

## 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 17 August 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 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 his ability to perform daily living activities (DLA) either continuously or periodically for extended periods; and that as a result of those restrictions, he requires help to perform those activities.

The ministry found that the information provided did establish that the appellant has reached 18 years of age and his impairment, in the opinion of a medical practitioner, is likely to continue for at least 2 years.

## 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 03 May 2017, completed by the appellant's physician (GP) who has known the appellant for 1 year and has seen him 11 or more times in the past 12 months.
  - An Assessor Report (AR) dated 03 May 2017, completed by the appellant's GP.
  - A Self Report (SR) dated 09 May 2017, completed by the appellant.
2. **Request for Reconsideration** dated 19 July 2017, signed by the appellant.
3. **Reconsideration Submission** dated 17 August 2017, which included the following:
  - 1 page cover letter dated 17 August 2017;
  - 11-page submission prepared by the appellant's advocate dated 17 August 2017 ("Reconsideration Submission");
  - 4-page Permanent Functional Impairment Evaluation (PFIE) report, dated 12 July 2017, prepared by a Disability Awards Medical Advisor (MA); and
  - Release of Information form signed by the appellant.

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

### **Diagnoses**

In the MR, the GP diagnoses the medical conditions related to the appellant's impairment as:

- Right knee medial compartment osteoarthritis – onset June 2015
- Brain injury – onset May 1966
- Anxiety – onset May 2015
- Deafness – onset May 1966

### **Severity of mental impairment**

MR:

The GP has provided a diagnosis of anxiety in the MR and indicates that there are significant deficits with cognitive and emotional function in the areas of memory, emotional disturbance, motivation, and motor activity.

AR:

The GP has completed the assessment of cognitive and emotional functioning assessment in the AR and assesses minimal impacts in the areas of emotion, attention/concentration, executive, memory and motivation. She assesses no impacts in the remaining areas. The GP has assessed the appellant as having good ability with speaking, reading, and writing and satisfactory ability with hearing (*loss of hearing in left ear*).

PFIE:

The MA does not indicate that the appellant has a mental impairment.

SR:

In describing his disability, the appellant indicates that he has sustained a traumatic brain injury. In describing how his disability affects his life and ability to care for himself, the appellant indicates that he doesn't like to go shopping because he finds that he sometimes forgets what he is shopping for due to pain and short term memory loss.

**Severity of physical impairment**

MR:

Under Health History, the GP writes:

*Right knee osteoarthritis – pain with activity, limited ability to walk or move, starting to impair functioning in hips and left knee due to altered gait.*

*Brain injury- has lost hearing in his left ear.*

For functional skills, the GP indicates that the appellant is able to walk less than 1 block unaided, climb no steps unaided, lift 2-7 kg unaided and remain seated without limitation.

The GP indicates that the appellant requires an unloader brace for his impairment.

AR:

In relation to mobility and physical ability, the GP assesses the appellant as taking significantly longer with walking indoors, walking outdoors and climbing stairs (*takes 3-4 times longer*). Standing, lifting and carrying and holding are assessed as independent.

PFIE:

In the PFIE, the MA provides the following clinical comments:

*Factors to consider include range of motion and muscle weakness.*

*Range of motion measurements were generated with sincere and consistent effort. The restrictions seen are consistent with the provided information.*

*Although it is difficult to assess I think it is fair to assume he has some moderate muscle weakness relation to the chronicity of his knee pathology.*

The MA also states that the appellant has difficulty with stairs and must ascend or descend one step at a time, leading with his left leg. The appellant can walk ½ block before stopping due to increased pain.

SR:

The appellant describes his disability as follows:

*Sustained a traumatic brain injury, crushed skull, deafness in left ear. Paralyzed [left] side of body ([left] leg, [left] arm, [left] side of mouth, [left] eye) had to learn to walk and talk all over again, long term rehab. Arthritis in C6-C7 neck from major neck injury [right] knee meniscus tear.*

In describing how his disability affects his life and ability to care for himself, the appellant indicates that it is hard for him to get out of bed in the morning and even harder to walk, especially first thing. He has a handicap decal in his vehicle, allowing him to get close to businesses. He will not park further than ½ block away because this is his maximum distance for walking without rest. He can't stand in one spot for long and will brush his teeth and then take a break before shaving. Getting in and out of the tub is difficult, he needs railings. When cooking, he takes about 10 breaks preparing a meal. He has a hard time getting in and out of a vehicle, has pain all day from migraines and his knee and has short-term memory loss. He does not like to go shopping as he often forgets what he is

shopping for due to pain and short-term memory loss. His left leg and hips are starting to give him trouble due to making up for the right knee injury. He needs to use a railing when going up or down stairs.

