

PART C – Decision under Appeal

The decision under appeal is the reconsideration decision of the Ministry of Social Development and Poverty Reduction (the ministry) dated 22 June 2017, which denied the appellant designation as a person with disabilities (PWD). The ministry determined that the appellant did not meet all of the criteria for PWD designation set out in the *Employment and Assistance for Persons with Disabilities Act*, section 2.

Specifically, the ministry determined that the information provided did not establish that the appellant's impairment, in the opinion of a medical practitioner, is likely to continue for at least 2 years; that the appellant has a severe mental or severe physical impairment; that a severe mental or physical impairment, in the opinion of a prescribed professional, directly and significantly restricts her ability to perform daily living activities (DLA) either continuously or periodically for extended periods; and that as a result of those restrictions, she requires help to perform those activities.

The ministry found that the information provided did establish that the appellant has reached 18 years of age.

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 information and records before the ministry at reconsideration consisted of the following:

1. The appellant's **PWD Designation Application** comprised of:
 - A Medical Report (MR) dated 22 February 2017, completed by the appellant's physician (MD) who has known the appellant for 4 months and has seen him 2-10 times in the past 12 months.
 - An Assessor Report (AR) dated 22 February 2017, completed by the appellant's MD.
 - A Self Report (SR) dated 28 February 2017 completed by the appellant.
2. **Request for Reconsideration** dated 27 April 2017, signed by the appellant, requesting an extension.
3. **Reconsideration Submission** dated 7 June 2017, which included the following:
 - 1-page cover letter dated 7 June 2017, from the appellant's advocate;
 - 1-page letter from the appellant's MD dated 11 May 2017 ("May letter"). In this letter, the MD states that the appellant is very lucky to be alive given the nature of his medical condition. The appellant is 14 months post-surgery and is not recovered. The MD hopes the appellant's recovery will be 3-6 months, but *"it may potentially take much longer and as many as 2 years (or more). This is an estimate and truly unknown. Much will depend on his response to medical therapy."*;
 - 2-page letter from a Registered Nurse (RN) dated 7 June 2017 ("RN letter"). In this letter, the RN explains that she is providing a re-assessment at the appellant's request. She provides the opinion that the appellant suffers from depression and anxiety as well as his physical symptoms. The RN describes the appellant's primary difficulty as shortness of breath, which impacts his ability to communicate, most physical activities, concentration and executive function. She states that he takes 4-5 times longer for physical activities. She explains that the appellant's condition affects his eating and sleeping, requiring that he eat small meals and sleep on an incline. Lack of sleep, she says, compounds the appellant's fatigue and concentration problems. The RN says that the appellant requires rest periods of up to 45 minutes to regain his energy. The appellant is described as barely maintaining independence as personal care and housekeeping activities take 3-4 times longer. She explained that the appellant requires periodic assistance going to and from stores and continuous assistance carrying purchases home. As well, the RN states that the appellant would benefit from a scooter, walker, bedside urinal, and an adjustable bed so he can sleep at an angle. The RN states that the appellant takes significantly longer with food preparation, banking, budgeting, and refilling prescriptions and attributes this to deficits in concentration and attention. As well, the RN states that the location of the appellant's home prevents him from walking to the nearest bus stop. The RN states that it takes the appellant 6 minutes to walk 50 feet and he is a 3-4 on the New York Heart Failure Classification most days. The RN indicates that the appellant's condition has caused him to be socially isolated and he requires continuous support developing and maintaining relationships as well as dealing with unexpected demands. As well, she states that the appellant requires periodic support to interact appropriately with others and secure assistance from others.; and
 - "Sample" Assessor Report form ("AR2"), unsigned and undated, completed by the RN (the content of which is discussed below).

The panel will first summarize the evidence from the PWD Application and AR2 as it relates to the legislative criteria at issue in this appeal.

Note: MD comments are indicated with *italics* and RN comments are indicated with “quotation marks”.

Diagnoses

In the MR, the MD diagnoses the medical conditions related to the appellant’s impairment as:

- Type A aortic dissection; aortic valve replacement – onset March 2016
- Hypertension – onset 2014

Duration

In the MR, the MD indicates that the appellant’s impairment is not likely to continue for two or more years and comments: *6 months – he requires participation in*

Severity of mental impairment

MR:

The MD does not provide a mental health diagnosis, reports that there are no difficulties with communication and indicates that there are no significant deficits with cognitive and emotional function.

