

## PART C – Decision under Appeal

The decision under appeal is the Ministry of Social Development and Social Innovation (the Ministry) reconsideration decision dated July 5, 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 November 26, 2016, a medical report (MR) dated December 19, 2016 and completed by the Appellant's general practitioner (GP) who has known the Appellant for one month and who has seen the Appellant once in the past year, and an assessor report (AR) dated February 2, 2017 completed by a registered nurse (Nurse) who saw the Appellant for the first time when completing the AR.

The evidence also included the following documents:

- 1) Request for Reconsideration (RFR) signed on June 22, 2017 to which the Appellant had attached a three page supplementary self-report (Additional SR) arguing that he does have a severe mental and physical impairment, that his impairment significantly restricts his ability to perform DLA and that he does require significant help or supervision from another person to perform DLA restricted by his impairment, providing more detail than was provided in the SR regarding the challenges that he faces in performing DLA, rebutting some of the information provided by the GP in the MR, and summarizing the information provided by the Nurse in the AR;
- 2) A two page medical report prepared by a specialist in internal medicine (Specialist) and dated January 26, 2017 in which the Specialist provides a brief medical history of the Appellant, a list of current medications, a social history of the Appellant, the results of a physical examination of the Appellant, the results of Specialist's investigations regarding the Appellant and a summary of the Specialist's impressions regarding the Appellant;
- 3) A card issued by another Province providing information about the Appellant's eligibility for an allowance to cover the cost of medication for the month of August 2016; and,
- 4) A largely illegible 3 page exercise stress test report.

### **Diagnoses**

In the MR, the GP diagnosed the Appellant with Cardiovascular Disease with no date of onset identified, Hypertension with no date of onset identified, and Chronic Obstructive Pulmonary Disease (COPD) also with no date of onset identified. The GP also provided the comment "*Patient also suffered 2 [Myocardial Infarctions (MI)] & had aortic valve replaced in 2014 in [another Province]. Completed 24 months of cardiac [rehabilitation].*"

### **Physical Impairment**

In the MR, the GP reported that:

- in terms of health history, the Appellant has had cardiovascular disease which resulted in 2 MI, and that subsequent treatment included a coronary artery bypass and an aortic valve replacement, both in 2014. The GP also writes "*Patient states he is easily fatigued after walking 20 minutes. Patient states heavy lifting causes fatigue. Patient completed cardiac [rehabilitation].*"; and,
- in terms of functional skills, the Appellant can walk more than 4 blocks unaided on a flat surface, can climb more than 5 steps unaided, and has no limitation with respect to how long he can remain seated. The GP indicated "unknown" for the Appellant's limitations in lifting.

In the AR, the Nurse reported that:

- the Appellant's medical condition continues to cause him weakness, shortness of breath (SOB) and dizzy spells and limits his ability to walk, carry and lift objects, and perform household chores;
- the Appellant states that he gets dizzy episodes at least 3 - 4 times per week and which are most likely to occur when he goes from a sitting to a standing position and that he has fallen as a result;
- the Appellant states that "*some days are so bad he has to crawl around the house on his hands and knees, can last all day - has to [lie] down throughout the day. Can walk 15 - 20 min. outside, has to stop ... (due to) fatigue and SOB - has to rest 5 - 10 min. then he goes back home. Needs to lean on something when standing [due to] dizziness. [Can only] stand [for] 20 - 30 min.*";
- the Appellant has recently been referred to the Specialist and is booked to have a stress test in mid March 2017 following which he will have "*a better idea of his cardiac function and how the restrictions affect his life*";
- the Appellant has previously completed cardiac rehabilitation "*and has been told that he will always have to 'take it easy' in life*" and that "*he was on 'disability' in (another province) prior to returning to BC*"; and,
- the Appellant states that his hearing is deteriorating and that he was close to requiring hearing aids when he last had his hearing checked 20 years ago.

