

PART C – Decision under Appeal

The decision under appeal is the Ministry of Social Development and Poverty Reduction (the ministry) reconsideration decision dated August 28, 2017 which found that the appellant did not meet all five of the statutory requirements of Section 2 of the *Employment and Assistance for Persons with Disabilities Act*, that must be met in order for the ministry to grant designation as a person with disabilities (PWD). The ministry found that the appellant met the age requirement. However, the ministry was not satisfied that the evidence establishes that:

- the appellant's impairment is likely to continue for at least two years;
- the appellant has a severe physical or mental impairment;
- the appellant's daily living activities (DLA) are, in the opinion of a prescribed professional, directly and significantly restricted either continuously or periodically for extended periods; and,
- as a result of these restrictions, the appellant requires the significant help or supervision of another person, the use of an assistive device, or the services of an assistance animal to perform DLA.

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

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

The evidence before the ministry at the time of the reconsideration decision included the Persons With Disabilities (PWD) Application comprised of the applicant information and self-report dated April 3, 2017, a medical report (MR) and an assessor report (AR) dated April 24, 2017, both completed by a general practitioner (GP) who has known the appellant since 2011 and has seen him the appellant 2 to 10 times in the past 12 months.

The evidence also included the following documents:

- 1) Letter dated January 16, 2017 from the GP;
- 2) X-Ray Report dated April 10, 2017; and,
- 3) Request for Reconsideration completed by the GP and dated August 14, 2017.

Diagnoses

In the MR, the GP diagnosed the appellant with arthritis (shoulders, elbows, wrists, hips, knees, ankles and back) with an onset in 2015, and diabetes with an onset in 2011. The appellant is also diagnosed with depression and anxiety, with an onset in 2016. In the AR, where asked to describe the mental or physical impairments that impact the appellant's ability to manage daily living activities, the GP responded "...arthritis, depression and anxiety."

Duration

In the MR, regarding the degree and course of the impairment, the GP indicated a "yes" response to the question whether the appellant's impairment is likely to continue for two years or more and wrote "options for improved pain management. Plan to refer to OA [osteoarthritis] clinic."

In the Request for Reconsideration, the GP wrote that she "cannot with certainty know if he will improve within 2 years. Possibly he will not."

Physical Impairment

In the MR and AR, the GP reported that:

- In terms of health history, "starting in 2015 patient developed knee and ankle pain, progressed to include back, shoulder, elbows, hips and wrist. He has come in 4 times for this issue over past 2 years. X-Rays in 2017 confirm OA in spine, hips and knees. Other joints not imaged. Lumbar spine- disc space narrowing, mild, acetabular osteophytes; knee- patellar osteophytes. Exam in office normal. Pain control measures- [over-the-counter analgesics] ice, heat. Impairment results from pain limiting patient activity. See report that follows. Diabetes- not currently managed optimally. Blood sugars very high likely contributing to cognitive problems."
- The appellant does not require an aid for his impairment.
- In terms of functional skills, the appellant can walk less than one block unaided, lift under 2 kg. (under 5 lbs.), remain seated less than 1 hour, and cannot climb any stairs unaided.
- In the additional comments to the MR, the GP wrote that over the past year there has been an "increase in pain and dysfunction due to arthritis."
- The appellant is assessed as independent with all aspects of mobility and physical ability. The GP also assessed the appellant as taking 3 times longer than typical with walking indoors and walking outdoors, climbing stairs and standing. The appellant is assessed as requiring continuous assistance from another person with lifting and with carrying and holding, with the comment "needs son's help."

In the Request for Reconsideration, the GP reported that the appellant “is severely disabled approximately 4 days a month when he requires continuous assistance from his son for carrying, lifting, getting groceries, preparing meals. The rest of the month he has pain and moderate disability as described.”

In his self-report, the appellant wrote that:

- He has severe pain in his low back, knees, and ankles. He has severe and chronic pain throughout his body all day.
- He has trouble sleeping because the pain wakes him up a few times during the night.
- Most days, his pain is so severe he can only stand for up to 10 minutes at a time. He must then sit or lie down for up to 20 minutes and apply ice.
- He can only walk up to one block. He must then sit and rest for 15-20 minutes because of the severe pain in his low back and knees.
- He has pain in his shoulders, elbows and wrists and it is very difficult to lift and carry groceries.

