

PART C – Decision under Appeal

The decision under appeal is the Ministry of Social Development and Social Innovation (“ministry”) reconsideration decision dated July 13, 2017 in which the ministry found the appellant was not eligible for designation as a Person With Disabilities (“PWD”) because he did not meet all of the criteria in Section 2(2) of the *Employment and Assistance for Persons with Disabilities Act* (“EAPWDA”). The ministry was satisfied that the appellant has reached 18 years of age and that his impairment will continue for at least 2 years. However, based on the information provided in the PWD Designation Application (“PWD application”) and Request for Reconsideration (“RFR”), the minister was not satisfied that the following criteria were met:

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

PART D – Relevant Legislation

Employment and Assistance for Persons with Disabilities Act - EAPWDA - section 2

Employment and Assistance for Persons with Disabilities Regulation - EAPWDR - section 2

PART E – Summary of Facts

The evidence before the ministry at reconsideration consisted of the following:

1. A PWD application comprised of:

- The *Applicant Information - Self-report* (“SR”) signed by the appellant on March 7, 2017. The appellant chose not to complete the SR.
- A *Medical Report* (“MR”) completed by a general practitioner (“the physician”) on February 28, 2017. The physician has known the appellant since August 2007 and has seen him 11 or more times in the past 12 months.
- An *Assessor Report* (“AR”) also completed by the physician on February 28, 2017. The physician completed the report via an office interview with the appellant.

The PWD application included the following information:

Diagnoses

MR

The appellant is diagnosed with *Bilateral knee osteoarthritis* and *Left knee old injury*; *Depression*; and *Chronic anxiety* [date of onset for all conditions is more than 5 years ago]. Under *Health History*, the physician indicated that the appellant has “moderate to severe knee pain - osteoarthritis and old left knee fracture, moderate prolonged mental disability - depression and anxiety.”

Functional Skills

The physician provided the following information regarding any functional limitations:

MR

Under *Health History*, the physician described “decreased mobility, sleep disturbance, and inability to stand for extended periods of time due to pain and swelling of the knees.” Regarding the appellant’s mental health, the physician noted that “physical restrictions cause worsening of depression symptoms, decreased motivation.”

In assessing the appellant’s functional skills per Part D of the report, the physician indicated that:

- the appellant can walk 2 to 4 blocks unaided on a flat surface;
- climb 2 to 5 steps unaided;
- lift 5 to 15 pounds;
- has no limitation with remaining seated;
- he has no difficulties with communication; and
- he has significant deficits with 6 out of the 12 areas listed for cognitive and emotional function: Executive, Memory, Emotional disturbance [depression and anxiety], Motivation, Impulse control, and Attention/sustained concentration [comment, “depression is worse due to physical limitations, gets anxious due to not being able to work”].

AR

The physician provided the following information for Part B, *Mental or Physical Impairment*:

Ability to Communicate

- The appellant's ability in all of the listed areas is satisfactory: Speaking, Reading, Writing, and Hearing.

Mobility and Physical Ability

- He is independent with 2 of the 6 functions:
 - Walking indoors, but he takes significantly longer than typical [comment, "all physical activity is painful"]; and
 - Standing [comment, "but can't do for very long"].
- He requires periodic assistance with 1 function: Walking outdoors, which also takes significantly longer [comment, "limited, needs to rest"].
- He uses an assistive device for Climbing stairs [comment, "needs to use railings for support"].
- He requires continuous assistance from another person for 2 functions:
 - Lifting [comment, "unable to lift much in weight"]; and
 - Carrying/holding [comment, "causes stress on knees"].

Cognitive and Emotional Functioning

- In indicating to what degree a mental impairment restricts or impacts the appellant's cognitive/emotional functioning, the physician check marked the following for the 14 areas listed:
 - No impact for 5 areas: Consciousness, Language, Psychotic symptoms, Other neuro-psychological problems, and Other emotional/mental problems.
 - Minimal impact for 2 areas: Impulse control, and Insight/judgment.
 - Moderate impact for 5 areas: Bodily functions [sleep disturbance], Attention/concentration [distractible, unable to maintain concentration], Executive, Memory, and Motor activity [lack of movement].
 - Major impact for 2 areas: Emotion and Motivation.
 - Comments: "Chronic pain causes sleep disturbance which worsens depression and anxiety. Lack of motivation, loss of interest, frustration due to lack of mobility."