In the SR, the Appellant wrote that:

- he has had more than 6 heart attacks, 2 stents inserted, by-pass surgery and his aortic valve replaced;
- he can manage light chores but is unable to do anything physical, strenuous or demanding;
- if he walks 20 - 25 minutes he has to sit and rest for 10 - 15 minutes and "*on a number of occasions after carrying a few (3 or 4) grocery bags home (he has) collapsed on the sofa and was unable to get up for approx. 20 min.*"; and,
- there are days when he gets light-headed when he stands up and passes out and falls, and "*there was one occasion where it was so bad that (he) literally had to crawl around the house even to the washroom*"

In the Additional SR, the Appellant summarized what he had stated in the SR, what the GP had reported in the MR and what the Nurse had reported in the AR, and wrote that:

- he has modified and adapted all physical activities to his physical capabilities because he is no longer able to do the things he used to do prior to his surgery;
- he can walk about 2 blocks in about 20 minutes but then he has to stop and rest for 10 - 15 minutes; and,
- he has recently moved back to BC and has a new doctor (the GP) who does not know him well and had only seen him once prior to completing the MR, that the GP did not ask the Appellant for his input or interview him regarding his functional skills or ability to perform DLA, and that he asked her to make changes regarding his functional skills (walking, climbing, lifting, etc.) and she refused to do so.

### ***Mental Impairment***

In the MR, the GP reported that the Appellant has Hypertension but has no difficulties with communication or significant deficits with cognitive or emotional function and did not identify a medical impairment.

In the AR, the Nurse reported that (*Nurse's comments in parentheses*):

- the Appellant's level of ability in communication was good in most areas (speaking, reading, and writing) and that hearing was satisfactory with a comment regarding the possible need for hearing aids as discussed above;
- there were no major impacts to cognitive and emotional functioning, moderate impacts to bodily functions, consciousness, emotion, attention/concentration, executive functioning, memory and motivation, and minimal impacts to other emotional or mental problems (*[Appellant] states that he has a past history of depression and also anxiety. [He] states [that he] never sleeps more than 2 hours at a time - takes him an hour or 2 to resettle - tired all the time naps during the day.... marital break-up - lost all of his property - alienated from children - had to start over*) ;
- he is independent with respect to making appropriate social decisions and interacts appropriately with others, but that he states that he is socially isolated with acquaintances and has no friends, and that he stays at home alone and does not involve himself in any community events;
- he needs periodic support or supervision in his ability to deal appropriately with unexpected demands (*Could create a lot of anxiety and make it difficult to get through the day*);
- he needs periodic support or supervision in his ability to secure assistance from others, (*Does not like to ask for help. Has few people that he knows here. Daughter and grandson help*);
- he has marginal functioning with his immediate social network (*[Appellant] states daughter and grandson inconsistent (sic) - often [confrontational] - [Appellant] states [he] feels abused*);
- he has marginal functioning with his extended social networks (*[Appellant] rarely goes out - if he does it is with his dog - poor relationship with [his] family*);
- he feels his depression makes him feel that he has nothing to live for, but is not suicidal, and he gets overwhelmed easily and feels that there are too many demands placed on him due to his anxiety;
- his concentration is poor, he forgets things easily and has to write down everything important;
- his motivation is poor, he has no interest in life and he socially isolates with no one to help motivate him;
- he is easily irritated and has to remove himself from situations to prevent an escalation of his anger; and,
- he has not connected with any mental health services or even the GP to discuss his anxiety and depression.

The Appellant does not refer to any mental impairment in the SR or the Additional SR.

In the January 2017 medical report the Specialist describes the Appellant as "a pleasant male in no apparent distress".