AR:

The MD has completed the assessment of cognitive and emotional functioning assessment in the AR and assesses moderate impacts in the areas of emotion and motivation. He assesses no impacts in the remaining areas. The MD includes the comments: *[appellant] is very anxious about his heart, surgery, BP and symptoms. It will take time for that to improve.*

The MD has assessed the appellant as independent for all social functioning areas (making appropriate social decisions, etc.) in the AR. The MD indicates that the appellant has good function in his immediate social networks and does not assess his functioning in extended networks, commenting: *I am not aware of this.* The MD assesses the appellant’s ability to communicate as good in all areas, including: speaking, reading, writing and hearing.

SR:

The appellant does not indicate that he has a mental impairment.

AR2:

The RN indicates that the appellant’s mental or physical impairments include depression and “anxiety endorsed.”

The RN has completed the assessment of cognitive and emotional functioning assessment in AR2 and assesses a major impact in the area of bodily functions; moderate impacts in the areas of consciousness, emotion, attention/concentration, executive, motivation and motor activity; minimal impacts in the areas of insight and judgment, memory, language and other neuropsychological problems. She assesses no impacts in the areas of impulse control, psychotic symptoms and other emotional or mental problems. The RN includes the comments: “Eating [increases] SOB. Small meals is best. May prepare rest period 45 mins. Visual issues on occasion.”

The RN has assessed the appellant as: independent in the social functioning area of appropriate social decisions; requiring periodic support/supervision for interacting appropriately with others and ability to secure assistance from others; and requiring continuous support/supervision for ability to develop and maintain relationships (“socially isolation”) and ability to deal appropriately with

unexpected demands. The RN indicates that the appellant has very disrupted functioning in his immediate social networks (“withdraws”). The RN’s assessment of the appellant’s functioning in extended networks is illegible (“becomes too short of breath”).

The RN assesses the appellant’s ability to communicate as good in relation to hearing and poor for speaking (“[illegible] worse day dyspnea daily”), reading (“2x longer needs to read”) and writing (“3x longer”) and provides the comments: “needs to [illegible]”.

Severity of physical impairment

MR:

Under Health History, the MD indicates that the appellant has a 2 year history of hypertension that is ongoing. As well, the MD indicates that the appellant was taken to hospital in March 2016 with chest pain and hypertension. He underwent major emergency surgery for aortic valve replacement, with aortic root repair and replacement of aortic arch and ascending aorta.

For functional skills, the MD indicates that the appellant is able to walk 2-4 blocks unaided, climb 5+ steps unaided, lift 7-16 kg unaided and remain seated without limitation.

The MD indicates that the appellant does not require aids or prostheses for his impairment.

AR:

In relation to mobility and physical ability, the MD assesses the appellant as independent with walking indoors (*he lacks stamina*) and walking outdoors, climbing stairs, standing, and carrying and holding. The MD indicates that the appellant takes significantly longer than typical with lifting (*this will improve with strength*).

SR:

The appellant describes his disability as an uncomfortable feeling/pounding in his chest with every heartbeat, which increases to pain as his heart rate increases. The appellant explains that his disability affects his life and ability to take care of himself as follows: *I can not exert myself without feeling pain in my chest. I have to rest/lay down frequent throughout the day. Going out is difficulty most days and impossible others. If my chest starts to hurt in public, I have had to go to the hospital on many occasions. Only laying down ‘til my heart rate slows relieves the pain.*

Ability to perform DLA

General

MR:

The MD indicates that the appellant has not been prescribed medications that interfere with his ability to perform DLA.

AR:

The MD provides the following general comments in relation to DLA: *this should be temporary until he recovers from surgery. I anticipate 6 months.*

AR2:

The RN provides the following general comments in relation to DLA: “some days stays in pajamas, avoids shower. Needs to pace. Surgery March 2016.” and “Family often prepares food and brings.”

Daily Living Activities

Prepare own meals

AR:

The MD indicates that the appellant is independent with the meals activities of meal planning, food preparation, cooking and safe storage of food.

AR2:

The RN indicates that the appellant is independent with the meals activities of meal planning and safe storage of food. She indicates that the appellant requires periodic assistance and takes significantly longer with food preparation (comments illegible) and needs periodic assistance with cooking.

