

PART C – Decision under Appeal

The decision under appeal is the Ministry of Social Development and Social Innovation (the Ministry) reconsideration decision dated July 13, 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.

The ministry also found that the appellant is not 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 EAPWDA and the appellant did not appeal the decision on this basis.

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 January 9, 2017, a medical report (MR) dated February 6, 2017 and completed by the Appellant's general practitioner (GP) who has known the Appellant for 20 years and who has seen him 2 - 10 times in the past year, and an assessor report (AR) dated March 6, 2017 completed by a social worker (SW) who has known the Appellant for 2 months and has seen him 2 - 10 times in the past year.

The evidence also included the following documents:

- 1) Eight page document of questions provided by a social services agency in the Appellant's community comprising:
 - 2 page questionnaire titled "Pain Chart for PWD" (Pain Chart Questionnaire) completed and signed by the Appellant on November 21, 2016;
 - 2 page questionnaire titled "Musculoskeletal Outcome Measures" (MOM Questionnaire) completed and signed by the Appellant on November 21, 2016; and,
 - 4 page checklist titled "Daily Living Activities for PWD" (DLA Checklist) completed and signed by the Appellant on November 21, 2016;
- 2) Request for Reconsideration (RFR) signed on June 27, 2017 stating that he is requesting a reconsideration of the Ministry's decision because his DLA are severely impaired, as a result he requires assistance with "*daily chores in order to be self sufficient*", and he is on daily medication for pain and depression;
- 3) Letter (First Referral Letter) dated June 6, 2017 and directed to "PWD" from the GP stating that the Appellant is unable to work due to persisting neck and low back pain, summarizing the treatment the Appellant is undertaking, identifying limitations in his physical functioning, and stating that the GP "*supports (the Appellant's) application for CPP (Canada Pension Plan) benefits*";
- 4) Letter of support (First Support Letter) dated December 2, 2016 and addressed to the Ministry from a life-long friend of the Appellant providing information about the "*things (the friend) helps (the Appellant) with since his health difficulties became severely disabling*";
- 5) Letter of support (Second Support Letter) dated December 4, 2016 and addressed to the Ministry from a friend of the Appellant providing information about things the Appellant can no longer do "*since his health difficulties became severely disabling*";
- 6) Letter of support (Third Support Letter) dated December 1, 2016 and addressed to "whom it may concern" from a friend of the Appellant providing information about how the Appellant's life has changed "*since his accident*"; and,
- 7) Letter of support (Fourth Support Letter) dated December 2, 2016 and addressed to the Ministry from a friend of the Appellant providing information about "*changes in (the Appellant) since his accident*".

Diagnoses

In the MR, the GP diagnosed the Appellant with chronic neck pain with an onset of June 2000, chronic back pain with an onset of June 2002, degenerative disc disease (DDD) of the C-spine and the L-spine with onset unknown, bilateral carpal tunnel syndrome (CTS) and insomnia with onset unknown. No additional comments were provided.

Physical Impairment

In the MR, the GP reported that:

- 1) in terms of health history:
 - the Appellant has back and neck pain resulting in reduced standing tolerance (≤ 20 min.),

severe impairment to sleep duration and sleep quality, and an inability to complete some DLA;

- the Appellant's back and neck pain is demoralizing and that he has emotional sequelae from living with chronic back pain and disability;
- the Appellant is unable to secure employment due to limitations; and,
- the Appellant's back and neck pain continues despite optimal medical treatment (which includes spinal injections, physiotherapy and medication) and his condition is not expected to improve or worsen; and,

2) in terms of functional skills, the Appellant can walk 2 to 4 blocks unaided on a flat surface, can climb more than 5 steps unaided, can lift 5 to 15 lbs., and can remain seated for 20 minutes.

In the AR the SW reported that *[comments in parentheses]*:

- the Appellant has L5 S1 DDD, stenosis in his thoracic spine and neck, arthritis and insomnia;
- the Appellant is independent with respect to
 - climbing stairs *[slowly - must use handrails]*; and,
 - standing *[limited to 20 (minutes) max.]*,
- the Appellant requires periodic assistance with
 - walking indoors *[periodically immobilized]* and outdoors *[periodically unable to walk outdoors ... outdoors walking is often limited to 100 yds. at most]*; and,
 - carrying and holding *[limited to 20 lbs. - 10 lbs.]*; and,
- requires continuous assistance from another person with lifting *[no lifting - unable to lift]*; and,
- there are days when the Appellant has severe back pain and his ability to move around is very limited.