Mental Impairment

In the MR and AR, the GP reported:

- The appellant does not have difficulties with communication.
- The appellant has significant deficits with cognitive and emotional function, which have not been identified.
- In the additional comments to the MR, the GP wrote: “severe progression of depression and anxiety over past year.”
- The appellant has a poor ability to communicate in all areas, specifically: speaking (note: “poor concentration”), reading (note: “can’t focus”), writing and hearing.
- There are major impacts to the appellant’s daily cognitive and emotional functioning in the areas of bodily functions, consciousness, emotion, memory and motivation. There are also moderate impacts in the areas of insight and judgment, attention/concentration, and executive. The remaining areas of functioning have no impact. The GP commented: “sleep poor due to constant pain, severe symptoms, affecting hygiene, ability to focus, complete tasks.”
- For social functioning, the appellant requires periodic support/supervision in all assessed areas, specifically: making appropriate social decisions (note: “3 times longer, loss of interest in all aspects of life”), developing and maintaining relationships (note: “severe pain”), interacting appropriately with others (note: “isolated to house, rarely leaves”), and dealing appropriately with unexpected demands. There was no assessment of the appellant’s ability to secure assistance from others.
- The appellant has marginal functioning in both his immediate and extended social networks, with no comments added by the GP.
- Where asked to describe the support/supervision required to help maintain the appellant in the community, the GP left this section incomplete.

In the Request for Reconsideration, the GP reported that:

- His communication is impaired due to poor concentration and focus as a result of his depression.
- While his blood sugars are high, the underlying cause is likely his depression.
- His motivation is severely impaired due to depression, most days he does not leave the house or just go for a short walk and nothing else.

In his self-report, the appellant wrote:

- He is socially isolated in his home because of his chronic pain. This has contributed to his depression and anxiety.
- When his pain is severe, he cannot concentrate on verbal conversation or participate in conversations with family members.

Daily Living Activities (DLA)

In the MR and AR the GP indicated that:

- The appellant has not been prescribed any medication and/or treatments that interfere with his ability to perform DLA.
- The appellant is independent and also takes 3 times longer than typical with walking indoors and walking outdoors.
- The appellant is independent and also takes 3 times longer with every task of all the listed DLA, specifically: the personal care DLA (note: “due to anhedonia and/or pain”), the basic housekeeping DLA, the shopping DLA (note: “or needs son when acutely unwell”), the meals DLA (note: “needs son when unwell”), the pay rent and bills DLA (note: “landlord comet to apt. [apartment] to collect rent”), the medications DLA (note: “son drops off”), and the transportation DLA.
- The GP added a comment: “when unwell needs son to help.”

In the Request for Reconsideration, the GP reported that:

- The appellant “is severely disabled approximately 4 days a month when he requires continuous assistance from his son for carrying, lifting, getting groceries, preparing meals. The rest of the month he has pain and moderate disability as described.”
- “To clarify”, the appellant “is requiring extensive assistance from his son for all DLA about 4 days per month.”
- When severely disabled, the appellant requires significant help from his son for all DLA.

In the letter dated January 16, 2017, the GP wrote that the appellant was assessed and he is unable to do “physical work” due to knee, back and ankle pain.

In his self-report, the appellant wrote:

- He has pain in his shoulders, elbows and wrists and it is very difficult to lift and carry groceries.
- For his personal care, he has difficulty with most tasks and when his pain is severe, he spends all day in bed.
- For meal preparation and cooking, he relies on the continuous support of his son.
- He cannot lift a pot/pan from the cupboard to the stove and he can only stand for up to 10 minutes at a time.
- He relies on the continuous support of his son for housework and laundry. He cannot stand long enough to clean the bathroom/kitchen or to vacuum his home.
- He relies on the continuous support of his son for shopping. He uses the shopping cart as support to walk around the grocery store and must take many breaks. He cannot lift medium to heavy items into the shopping cart.
- His son drops off all the prescriptions and picks them up.
- Getting in and out of a car is extremely painful and he cannot walk to the bus stop or get on/off the bus. He gets nervous in the general public.
- Sometimes payment of his rent is delayed because he is unable to go to the bank due to his pain. He relies on the continuous support from his son to pay his bills.
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Need for Help

In the AR, the GP reported that the appellant receives help for DLA from his family and that his “son helps out when needed.” In the section of the AR for indicating the assistance provided through the use of assistive devices, the GP did not identify any of the listed items and crossed this section of the AR out as not being applicable to the appellant.

