

PART C – Decision under Appeal

The decision under appeal is the Ministry of Social Development and Poverty Reduction (“ministry”) reconsideration decision dated July 19, 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.

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

PART D – Relevant Legislation

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

Employment and Assistance for Persons with Disabilities Regulation - EAPWDR - sections 2 and 2.1

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 April 3, 2017. The appellant chose not to complete the SR.
- A *Medical Report* (“MR”), undated, completed by a general practitioner (“the physician”). The physician has known the appellant for 3 years and has seen him 2 to 10 times in the past 12 months - preceding the date the application was completed.
- An *Assessor Report* (“AR”) completed by the physician on April 17, 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 ischemic heart disease “after stent placement in coronary arteries”, chronic diabetes; and right arm ischemia due to subclavian occlusion. Under *Health History*, the physician indicated the appellant has “chest pain with exertion due to coronary artery disease; has a few stents in coronary arteries.” The appellant also had surgery on his right arm “due to occlusion of the subclavian artery”, and his diabetes requires “diet and medications.”

Functional Skills

The physician provided the following information regarding any functional limitations:

MR

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

- the appellant can walk 1 to 2 blocks unaided on a flat surface;
- climb 5+ steps unaided;
- lift 5 to 15 pounds;
- how long he can remain seated is unknown;
- he has no difficulties with communication; and
- he has no significant deficits with any of the areas indicated for cognitive and emotional function.

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 *Good*: Speaking, Reading, Writing, and Hearing.

Mobility and Physical Ability

- He is independent with 4 of the 6 functions: Walking indoors, Walking outdoors, Climbing stairs, and Standing.

- He requires periodic assistance with 2 functions: Lifting, and Carrying/ holding.

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 9 areas: Bodily functions, Consciousness, Insight and judgment, Executive, Motor activity, Language, Psychotic symptoms, Other neuro-psychological problems, and Other emotional/mental problems.
 - Minimal impact for 5 areas: Emotion, Impulse control, Attention/ concentration, Memory, and Motivation.

Daily Living Activities (DLA)

MR

- The physician checked *No*, the appellant has not been prescribed medication/ treatments that interfere with his ability to perform DLA.
- For *Part E - Daily Living Activities*, the appellant is independent with 6 out of the 10 listed DLA: Personal self-care, Meal preparation, Management of medications, Use of transportation, Management of finances, and Social functioning.
- He has restrictions with the 4 remaining DLA as follows:
 - Basic housework and Mobility outside the home: continuously restricted
 - Daily shopping and Mobility inside the home: periodically restricted
 - The physician commented that the degree of restriction is "moderate."
 - Additional comments were left blank.

AR

- For *Part C, Daily Living Activities*, the appellant is independent with all areas of 2 out of 8 listed DLA:
 - Transportation; and
 - Social Functioning [although he was reported to have marginal functioning with both his immediate and extended social networks, while the comment for any safety issues was "none"].
- He has restrictions in specified areas of the 6 remaining DLA:
 - Personal Care: He is independent with 5 out of 8 areas listed: Toileting, Feeding self, Regulating diet, Transfers (in/ out of bed), and Transfers (on/ off chair), but requires periodic assistance with the 3 remaining areas: Dressing, Grooming, and Bathing.
 - Basic housekeeping: He requires continuous assistance from another person for all areas: Laundry and Basic housekeeping
 - Shopping: He requires periodic assistance with all areas of shopping: Going to and from stores, Reading prices and labels, Making appropriate choices, Paying for purchases, and Carrying purchases home.
 - Additional comments, including a description of the type and amount of assistance and any safety issues, were left blank.

- Meals: The appellant requires periodic assistance with all areas: Meal planning, Food preparation, Cooking, and Safe storage of food.
- Pay Rent and Bills: He requires periodic assistance with all areas: Banking, Budgeting, and Pay rent and bills.
- Medications: He also requires periodic assistance with all areas of this DLA: Filling/ refilling prescriptions, Taking as directed, and Safe handling and storage.
- Additional comments were left blank.

Need for Help

MR

- When asked to indicate whether the applicant requires any prostheses or aids for his impairment, the physician check marked *No*.
- Regarding what assistance the appellant needs with DLA, and the nature and extent of assistance required, the physician wrote, "help with house chores."

AR

- The physician checked that the appellant lives alone and receives help with DLA from friends.
- No comments were provided for *what assistance would be necessary if help is required but there is none available*.
- The physician wrote "none" regarding any assistive devices or equipment.
- He checked *No*, the appellant does not have an assistance animal.