Manage personal finances

AR:

The MD has not assessed the pay rent and bills activities, including banking, budgeting, and paying rent and bills. He provides the comment: *the major issue is lack of funds*.

AR2:

The RN has assessed appellant as independent with all pay rent and bills activities, including banking ("2x longer (online)"), budgeting ("3x longer"), and paying rent and bills.

Shop for personal needs

AR:

The MD indicates that the appellant is independent with the shopping activities of reading prices and labels and making appropriate choices and requires periodic assistance with going to and from stores (*Lacks stamina*), paying for purchases (*he's not working*) and carrying purchases home (*lacks stamina/strength*).

AR2:

The RN indicates that the appellant is independent with the shopping activities of reading prices and labels and making appropriate choices and requires continuous assistance carrying purchases home ("lacks stamina – 3-5x longer"). The RN's assessment of the appellant's abilities in relation to going to and from stores ("lacks stamina") and paying for purchases are not legible.

Use public or personal transportation facilities

AR:

The MD indicates that the appellant is independent getting in and out of a vehicle, using public transit and using transit schedules and arranging transportation.

AR2:

The RN indicates that the appellant is independent getting in and out of a vehicle and using transit schedules and arranging transportation and requires continuous assistance with using public transportation ("does not have ability to walk to the bus").

Perform housework to maintain the person's place of residence

AR:

The MD indicates that the appellant is independent with laundry and basic housekeeping.

AR2:

The RN indicates that the appellant is independent and takes significantly longer with laundry ("3x longer") and takes significantly longer with basic housekeeping ("3x longer").

Move about indoors and outdoors

MR:

The MD indicates that the appellant is able to walk 2-4 blocks unaided on a flat surface and can climb 5+ to climb stairs unaided.

AR:

The MD indicates that the appellant is independent walking indoors and outdoors, climbing stairs and standing.

AR2:

The RN indicates that the appellant takes significantly longer walking indoors ("4x longer at least") and outdoors ("5x longer"), climbing stairs ("avoids 2x weekly") and standing ("5x longer/can get dizzy").

Perform personal hygiene and self-care

AR:

The MD indicates that the appellant is independent with dressing, grooming, bathing, toileting, feeding self, regulating diet and transfers in/out of bed and on/off chair.

AR2:

The RN indicates that the appellant is independent and takes significantly longer (legible areas indicate 2-3 times longer) with dressing, grooming, bathing, toileting, feeding self, regulating diet and transfers in/out of bed and on/off chair.

Manage personal medication

AR:

The MD indicates that the appellant is independent in all aspects of this DLA.

AR2:

The RN indicates that the appellant is independent with taking medications as prescribed and safe handling and storage and takes 3x longer filling prescriptions.

Social Functioning

AR:

The MD indicated that the appellant is independent for all social functioning areas and has good functioning in his immediate social networks.

AR2:

The RN has assessed the appellant as: independent in making appropriate social decisions; requiring periodic support/supervision for interacting appropriately with others and ability to secure assistance from others; and requiring continuous support/supervision for ability to develop and maintain relationships ("socially isolation") and ability to deal appropriately with unexpected demands. The RN indicates that the appellant has very disrupted functioning in his immediate social networks ("withdraws"). The RN's assessment of the appellant's functioning in extended networks is illegible ("becomes too short of breath").

Help required

MR:

The MD indicates that the appellant does not require any aids or prostheses.

AR:

The MD indicates that the appellant receives assistance from family.

The MD indicates that the appellant does not receive assistance from assistance animals.

AR2:

The RN indicates that the appellant receives assistance from family, health authority professionals, the MD and food bank.

The RN indicates that the appellant does not receive assistance from assistive devices or assistance animals and would benefit from a scooter.

Notice of Appeal

In his Notice of Appeal dated 30 June 2017, the appellant gives as Reasons for Appeal: *The ministry gave insufficient weight to Reconsideration evidence. Further evidence/clarification will be provided by my doctor.*

The Hearing

With the consent of both parties, the hearing was conducted in writing pursuant to section 22(3)(b) of the *Employment and Assistance Act*.