Appellant’s additional information

In his Notice of Appeal dated September 7, 2017, the appellant expressed his disagreement with the ministry’s reconsideration decision and wrote that he disagrees because:

- He is “severely disabled, just not continuously.”
- He is severely disabled 4 days per month on average where he requires continuous assistance from his son for all of his activities such as carrying, lifting, getting groceries, and preparing meals.
- His depression also results in severe disability due to his poor motivation and concentration.

Prior to the hearing, the appellant also provided a letter dated September 24, 2017 in which he wrote that “currently due to severe health-related problems” he is unable to work. He is also suffering from back, ankle, knee and shoulder pain that has severely affected his mobility.

The ministry relied on its reconsideration decision as the ministry’s submission in the appeal.

The panel considered that there was no additional information for which a determination of admissibility was required under Section 22(4)(b) of the *Employment and Assistance Act*.

PART F – Reasons for Panel Decision

The issue on the appeal is whether the ministry's reconsideration decision, which found that the appellant is not eligible for designation as a person with disabilities (PWD), was reasonably supported by the evidence or was a reasonable application of the applicable enactment in the circumstances of the appellant. The ministry found that the appellant does not have a severe mental or physical impairment that, in the opinion of a medical practitioner, is likely to continue for at least 2 years. The ministry also found that his daily living activities (DLA) are not, in the opinion of a prescribed professional, directly and significantly restricted either continuously or periodically for extended periods and that, as a result of those restrictions, it could not be determined that the appellant requires the significant help or supervision of another person, the use of an assistive device, or the services of an assistance animal to perform DLA.

The criteria for being designated as a PWD are set out in Section 2 of the EAPWDA as follows:

Persons with disabilities

2 (1) In this section:

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

"daily living activity" has the prescribed meaning;

"prescribed professional" has the prescribed meaning.

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

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

(b) in the opinion of a prescribed professional

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

(A) continuously, or

(B) periodically for extended periods, and

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

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

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

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

(i) an assistive device,

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

(iii) the services of an assistance animal.

(4) The minister may rescind a designation under subsection (2).

The EAPWDR provides as follows:

Definitions for Act

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

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

(i) prepare own meals;

(ii) manage personal finances;

(iii) shop for personal needs;

(iv) use public or personal transportation facilities;

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

(2) For the purposes of the Act, "**prescribed professional**" means a person who is

(a) authorized under an enactment to practise the profession of

- (i) medical practitioner,
- (ii) registered psychologist,
- (iii) registered nurse or registered psychiatric nurse,
- (iv) occupational therapist,
- (v) physical therapist,
- (vi) social worker,
- (vii) chiropractor, or
- (viii) nurse practitioner, 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.

Part 1.1 — Persons with Disabilities

Alternative grounds for designation under section 2 of Act

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

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

Duration

Section 2(2)(a) of the EAPWDA requires that a medical practitioner or a nurse practitioner provide an opinion that the appellant's impairment is likely to continue for at least two years. In the reconsideration decision, the ministry acknowledged that, in response to the question in the PR whether the appellant's impairment is likely to continue for two years or more, the GP responded "yes" and wrote: "options for improved pain management. Plan to refer to OA clinic." However, the ministry also reasonably considered the report by the GP in the Request for Reconsideration that she "...cannot with certainty know if he will improve within 2 years. Possibly he will not," and found that the information provided by the GP is unclear. The MR was completed in April 2017 and the Request for Reconsideration is dated 4 months later, in August 2017, during which time some of the options recommended by the GP for improved pain management may have been explored; however, there was no additional information provided on the appeal to elaborate on or clarify the GP's assessment. As the information provided by the medical practitioner raised doubt about the likely duration of the impairment and suggested that there may be improvement within 2 years, the panel finds that the ministry's determination that the medical practitioner had not confirmed that the appellant's impairment will likely continue for two or more years from the date of the application, as required by Section 2(2)(a) of the EAPWDA, was reasonable.

Severe Physical Impairment

In the reconsideration decision, the ministry was not satisfied that the information provided establishes a severe physical impairment. The ministry acknowledged that the GP diagnosed arthritis in the appellant's shoulders, elbows, wrists, hips, knees, ankles and back since 2015 and diabetes since 2011 and noted that the GP commented that the X-Rays in 2017 confirm OA in spine, hips and knees and the other joints were not imaged. The ministry noted that the GP commented that the diabetes is not managed optimally and that, in the last year, there has been an increase in pain and dysfunction due to arthritis. The ministry wrote that the inconsistencies between the information provided by the GP in the PWD application and in the Request for Reconsideration made it difficult to develop a clear and coherent picture of the degree of the appellant's impairment. The ministry also wrote that the appellant's self-report provides a description of a much more severe level of impairment than described by the GP in either report and the ministry had placed more weight on the GP's evidence. The GP's comments in the Request for Reconsideration that the appellant "is severely disabled approximately 4 days a month" and "the rest of the month he has pain and moderate disability as described," may account for the appellant's description if considered as reflecting his functioning on one of the 4 days of more pronounced restriction.