2. A Request for Reconsideration ("RFR") signed by the appellant on July 5, 2017 with attached submission, a checklist ("RFR checklist") prepared by the appellant's advocate and completed and signed by the physician on June 29, 2017. All items were checked to indicate *yes* as follows:

Medical conditions

- The appellant suffers from "severe conditions" including ischemic heart disease, chronic diabetes, peripheral arterial disease, asthma, chronic back pain, and depression.

Restrictions

- As a result of his conditions he is "directly and significantly restricted in his ability to do his daily living activities continuously."

Functional skills/ abilities

- Basic mobility/ Climbing stairs: He is "directly and significantly restricted" from walking more than 1 to 2 blocks "due to chronic back and chest pain, weakness, shortness of breath and heart palpitations and he takes 2 to 3 times longer with climbing stairs." He is also "unable to walk more than a couple of minutes or climb any stairs on bad days (2 times per week)", and he requires transportation for community access.
- Lifting/ carrying/ holding: The appellant is "significantly restricted from lifting or holding more than 5 to 10 pounds due to heart issues, weakness and chronic pain." He is also "unable to carry any weight" and he requires "continuous assistance."
- Sitting: The appellant has "direct restrictions with sitting longer than 5 minutes without changing positions due to chronic back pain."

DLA

Personal Care

- Dressing/ Grooming/ Bathing: “significant restrictions due to mobility issues, chronic pain and heart issues.” The appellant neglects his personal care on bad days “2 times per week”, and he requires a shower chair as he has experienced 2 falls in the shower this year.
- Toileting: “takes 2 times longer cleaning himself after toileting due to shortness of breath.”
- Feeding self/ Regulate diet: “lack of appetite during April to October when asthma symptoms are exacerbated.” The appellant also “takes 2 times longer to follow a diabetic diet and experiences lightheadedness from low blood sugar on a daily basis.”
- Transfers [In/ out of bed and chair]: “takes 2 times longer.”

Basic housekeeping

- Laundry/ housekeeping: “significant restrictions due to mobility issues. Brother provides continuous assistance.”

Shopping

- Going to and from the store and carrying purchases: “significant restrictions due to mobility issues, heart issues and chronic pain. Requires continuous assistance.”
- Reading labels/ prices and making appropriate choices: “takes 2 times longer.”
- Paying for purchases: “direct restrictions with standing in line-ups longer than 5 minutes and requires continuous assistance.”

Meals

- Food prep./ Cooking: “Significant restrictions with standing longer than 5 minutes to cook and prepare meals”, noting that the appellant sits down to cook and “requires continuous assistance from brother at least once per week.”

Pay Rent and Bills; and Medications

- Banking/ Filling prescriptions: “direct restrictions with standing in lineups longer than 5 minutes.” He sits down while waiting “due to chronic pain and heart issues and needs transportation to access the bank, pharmacy and doctor appointments.”

Transportation

- Getting in/ out of vehicle: “takes 2 times longer due to mobility issues and holds on to car door for support.”
- Using public transit: “significant restrictions with walking to the bus stop and getting on and off the bus due to chronic pain, heart issues, shortness of breath and weakness.” He also “requires a seat on the bus.”
- In addition, he experiences the following symptoms “daily as a result of his mental health conditions which further restrict his ability to complete his daily living activities”:
 - “Sleep disturbances: wakes up throughout the night due to pain - moderate impact;”
 - “Problems with consciousness and drowsiness - major impact;”
 - “Depression - major impact;”

- “Poor attention/ concentration – moderate impact;”
- “Memory issues - major impact”; and
- “Lack of motivation - moderate impact.”

3. The ministry’s denial letters of July 19, 2017; and May 25, 2017 with *Persons with Disabilities Designation Denial Decision Summary*. The ministry indicated the appellant applied for PWD designation on April 19, 2017; was denied on May 25, 2017; and his RFR was received on July 5, 2017.

Additional submissions

With the consent of both parties, the appeal proceeded as a written hearing pursuant to section 22(3)(b) of the *Employment and Assistance Act*. Subsequent to the reconsideration decision the appellant filed his *Notice of Appeal* dated August 11 2017 in which he stated his argument on appeal. His advocate provided a 2-page written appeal submission with a copy of section 2 of the EAPWDR, faxed to the Tribunal on August 28, 2017, expanding the appellant’s argument on appeal. The panel accepts the submission as argument in support of the checklist submission that was provided for the reconsideration. The ministry indicated in an e-mail to the Tribunal that its submission on appeal would be the reconsideration summary. The panel will consider the arguments of both parties in the next section, *Part F*.