In the SR, the Appellant wrote that:

- his physical impairment was the result of a motor vehicle accident (the Accident) on June 20, 2014 in which he was rear ended at a stop light;
- since the Accident he has had over 40 physiotherapy treatments, has been treated by a Kinesiologist, another unspecified medical specialist, had a functional capacity evaluation and two computerized axial tomography (CAT) scans. He stated that the CAT scan shows that, in addition, he has spinal stenosis, arthritis and facet joint degeneration. He has also been receiving medial branch blocks at a medical clinic in a city near his community;
- as a result of a previous unspecified injury he has L5 S1 disc herniation;
- he can only stand on a concrete surface for up to 20 minutes and he can only sit on a chair for 20 minutes before he has to get up and move around;
- he has problems with his upper back and upper shoulders, where there is so much pain that *"he feels like he is being hit with a hammer"*;
- he has a decreased range of motion in his upper body and decreased trunk movement, and he is not able to squat;
- he has poor tolerance of extension of the cervical spine and loading of the spine;
- while he is able to drive he can only drive for 30 minutes after which he has to stop and move around;
- he is unable to lift more than 10 lbs. over his head and unable to carry more than 20 lbs. over a short distance;
- he finds it almost impossible to do anything that involves walking around or standing in line; and,
- he had always been an active "outdoor type" person but can no longer able to do the things he loves, like hunting.

In the Referral Letter, the GP states that the Appellant's standing tolerance is limited to 30 minutes and that his walking tolerance is "*often limited to 500 metres, unaided, but this often takes an inordinate amount of time.*"

In the First Support Letter, the Appellant's life-long friend states that the Appellant "*can no longer do most of the things he used to do, and (, in the friend's presence, the friend) can see how much pain (the Appellant) is in just from the simplest tasks, sometimes something as simple as walking up the stairs ... or standing from (the) couch.*"

In the Second Support Letter, the Appellant's friend states that the Appellant lived with her family for almost 2 years before the Accident, during which time he often provided her help with daily chores, but since the Accident he is no longer able to help with the types of things he used to help her with, including "*odd jobs around the house, carry(ing) heavy items from the store, or help(ing) pick up the friend's 2 year old daughter when the extra hand would be useful.*"

In the Third Support Letter, the Appellant's friend states that the Appellant has not been the same since the accident, and that "*(the Appellant's) ability to walk, sit and move in general has become unbearable to watch.*" The friend states that he has known the Appellant for 20 years, and that he can recall that before the Accident the Appellant had the ability to "*function as a normal man for his age*" and that they would "*enjoy doing things like motorcycling, dirt biking, camping, fishing, and hunting*" together, but since the Accident the Appellant could no longer do these things.

In the Fourth Support Letter, the Appellant's friend states that before the Accident the Appellant could drive a vehicle for 16 hours without debilitating discomfort, but that now "*the threshold occurs after 30 minutes*", and that in the autumn of 2016 the friend had to chop firewood for the Appellant as the Appellant "*was physically impeded.*"

In the Pain Chart Questionnaire, the Appellant reported that:

- the pain to his neck, upper back, back left side and lower back is constant and that lifting, bending, standing, sitting, driving and cold weather all make the pain worse;
- on a scale of 0 - 5 where 0 is no pain and 5 is excruciating pain, he has ticked both 3 (distressing) and 4 (horrible);
- he does not do as many leisure activities as before the Accident because they cause pain and discomfort; and,
- along with the pain, he also sometimes suffers from lack of sleep and gets a numbness in his hands.