### **Ability to perform DLA**

#### **General**

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

AR:  
The GP provides the following general comments in relation to DLA: *patient has had trouble paying rent in the past due to inadequate finances.*

PFIE:  
The MA indicates that the appellant's sleeping is disrupted 5 nights per week due to pain caused by moving around while sleeping. Driving results in achiness around his knee. The appellant enjoys fishing but is unable manage the moving boat.

#### **Daily Living Activities**

##### *Prepare own meals*

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

PFIE:  
THE MA indicates that the appellant's food preparation is limited by his standing tolerance.

##### *Manage personal finances*

AR:  
The GP has assessed appellant as independent with banking and "takes significantly longer than typical" with budgeting and paying rent and bills. She provides the comment: *has had difficulty paying rent due to not having money.*

##### *Shop for personal needs*

AR:  
The GP indicates that the appellant is independent with the shopping activities of reading prices and labels, making appropriate choices and paying for purchases. She indicates that the appellant is independent and takes significantly longer than typical with going to and from stores (*takes 3-4 times longer than previously*) and carrying purchases home.

##### *Use public or personal transportation facilities*

AR:  
The GP indicates that the appellant is independent getting in and out of a vehicle. Using public transit and using transit schedules and arranging transportation are marked "N/A".

##### *Perform housework to maintain the person's place of residence*

AR:  
The GP indicates that the appellant is independent and takes significantly longer with laundry and basic housekeeping (*can perform activities independently but takes 3-4 times longer than previously*).

*Move about indoors and outdoors*

MR:

The GP indicates that the appellant is able to walk less than one block unaided on a flat surface and can climb no climb stairs unaided.

AR:

The GP indicates that the appellant takes significantly longer than typical with walking indoors and outdoors and climbing stairs.

PFIE:

The MA indicates that the appellant can walk about ½ block before needing to stop due to increased pain. He indicates that the appellant has some difficulty with stairs and must ascend or descend one step at a time, leading with his left leg.

*Perform personal hygiene and self-care*

AR:

The GP 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. All of these activities are assessed by the GP as taking significantly longer than typical (*can perform activities independently but takes 3-4 times longer than previously*).

PFIE:

The MA indicates that the appellant is independent with self-care but has some difficulty bending to put on his socks and getting in and out of the shower requires a bit of effort for the appellant.

*Manage personal medication*

AR:

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

*Social Functioning*

AR:

The GP has assessed the appellant as independent for the following social functioning Daily Living Activities: appropriate social decisions; able to develop and maintain relationships (*brother and sister live in town, sees them*); interacts appropriately with others; and able to deal appropriately with unexpected demands. The GP indicates that the appellant requires continuous support/supervision with securing assistance form others (*unable to secure assistance form others*). The GP indicates that the appellant has marginal functioning in his immediate social networks and very disrupted functioning in extended networks.

*Help required*

MR:

The GP indicates that the appellant requires a right knee unloader brace.

AR:

The GP indicates that the appellant does not receive assistance from other people and would benefit from a physiotherapy program.

The GP indicates that the appellant requires a right knee unloader knee brace.

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

PFIE:

The MA indicates that the appellant wears an Offloader brace.

SR:

The appellant indicates that he has difficulty getting in and out of the tub and needs railings.

### **Notice of Appeal**

In his Notice of Appeal dated 29 August 2017, the Reasons for Appeal state: *Mr. [omitted] submits that the ministry's conclusions in the reconsideration decision are not reasonably supported by the evidence before the ministry at reconsideration.*

### **At the Hearing**

The appellant's advocate argued at the hearing that the ministry had failed to consider relevant evidence provided in the PWD application and PFIE and that the ministry had failed to consider and engage with relevant evidence highlighted in the appellant's reconsideration submission. These arguments are addressed in Part F (below).

The appellant explained that shaving his head used to take him about 5 minutes and it now takes 30-45 minutes because he has difficulty standing. He explained that stairs are difficult and he avoids them. He also explained that he has difficulty stepping into the bathtub to shower and he needs railings but does not have them because he doesn't own his residence.