Daily Living Activities (DLA)

MR

- The physician checked Yes, the appellant has been prescribed medication/ treatments that interfere with his ability to perform DLA [comment, "drowsiness"].

AR

- The physician indicated that depression and chronic knee pain/swelling are the impairments that impact the appellant's ability to do DLA [Part B, 1, *Mental or Physical Impairment*]. For Part C, *Daily Living Activities*, the appellant has restrictions in specified areas of the following DLA:
 - **Personal Care:** He is independent with 6 out of 8 areas listed but takes significantly longer than typical with Dressing [comment, "painful and slow"] and Bathing [comment, "need supports to help lifting legs"]. He requires periodic assistance from another person for the remaining 2 areas:
 - Transfers [bed]; and
 - Transfers [chair].

- These activities also take significantly longer [comments, “knees stiff in a.m.”, and “slow to get up and down”].
- **Basic housekeeping:** He requires periodic assistance from another person for 2 areas: Laundry and Basic housekeeping [comments, “unable to stand very long, and “needs help with household chores”].
- **Shopping:** He is independent with 4 out of 5 areas of Shopping: Going to and from stores [for which he also requires periodic assistance and takes significantly longer – Comment, “need transportation and help carrying”]; Reading prices and labels, Making appropriate choices, and Paying for purchases. He requires continuous assistance from another person for the remaining area, Carrying purchases home.
 - Additional comments including a description of the type and amount of assistance and any safety issues, was left blank.
- **Meals:** The appellant is independent with 2 out of 4 areas: Meal planning and Food preparation but also requires periodic assistance with both of these activities.
 - Meal planning also takes significantly longer;
 - Cooking requires periodic assistance; and for
 - Meal planning, Food preparation and Cooking, he “lacks motivation.”
 - No information was provided for Safe storage of food.
- **Pay Rent and Bills:** The appellant is independent with all areas: Banking, Budgeting, and Pay rent and bills.
- **Medications:** He is also independent with all areas but requires periodic assistance with Filling/refilling prescriptions [comment, “sometimes needs reminding”].
- **Transportation:** He is independent with 2 out of 3 areas: Using public transit [where available], and Using transportation schedules and arranging transportation.
 - Getting in and out of a vehicle requires continuous assistance, and he also takes significantly longer [comment, “very hard on knees getting in and out of vehicles”].
 - Additional comments were left blank.
- **Social Functioning:** The appellant is independent with 3 out of 5 areas but also requires periodic support/supervision:
 - Appropriate social decisions [comment, “doesn’t socialize much”];
 - Able to develop/maintain relationships [comment, “physically unable to keep up with friends in activities - feels a burden”]; and
 - Interacts appropriately with others [comment, “needs encouraging, prefers to be alone”].
 - He requires periodic support/supervision with the two remaining areas: Able to deal appropriately with unexpected demands [comment, “gets frustrated”]; and Able to secure assistance from others [comment, “getting better at asking for help but still hard”].
 - The physician indicated the appellant has marginal functioning with his social networks.
 - Under *Comments*, when asked to describe the support/supervision required to help maintain the appellant in the community, the physician wrote, “transportation, physical exercising (swimming).”
 - *Additional Comments*, including identification of any safety issues, was left blank.

Need for Help

MR

- When asked to indicate whether the applicant requires any prostheses or aids for his impairment, the physician wrote, “knee brace”.

AR

- The physician checked that the appellant lives with family/friends.
- The appellant receives help with DLA from family, friends, and Health Authority professionals [comment, “sister helps a great deal”].
- When asked to indicate what assistance would be necessary if help is required but there is none available, the physician wrote, “home care, physical therapy, transportation.”
- The physician checked *No*, the appellant does not have an assistance animal.

MR and AR

- Under *Additional Comments/Additional Information*, the physician wrote, “prolonged moderate to severe mental and physical disabilities requiring assistance.”

2. A Request for Reconsideration (“RFR”) signed by the appellant on June 14, 2017 in which he stated that he was requesting an extension of time for PWD reconsideration.

3. The ministry’s denial letters of July 13, 2017; and May 17, 2017 with *Persons with Disabilities Designation Denial Decision Summary*. The ministry indicated the appellant applied for PWD designation on March 20, 2017; was denied on May 16, 2017; and although the ministry granted his request for an extension of time to submit information for the reconsideration, no additional information was received by the ministry.

Additional submissions

Subsequent to the reconsideration decision, the appellant filed his *Notice of Appeal* dated July 17, 2017 in which he stated that he does not agree with the ministry’s decision.