In the MOM Questionnaire, the Appellant reports that:

- on a scale of 0 - 10 where 0 is no pain, 1 is mild pain, 8 is severe pain and 10 is worst pain imaginable, he has circled both 6 and 7;
- where asked to identify to what extent in the past week he has had trouble sleeping he circled "constantly", needed to lie down during the day, felt tired and lacking in energy and had headaches he circled "very much", and felt dizziness he circled "moderately";
- he has attended a doctor or other health care provider 4 - 5 times over the past 4 weeks in relation to his pain;
- he takes 6 - 8 tablets of medication per day for the pain; and
- where asked to identify how difficult it was over the past week to do a range of activities he identified four which he could not do at all (including running, lifting and carrying 22 lbs., and reaching up behind his back), ten which were very difficult (including normal housework, walking on a flat surface for more than 1 km or on uneven ground, kneeling and squatting, bending forward or stooping, sitting at a desk, turning your head to look over your shoulder,

reaching overhead to a high shelf, and writing at a desk or typing at a keyboard), one which was moderate to very difficult (traveling in a car), eight which were moderately difficult (including traveling by public transit, walking 100 metres, walking up and down stairs, rising from sitting, looking up and down, lifting or carrying groceries and opening tight jars and bottle tops), and one of which was a bit difficult (personal hygiene).

Mental Impairment

In the MR, the GP reported that the Appellant:

- has no difficulties with communication;
- has the following deficits with cognitive and emotional functioning: emotional disturbance, motivation and attention or sustained concentration with the comment “Dysthymia, anxiety”;
- has an identified mental impairment and is restricted in social functioning with the explanation “(Appellant) is socially withdrawn. Parents and a couple of friends are his support network. Lower tolerance for frustration”, but does not indicate whether the restriction is continuous or periodic.

In the AR, the SW reported that [*comments in parentheses*]:

- with respect to his ability to communicate, the Appellant has good speaking, writing and hearing skills and satisfactory reading skills [*(reading) affected by poor concentration” (and) has noticed that focus and concentration when reading has deteriorated - Also unable to sit and read → must get up and move - pain is distracting*”];
- there were five major impacts to cognitive and emotional functioning:
 - bodily functions [*lack of sleep*];
 - attention/concentration;
 - motivation [*finds (he is) unable to do basic tasks*];
 - motor activity - decreased goal oriented activity; and,
 - other emotional or mental problems [*very frustrated, becomes detached*];
- there were four moderate impacts to cognitive and emotional functioning:
 - consciousness - drowsy [*lack of sleep*];
 - emotion,
 - executive functioning [*Always thinking - unable to act on it - leads to frustration*]; and,
 - memory - learning new information [*focus is limited*];
- there were no impacts to other cognitive and emotional functioning (impulse control, insight and judgment, language, psychotic symptoms or other neurological problems);
- in the comments section of the cognitive and emotional functioning section, “*Sleep deprivation - unable to sleep through the night. Takes a long time to fall asleep. Can go 3 to 4 days without sleeping then will collapse from exhaustion. Feels like he is in a fog. Experiences situational depression. Has no motivation - losing hope. Has trouble focussing; forgets where he puts things; loses interest quickly - has unfinished projects or things he should do but just unable to handle. Poor sense of self worth. Unable to act on plans.*”;
- in terms of social functioning, he is independent in:
 - making appropriate social decisions [*Has become socially isolated → prefers not to go out with friends because he is unable to participate in activities such as hunting and fishing*];
 - ability to maintain relationships [*Just a few close friends. Gets frustrated when people don't understand his limitations. does not want people to know how bad his situation is.*]; and,
 - appropriate interaction with others [*Does get impatient with people to a point where (he) wants to be left alone - social isolation*].
- he requires periodic support or supervision in:

- his ability to deal appropriately with unexpected demands [*Tries to ignore - has a short fuse*]; and,
- his ability to secure assistance from others [*Tries not to ask for help - does not want to be a burden to others*];
- where asked to describe how the Appellant's mental impairment impacts his relationship with his immediate social network, the Appellant demonstrates marginal functioning [*Has an uncle who is helpful. Lives with parents - stressful. Very few friends - 2 good friends. Feels he is a burden on family and friends*]; and
- where asked to describe how the Appellant's mental impairment impacts his relationship with his extended social networks, the Appellant demonstrates marginal functioning [*(Appellant) is in a transition period of social adjustment. Unable to maintain long term relationships - feels people don't understand*].

In the SR the Appellant states that he is “*unable to turn off (his) thoughts*” and he is “*overwhelmed with fears of (his) future*”. He also states that he is finding that he no longer wants to be around people because he has no more patience or tolerance for people. He says that he gets very frustrated because he has lost his independence and being dependent on his parents has really affected him.