PART F – Reasons for Panel Decision

The issue on appeal is whether the ministry's reconsideration decision of July 19, 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 or physical impairment

In his *Notice of Appeal* the appellant argued that the ministry “made a very narrow interpretation of the legislation and an unreasonable decision based on the evidence.” In the appeal submission, his advocate expands this argument, submitting that the ministry “has unreasonably determined the severity of the impairments” by not giving the reconsideration checklist adequate weight. She argued that the additional medical evidence “clarified and provided the narrative of the severity of the diagnosis”, noting that the same physician who filled out the original PWD medical reports has provided the RFR checklist. The advocate submitted that when the forms are initially filled out, “many times doctors are very busy and accidentally omit information and are unclear on the requirements for their patients to get the disability designation.”

In the reconsideration decision the ministry submitted that a diagnosis of a serious medical condition “does not in itself determine PWD eligibility or a severe impairment”, and “restrictions to a person’s ability to function independently or effectively are required.” The ministry argued that none of the assessments by the physician establish a *severe* mental or physical impairment.

Mental impairment

The advocate argued that the RFR checklist indicated the appellant “also suffers from mental impairment such as depression, memory issues, lack of motivation, poor concentration as well as severe sleep disturbances.” The ministry argued that neither the original PWD medical reports nor the checklist contain evidence of a severe mental impairment, noting that in the MR, the physician reported no significant deficits with cognitive/ emotional functioning; and in the AR, 5 functions including Emotion and Memory, were said to be only minimally impacted by the appellant’s impairment. The ministry further noted that the physician reported no deficits with communication, or social functioning despite the appellant’s marginal functioning with his social networks.

Regarding the RFR checklist, the ministry argued that the physician’s information between the original PWD application and the checklist does not support finding a severe mental impairment because the information contains discrepancies and the physician “does not provide any additional information as to the changes from his initial assessment.” The ministry noted, for example, that 6 areas of cognitive/ emotional functioning were impacted to a moderate or major degree in the RFR checklist, unlike the MR and AR where minimal or no impacts were indicated.

Panel's decision - mental impairment

The panel finds that the ministry reasonably concluded that the information provided in the PWD application and RFR checklist does not establish a severe mental or physical impairment due to the unexplained discrepancies in the information. The appellant has no significant deficits in any areas of Cognitive and Emotional Functioning in the MR, and in the AR his impairment has only a minimal impact in 5 of 14 listed areas. Neither report identifies any significant deficits with any area of cognitive/ emotional, and the appellant has no difficulties with communication; is independent with all areas of Social Functioning; and the ministry also noted that no safety issues were identified.

While the advocate argued that the RFR checklist confirms a severe mental impairment especially due to the appellant's "severe sleep disturbance", the panel finds that the ministry reasonably determined that the checklist falls short of meeting the legislative requirement for severity due to unexplained discrepancies between it and the PWD medical reports. In the checklist, moderate and major impacts were reported for 6 areas of cognitive/ emotional functioning: sleep disturbances, problems with consciousness and drowsiness, depression, attention/ concentration, memory, and motivation. However, in the MR, the physician specifically checked *No* when asked if there are any significant deficits with these and other cognitive and emotional functions. All of the functions listed in the RFR checklist of symptoms, except sleep disturbance, are listed in section D-6 of the MR, and there is no indication that the physician has overlooked these items as submitted by the advocate.

Bodily functions [including sleep disturbance] are listed in the AR and as noted in the ministry's summary of the evidence, the physician specifically check marked *No impact* for Bodily functions and he checked *Minimal impact* for the remaining functions that were identified as "major or moderate impact" in the RFR checklist. The checklist indicated that the appellant "wakes up through the night due to pain", and although the physician noted in the PWD application that the appellant has an impairment involving his right arm and has had heart surgery, there is no information about these conditions causing "severe sleep disturbance", or any significant restrictions or impacts to cognitive/ emotional functioning. 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.

Physical impairment

The advocate listed the conditions diagnosed by the physician and emphasized that the appellant was "hospitalized due to surgery to obtain stents in coronary artery." The advocate argued that the RFR checklist confirms that he is significantly restricted from walking more than 1 to 2 blocks; and on his "bad days", which occur "at least 2 times per week", he is "unable to walk more than a couple of minutes." He also cannot climb "any stairs" on his bad days and climbing stairs takes him "2 to 3 times longer." The advocate also noted that in the RFR checklist, the appellant is unable to lift more than 5 to 10 pounds, and he is unable to carry "any weight" or "sit longer than 5 minutes without readjusting constantly."