A diagnosis of a serious medical condition does not in itself determine PWD eligibility or establish a severe impairment. An "impairment" is a medical condition that results in restrictions to a person's ability to function independently or effectively or for a reasonable duration. To assess the severity of an impairment, the ministry must consider the nature of the impairment and the extent of its impact on daily functioning.

The ministry reasonably considered the impacts of the appellant's diagnosed medical condition on his daily functioning, beginning with the assessments provided in the MR and in the AR. The ministry considered that the GP assessed the appellant's functional skills as being able to walk less than one block unaided, lift under 5 lbs., remain seated less than 1 hour, and cannot climb any stairs unaided. The ministry considered the GP's assessment in the AR of independence with all aspects of mobility and physical ability, although the appellant takes significantly ("3 times") longer with most aspects, specifically: walking indoors and walking outdoors, climbing stairs, and standing. The ministry reasonably considered that there is no comment provided by the GP to explain how the appellant takes 3 times longer with standing, or to explain the inconsistency between an assessment of an inability to climb stairs unaided in the MR and the indication of the appellant's independence with

climbing stairs in the AR. The ministry noted that the appellant does not require an aid for his impairment and he performs his mobility without the assistance of another person or the use of an assistive device, such as a cane or a walker. The GP assessed the appellant as both independent and as requiring continuous assistance from another person with lifting and with carrying and holding, with the comment “needs son’s help” and the ministry pointed out the inconsistency. Given the GP’s comments about the appellant’s increased restrictions for 4 days per month, this inconsistency may relate to the difference between one of the appellant’s “good” days, where he is independent with his mobility and physical ability and a “bad” day, when he takes longer and requires assistance.

In his self-report, the appellant wrote that he has severe and chronic pain throughout his body all day and he has trouble sleeping because the pain wakes him up a few times during the night. The appellant wrote that “most days” his pain is so severe he can only stand for up to 10 minutes at a time. He must then sit or lie down for up to 20 minutes and apply ice. The appellant wrote that he can only walk up to one block and then he must then sit and rest for 15-20 minutes because of the severe pain in his low back and knees. The pain in his shoulders, elbows and wrists make it very difficult to lift and carry groceries. In his Notice of Appeal, the appellant wrote that he is “severely disabled, just not continuously” and he acknowledged that he is severely disabled 4 days per month on average where he requires continuous assistance from his son for all of his activities such as carrying, lifting, getting groceries, and preparing meals.

For the ministry to be “satisfied” that an impairment is severe, the panel considers it reasonable for the ministry to expect that the information provided by the medical practitioner and prescribed professional presents a comprehensive overview of the nature and extent of the impacts of the medical conditions on daily functioning, including by providing the explanations, descriptions or examples in the spaces provided in the MR and in the AR forms.

Given the GP’s assessment of independence with all aspects of mobility and physical ability as well as the report of limited activity tolerance during acute episodes of pain for 4 days per month and “moderate” disability for the rest of month, the panel finds that the ministry reasonably determined that there is not sufficient evidence to establish that the appellant has a severe physical impairment under Section 2(2) of the EAPWDA.

Severe Mental Impairment

In the reconsideration decision, the ministry was not satisfied that the information provided was sufficient evidence to establish that the appellant has a severe mental impairment. The ministry considered that the GP diagnosed depression and anxiety since 2016 and reported that there has been “severe progression of depression and anxiety over past year.” The ministry also considered that the GP indicated that the appellant has significant deficits without specifying which areas are impacted, but also reported that there are major impacts to the appellant’s daily cognitive and emotional functioning in the areas of bodily functions, consciousness, emotion, memory and motivation. There are moderate impacts assessed in the areas of insight and judgment, attention/concentration, and executive, and no impact to the remaining areas of functioning. The GP commented: “sleep poor due to constant pain, severe symptoms, affecting hygiene, ability to focus, complete tasks.”