In the Fourth Support Letter, the Appellant's friend states that the Appellant is frustrated with his limitations and that his physical disability has impaired his ability to socialize, which has led to social isolation and low level depression.

In the Pain Chart Questionnaire, the Appellant stated that he is emotionally upset, frustrated and angry, adding that he does “*not know ... where (he) is going or where (he) will end up*”.

In the MOM Questionnaire, the Appellant stated that he has felt downhearted and sad and nervous and uptight in the past week to a moderate extent.

In the DLA Checklist the Appellant stated that on his worst days he is challenged with interacting with strangers in public, developing and maintaining relationships and being able to ask for help when he needs it, and that he doesn't go out as much as before because he doesn't want to have to explain his injury. In addition, regarding mental and emotional skills and communication, on his worst days he has difficulty coping with anxiety and agitation, depression, stress and confusion, and he has trouble planning ahead, remembering information and appointments and being able to make himself understood. In addition, he feels frustration and anger, saying that he can't do what he wants to do, that he is embarrassed and depressed about his inability to work and doesn't want to have to explain to people “*what is happening to (him)*”. He states that he has a hard time staying focused and completing tasks, adding “*when (he) starts something and then (it) starts to hurt (he) gets really frustrated and (has) to stop*”. He said that he gets anxiety because he used to earn a good living and a promising future before the Accident and now he feels that this is all gone.

Restrictions in the Ability to Perform DLA

In the MR, the GP reported that the Appellant has been prescribed medication that interferes with his ability to perform DLA because it causes drowsiness, and that the duration of the medications is indefinite. The GP states that the Appellant's impairment directly affects his ability to perform three DLA continuously: meal preparation, basic housework and mobility outside the home, adding “*Back pain limits standing tolerance (to prepare meals or shop)*”. The GP reports that two other DLA are periodically restricted: daily shopping and mobility inside the home, with the comment “*Back pain limits standing (≤ 20 min.) & walking (≤ 20 min.)*”.

In the additional comments section of the MR, the GP reports that the Appellant is dependent on his aging parents for DLA.

In the AR, the SW reported that the Appellant [*comments in parentheses*]:

- is independent with respect to some aspects of personal care (toileting, feeding self and regulating diet) but that he took significantly longer than normal with dressing [*Will often put on dirty clothes*], grooming [*Makes sure he showers and shaves if going out*], bathing [*Very irregular*], transfers in and out of bed [*Extremely slow*] and transfers on and off a chair [*Slowly*];
- requires periodic assistance with laundry [*Takes to laundromat. Lets it pile up*] and continuous assistance from another person with basic housekeeping [*Stepmother does all housekeeping*];
- requires periodic assistance with carrying purchases home and continuous assistance from another person with going to and from stores [*Parents do all shopping*];
- requires continuous assistance from another person with meal planning, food preparation, cooking and safe storage of food [*Mother does all cooking, prep. and stove top cooking → unable to do these things anymore*];
- is independent with respect to banking, budgeting, paying bills, filling/refilling prescriptions, taking medication as directed [*Does forget in mornings*] and safe handling and storage of medications; and
- is independent with respect to getting in and out of a vehicle [*Cannot get in and out of small car. Can climb into his truck. Must hold into steering wheel.*] and does not use public transit.

The SW also provides the following additional comments in the AR:

- *One of the most dramatic changes is how long it takes (the Appellant) to get going in the morning and often unable to move. Takes an hour to wake up & move around. Sometimes has not slept all night. Exhausted from having no sleep; and,*
- *Appellant will cook sometimes but a real challenge → unable to go through process of prep. and cooking.*

In the SR, the Appellant wrote that:

- in the mornings it takes him an hour to an hour and a half to get moving and he has to do stretches that his physiotherapist gave him to loosen up and sometimes he does the stretches at night to try to get back to sleep; and
- he can dress himself but has trouble doing simple things like going for a walk. He often can't move so he stays at home. On a good day he can walk 100 yards to a shop where he tries to do little projects. He must rest after doing something for half an hour.

In the Pain Chart Questionnaire, the Appellant reported that he is unable to get things done around the house and the things he does get done take a lot longer to complete because he has to stop and rest.