### ***Restrictions in the Ability to Perform DLA***

In the MR, the GP reported that the Appellant has not been prescribed any medication or treatment that interferes with his ability to perform DLA and that his activity is not restricted with respect to any DLA except for daily shopping and mobility outside the home, for which activities are periodically restricted with the explanation "*difficulty in carrying heavy groceries if walking [more than] 15 min.*"

In the AR, the Nurse reported that:

- the Appellant was independent with respect to all personal care and basic housekeeping activities but that he took significantly longer than normal with basic housekeeping and laundry, and that he only does one load of laundry at a time to avoid fatigue;
- he states that he takes a long time to complete household chores, working for a few minutes at a time, then resting, and that it can take him 2 hours to wash and dry dishes;
- he can lift up to approximately 15 lbs. and carry things short distances but has to stop due to fatigue and SOB;
- he is independent with respect to shopping except for going to and from stores and carrying purchases home, and that he takes his daughter shopping with him to carry his groceries;
- he is independent with meal planning and safe storage of food but he requires periodic assistance and takes significantly longer than normal to prepare and cook food, with the comment that he states that his daughter does most of the cooking and that he can only prepare food a little at a time and that it takes 2 - 3 hours to prepare a meal; and,
- makes the general comment that the Appellant is able to maintain DLA but that everything is an effort and takes him a long time and that he requires frequent rest periods.

In the SR, the Appellant wrote that he can perform DLA with frequent rest breaks.

In the Additional SR, the Appellant wrote that:

- all DLA are a struggle to complete but *“that if [he] take[s] his time and work[s] at [his] own pace [he] can eventually get things done”*;
- he can work in spurts of 20 minutes but then has to rest for 10 - 15 minutes;
- he can sweep floors, doing one room at a time and taking a 10 - 15 minute rest break between each room;
- he lives with his daughter and grandson and his daughter does most of the meal preparation and cooking because he does not have the ability to stand for long; and,
- he does the dishes but it takes him 2 hours to wash, dry and put them away because he has to take at least three 10 - 15 minute breaks while doing them.

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

In the MR, the GP indicated that the Appellant does not require any prostheses or aids for his impairment.

In the AR, the Nurse reported that:

- the Appellant lives with his daughter who can assist him when he needs help, and who goes with him when he goes shopping to assist in carrying groceries;
- he needs a hearing test to determine if he qualifies for hearing aids; and,
- he does not have an assistance animal.

### ***Additional Information submitted after reconsideration***

In his Notice of Appeal dated July 17, 2017, the Appellant stated that he can no longer do anything physical, strenuous or any activity for an extended period of time.

At the hearing, the Appellant said that he did not understand what the Ministry considered a “severe impairment”. He stated that he cannot do anything physically demanding or strenuous. He provided the example of carrying a box spring mattress for his daughter several months ago when, as a result,

he was incapacitated for days. He stated that his DLA are directly restricted by his impairment . He said that he has been off work for 3 years and has had to make adaptations to the way he does things and has “changed everything” in order to perform DLA. He stated that he is not even sure how much weight he can carry because he hasn’t carried anything for several years.

In describing a typical day, the Appellant stated that he does not require any help with getting out of bed, dressing, bathing or other aspects of his personal care. He stated that he gets up in the morning, makes coffee and goes for a walk for three or four blocks with his dog. He explained that he feels he needs the exercise and always tries to go for a walk at least once a day. He stated that he does housekeeping chores, but it takes him 2 hours to do the dishes and a long time to sweep and clean, as he has to take several breaks. Nevertheless, he does what housekeeping he can. His daughter usually makes dinner, but he manages to prepare and cook meals from time-to-time. He stated that when he stands up suddenly he often feels dizzy and has fallen down on a number of occasions. He said that he used to drive but he no longer does and has not had a driver’s licence for many years. He stated that while his daughter sometimes takes him shopping, he usually walks to the store by himself but he has to do so frequently because he is forced to buy a small number of items so that he can carry them home by himself.

The Appellant also stated that, while he suffers from depression, he does not have a current diagnosis of a mental impairment. He said that he was diagnosed with clinical depression several years ago and prescribed antidepressants, which he was told he would have to take for the rest of his life, but that he decided to stop taking them some time ago and has not used them for years.