Submissions on Appeal

The appellant's appeal submission included the following documents:

- 1-page cover letter dated 21 August 2017 from the appellant's advocate;
- 3-page Appeal Argument brief prepared by the appellant's advocate. The brief consists of argument; specifically, it argues that the ministry did not allocate appropriate weight to the "new evidence" provided at reconsideration and asks that the tribunal re-evaluate the evidence and assign the appropriate weight and deference to the evidence and arguments provided at reconsideration. The brief argues that the information provided demonstrates that appellant does meet the eligibility criteria for PWD designation and asks that the tribunal find that the appellant does fulfill the requirements for PWD designation; and
- 1-page letter dated 16 August 2017 from the appellant's MD ("August letter"). The letter indicates that:
 - The MD agrees with the appellant's advocate that the "new evidence" was not adequately or fairly considered;
 - The MD has read the RN's letter and AR 2 and agrees with her reasons and findings. The MD believes that this information does more likely than not represent the appellant's current medical and living situation;
 - Estimating recovery time is challenging and is subject to revision based on new information; and
 - Given the rate of the appellant's recovery to date, the MD is of the view that *it is more likely than not that his conditions or symptoms will persist for at least 2 more years.*

The ministry's appeal submission dated 25 August 2017 provided the following:

- The ministry had reviewed the information provided in the August 16 letter from the appellant's MD; and
- The ministry may have found that the appellant met the criteria for PWD designation if the information had been available at reconsideration.

Admissibility

Section 22(4) of the *Employment and Assistance Act* (EAA) provides that panels may admit as evidence the information and records that were before the minister when the decision being appealed was made and “oral or written testimony in support of the information and records” before the minister when the decision being appealed was made.

These limitations reflect the jurisdiction of the panel established under section 24 of the EAA. Panels are limited to determining if the ministry’s decision is reasonably supported by the evidence or a reasonable application of the legislation in the circumstances of the appellant. Thus, panels are not to assume the role of decision-makers of the first instance by considering information that presents a new or different picture of the impairment or restrictions than that which was before the ministry when it made its reconsideration decision.

In light of these legislative boundaries, the panel finds that the August letter from the appellant’s MD is not admissible. In reaching its conclusions on admissibility, the panel notes that neither the appellant nor the ministry has articulated a position in relation to admissibility of the August letter in their appeal submissions. The ministry has indicated that the reconsideration decision may have been different had this information been available at that time. The appellant’s appeal submissions argue that the MD has now taken the time to review the new evidence and make requisite retractions, the result of which is to collapse the arguments of the reconsideration adjudicator.

Specifically, the panel finds the August letter to be inadmissible in two areas. First, the panel finds that the MD’s revised assessment as to the expected duration of the appellant’s impairment provides a different picture, based on the appellant’s rate of recovery to date (i.e. after reconsideration), and therefore cannot be said to corroborate or substantiate the information and records before the ministry at reconsideration; it is therefore not admissible in accordance with section 22(4) of the EAA. Second, the panel finds that the MD’s expression of support for the RN’s assessment constitutes a revision in the MD’s assessment that presents a new or different picture of the MD’s assessments of the impairment or restrictions than that which was before the ministry when it made its reconsideration decision. The reconsideration officer was presented information set out in two different sets of assessments, the AR from the MD, and the AR2 from the RN, and had to weigh these assessments as appropriate under the circumstances. The information in the MD’s August letter is new information that was not before the ministry at reconsideration. As such, the panel finds that this information is not in support of information and records before the ministry at reconsideration and is not admissible in accordance with section 22(4) of the EAA.

PART F – Reasons for Panel Decision

The issue in this appeal is whether the ministry's reconsideration decision that determined that the appellant did not meet four of the five statutory requirements of Section 2 of the *EAPWDA* for designation as a person with disabilities (PWD) is reasonably supported by the evidence or is a reasonable application of the legislation in the circumstances of the appellant.

Specifically, the ministry determined that the information provided did not establish that:

- the appellant's impairment, in the opinion of a medical practitioner, is likely to continue for at least 2 years;
- the appellant has a severe mental or severe physical impairment;
- the appellant's severe mental or physical 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 those restrictions, he requires help to perform those activities.

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

2 (1) In this section:

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

"**daily living activity**" has the prescribed meaning;

"**prescribed professional**" has the prescribed meaning.

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

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

(b) in the opinion of a prescribed professional

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

(A) continuously, or

(B) periodically for extended periods, and

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

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

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

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

(i) an assistive device,

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

(iii) the services of an assistance animal.