In the DLA Checklist, the Appellant stated that on his worst days he either cannot perform the following activities or they take him much longer than most people [*comments in parentheses*]:

- chopping food, peeling fruit or vegetables, standing at the sink or stove and lifting food from cupboards or counters [*(His) mother does all the housework and yard work, most of the cooking and cleaning. She will often do (his) laundry and sometimes he will take it to town for drop-off service.*];
- walking around stores, putting groceries in the shopping cart and taking them out, carrying groceries to the car and into the house, being able to wait in line without becoming frustrated and angry [*Walking around stores is difficult due to pain in (his) back. Carrying groceries can*

be hard on (his) neck.];

- remembering or being motivated to eat regular meals, budgeting for groceries or other things he needs and stopping himself from buying things he doesn't need;
- washing counters and sinks, cleaning the bathtub, making beds, cleaning the toilet, washing dishes, putting dishes away, vacuuming, sweeping or washing floors, dusting, carrying, doing and folding laundry and cleaning windows [*This is one of the areas (he has) a lot of difficulties with. Bending and kneeling (he) finds hard to do. (His) mother is (elderly) and it bothers him that she does most of the work.*];
- standing at the bus stop and on the bus;
- getting in and out of chairs, getting in and out of bed, bending to pick things up from the floor [!!!] and kneeling and getting up from the kneeling position [!!!];
- remembering or having energy/motivation to bathe every day; and,
- remembering to have his prescriptions filled so he doesn't run out.

Need for Help

In the MR, the GP indicated that the Appellant does not require any prostheses or aids for his impairment, adding the comment "*No assistive device needs. Family are able to help him with food (preparation) and housework*".

In the AR, the SW stated that the Appellant lives with his elderly parents and that his mother does all the of the housework and most of the cooking and cleaning, as indicated above.

In the SR, the Appellant wrote that since the Accident he has had to move in with his parents and that his stepmother helps him with DLA including cooking, cleaning, laundry and household chores.

In the DLA Checklist the Appellant stated that his mother does all the housework and most of the cooking and cleaning, and that she will often do his laundry, though sometimes he will take it to a drop off service at a laundromat in his community, as indicated above.

Additional Information submitted after reconsideration

In his Notice of Appeal dated August 1, 2017, the Appellant appended a document entitled "Reasons For Appeal" which stated that the Appellant:

- maintains that he does have a severe physical and/or mental impairment and provides a summary of the evidence in support of his severe impairment, including his reduced sitting and standing tolerance, his chronic neck and back pain and limitations in his ability to walk and carry or hold items; and
- confirms that he is directly and significantly restricted in his DLA and requires assistance as a result, and provides a summary of the evidence, including that he lives with his parents solely as a result of his need for assistance with his DLA.

At the hearing, the Appellant introduced a second referral letter (Second Referral Letter) from his GP dated August 18, 2017 which re-stated the information in the First Referral Letter and which also stated that the Appellant's chronic pain has become complicated by depression for which he is now meeting with a psychiatrist and taking antidepressant medication.

At the hearing, the Appellant's advocate summarized the information in the MR, the AR, and the SR and stressed that the best evidence that the Appellant has a significant need for assistance with his DLA is the fact that, while he used to be independent, he is now having to live with his elderly parents out of necessity, and that he would rather be working than looking for a small disability pension.

At the hearing, the Appellant clarified that his reference to a previous injury in his SR was to an injury he incurred when he was 6 years old. He stated that he had more or less recovered from the injury but that it was aggravated by the Accident. He explained specifically what physical motions restricted his ability to perform a number of DLA, for example he cannot do the laundry, chop food or wash dishes because he cannot bend over. He also explained some recent changes to his medication, which includes two antidepressants and a new type of pain-killer for which his dose has just been increased from one tablet per day to two tablets per day and he is having to make adjustments to his sleep patterns as a result.

At the hearing, the Ministry relied on its reconsideration decision and stated that if the Appellant applied for and received a CPP benefit he would qualify for a PWD designation but the amount of disability assistance provided by the Ministry would be reduced to reflect the value of the CPP benefit.

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 Ministry objected to the admissibility of the information in the Second Referral Letter regarding the treatment and medication of the Appellant’s mental impairment because it was new information.