Oral submissions

At the hearing, the appellant stated that his only new information is that he is seeking counselling. By way of clarification he explained that he is “waiting for a meeting” but has not yet had any counselling. As the physician indicated in both the MR and AR that the appellant requires assistance for his mental as well as his physical disability, the panel admits the information under section 22(4)(b) of the *Employment and Assistance Act* [“EAA”] as evidence in support of the information and records that were before the minister at the time the decision being appealed was made.

The appellant also provided his argument on appeal, and the panel will consider the arguments of both parties in the next section, Part F. He stated that he is taking anti-inflammatory medication for pain and has tried working, as he worked hard all his life, but it is “not fair to him or the employer when he can only last a day.” He stated that he has problems sleeping [with his knee acting up] and has to take sleeping pills. He stated that his sister helps him with shopping as he does not have a vehicle, and about a week ago, a family member passed away but due to his disability, he could not fully participate in cultural rituals that involve lifting.

When asked by the panel whether he can participate in swimming or physical therapy [the physician had noted in the AR that these would be helpful], the appellant said he could participate in swimming but would have to get a pool pass. As his knee often swells up, he agreed that physical therapy might help but stated that he “does not do it now.”

Regarding his ability to lift, when asked by the panel which assessment by the physician is more accurate [the MR where he is able to lift 5 to 15 pounds, versus the AR where he is “unable to lift much in weight”], the appellant explained that he can “lift groceries but nothing heavier” and he can only lift 5 to 15 pounds “for a short duration”. He explained that his sister lifts grocery items onto the counter and he “puts the lighter stuff away.”

The panel finds that the appellant’s submissions clarify the information in the PWD medical reports that was before the ministry at reconsideration. Specifically, the physician mentioned in the MR that the appellant takes medication and is unable to work. In both reports the physician provided an assessment of the appellant’s ability to lift; and in the AR he recommended swimming and physical therapy. The panel therefore admits the oral testimony under section 22(4)(b) of the EAA as evidence in support of the information and records before the minister at the time the decision being appealed was made.

With the consent of the appellant, the ministry attended the hearing with an observer [a ministry trainee]. The ministry provided its argument on appeal and did not submit any new evidence. The panel asked the ministry what information was relied on to conclude that “the evidence suggests it is in the duty of family members to help each other when in need but it does not necessarily establish that such help is required as a result of the impairment.” The ministry replied that it was “not sure why they worded it that way” but that “common experience suggests it is the duty of family to help.” The appellant added that close family ties are a part of his culture and he and his sister have helped each other out whenever they could, and without asking.

PART F – Reasons for Panel Decision

The issue on appeal is whether the ministry's reconsideration decision of July 13, 2017 in which the ministry found the appellant was not eligible for designation as a PWD because he did not meet all of the criteria in Section 2(2) of the EAPWDA was reasonably supported by the evidence or was a reasonable application of the legislation in the circumstances of the appellant. The ministry was satisfied that the appellant has reached 18 years of age and that his impairment will continue for at least 2 years. However, based on the information provided in the PWD application and RFR, the ministry was not satisfied that the appellant has a severe mental or physical impairment that in the opinion of a prescribed professional, directly and significantly restricts his ability to perform DLA either continuously or periodically for extended periods; and as a result of these restrictions, he requires help to perform DLA through an assistive device, the significant help or supervision of another person, or the services of an assistance animal.

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

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

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

(b) in the opinion of a prescribed professional

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

(A) continuously, or

(B) periodically for extended periods, and

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

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

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

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

(i) an assistive device,

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

(iii) the services of an assistance animal.

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

Definitions for Act

2 (1) In this section:

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

For the purposes of the Act and this regulation, "**daily living activities**" ,

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

(i) prepare own meals;

(ii) manage personal finances;

(iii) shop for personal needs;

(iv) use public or personal transportation facilities;

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

- (vi) move about indoors and outdoors;
- (vii) perform personal hygiene and self-care;
- (viii) manage personal medication, and
- (b) in relation to a person who has a severe mental impairment, includes the following activities:
 - (i) make decisions about personal activities, care or finances;
 - (ii) relate to, communicate or interact with others effectively.

Analysis

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

Severe mental impairment

In his testimony, the appellant argued that he followed all the correct procedures for obtaining information for his PWD application but was still denied and he feels that it is the wrong decision, and he is in the process of seeking counselling for his mental health issues.