### **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.

The information provided by the appellant at the hearing is admissible in accordance with section 22(4) of the *EAA* because it provided additional detail in relation to information that was before the ministry at reconsideration. Specifically, the appellant provided additional detail in relation to the time it takes him to shave, his difficulty stepping in/out of the tub to shower and his difficulty with stairs.

The panel finds that the information provided by the appellant's advocate at the hearing consisted of argument and, therefore, does not require an admissibility determination 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 three of the five statutory requirements of Section 2 of the *EAPWDA* for persons with disabilities (PWD) designation 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 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.

### **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 was not satisfied that the information provided establishes a severe mental impairment. The ministry observed that the appellant has been diagnosed with anxiety and noted that in the MR when the GP was asked to assess the severity of the appellant's conditions she does not mention any mental health conditions. The ministry noted that a large majority of the PWD application relates to the appellant's physical impairments. The ministry observed that the GP indicated that there were significant deficits with the appellant's cognitive and emotional functioning noted in the MR but no major or moderate impacts to cognitive and emotional functioning were noted in the AR. The ministry further observed the GP's assessment of very disrupted functioning in extended networks but found it to be unclear why the appellant experiences this restriction due to the absence of commentary. The ministry also considered that there is no mention of a referral to a mental health specialist, and found that it would be expected that the appellant would benefit from the help of a mental health expert such as a counselor if his anxiety were considered severe.

The panel finds that the ministry's determination that a severe mental impairment has not been established was reasonable. In reaching this conclusion, the panel finds the ministry was reasonable in considering that the absence of severe and moderate impacts to the appellant's cognitive and emotional function in the AR and the lack of comment/information by the GP supports the determination that the appellant does not have a severe mental impairment. The panel also finds the ministry's observation about the absence of commentary by the GP about mental health conditions when asked to assess the severity of the appellant's conditions to be reasonable. The panel finds that the ministry's observation that, in the absence of comment from the GP, it is unclear why the



appellant experiences very disrupted functioning in extended networks to be reasonable. The panel notes, but is unable to accept, the appellant's argument that the legislation does not require the appellant's referral history or confirmation that the appellant is getting the help they need. The appellant argues that this amounts to the adjudicator adding additional eligibility criteria and effectively fettering their discretion. While the panel finds that the legislation does not require referral to a mental health specialist, the panel also finds that the ministry's mention of the absence of a referral in the reconsideration decision does not amount to importing additional criteria, which results in a fettering of discretion. The panel notes that many of the observations and conclusions in the reconsideration decision relate to a lack of information and finds that the ministry's determination that the information provided does not establish a severe mental impairment is reasonable.

### Severity of physical impairment

In the reconsideration decision, the ministry was not satisfied that the information provided establishes a severe physical impairment. In reaching this conclusion, the ministry first considered the GP's assessments of functional skills and acknowledged that the appellant wears a knee brace and requires 3-4 times longer for activities that require mobility. The ministry argued that if the appellant's impairment were considered severe he would benefit from or require additional aids. The ministry argued that the appellant does not require any assistance with any DLA. The ministry argued that while the GP has stated that the appellant has osteoarthritis in his knee and experiences pain with activity and his ability to walk or move is limited, she has not explained the degree of pain or how active the appellant must be to experience pain. The ministry further argued that the GP has stated that the appellant is starting to experience impaired functioning in his hips and in the other knee due to his altered gait, but has not explained to what degree. The ministry was not satisfied that the information provided suggests a severe impairment. The ministry noted that the GP has assessed the appellant can lift 5-15 lbs. and remain seated without limitation. The ministry also noted that the appellant has been assessed by the GP (in the AR) as independent with all aspects of meals and food preparation and argued that it would be expected that the appellant would experience at least some degree of restriction with his ability to stand, lift, carry, hold and prepare meals if his knee impairment were considered severe. The ministry also considered the information in the PFIE, noting that the report stated that the appellant had difficulty with stairs and concluding that the appellant is still able to use stairs (with difficulty) in contrast to what was reported in the PWD application. The ministry noted that the PFIE stated that the appellant feels his condition is stable over time and concluded that this does not suggest a severe physical impairment. The ministry considered the PFIE statement that the appellant is independent with self-care but has difficulty putting on his socks and argued that the report does not indicate that the appellant requires help or explain the degree of difficulty. The ministry noted that the PFIE report explains that the appellant experiences achiness in his knee caused by driving and, while he enjoys fishing, is not able to manage moving in a boat. The ministry noted that the PFIE report concludes by stating that "it is fair to assume that the appellant has some moderate muscle weakness related to the chronicity of his knee pathology", and concluded that the minister was not satisfied that the information provided by the MA suggests a severe physical impairment. The ministry went on to note that while the appellant takes 3-4 times longer with many DLA, the GP has specially indicated that the appellant is independent in these areas and does not require any periodic or continuous assistance. The ministry argues that if all of the tasks indicated took 3-4 times longer (than previously), it would be expected that the appellant would require some degree of help from time to time in order to keep up with some DLA. The ministry argues that it would also be expected that the appellant would benefit from assistive devices beyond a knee brace. The ministry concluded its analysis of the appellant's knee condition by acknowledging that he experiences some degree of restriction, but is not satisfied that the information provided is evidence of a severe physical impairment.