The panel did not admit the information about psychiatric treatment and anti-depressant medication as at the time of the reconsideration decision there was no indication that the Appellant was receiving any treatment or medication for a mental impairment and therefore it was not testimony in support of information and records that were before the Ministry at the time of the reconsideration.

PART F – Reasons for Panel Decision

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

Part 1.1 — Persons with Disabilities

Alternative grounds for designation under section 2 of Act

2.1 The following classes of persons are prescribed for the purposes of section 2 (2) [persons with disabilities] of the Act:

- (a) a person who is enrolled in Plan P (Palliative Care) under the Drug Plans Regulation, B.C. Reg. 73/2015;
- (b) a person who has at any time been determined to be eligible to be the subject of payments made through the Ministry of Children and Family Development's At Home Program;
- (c) a person who has at any time been determined by Community Living British Columbia to be eligible to receive community living support under the *Community Living Authority Act*;
- (d) a person whose family has at any time been determined by Community Living British Columbia to be eligible to receive community living support under the *Community Living Authority Act* to assist that family in caring for the person;
- (e) a person who is considered to be disabled under section 42 (2) of the Canada Pension Plan (Canada).

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.

Physical Functioning

In its reconsideration decision, the Ministry was not satisfied that the information provided establishes a severe physical impairment. The Ministry noted that the SW does not describe how often the Appellant is periodically immobilized or how often there are days when his back pain is so severe that he cannot move around, and as a result, the Ministry found that it could not determine the Appellant's overall level of physical functioning. The Ministry also found that the SW's assessment of the Appellant's ability to lift was inconsistent with his ability to carry and hold, and that while the SW states that the Appellant cannot lift, the GP indicates that the Appellant can lift 5 to 15 lbs. The Appellant's position is that he is only able to sleep for about 3 hours before he wakes up stiff and in pain, that he can only stand or sit for up to 20 minutes at a time, and that he has problems with his upper neck and shoulders which result in significant pain.

Panel Decision

As the SW has indicated that some of the Appellant's episodes of impairment are periodic rather than continuous (e.g. walking indoors and outdoors, carrying and holding), the panel finds that the Ministry was reasonable in determining that in order to assess whether the periodic impairments were for extended periods, as required in the legislation, it would need to know how often and for how long the episodes occur, and the use of terms like "often", "sometimes" and "there are days when ..." are not precise enough to enable the Ministry to make that assessment.

As Section 2(2) of the EAPWDR requires that the Ministry be satisfied that a person has a severe mental or physical impairment, the severity of an impairment must be assessed. 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.

The panel notes that the Ministry states in its reconsideration decision that the information in the SR is considered in conjunction with the assessments provided by the Appellant's GP. The panel further notes that there is no reference in the reconsideration decision to any the information provided in the SR and the other documents submitted by the Appellant with his PWD application (the Pain Chart Questionnaire, the MOM Questionnaire, the DLA Checklist or any of the Support Letters). While the legislation makes it clear that prescribed professional(s) must provide opinion(s) that an impairment is severe in order to meet the legislative test, in completing a reasoned assessment of the degree to which an applicant is impaired, the Ministry would be expected to give some weight to the assessments provided by a PWD applicant and any other individuals who know the applicant well and have provided information on the nature of his or her impairment, particularly in light of the fact that the Ministry's PWD application form includes a section asking for a self assessment.

Despite the lack of direct references to the SR in the Ministry's reconsideration decision, the panel finds that the Ministry was not unreasonable in determining that, in weighing the evidence contained in the MR, the AR, and the SR, together with other written submissions, the Appellant's impairment was not severe, and the panel finds that the Ministry's determination that the assessments provided by the GP and the SW are indicative of a *moderate* rather than a *severe* physical impairment was reasonably supported by the evidence before the Ministry at reconsideration.