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

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

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

(i) prepare own meals;

(ii) manage personal finances;

(iii) shop for personal needs;

(iv) use public or personal transportation facilities;

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

(vi) move about indoors and outdoors;

(vii) perform personal hygiene and self care;

(viii) manage personal medication, and

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

- (i) make decisions about personal activities, care or finances;
 - (ii) relate to, communicate or interact with others effectively.
- (2) For the purposes of the Act, "**prescribed professional**" means a person who is
- (a) authorized under an enactment to practise the profession of
 - (i) medical practitioner,
 - (ii) registered psychologist,
 - (iii) registered nurse or registered psychiatric nurse,
 - (iv) occupational therapist,
 - (v) physical therapist,
 - (vi) social worker,
 - (vii) chiropractor, or
 - (viii) nurse practitioner, or
 - (b) acting in the course of the person's employment as a school psychologist by
 - (i) an authority, as that term is defined in section 1 (1) of the *Independent School Act*, or
 - (ii) a board or a francophone education authority, as those terms are defined in section 1 (1) of the *School Act*,
- if qualifications in psychology are a condition of such employment.

Duration

The legislation requires the minister to assess the likely duration of a person's impairment in consideration of the opinion of a medical practitioner or nurse practitioner. The legislation is clear that the medical practitioner or nurse practitioner's opinion is fundamental to the analysis of likely duration. Regarding the likely duration of impairment, section 2(2)(a) of the EAPWDA requires that the impairment be likely to continue for at least 2 years.

In the reconsideration decision, the ministry concluded that it was not able to establish that in the opinion of a medical practitioner or nurse practitioner the appellant's impairment was likely to continue for at least 2 years. In reaching this conclusion, the ministry considered the MD's assessment in the PWD application, which indicated that the appellant's impairment is not likely to continue for two years or more. The ministry also considered the May letter, which indicated that while the MD hoped for 3-6 month recovery it could potentially take much longer and as many as 2 years or more. The ministry found that the comments provided in the May letter did not constitute confirmation of a likelihood that the appellant's impairment would continue for 2 years or more.

The panel notes that the appellant has argued in his appeal submission that the ministry's interpretation is too limiting and restrictive. The panel finds that the potential or possibility of duration of 2 years or more does not amount to an opinion as to likely duration of 2 years or more, as required by the legislation, particularly when considered in conjunction with the MD's other comments in the May letter, including his hope for 3-6 month recovery and his comment that it is truly unknown. The appellant has also argued that the August letter clarifies the MD's position on duration. However, the panel has determined that this letter is not admissible. As such, the panel finds the ministry's conclusion that this legislative criterion was not met to be reasonable.

Severity of impairment

The legislation requires that for PWD designation, the minister must be "satisfied" that the person has a severe mental or physical impairment. The legislation makes it clear that the determination of severity is at the discretion of the minister, considering all of the evidence, including that of the appellant. The diagnosis of a serious medical condition or the identification of mental or physical deficits does not in itself determine the severity of an impairment. Impairment is defined in the PWD application as a loss or abnormality of psychological, anatomical or physiological functioning causing restriction in the ability to function independently, appropriately, effectively or for a reasonable duration. While this is not a legislative definition, and is therefore not binding on the panel, in the panel's opinion it reflects the legislative intent and provides an appropriate analytical framework for

assessing the degree of impairment resulting from a medical condition.

Severity of mental impairment

In the reconsideration decision, the ministry found that the information provided did not establish that the appellant has a severe mental impairment. The ministry observed that there were no significant deficits with cognitive and emotional functioning noted in the MR or major impacts to cognitive and emotional functioning noted in the AR. As well, the ministry noted that there were 2 moderate impacts indicated by the MD in the AR. The ministry concluded that these impacts were not indicative of a severe impairment of mental functioning. The ministry further observed the MD's assessment of independence in all areas of social functioning, good functioning with immediate social networks and the absence of safety issues or support/supervision required to maintain the appellant in his community. The ministry considered the May letter and noted that it did not speak to impacts on mental functioning. The ministry then went on to consider the RN letter and AR2, noting that this information speaks to the presence of depression and anxiety with major, moderate and minimal impacts assessed in relation to cognitive and emotional functioning. The ministry noted that the impacts reported by the RN were not supported by the MD's assessments. The ministry further noted that while the RN indicates that the appellant suffers from depression and anxiety, the MD has not provided a diagnosis for these conditions. The ministry considered that the RN had assessed impacts in several areas, while the MD had indicated that there were no significant deficits, two moderate impacts and independence in all areas of social functioning. The ministry, with reference to the absence of additional information in the May letter, concluded that the MD's assessments remained accurate.