In the reconsideration decision, the ministry argued that the appellant's chronic depression/anxiety is moderate as the physician not only described it as moderate, he also characterized it as related to the appellant's physical condition which was found to be moderate and causing decreased motivation. The ministry argued that a severe impairment of mental functioning was also not established because although the physician indicated significant deficits in 6 areas of cognitive/emotional functioning in the MR, he indicated a major impact with only 2 areas [Emotion and Motivation] in the AR.

The ministry noted that most restrictions to DLA were due to the appellant's physical impairment and a mental restriction [lack of motivation] was identified only for Meals. The ministry argued that if the appellant's depression had a major impact on his daily functioning, it would be expected that Personal Care would also be impacted by a lack of motivation, yet the physician indicated that the appellant is independent with Personal Care.

Regarding social functioning, the ministry argued that the physician's information that the appellant is independent with most functions but requires periodic support, and that he has *marginal*, as opposed to *very disrupted* functioning with his social networks, does not confirm a severe impairment as the appellant is "capable of basic social interactions." The ministry further noted that the physician made no mention of counselling or help from a specialist, arguing that if the appellant's mental health conditions were severe, a referral to a mental health professional would be expected. At the hearing, the ministry affirmed that it looked at all of the information cumulatively to find that a severe impairment was not established by the information provided.

Panel's decision - Severe mental impairment

The panel finds that the ministry reasonably concluded that the information provided in the PWD application does not establish a severe mental impairment. Although the physician reported that the appellant has depression and chronic anxiety, the ministry argued that there was inconsistent and insufficient information regarding the severity of these conditions. Specifically, in the MR, the physician stated that the appellant has a "moderate - prolonged mental disability". In both the MR and the AR, he characterized the appellant's mental disability as "prolonged moderate to severe" without explaining when and how it manifests as a *severe* impairment.

As noted by the ministry, there was inconsistent information between the MR and the AR regarding the extent of deficits and impacts to cognitive and emotional functioning, with significant deficits indicated for many of the areas listed in the MR, but only 2 major impacts noted in the AR [Emotion and Motivation]. Of the numerous deficits indicated in the MR, the only explanation provided was for Emotional disturbance [“depression is worse due to physical limitations”, and “gets anxious due to not being able to work”].

Furthermore, as argued by the ministry, the information on restrictions to DLA was insufficient to establish a severe mental impairment. While Meals was restricted by the appellant’s lack of motivation, a lack of motivation was not reported for any of the other DLA. While the physician indicated that the appellant “doesn’t socialize much...gets frustrated”, and has difficulty asking for help, he reported that the appellant is also independent with most areas of social functioning.

Regarding the lack of information on a referral/ assessment by a mental health professional, the panel finds that the ministry was reasonable in expecting such information to be referenced where an applicant has a severe impairment of mental functioning. The appellant testified that while he is waiting to meet with a counsellor he has not seen one yet, and although the physician check marked in the AR that the appellant receives help from *Health Authority Professionals*, he did not provide any detail on which professionals are assisting the appellant and in what capacity.

The legislation requires evidence of a severe mental impairment that significantly impacts daily functioning. While the evidence indicated that the appellant has depression and anxiety associated with his physical condition, the panel finds that the ministry reasonably concluded that the information regarding functional restrictions lacked sufficient detail and consistency to establish a severe mental impairment. Therefore, based on the information in its entirety, the panel finds that the ministry reasonably determined a severe mental impairment under section 2(2) of the EAPWDA was not established.

Severe physical impairment

The appellant stated that he feels the ministry’s decision is wrong as he followed the correct procedures to provide information for his application but was still denied. He stated that he is on anti-inflammatories and sleeping pills for pain; has tried to work but can only last a day; and due to his conditions he was unable to participate in a cultural ritual when a family member passed away.

The ministry argued that the appellant’s functional limitations, as reported by the physician, “are more in keeping with a moderate degree of impairment as you would have basic capabilities” [able to walk 2 to 4 blocks, etc., as reported in the MR]. While the ministry acknowledged that the appellant experiences restrictions as a result of his knee conditions, it noted that the physician did not explain how often the appellant’s knee pain is moderate versus severe, or to what degree medication helps his overall functioning. The ministry argued that being unable to stand for extended periods of time, and requiring a knee brace, does not necessarily confirm a *severe* physical impairment. The ministry noted that the physician reported “an assortment of capabilities” for DLA and that overall, the appellant was reported as able to perform basic daily tasks.