Mental Functioning

In its reconsideration decision, the Ministry found that the GP's assessments in the MR did not point to any difficulties with communications. In addition, the Ministry found that the GP reported significant deficits in the areas of emotional disturbance, motivation and attention or sustained concentration, but no significant deficits for the other eight of areas of cognitive and emotional functioning. In terms of social functioning, the Ministry noted that the GP indicates that the Appellant's social functioning is restricted, but does not indicate if that restriction is continuous or periodic. In the AR, the Ministry noted that the SW reported that the Appellant's level of ability with respect to speaking, writing and hearing were good, that reading ability was satisfactory, and the SW indicated major impacts to five areas of cognitive and emotional functioning, moderate impacts to three areas, and no impacts to the remaining five areas. Regarding social functioning, the SW reported that the Appellant requires periodic support or supervision in dealing with unexpected demands and in securing assistance from others, and that the Appellant had marginal functioning with both his immediate and his extended social networks, but did not indicate that the Appellant needs help to maintain in the community. On balance the Ministry found that the cumulative impact on cognitive and emotional functioning was indicative of a *moderate* rather than a *severe* impairment to mental functioning. The Appellant's position is that he gets very frustrated because he has lost his independence and being dependent on his parents has really affected him. On his worst days he is challenged with interacting with strangers in public, developing and maintaining relationships and being able to ask for help when he needs it. In addition, regarding mental and emotional skills and communication, on his worst days he has difficulty coping with anxiety and agitation, depression, stress and confusion, and he has trouble planning ahead, remembering information and appointments and being able to make himself understood.

Panel Decision

The panel notes that the evidence shows that a large majority of the cognitive and emotional functions are either not significantly impacted or are not impacted in any way by the Appellant's mental impairment, and that for functions where impacts are identified, neither the prescribed professionals nor the Appellant provide sufficient information for the Ministry to determine the frequency or duration of those impacts or what kind of support he needs to maintain him in the community. Therefore the panel finds that the Ministry reasonably determined that a *severe* mental impairment was not established pursuant to Section 2(2) of the EAPWDA.

Restrictions in the ability to perform DLA

In its reconsideration decision, the Ministry notes that the GP has indicated that the Appellant has been prescribed medication that interferes with his ability to perform DLA, that his impairment continuously restricts meal preparation, basic housework and mobility outside the home, and that daily shopping and mobility inside the home is periodically restricted. The Ministry further notes that in the AR the SW reports that the Appellant requires continuous assistance from another person for basic housekeeping, going to and from stores, and all aspects of meal planning and preparation including cooking, and periodic assistance with laundry and carrying purchases home. The Ministry also notes that the SW states that the Appellant takes significantly longer with most aspects of personal care, but does not indicate how much longer he takes. In addition, the Ministry notes that the Appellant is able to independently manage all other DLA. The Ministry concludes that these assessments are indicative of a moderate level of restriction. The Appellant's position is that he is unable to get things done around the house and the things he does get done take a lot longer to

complete because he has to stop and rest and that on his worst days he either cannot perform a number of DLA (food preparation, shopping and housekeeping) or they take him much longer than most people.

Panel Decision

Section 2(2)(b) of the EAPWDA requires that the Ministry be satisfied that prescribed professionals have 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 SW are the prescribed professionals. 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 Panel notes that 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 meal preparation, basic housework and mobility outside the home are continuously restricted, that daily shopping and mobility inside the home are periodically restricted, and that social functioning is restricted (without specifying whether it is restricted periodically or continuously), while in the AR, the SW reports that basic housekeeping (excluding laundry), going to and from stores and all aspects of meals (planning, preparation, cooking and safe storage) are continuously restricted, while laundry, carrying purchases home, ability to deal appropriately with unexpected demands and ability to secure assistance from others are all periodically restricted.

The panel further notes that the prescribed professional is instructed in the MR to describe the degree of restriction on DLA in the comments section of the MR. The additional commentary provided by the GP in this section of the MR is "*Back pain limits standing tolerance (to prepare meals or shop)*". There is no additional information identifying the frequency or duration of the periodic restrictions to those DLA identified as being subject to periodic restrictions (daily shopping and mobility inside the home). Similarly in the AR, the SW does not indicate the frequency or duration of assistance required where the requirement of periodic assistance is identified (laundry, carrying purchases home, ability to deal appropriately with unexpected demands and ability to secure assistance from others).

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

Help with DLA

In its reconsideration decision, the Ministry states that it cannot be determined that significant help is required because it has not been established that DLA are significantly restricted. The Appellant's position is that he is completely reliant on his stepmother to help him with several DLA including cooking, cleaning, and household chores, and the fact that he needs assistance with DLA is clearly demonstrated by the fact that he has been forced to move in with his elderly parents.

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.