In the Request for Reconsideration, the GP reported that while the appellant’s blood sugars are high, the underlying cause is likely his depression, and his motivation is “severely impaired” due to depression. The GP wrote that “most days” the appellant does not leave the house or he just goes for a short walk and nothing else. The ministry considered that the GP’s description differs from the assessment in the PWD application and no information was provided by the GP to explain this discrepancy or suggest that the appellant’s condition has worsened since the application was

originally completed. The appellant wrote in his self-report that he is socially isolated in his home because of his chronic pain and this has contributed to his depression and anxiety. The ministry considered that the GP wrote in the Request for Reconsideration that the appellant is “severely disabled” just 4 days per month and found that, otherwise, his impairment is described as “moderate.”

Considering the two “social functioning” DLA that are specific to mental impairment – make decisions about personal activities, care, or finances (*decision making*), and relate to, communicate or interact with others effectively (*relate effectively*), the panel finds that the ministry reasonably concluded that there is insufficient evidence to establish that the appellant is significantly restricted. Regarding the ‘decision making’ DLA, the GP reported in the AR that the appellant independently manages all decision-making components of DLA but he takes 3 times longer than typical, specifically with: personal care (regulate diet- “due to anhedonia and/or pain”), shopping (making appropriate choices and paying for purchases), meals (meal planning and safe storage of food), pay rent and bills (including budgeting), medications (taking as directed and safe handling and storage), and transportation (using transit schedules and arranging transportation). The GP commented that the appellant needs his son’s assistance “when acutely unwell,” and that his landlord comes to his apartment to collect the rent. The GP and the appellant agree that the frequency of exacerbations to the appellant’s condition is for 4 days each month, although neither described whether these days typically occur consecutively or throughout the month. The GP reported in the AR that the appellant requires periodic support/supervision with making appropriate social decisions, and the GP wrote: “3 times longer, loss of interest in all aspects of life,” without specifying how often he requires support/supervision in this area.

Regarding the DLA of ‘relating effectively’ with others, the GP assessed the appellant as requiring periodic support/supervision with developing and maintaining relationship, noting “severe pain,” and with interacting appropriately with others, noting “isolated to house, rarely leaves.” The ministry considered that the GP indicated that the appellant has marginal functioning in both his immediate and his extended social networks, and wrote that the GP did not provide an explanation, did not report a safety issue, and did not indicate any support/supervision required to maintain the appellant in the community.

The ministry wrote that the GP reported in the MR that the appellant has no difficulties with communication and, in the AR, the GP assessed the appellant with a poor ability to communicate in all areas of speaking, reading, writing, and hearing, as he has: “poor concentration can’t focus.” The ministry found that this discrepancy made it difficult to assess the appellant’s ability to communicate. In the Request for Reconsideration, the GP reported that the appellant’s communication is impaired due to poor concentration and focus as a result of his depression. In his self-report, the appellant wrote that when his pain is severe, he cannot concentrate on verbal conversation or participate in conversations with family members. The appellant also wrote in his Notice of Appeal that he is severely disabled 4 days per month on average when he requires assistance from his son, and that his depression “also” results in severe disability due to his poor motivation and concentration.

Given the discrepancies in the information from the GP regarding impacts to the appellant’s cognitive and emotional functioning and the lack of clarifying information regarding possible exacerbations to his functioning, and the insufficient evidence to establish that the appellant is significantly restricted with the two DLA specific to a severe mental impairment, the panel finds that the ministry reasonably determined that a severe mental impairment was not established under Section 2(2) of the EAPWDA.

Restrictions in the ability to perform DLA

In the reconsideration decision, the ministry was not satisfied that the appellant has a severe physical or mental impairment that, in the opinion of the prescribed professional, directly and significantly restricts DLA either continuously or periodically for extended periods of time.

According to the legislation, Section 2(2)(b) of the EAPWDA, the ministry must assess direct and significant restrictions to DLA in consideration of the opinion of a prescribed professional, in this case the appellant's GP. This does not mean that the other evidence is not factored in as required to provide clarification of the professional evidence, but the legislative language makes it clear that a prescribed professional's evidence is fundamental to the ministry's determination as to whether it is "satisfied." Therefore, the prescribed professional completing the assessments 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 the reconsideration decision, the ministry reviewed the information provided in the MR and noted that the GP indicated that the appellant has not been prescribed medications and/or treatments that interfere with his ability to perform DLA. The ministry considered that the GP indicated in the AR that the appellant is independent and also takes 3 times longer than typical with every task of all the listed DLA, specifically: the move about indoors and outdoors DLA, the personal care DLA (note: "due to anhedonia and/or pain"), the basic housekeeping DLA, the shopping DLA, the meals DLA, the pay rent and bills DLA (note: "landlord comet to apt. [apartment] to collect rent", the medications DLA (note: "son drops off"), and the transportation DLA. The ministry considered that a "blanket" assessment that the appellant requires 3 times longer completing DLA is not helpful for the ministry to determine the nature of specific restrictions and how the restriction is related to the impairment. The GP added a comment to the assessment of DLA: "when unwell needs son to help," and the panel finds that the ministry reasonably concluded that there is not sufficient information provided to clarify the assessment. The panel finds the absence of detail from the GP makes it particularly difficult to determine if the assessment to the appellant's ability to perform his DLA is meant to reflect his functioning on a "good" day or on a "bad" day, or on both.