The ministry argued that the information provided also falls short of establishing a severe physical impairment as the physician did not detail any therapies that have been tried; or indicate referrals to any specialists or whether medications help improve the conditions. The ministry further argued that if the appellant’s impairment was severe, he would benefit from other assistive devices, yet the

physician mentioned only the knee brace. Overall, the ministry was not satisfied that a severe impairment was exhibited by the “combination of functional skills, mobility and physical abilities.”

Panel’s decision - Severe physical impairment

The panel finds that the ministry reasonably concluded that the information provided in the PWD application does not establish a severe physical impairment. While the physician indicated that the appellant has a “prolonged moderate to severe” physical disability, the ministry noted that the appellant was also reported [in the MR] to have basic functions including the ability to walk 2 to 4 blocks unaided, climb 2 to 5 steps, and lift 5 to 15 pounds despite experiencing pain and limited capacity with “all physical activity” and needing to stop and rest [information from the AR].

The panel further finds that the ministry was reasonable in finding that being unable to stand for extended periods and requiring a knee brace, do not, on their own, confirm that a person has a severe physical impairment. The panel finds that the ministry was reasonable to expect information from test results, referrals to various types of therapists and specialists, and information on the effectiveness of medications/ treatments, in assessing whether the appellant’s impairment is severe. As the ministry stated at the hearing, the adjudicator “can’t make a decision based on assumptions as they are bound by the legislative criteria”, and unfortunately “there was not enough evidence to make a decision in his favour.”

The legislation requires evidence of a severe physical impairment that significantly impacts daily functioning. While the evidence indicates that the appellant has long standing knee problems that cause him pain and limit his physical capacity, the physician indicated in the MR and AR that he still has a moderate degree of physical ability with respect to walking, lifting, and other functions listed in the reports. The panel sympathizes with the appellant and finds it unfortunate that his long term physician did not provide more detailed information about his condition, including any referrals to specialists and the outcome of any treatment. However, based on the information in its entirety which indicates moderate restrictions and limitations, the panel finds that the ministry reasonably determined a severe physical impairment under section 2(2) of the EAPWDA was not established.

Restrictions in the ability to perform DLA

The appellant stated that his sister helps with Shopping as he does not have a vehicle, and she puts away the heavy grocery items as he is unable to lift them onto the counter. While the appellant emphasized that he is also unable to work due to his disability, the panel notes that employability, including the ability to work, is not a criterion for PWD eligibility under the legislation.

The ministry argued that the physician’s information was insufficient to confirm that DLA are directly and significantly restricted as required by the legislation. The ministry noted that the physician did not provide further detail regarding how long the appellant can stand to perform tasks, or how much longer it takes him do his DLA. The ministry noted that the appellant does not require continuous assistance “in any categories except tasks that involve lifting and carrying.” However, the physician also reported that the appellant can lift 5 to 15 pounds and the ministry argued that being able to lift that amount of weight would not impose *significant* restrictions on DLA.

While the ministry accepted that the appellant has some degree of restriction due to his knee conditions and mental health, the ministry was not satisfied that the appellant’s overall capabilities correlate with *significant* restrictions. The ministry noted that although the appellant requires continuous assistance and takes significantly longer with the task of Getting in and out of a vehicle as it is “very hard on his knees”, he does not require a cane or walker to assist with performing this task.

The ministry argued that if he was *significantly* restricted with getting in and out of a vehicle, the physician would recommend an assistive device.

Panel's decision - Restrictions to DLA

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

In analyzing the physician's information on restrictions to the DLA, the panel finds that the ministry was reasonable in concluding that the physician's evidence does not establish that the appellant's DLA are directly and significantly restricted either continuously, or periodically for extended periods. Regarding specific DLA, the panel notes the following:

DLA with no significant restrictions

For the DLA specified in section 2(1)(a) of the EAPWDR, the physician's information in the AR indicates that the appellant can perform most activities independently as follows:

Prepare own meals

The appellant is independent and/or requires periodic assistance with all Meals tasks that the physician provided an assessment for. The only restriction reported was that he "lacks motivation" for several tasks and there was no indication that his lack of motivation prevents him from preparing his own meals.

Manage personal finances and manage personal medication

The appellant is independent with all areas of Pay Rent and Bills, and Medications, and the only restriction reported is that he sometimes needs reminders to fill his prescriptions.