Before concluding its analysis in relation to a severe physical impairment, the ministry also considered the diagnoses of brain injury and deafness in 1966. The ministry noted that there was little information in the application relating to these conditions, arguing that this does not suggest that these conditions are severe impairments. The ministry argued that stating that the appellant experienced a brain injury as a child does not confirm a severe impairment. The ministry has acknowledged that the appellant is deaf in his left ear and stated its assumption that he experiences no restriction with the hearing in his right ear and concluded that his overall hearing is not considered a severe impairment. The ministry noted the absence of other reports, assessments, referrals or tests related to the appellant's brain injury and found that it was difficult to confirm the severity of the condition.

The ministry concluded that it was not satisfied that the information provided establishes a severe physical impairment.

The appellant argues that the ministry has failed to consider all available evidence in making its decision. Specifically, the appellant argues that the SR does indicate a need for railings to get in and out of the bathtub/shower. The appellant refers to the BCSC's *Hudson* decision (at para. 64), which he argues "obliges decision makers to give considerable weight to the applicant's self-report in Section 1 of the Application, as it would be illogical for the form to ask the applicant to describe their disabling condition if it is not to be considered, and nothing in the *Act* prevents the Ministry or Tribunal from considering the self-report." The panel acknowledges this argument and notes that the court in *Hudson* does not place an *obligation* on decision makers to give considerable weight, rather the relevant paragraph of the decision states:

*Concerning the weight to be given to the petitioner's evidence, while s. 2(2) of the EAPDA makes it clear that certain eligibility criteria for PWD status need to be confirmed by the applicant's physician or assessor, nothing in the EAPDA prevents the Ministry or the Tribunal from placing considerable weight on the Petitioner's evidence, provided the statutory eligibility criteria are met.*

The panel notes that the information provided by the appellant at the hearing and in the SR indicates that he does need and would like to have a railing in the bathroom as he has difficulty stepping over the edge of the bathtub to shower. The appellant argues that this suggests that there are significant restrictions with bathing. The panel notes that the ministry does not mention this information in the reconsideration decision. The panel notes, however, that the information provided by the GP in the MR and AR does not mention a need for additional assistive devices and neither does information in the PFIE. Furthermore, the panel notes that the GP indicates in the AR that the appellant is independent with bathing and takes longer than previously; however, she does not indicate that the appellant experiences significant restrictions in bathing. The panel notes that bathing falls within the personal hygiene and self-care DLA and the legislation specifically requires that significant restrictions to DLA must be in the opinion of a prescribed professional.

The appellant also argues the ministry's failure to consider all available evidence is reflected in the ministry's statement: *If your knee impairment were considered severe, it would be expected that you would experience at least some degree of restrictions with your ability to stand, lift, carry, hold and prepare meals.*

The appellant argues that ministry has failed to consider the GP's assessment that the appellant can lift 5-15 lbs., the PFIE statement that food preparation is limited by the appellant's standing tolerance and the appellant's SR statement that he cannot stand in one spot for any length of time. The panel finds that the ministry did specifically mention, and therefore, presumably consider, the GP's assessment that the appellant can lift 5-15 lbs. and is independent with all aspects of meals, including

food preparation and cooking. The panel notes that the information the appellant argues was not considered conflicts with the information specifically mentioned by the ministry in the reconsideration decision. The panel finds that the quoted statements in the PFIE and SR do reflect some level of restriction in the appellant's ability to stand; however, this information does not provide sufficient detail to displace the ministry's conclusion, particularly when considered in the context of the GP's assessment that the appellant is independent with standing. The panel finds that, while there may be some lack of detail in the ministry's reasons, the ministry's determination that it was not satisfied that a severe impairment has been established was reasonable.