In the reconsideration decision, the ministry accepted that the RFR checklist indicates the appellant experiences limitations to his physical functioning due to chronic back and chest pain, weakness, shortness of breath and heart palpitations. The ministry argued, however, that the information provided "speaks to a moderate rather than severe physical impairment."

The ministry noted that the appellant does not require prostheses or aids for his impairment, aside from a shower chair, as reported in the RFR checklist; however, the ministry also noted that a shower chair was not indicated in the PWD application. The ministry argued that the functions indicated in

the MR and AR [able to walk 1-2 blocks, for example, and independently walk indoors and outdoors, climb stairs, and stand] as well as needing only periodic assistance for Lifting and Carrying/ Holding, are indicative of a moderate level of impairment. In reviewing the RFR checklist and noting the further restrictions reported for walking, climbing stairs, carrying/ holding, and sitting, the ministry maintained its position that the restrictions are indicative of a moderate rather than severe impairment.

Panel's decision - physical impairment

The panel finds that the ministry reasonably concluded that the information provided in the PWD application is more in keeping with a moderate degree of impairment. Although the RFR checklist indicated the appellant has bad days where he is "unable to walk more than a couple of minutes", in the MR, the appellant was reported as able to walk 1 to 2 blocks unaided and in the AR he is independent with walking both indoors and outdoors and does not require any prosthesis or assistive device.

With regard to climbing stairs, in the MR [section D], the appellant was reported to have to the highest range of function on the scale. In the AR he is independent with stairs. While the RFR checklist indicated that he cannot climb "any stairs" on his bad days [2 times per week] and that he takes 2 to 3 times longer to climb stairs, the panel finds that the ministry reasonably determined that the information across all of the assessments supports the ministry's finding of a moderate level of impairment.

While the MR and AR indicated that the appellant can lift 5 to 15 pounds and requires only periodic assistance with Lifting, and with Carrying/ holding, the RFR checklist stated that due to his heart issues, weakness and chronic pain, "he is unable to carry any weight and requires continuous assistance." As there was no explanation for the discrepancy in the information, the panel finds that the ministry reasonably determined that the information in the MR and AR, which shows that the appellant is largely independent with lifting and carrying small loads, supports the ministry's finding of a moderate physical impairment.

The legislation requires evidence of a severe physical impairment that significantly impacts daily functioning. While the length of time the appellant could remain seated was "unknown" in the MR, in the RFR checklist, he cannot sit "longer than 5 minutes without changing positions due to chronic back pain." While the ministry accepted that the appellant has restrictions due to pain, the panel finds that the physician's information that the appellant is independent with all of his physical functions supports the ministry's determination of a moderate rather than severe physical impairment. Based on the information in its entirety, 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 advocate argued that the physician "clearly confirms...that the majority of the daily living activities are directly and significantly restricted as a result of the appellant's severe physical impairments." The advocate argued that the RFR checklist confirms "severe restrictions with personal care, meals, housekeeping, shopping, and transportation. The advocate submitted that if the ministry had given the additional information adequate weight, the appellant would have a much stronger case for PWD designation.

Regarding the information in the MR and AR, which the ministry summarized in the reconsideration decision, the ministry acknowledged the appellant has “certain limitations” resulting from chronic back and chest pain, weakness, shortness of breath and heart palpitations and would be expected to require assistance as a result. However, the ministry argued that the “frequency and duration of these periods are not described in order to determine if they represent a *significant* restriction to your *overall* level of functioning.”

Considering the RFR checklist [also summarized in the reconsideration decision], the ministry’s record indicated that information on the frequency and duration of restrictions was provided in the additional submission. However, the ministry argued that the physician’s assessments across all of the reports are indicative of a moderate level of restriction and do not confirm the legislative criteria: *significantly restricts daily living activities continuously or periodically for extended periods*. Overall, the ministry argued that there “was not enough evidence” to confirm that the appellant’s impairment restricts his ability to perform DLA continuously or periodically for extended periods.

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 reasonably concluded that the physician’s evidence across all assessments was insufficient to establish that the appellant’s DLA are directly and significantly restricted either continuously, or periodically for extended periods. For the DLA specified in section 2(1)(a) of the EAPWDR, the physician’s information in the MR and AR indicated that the appellant can perform the following activities independently or with periodic assistance:

Prepare own meals

In the MR, the appellant is not restricted with meal preparation and in the AR he requires periodic assistance with all areas of Meals. While significant restrictions were reported in the RFR submission regarding food preparation, it was noted only that the appellant needs to sit down to prepare food and requires continuous assistance from family “at least once per week.” The panel finds that the ministry

reasonably determined that the evidence indicates a moderate degree of restriction as the appellant is independent with the activity overall.