Perform housework

While he requires periodic assistance with Laundry ["unable to stand very long"] and Basic Housekeeping ["needs help with household chores"], the physician's comments, as noted by the ministry, are not sufficient to confirm significant restrictions for extended periods as the physician did not indicate how long the appellant can stand or the nature of the help he needs for housework.

Perform personal hygiene and self-care

Although he takes significantly longer with Dressing and Bathing, the appellant independently manages almost all tasks of Personal care. While he requires periodic assistance with Transfers (bed and chair) and experiences stiffness and slowness and also needs supports to lift his legs when bathing, the information indicates that he is able to perform these movements [as noted by the ministry, his "lack of motivation" was not a factor here], and there is insufficient evidence that his restrictions are for extended periods as required by the legislation.

Make decisions about personal activities, care or finances and relate to, communicate or interact with others effectively

The appellant is independent with most areas of Social Functioning but needs periodic support with all areas mainly because he avoids socializing and gets frustrated and worries about being a burden to others when he has to deal with unexpected demands or is unable to physically keep up in activities with friends. The physician indicated that the appellant requires support with physical exercise such as swimming and he needs encouragement to socialize; however, as argued by the ministry, there is insufficient information to confirm that the appellant cannot make decisions about his activities or get along with others. These DLA are also associated with a severe mental impairment and the ministry found that a severe impairment of mental functioning was not established by the information in the medical reports.

Continuously restricted DLA

Shop for personal needs

The appellant is independent with most areas of Shopping despite taking significantly longer with Going to and from stores and also requiring periodic assistance with this task ["need transportation and help carrying"]. The physician nevertheless reported that he needs continuous assistance with one area, Carrying purchases home. As noted by the ministry, the physician also indicated that the appellant can lift 5 to 15 pounds, and the appellant explained in his testimony that he "can lift groceries but nothing heavier" and he cannot lift any weight for very long. As the appellant is independent with most Shopping tasks, and has moderate function in the area of lifting, the panel finds that the ministry reasonably determined that the information from his prescribed professional falls short of confirming significant restrictions with shopping.

Use public or personal transportation facilities / Move about indoors and outdoors

While the appellant is independent with public transportation [where available], he requires continuous assistance and takes significantly longer with Getting in and out of a vehicle as it is "very hard on his knees" and walking also takes him significantly longer. However, as noted by the ministry, the physician did not indicate a need for any assistive devices other than a knee brace and the panel finds that the ministry would reasonably expect the appellant to need other assistive devices in order for his restrictions to be significant. As the physician indicated that the appellant is able to independently manage most DLA, the panel finds that the ministry reasonably determined the criteria in subsection 2(2)(b)(i) of the EAPWDA were not met.

Help to perform DLA

The evidence indicates that the appellant has a knee brace, that family, friends and health authority professionals provide assistance for DLA, and that the appellant especially relies on his sister for help and support. While the ministry argued that the help he receives from his sister may stem from a "duty of family members" and not necessarily from the appellant's physical restrictions, the ministry's position is that as it has not been established that DLA are significantly restricted, it cannot be determined that significant help is required from other persons. The ministry noted that the information provided did not indicate that the appellant requires any other assistive devices.

Panel's decision - Help to perform DLA

Subsection 2(2)(b)(ii) of the EAPWDA requires a prescribed professional to confirm that as a result of significant restrictions to DLA, the person requires help to perform an activity. Where another person is providing the help, the level of assistance or supervision required must be significant as set out in subsection 2(3)(b)(ii). The physician's evidence confirms that the appellant does not use any assistive devices other than a knee brace and while he does receive help from friends, Health Authority professionals, and especially from his sister the evidence is unclear regarding to what extent the assistance she provides is due to his disability. For example, assisting him with transportation because he does not have his own transportation does not establish that he requires significant help as a result of his restrictions.

In any event, the panel found that the ministry reasonably determined the information provided does not confirm significant restrictions to DLA that are the result of a severe impairment. As restrictions to DLA are a precondition for needing help with DLA, and that precondition has not been met, the panel finds that the ministry reasonably determined the criterion under subsection 2(2)(b)(ii) of the EAPWDA was not met.

Conclusion

The panel finds that the ministry's reconsideration decision that determined the appellant is not eligible for PWD designation under section 2 of the EAPWDA was reasonably supported by the evidence. The panel confirms the decision pursuant to section 24 of the EAA and the appellant is not successful in his appeal.