The panel notes the conflicting information provided by the RN and MD in relation to the presence of a mental impairment and impacts on the appellant's functioning. The panel notes that the MD has not provided a mental health diagnosis in the PWD application or the May letter, has indicated that there are no significant deficits with cognitive and emotional functioning and has assessed the appellant as independent in all social functioning DLA. The panel notes, as did the ministry, that the MD mentions in his comments that the appellant is anxious about his physical health and indicates that this will improve with time. As well, the panel notes that the appellant has not mentioned a mental impairment in the SR nor described impacts to his life or his ability to care for himself arising from a mental impairment. The panel also notes that some of the difficulties the RN describes in relation to the appellant's difficulties with communication, social isolation and cognitive and emotional functioning are linked to his physical impairment rather than a mental impairment. For instance, requiring small meals and sleeping on an incline, which are described by the RN as due to his heart condition, have been reported in AR2 as an impact or restriction due to the appellant's mental impairment or brain injury. The panel notes, but is unable to accept, the appellant's argument that because of the August letter, the RN's "work should supersede the previous PWD form in all aspects that it conflicts with it". As noted previously, the panel has determined that this letter is not admissible. As well, the panel notes that only a physician or nurse practitioner may complete the MR portion of a PWD application; thus, it is impossible to accept the RN's work in place of the PWD application on all aspects of conflict. The panel finds that the ministry's determination that a severe mental impairment has not been established was reasonable.

Severity of physical impairment

In the reconsideration decision, the ministry was not satisfied that a severe impairment of the appellant's physical functioning had been established. In reaching this conclusion, the ministry first considered the MD's assessments of functional skills and argued that these assessments did not reflect a severe physical impairment. The ministry also considered the MD's mobility and physical ability assessment, noting that the MD had assessed the appellant as independent in all but one listed area. The ministry considered the May letter and argued that the MD had not provided

assessment of the appellant's functional skills or impacts to his mobility/physical ability. The ministry then considered the assessments provided in the RN letter and AR2, noting that the RN has not provided information about how long she has known the appellant, how many times she has seen the appellant or the sources she has used in her assessment. The ministry also noted that the RN has suggested that the MD did not take sufficient time to complete the PWD application, but found that there was no evidence to suggest that the assessments were incomplete or inaccurate. The ministry found that some of the information provided by the RN was not supported by the MD's assessments in the PWD application. The ministry found that it had no reason to question the accuracy of the MD's assessments, noting that the May 2017 letter was an opportunity for the MD to provide additional information but he did not do so.

The panel notes presence of one MR prepared by the MD and conflicting AR assessments from the MD and RN before the ministry at reconsideration. The panel also notes that the appellant's advocate argues in the appeal submission that the ministry's approach to resolving the conflict was to accord more weight to the MD's information and this was unreasonable. The panel disagrees and finds that the ministry's reasons for concluding that the MD's assessments remained accurate were reasonable. The panel finds that the MD had provided a letter at reconsideration and did have an opportunity to provide additional information, as argued by the ministry, and that the RN has not provided background information as to her knowledge of the appellant or the sources of the assessment as noted by the ministry. As such, it was reasonable for the ministry to conclude that the MD's assessments remained accurate. As well, the panel notes that the appellant's advocate has argued that the RN *found* that the MD had not take sufficient time given the impacts of the appellant's symptoms on his life. However, the panel notes that the RN letter states that she is re-evaluating the appellant at his request, "[h]e believes that his doctor was too rushed to fill out the PWD application reports with the required detail. This is a common issue I have seen often." Furthermore, the panel notes that the MD's assessment of the appellant's functional skills in the MR is on the higher end and he is assessed as independent with most areas of mobility and physical ability and most DLA in the AR. And while the information in the RN's letter and AR2 does, to some extent conflict with some of this information, the PWD application form is clear that the MR is to be completed by a physician or nurse practitioner only. Therefore, the argument presented by the appellant's advocate, that the new evidence (RN's assessments) is of superior quality to the old evidence (MD's assessments), does not provide an adequate solution to the conflict. Accordingly, the panel finds that the ministry reasonably concluded that the information provided does not establish a severe physical impairment and that this criterion was not met.

