. At the hearing, the advocate questioned where the legislation states that taking 2-3 times longer than typical cannot be considered a significant restriction.

In the reconsideration decision, the ministry stated that although it finds the assessments in the AR of the appellant's ability to manage his DLA to be notable, taking 2-3 times longer to complete activities does not in itself establish a significant restriction in these areas. The ministry also noted that while the MPs indicate that he required continuous assistance to do laundry and basic housekeeping, given assessment of his ability to stand for 30 minutes and lift 25 kg, the ministry concluded that he likely would be able to perform some light housekeeping duties such as wiping counters, washing dishes or sweeping up. As a result, the ministry considers “requires periodic assistance” to be a more accurate assessment of his ability to perform in these area. As no information was provided to describe how often he requires assistance and for how long, the ministry is unable to establish that his restrictions for this DLA are both *significant* and *periodic for extended periods of time*, as required by the legislation.

The panel considers problematic the suggestion by the ministry that the MPs assessment of the appellant's ability to manage daily housework might more appropriately be "requires periodic assistance," as a footnote in the AR states that "Periodic assistance – refers to the need for significant help for an activity some of the time as would be the case when a person required help due to the episodic nature of the impairment." There is no information provided that would suggest that (apart from being between operations), the appellant's impairment was episodic in nature. However, given the mobility and physical ability assessments noted by the ministry, the panel finds that, without further information as to why or to what extent the appellant requires continuous assistance of another person or is unable for this DLA, the ministry was justified in its skepticism of this assessment and in not giving it full weight.

Regarding the DLA of moving about indoors and outdoors, the panel notes that, while the appellant was assessed as restricted to being able to walk less than one block, and needing to take a rest every 25 m, there is insufficient evidence that he needed help for this DLA, either in terms of being accompanied when moving about outdoors or requiring an assistive device such as a walker with a seat that he can use when resting.

As to the 13 tasks in 4 DLA taking 2-3 times longer than typical, in providing these assessments the MPs also indicated that he was able to perform these tasks independently – i.e. not restricted to the point where help is needed, as required under the legislation by reading paragraphs (i) and (ii) of subsection 2(b) of the EAPWDA together. Without further information that would explain other factors that might need to be considered (such as safety issues), the panel finds that the ministry was reasonable in finding that these assessments do not establish that the restrictions in performing these tasks are "significant."

As a severe mental impairment has not been established, in this section of its decision the ministry did not specifically address the 2 "social functioning" DLA applicable to a person with a severe mental impairment as specified in section 2(1)(b) of the EAPWDR – make decisions about personal activities, care or finances (the "decision-making" DLA); and relate to, communicate or interact with others effectively (the "relating to effectively" DLA). Regarding the decision-making DLA, the panel notes that the MPs commented that the appellant often makes inappropriate social decisions and has a poor ability to compromise, but do not provide assessments of any need for support or supervision. The MPs also assess the appellant as independent in such decision-making areas as meal planning, making appropriate decisions while shopping, managing finances and taking medication. In terms of the DLA of "relating to effectively," the MPs assess the appellant as requiring periodic support/supervision for developing and maintaining relationships, commenting that it is difficult for the appellant to maintain family support, but do not provide any information as to the nature of the support/supervision required. As to interacting appropriately with others, the MPs commented that the appellant is easily angered and emotionally labile, but again do not provide an assessment of any support/supervision required.

Based on the assessments provided by the appellant's MPs as reviewed above and the reported level of independence, the panel finds that the ministry was reasonable in finding that there was insufficient evidence to establish that, as a result of his impairment, the appellant's ability to perform the prescribed DLA was directly and significantly restricted, either continuously or periodically for extended periods.

### Help with DLA

The ministry found that, as it has not been established that DLA are significantly restricted, it cannot be determined that significant help is required.

Section 2(2)(b)(ii) of the *EAPWDA* requires that, as a result of being directly and significantly restricted in the ability to perform DLA either continuously or periodically for extended periods, a person must also require help to perform those activities. That is, the establishment of direct and significant restrictions under section 2(2)(b)(i) is a precondition of meeting the need for help criterion. Help is defined in subsection (3) as the requirement for an assistive device, the significant help or supervision of another person, or the services of an assistance animal in order to perform a DLA.

While the appellant benefitted from the assistance of his roommate, and currently benefits from the support of his family, since the ministry reasonably determined that direct and significant restrictions in the appellant's ability to perform DLA have not been established, the panel finds that the ministry reasonably concluded that under section 2(2)(b)(ii) of the *EAPWDA* it cannot be determined that the appellant requires help to perform DLA.

### Conclusion

The panel finds that the ministry's reconsideration decision, which determined that the appellant was not eligible for PWD designation, was reasonably supported by the evidence. The panel therefore confirms the ministry's decision. The appellant is thus not successful on appeal.