The appellant takes issue with the ministry's statement that: *Dr. [omitted] writes that you feel your symptoms are stable over time, which does not suggest a severe physical impairment.* The appellant argues that considerations of stability and severity are properly independent of one another and having a degenerative impairment is not required by the legislation. The panel finds that the appellant's assertion is correct, the legislation does not require a degenerative impairment, and further finds that the fact that a condition may be considered stable does not lead to a conclusion that it is not severe.

The panel notes that the appellant has also argued that the ministry failed to consider/engage with information and arguments provided by the appellant's legal advocate in the reconsideration submission. The appellant acknowledges that the advocate's submissions are not evidence per se, but argues that the ministry's failure to engage with some of the arguments constitutes a failure to consider the circumstances of the appellant. The panel acknowledges that the ministry has not responded to each of the arguments forwarded in the appellant's reconsideration submission, but finds that this does not lead to a conclusion that this must then mean that the arguments were not considered at all by the ministry as asserted by the appellant. Furthermore, the panel finds that a failure to directly engage with each of the advocate's arguments does not lead to a conclusion that the ministry failed to consider the circumstances of the appellant.

The panel finds that the evidence before the ministry provides an incomplete, and in some instances internally inconsistent, representation regarding the severity of the appellant's impairment and his capacity to function independently, appropriately, effectively or for a reasonable duration. 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 GP. 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 acknowledged that the appellant takes 3-4 times longer to perform many DLA, but is independent and does not require periodic or continuous assistance with any DLA. The ministry argued that if all of the tasks took 3-4 times longer on a continuous basis, it would be expected that the appellant would require some assistance from time to time to keep up with some DLA. The ministry also argued that it would be expected that the appellant would benefit from/require assistive devices beyond a knee brace. The ministry noted that the MA reported in the

PFIE that the appellant is independent with self-care, has difficulty bending to put on socks, experiences increased achiness when driving and enjoys fishing but cannot manage the moving boat. The ministry noted that the MA reported moderate muscle weakness related to the chronicity of the appellant's knee pathology, but concluded that the information provided by the MA suggests significant restrictions with DLA. The ministry concluded that, despite the presence of some limitations, the information provided did not establish that an impairment significantly restricts daily living activities continuously or periodically for extended periods.

The appellant takes issue with the ministry's conclusion: *If all of the tasks indicated took you 3-4 times longer on a consistent basis, it would be expected that you would require at least some degree of help from time to time in order to keep up with some areas of daily living.* The appellant argues that the legislation considers the help the applicant requires not the help the appellant receives. However, the panel notes that the only assistance the GP indicates is needed is a physiotherapy program. As well, the panel notes that the assistance the appellant himself indicates he needs is a railing in the bathroom. As such, the panel finds that the information provided does not indicate that the appellant requires help from time to time to keep up with some DLA as the appellant's advocate seems to be arguing.

The appellant also takes issue with the ministry's conclusion: *it would also be expected that if all of the tasks indicates took you 3-4 times longer on a consistent basis, you would benefit from/require the use of assistive devices beyond a knee brace.* The appellant argues that multiple aids are not specifically required by the eligibility criteria set out in the statute. The panel finds that the statute requires direct and significant restrictions to DLA continuously or periodically for extended periods and as a result of those restrictions the person requires help to perform those activities. The panel finds that the legislation does not require that a person demonstrate a need for multiple aids; however, the panel also finds that it is reasonable for the ministry to consider the nature of the aid(s) required when assessing whether direct and significant restrictions to DLA (continuously or periodically for extended periods) has been established.

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 GP has, in the AR, assessed the appellant as independent with DLA. The panel notes that the GP has indicated that some DLA take 3-4 times longer (than previously) but does not indicate that any assistance is required or needed. Furthermore, the PFIE and the appellant's evidence (in the SR and at the hearing) also indicate that the appellant is independently able to perform DLA. The panel finds that the evidence before the ministry paints a picture of an individual who is independently able to perform daily living activities with some activities taking 3-4 times longer than they previously took the appellant to complete. As such, 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 under section 2(2)(b)(ii) of the EAPWDA that it cannot be determined that the appellant requires help to perform DLA. However, the panel notes that the ministry has made an error in stating that no assistive devices are required. The evidence before the ministry, from the GP, MA, and the appellant himself, is that the appellant requires the use of a knee brace.

### **CONCLUSION**

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.