Direct and significant restrictions in the ability to perform DLA

The legislation – section 2(2)(b)(i) of the EAPWDA – requires the minister to assess direct and significant restrictions of DLA in consideration of the opinion of a prescribed professional, in this case the appellant's MD and the RN. The legislation is clear that a prescribed professional's opinion is fundamental to the analysis of restrictions with DLA. At issue is the degree of restriction in the appellant's ability to perform the DLA listed in section 2(1)(a) and (b) of the EAPWDR. Regarding the degree of the restriction, section 2(2)(b)(i) of the EAPWDA requires activities to be directly and significantly restricted either continuously or periodically for extended periods. The panel notes that, according to the legislation, the direct and significant restriction in the ability to perform DLA must be a result of a severe impairment, a criterion not established in this appeal.

In the reconsideration decision, the ministry noted the MD's assessment that the appellant is independent with most DLA and requires periodic assistance with some aspects of the shopping DLA. The ministry noted, however, that the MD has not described the frequency or duration of assistance required. The ministry noted that the May letter does not speak to DLA restrictions or provide additional information in this area. The ministry considered the assessments in the RN letter

and AR2, noting that the RN indicated that the appellant takes significantly longer with some activities and requires assistance from another person with meals. The ministry noted that the MD did not indicate that the appellant took significantly longer with any DLA. As well, the ministry considered that the RN stated that the appellant would benefit from a hospital bed, bedside urinal and a scooter, while the MD indicated that no aids or prostheses were required. The ministry concluded that there is not enough evidence to confirm that an impairment significantly restricts the appellant's ability to perform DLA continuously or periodically for extended periods.

The panel finds that the ministry's determination that the information provided does not establish that a severe impairment significantly restricts the appellant's ability to perform DLA continuously or periodically for extended periods was reasonable. The MD has, in the AR, assessed the appellant as independent with most DLA. The panel notes that the MD has indicated that some shopping activities require periodic assistance but has not indicated how often this assistance is required. In contrast, the RN letter and AR2 provide a somewhat different picture of the appellant's abilities. The panel notes that the RN and MD both assess the appellant as independent with most DLA; however, the RN's assessment is that the appellant takes significantly longer with several DLA. Both RN and MD assessments indicate that the appellant requires some assistance with shopping, but disagree on the extent (periodic or continuous) of assistance required. The RN indicates that assistance is required with meals, whereas the MD indicates that the appellant can manage these tasks independently. The appellant's advocate argues that doctors do not have sufficient time and the new evidence was given too little weight. The panel finds, in the face of this conflicting information, that the ministry's rationale (as discussed previously) for finding that the MD's assessments remained accurate was reasonable. The panel finds that the ministry reasonably determined that this legislative criterion was not met.

Help required

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

In the reconsideration decision, the ministry concluded that, as it has not been established that DLA are significantly restricted, it cannot be determined that significant help from other persons is required and no assistive devices are required. The panel has concluded (above) that the ministry reasonably determined that direct and significant restrictions in the appellant's ability to perform DLA have not been established. As a result, the panel also finds that the ministry reasonably concluded that under section 2(2)(b)(ii) of the EAPWDA that it cannot be determined that the appellant requires help to perform DLA.

CONCLUSION

The appellant's advocate has requested in the appeal submission that the panel review the totality of the evidence, allot the reconsideration evidence the weight it deserves and find that the appellant does fulfill the requirements for PWD designation. As discussed under "Admissibility", in Part E above, the panel does not have jurisdiction to address or consider this request as the EAA at section 24(1) clearly states that a panel must determine whether the decision being appealed is reasonably supported by the evidence, or a reasonable application of the applicable enactment in the circumstances of the person appealing the decision. As explained above, the panel has found that the ministry was reasonable in determining that the information provided does not establish that the appellant met the PWD designation criteria at issue in this appeal.

Accordingly, the panel finds that the ministry's reconsideration decision, which determined that the appellant was not eligible for PWD designation, was a reasonable application of the legislation in the appellant's circumstances and was reasonably supported by the evidence. The panel therefore confirms the ministry's decision. The appellant is not successful on appeal