Manage personal finances and manage personal medication

In the MR, neither of these DLA is restricted and in the AR, the appellant requires periodic assistance only. In the RFR checklist, “direct restrictions” were reported for banking and filling prescriptions as the appellant cannot stand in line ups “longer that 5 minutes” and has to sit down while waiting due to his chronic pain and heart issues. Again, the physician gave no explanation for the inconsistent assessment and the panel finds that the ministry was therefore reasonable in giving the original information greater weight, finding that the appellant is independent with these activities.

Shop for personal needs

In the MR Daily shopping is reported as periodically restricted and in the AR the appellant requires periodic assistance with all areas of Shopping. In the RFR submission, shopping is significantly restricted “due to mobility issues, chronic pain, and heart issues”, and the appellant “requires continuous assistance.” It also takes the appellant 2 times longer to read prices/ labels and choose items. There was no explanation for the change in the assessment between the original reports and the supplementary checklist. In any event, taking 2 times longer reasonably supports the ministry’s position that the appellant has moderate restrictions with DLA.

Use public or personal transportation facilities

In both the MR and AR, no restrictions were reported and the appellant is independent with all areas of Transportation. However, in the RFR checklist, the appellant has significant restrictions with walking to the bus stop and getting on the bus [due to pain, heart issues, shortness of breath, and weakness]. Despite the advocate’s argument that doctors are very busy and could accidentally omit information, the physician specifically checked *No* restrictions in the original PWD medical reports and also indicated that he completed the assessments through an office interview with the appellant. For this DLA in particular, the panel finds that the ministry reasonably determined there is insufficient information to conclude that DLA are significantly restricted either continuously, or periodically for extended periods as required by the legislation.

Move about indoors and outdoors

In the MR, Mobility inside the home is periodically restricted while Mobility outside the home is continuously restricted. However, in the AR, the appellant is independent with both Walking indoors and Walking outdoors and there is no explanation for the discrepancy between the 2 reports.

Perform personal hygiene and self-care

In the MR, Personal self-care is not restricted and in the AR the appellant is independent with most areas of Personal Care but requires periodic assistance with Dressing, Grooming, and Bathing. In the RFR submission, significant restrictions were reported due to the appellant’s mobility issues, chronic pain, and heart problems, and the appellant requires a shower chair for bathing. In the AR, toileting was marked as independent; whereas, in the additional submission, the appellant takes 2 times longer with this activity. Again, the physician provided no explanation for the discrepancy in the information and the panel finds that the additional information reasonably supports the ministry’s finding of a moderate degree of restriction.

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

As indicated earlier, under *Mental impairment*, the appellant is independent with making decisions: Executive was not restricted under Cognitive and Emotional function in either the MR or AR. He is also independent with all areas of Social Functioning.

Criterion summary

Based on the physician’s evidence, the panel finds that the ministry reasonably determined the appellant’s impairments result in moderate restrictions to DLA. Even where an additional explanation was provided in the RFR checklist, indicating a more severe degree of restriction, the physician did

not explain why assessments were different from the original PWD medical reports, and discrepancies in the information between the MR and AR were also not explained. Overall, the information indicates that the appellant is either independent or requires periodic assistance with most DLA. As argued by the ministry, there was insufficient information in the above assessments to confirm that DLA are significantly restricted either continuously, or periodically for extended periods as required by the legislation.

Continuously restricted DLA

Perform housework

Basic housework is continuously restricted in the MR, and in the AR the appellant requires continuous assistance with both Laundry and Basic housekeeping. In the RFR checklist, significant restrictions were indicated due to mobility issues, and the appellant's family "provides continuous assistance." However, as noted above, the physician indicated that all other DLA are managed independently or with periodic assistance, and where a greater degree of restriction was identified in one of the reports, the information conflicted with the other reports and there was no clear and consistent picture for those DLA. Again, based on the assessments as a whole, 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 advocate argued that the appellant requires help with DLA, especially in the areas of housekeeping, laundry, and shopping where his family provides "continuous assistance." While the ministry argued that the need for a shower chair "does not establish the existence of a severe impairment", 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.

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 evidence indicates that the appellant has a shower chair and that family and friends provide assistance for DLA. However, 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.