Regarding a professional assessment of the Appellant’s recent stress test (9 minutes on a treadmill), the raw but unreadable results of which formed part of the written information available to the Ministry at reconsideration, the Appellant stated that he was told that he had done well and the professional who analyzed the results did not refer him for any further testing.

At the hearing, the Ministry relied on its reconsideration decision and explained that the Ministry was guided by the definition of “severe impairment” as it appears in Section 2(2)(b) of the EAA: in the opinion of a prescribed professional it must *directly* and *significantly* restrict a person's ability to perform DLA either *continuously*, or *periodically for extended periods*. The Ministry determined that this requirement was not met in the Appellant’s case.

The Ministry also stressed that in several places in both the MR and the AR, the prescribed professionals has used the term “*patient states*”, which the Ministry suggested implies that the statement made is actually the Appellant’s opinion and not that of the prescribed professional. The Ministry also pointed out that, while the Ministry takes into account the self-assessment by the Appellant, it is required under the legislation to rely most heavily on the assessments provided by prescribed professionals, and that in this case neither of the prescribed professionals had seen the Appellant more than once at the time that they completed the MR and the AR, and suggested that because neither of them knew the Appellant well they might not be in a position to provide informed assessments of the severity of the Appellant’s impairment, its impact on DLA, and his need for help.

### ***Admissibility of Additional Information***

Section 22(4) of the *Employment and Assistance Act* (EAA) provides that panels may admit as evidence (i.e. take into account in making its decision) the information and records that were before the minister when the decision being appealed was made and “oral and written testimony in support of the information and records” before the minister when the decision being appealed was made – i.e. information that substantiates or corroborates the information that was before the minister at

reconsideration. These limitations reflect the jurisdiction of the panel established under section 24 of the EAA: to determine whether the Ministry's reconsideration decision is reasonably supported by the evidence or a reasonable application of the enactment in the circumstances of an Appellant. That is, panels are limited to determining if the Ministry's decision is reasonable and are not to assume the role of decision-makers of the first instance. Accordingly, panels cannot admit information that would place them in that role.

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

The panel considered the additional oral information presented at the hearing to be oral testimony corroborating and clarifying the information and records that were before the ministry when the decision being appealed was made and therefore admissible.

## PART F – Reasons for Panel Decision

The issue on appeal is whether the Ministry's reconsideration decision, which found that the Appellant is not eligible for designation as a person with disabilities (PWD), was reasonably supported by the evidence or was a reasonable application of the applicable enactment in the circumstances of the Appellant. The Ministry found that the evidence does not establish that the Appellant has a severe mental or physical impairment and that his DLA are not, in the opinion of a prescribed professional, directly and significantly restricted either continuously or periodically for extended periods. Also, as a result of those restrictions, it could not be determined that the Appellant requires the significant help or supervision of another person, the use of an assistive device, or the services of an assistance animal to perform DLA.

The criteria for being designated as a PWD are set out in Section 2 of the EAPWDA as follows:

### **Persons with disabilities**

2 (1) In this section:

"assistive device" means a device designed to enable a person to perform a daily living activity that, because of a severe mental or physical impairment, the person is unable to perform;

"daily living activity" has the prescribed meaning;

"prescribed professional" has the prescribed meaning.

(2) The minister may designate a person who has reached 18 years of age as a person with disabilities for the purposes of this Act if the minister is satisfied that the person is in a prescribed class of persons or that the person has a severe mental or physical impairment that

(a) in the opinion of a medical practitioner or nurse practitioner is likely to continue for at least 2 years, and

(b) in the opinion of a prescribed professional

(i) directly and significantly restricts the person's ability to perform daily living activities either

(A) continuously, or

(B) periodically for extended periods, and

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

(3) For the purposes of subsection (2),

(a) a person who has a severe mental impairment includes a person with a mental disorder, and

(b) a person requires help in relation to a daily living activity if, in order to perform it, the person requires

(i) an assistive device,

(ii) the significant help or supervision of another person, or

(iii) the services of an assistance animal.