Section 2(2) of the EAPWDA requires that a severe impairment directly and significantly restricts the appellant's ability to perform the prescribed DLA either continuously or periodically for extended periods. The direct and significant restriction may be either continuous or periodic. If the restriction is periodic, it must be for an extended time. Inherently, any analysis of periodicity must also include consideration of the frequency. All other things being equal, a restriction that only arises once a year is less likely to be significant than one which occurs several times a week. Accordingly, in circumstances where the evidence indicates that a restriction arises periodically, it is appropriate for the ministry to require evidence from the prescribed professional of the duration and frequency of the restriction in order to be "satisfied" that this legislative criterion is met.

In the Request for Reconsideration, the GP reported that the appellant "is severely disabled approximately 4 days a month when he requires continuous assistance from his son for carrying, lifting, getting groceries, preparing meals. The rest of the month he has pain and moderate disability as described." The GP emphasized that the appellant "...is requiring extensive assistance from his son for all DLA about 4 days per month." In his self-report, the appellant described the extensive assistance required from his son with many DLA, and he agreed in his Notice of Appeal that he requires this level of assistance an average of 4 days per month. The ministry acknowledged that the appellant is significantly restricted from performing his DLA approximately 4 days per month and that he requires periodic assistance from another person. The panel finds that the ministry reasonably concluded that 4 days per month does not represent periodic restrictions with performing DLA "for

extended periods of time,” particularly as there is no information about the pattern of these 4 days each month, whether consecutive or intermittent.

Prior to the hearing, the appellant provided a letter dated September 24, 2017 in which he wrote that “currently due to severe health-related problems” he is unable to work. In the letter dated January 16, 2017, the GP wrote that the appellant was assessed and he is unable to do “physical work” due to knee, back and ankle pain. As for finding work and/or working, the panel notes that employability is not a criterion in section 2(2) of the EAPWDA nor is it listed among the prescribed daily living activities in section 2 of the EAPWDR.

Given the GP’s report of the appellant’s independence with all tasks of DLA and the lack of a clear description of the appellant’s restrictions on either a good or a bad day, the panel finds that the ministry reasonably determined that the evidence is insufficient to show that the appellant’s overall ability to perform his DLA is significantly restricted either continuously or periodically for extended periods, pursuant to Section 2(2)(b)(i) of the EAPWDA.

Help to perform DLA

In the reconsideration decision, the ministry held that, as it has not been established that DLA are significantly restricted, it cannot be determined that significant help is required. Section 2(2)(b)(ii) of the EAPWDA requires that, as a result of being directly and significantly restricted in the ability to perform DLA either continuously or periodically for extended periods, a person must also require help to perform those activities. That is, the establishment of direct and significant restrictions under section 2(2)(b)(i) is a precondition of meeting the need for help criterion. Help is defined in subsection (3) as the requirement for an assistive device, the significant help or supervision of another person, or the services of an assistance animal in order to perform a DLA.

While the GP indicated that the appellant receives help from his family, that his “son helps out when needed,” and that he does not require any assistive devices, as the ministry reasonably determined that direct and significant restrictions in the appellant’s ability to perform DLA have not been established, the panel finds that the ministry also reasonably concluded that, under section 2(2)(b)(ii) of the EAPWDA, it cannot be determined that the appellant requires help to perform DLA.

Conclusion

Having reviewed and considered all of the evidence and relevant legislation, the panel finds that the ministry’s reconsideration decision, which determined that the appellant was not eligible for PWD designation since the evidence does not satisfy all of the criteria in Section 2(2) of the EAPWDA, was reasonably supported by the evidence, and therefore confirms the decision. The appellant’s appeal, therefore, is not successful.