(4) The minister may rescind a designation under subsection (2).

The EAPWDR provides as follows:

### **Definitions for Act**

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

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

(i) prepare own meals;

(ii) manage personal finances;



- (iii) shop for personal needs;
  - (iv) use public or personal transportation facilities;
  - (v) perform housework to maintain the person's place of residence in acceptable sanitary condition;
  - (vi) move about indoors and outdoors;
  - (vii) perform personal hygiene and self care;
  - (viii) manage personal medication, and
- (b) in relation to a person who has a severe mental impairment, includes the following activities:
- (i) make decisions about personal activities, care or finances;
  - (ii) relate to, communicate or interact with others effectively.

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

- (a) authorized under an enactment to practise the profession of
- (i) medical practitioner,
  - (ii) registered psychologist,
  - (iii) registered nurse or registered psychiatric nurse,
  - (iv) occupational therapist,
  - (v) physical therapist,
  - (vi) social worker,
  - (vii) chiropractor, or
  - (viii) nurse practitioner ...

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### **Severity of Impairment**

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. With respect to assessing the *severity* of an impairment, Section 2(2)(b)(i) of the EAPWDR requires that a mental or physical impairment *directly and significantly* restricts the person's ability to perform DLA either *continuously, or periodically for extended periods*. Therefore, 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 Nurse.

### **Physical Functioning**

In its reconsideration decision, the Ministry was not satisfied that the information provided establishes a severe physical impairment. The Ministry's position is that it is difficult to develop a clear and coherent picture of the degree of the Appellant's impairment due to inconsistencies between information provided by the GP and the Nurse and a lack of detail regarding limitations or restrictions

in mobility, physical ability and functional skills. The Ministry also noted that in describing impact to physical functioning both prescribed professionals at times used terms such as “patient states” or “states”. At the hearing, the Ministry argued that because neither the GP nor the Nurse knew the Appellant well, neither might be in a position to provide informed assessments of the Appellant’s impairment. The Appellant’s position is that he does have a severe physical impairment. At the hearing, the Appellant argued that the reason that the prescribed professionals had written “patient states” in their assessments was because neither of them actually observed the Appellant in his home, and could not therefore independently confirm his degree of independence with respect to performing DLA.

### *Panel Decision*

In its reconsideration decision, after quoting the GP’s description of the Appellant’s medical condition from the MR, the Ministry states “*It is noted that a diagnosis of a serious medical condition does not in itself determine PWD eligibility or establish a **severe impairment***”. Therefore the Ministry implicitly acknowledges that the GP has described a diagnosis of a serious medical condition, but argues that a *severe impairment* of the Appellant’s physical functioning has not been established, in part because the prescribed professionals have not described the nature, frequency and/or duration of several of the limitations or restrictions in mobility, physical ability and functional skills that result. The panel acknowledges that there are some inconsistencies between the assessments provided by the GP in the MR and the Nurse in the AR, and there is little information provided as to whether impairments impacting physical functioning are continuous or periodic (either for short periods or for extended periods) with respect to activities such as the amount of weight that the Appellant can lift, carry or hold.

The panel notes that there is no requirement in Section 2(2) of the EAPWDA that a prescribed professional must have a minimum amount of contact with the Appellant in order to render an opinion. Furthermore, despite the Ministry’s oral argument at the hearing that because neither the GP nor the Nurse knew the Appellant well they might not be in a position to provide informed assessments of the Appellant’s impairment, the panel notes that in its reconsideration decision the Ministry provides an analysis based on the information provided by both prescribed professionals, and makes its determination partly based on those assessments, thereby giving weight to them. The panel accepts the Appellant’s argument that the prescribed professionals might have written “patient states” or “states” because they did not have the opportunity to independently observe certain functions or activities, and that, as a result, in those circumstances the Ministry should give significant weight to the Appellant’s self assessment and any other evidence regarding the Appellant’s ability to perform DLA, from any reliable source. Nevertheless, 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 DLA either *continuously or periodically for extended periods* pursuant to Section 2(2) of the EAPWDA, did reasonably take into account the information provided by the prescribed professionals and was reasonably supported by the evidence before the Ministry at reconsideration.

### **Mental Functioning**

In its reconsideration decision, the Ministry found that the GP had not diagnosed the Appellant with a mental impairment, that he had no difficulties with communication, and that he had no significant deficits with respect to any aspects of cognitive or emotional functioning. In the AR, the Ministry noted that the Nurse indicated no major impacts to cognitive and emotional functioning, moderate impacts to seven areas of cognitive and emotional functioning, minimal impacts to one area, and no impact to six areas. On balance the Ministry found that, based on the prescribed professionals’

assessments, the cumulative impact on cognitive and emotional functioning was not indicative of a severe impairment to mental functioning. The Appellant's position is that he does not have a severe mental impairment.

### *Panel Decision*

As the GP did not provide a diagnosis of a mental impairment and because the Appellant does not argue that he has a severe mental impairment, the panel finds that the Ministry reasonably determined that a severe mental impairment was not established pursuant to Section 2(2) of the EAPWDA.

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

The Ministry's position is that, based on all of the information provided in the Appellant's application for a PWD designation and leading up to and including the information available at reconsideration, there is not enough evidence that the Appellant has a severe impairment that significantly restricts his ability to perform DLA continuously or periodically for extended periods. The Appellant's position is that he has significant restrictions to his DLA because it takes him 2 - 3 hours to complete household chores, he can only walk 3 - 4 blocks at a time, he can carry only light weight items, and he must rest frequently for 10 - 15 minutes when undertaking physical activities.

### *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 is the prescribed professional. DLA are defined in Section 2(1) of the EAPWDR and are also listed in the MR 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 prescribed professional is instructed in the MR to describe the extent of the restrictions on DLA in the comments section of the MR. The panel notes that there is no additional commentary provided by the GP in this section of the MR, and there is no additional information provided anywhere in the MR identifying the nature or extent of restrictions on the DLA for which periodic restrictions have been noted (daily shopping and mobility outside the home) other than "*Difficulty carrying heavy groceries if walking > 15 min.*".

Similarly, the prescribed professional is instructed in the AR to provide additional comments describing the type and amount of assistance required with DLA. The Nurse has not provided any additional information in this section of the AR other than "*Will take daughter shopping with him to assist in carrying groceries*", which describes the type of assistance required for this particular DLA but not the frequency. (The Appellant has stated that he usually shops by himself.)

In addition, the evidence as to whether or not there are limitations to the Appellant's physical functioning is not consistent: in the MR the GP states that no DLA are restricted except for daily

shopping and mobility outside the home. In the AR the Nurse reports that the Appellant also requires periodic assistance with food preparation and cooking. In addition, the extent, duration and frequency of the periodic restrictions is not explained, as the Nurse's only comment with respect to food preparation and cooking is "*states that daughter does most of the cooking*".

The panel finds that the Ministry makes a reasonable argument that the information provided by the GP and the Nurse is either inconsistent or vague for specific DLA, as outlined above. Therefore, the panel finds that the ministry reasonably concluded that there is not enough evidence to show that the appellant's overall ability to perform his DLA is significantly restricted either continuously or periodically for extended periods, pursuant to Section 2(2)(b)(i) of the EAPWDA.

### **Help with DLA**

The Ministry's position is that it cannot be determined that significant help is required because it has not been established that DLA are significantly restricted. The Appellant argues that, while he is independent with respect to most DLA and does not use any assistive devices, he has to rely on his daughter from time-to-time to help him carry shopping and that she usually cooks and prepares food for him.

### *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 specified 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.