PART C – Decision under Appeal

The decision under appeal is the Ministry of Social Development and Poverty Reduction (the ministry) reconsideration decision dated August 23, 2017 that found that the appellant did not meet two of the five statutory requirements of Section 2 of the *Employment and Assistance for Persons with Disabilities Act* for designation as a person with disabilities (PWD). The ministry found that the appellant met the age requirement and that he has a severe mental impairment, though not a severe physical impairment, which, in the opinion of a medical practitioner, is likely to continue for at least two years.

However, the ministry was not satisfied that the evidence establishes that:

- 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

Although the hearing had been adjourned in part to allow the appellant to have an advocate attend the hearing to represent him, the appellant advised that the advocate was not available and he wished to proceed with the hearing, with his brother to act as his representative.

The evidence before the ministry at the time of the reconsideration decision included the Person With Disabilities (PWD) Application comprised of the applicant information and self-report April 24, 2017, a medical report (MR) and an assessor report (AR) both dated April 25, 2017 and completed by a general practitioner (GP) who has known the appellant since February 2000 and has seen him 11 or more times in the past year.

The evidence also included the following documents:

1) A referral to a spirometry laboratory dated March 23, 2017 for long-term COPD; and,
2) Request for Reconsideration dated July 25, 2017.

Diagnoses

In the MR, the appellant was diagnosed by the GP with Chronic Obstructive Pulmonary Disease (COPD), chronic neck and back pain, major depressive disorder, and generalized anxiety disorder, with no dates of onset provided. In the AR, when asked to describe the mental or physical impairments that impact the appellant's ability to manage daily living activities, the GP wrote: "hx [history] of asthma, COPD, brain injury, chronic hip and back pain, insomnia, depression and anxiety."

Physical Impairment

In the MR and AR, the GP reported that:

- In terms of health history, the appellant has "severe COPD with spirometry findings supportive. Gross shortness of breath (SOB). Chronic pain in neck and back moderate to severe impairment."
- The appellant does not require an aid for his impairment.
- In terms of functional skills, the appellant can walk less than one block unaided, climb 5 or more steps unaided, lift under 2 kg. (under 5 lbs.), and has no limitation with remaining seated.
- In the additional comments to the MR, the GP wrote "gross chronic neck and back pain. Severe COPD and smoking addiction with SOB."
- The appellant is assessed as independent with all aspects of mobility and physical ability and the GP commented "mobility and physical ability all limited due to chronic back and hip pain-medication is being used as needed." The GP also commented regarding the appellant's ability to walk indoors that he has "continual pain due to weak left hip" and regarding his walking outdoors that this is "limited, only short distances." Regarding climbing stairs, the GP wrote: "limited, due to pain and SOB", and for standing he commented "for 10 minutes at a time due to ongoing pain." For both lifting and carrying and holding, the GP wrote: "limited due to pain."

In his self-report, the appellant wrote that:

- He has had asthma since he was very young, which has progressed to COPD.
- He had surgery with complications that, over time, became clear that he had sustained damage.
- He had a car accident which led to his neck and back issues.
- His asthma and COPD leave him with limited energy.
- His car accident has put him in constant back, neck and hip pain.

Daily Living Activities (DLA)

In the MR and the AR, the GP reported:

- The appellant has not been prescribed any medication and/or treatments that interfere with his ability to perform DLA.
- The appellant is independent with walking indoors and walking outdoors.
- The appellant is independently able to perform every task of the personal care DLA, the shopping DLA, the meals DLA, and the transportation DLA.
- For the basic housekeeping DLA, the appellant takes longer than typical with laundry and with basic housekeeping, and the GP wrote: "rests are needed every 10 to 15 minutes due to pain and SOBOE [shortness of breath on exertion]."
- Regarding the shopping DLA, the GP wrote that although the appellant is independent with the task of carrying purchases home, it is for "only short distances."
- For the pay rent and bills DLA, the appellant requires periodic assistance from another person with all tasks, including banking and budgeting. The GP wrote that "given stress in regards to the finances [the appellant] copes by avoiding, denying, or procrastinating."
- Regarding the medication DLA, the appellant requires periodic assistance from another person with all tasks, specifically filling/refilling prescriptions, taking as directed, and safe handling and storage, with no further explanation or description provided by the GP.
- For the transportation DLA, the appellant is independent with all tasks and the GP noted that the appellant "continues to drive short distances."

In his self-report, the appellant wrote:

- He cannot perform even basic tasks for long.
- Very often even the simplest of daily task (dishes, cleaning house, etc.) causes him to use his inhaler and he has to slow down or stop for a while.
- He cannot read for more than 5 minutes. Assimilating information and focusing on a task is almost impossible.
- Doing household chores is manageable but has pain and weakness.
- Prolonged activity is impossible.
- His duties to care for his disabled son over the years have become more difficult, going from uncomfortable to very painful.

Need for Help

In the AR, the GP indicated that the help required for DLA is provided by family, friends and health authority professionals. Regarding the equipment or devices routinely used by the appellant, the GP wrote "N/A" or not applicable to the appellant.

Additional Information

In his Notice of Appeal dated August 22, 2017, the appellant expressed his disagreement with the ministry's reconsideration decision and wrote that his ailments do directly and significantly restrict daily living and he does need assistance daily due to his medical issues.

Prior to the hearing, the appellant provided additional documents as follows:

1) Questionnaire dated September 26, 2017 in which the GP indicated:
    - Regarding the appellant's physical impairment, that "COPD is a very major issue. Severe shortness of breath with activity especially. Continued cigarette smoking addiction worsens his breathing. Neck and back pain daily and chronic. Exacerbated by any activity."

- With respect to how his performance affects his DLA, the GP wrote: “pt. [patient] by self-report states needs 15 to 30 minute breaks doing simple housework (i.e. dishes, sweeping, cleaning).
- When asked whether, overall, the appellant’s impairment significantly restricts his ability to perform a range of DLA on a continuous basis, or periodically for extended periods, the GP indicated both “continuously” and “periodically” and wrote: “continuous level of SOB, pain. SOBOE flares up symptoms requiring more breaks.”
- The GP agreed that the appellant requires significant help with DLA and wrote: “Intuitive to previous answers. Breaks are often and lengthy. More cognitive impairments have been well described in information provided. Memory declines by self report.”

2) Letter dated October 3, 2017 in which a chiropractor wrote:
   - The appellant presented to his clinic in March 2007 for injuries sustained in a motor vehicle accident (MVA) and was treated for a year for low back, mid back, and neck pain and had plateaued.
   - He reached 60% recovery at that time, with chronic adhesions restricting motion mostly in low back, sacroiliac joints, and hips. There is postural distortion and altered joint mechanics throughout his spine.
   - These injures have hindered his capacity for full-time and part-time employment.
   - The soft tissue injuries have increased the onset of degenerative joint disease, preventing physical lifting, bending, and twisting.
   - Due to time lapse and inability to afford continued treatment, his present day situation is grave.
   - His level of pain has increased with his work at home. He needs to rest after 30 minutes of household work due to VAS pain scale being a 9 out of 10. This makes it difficult to be a full-time care giver to his son.
3) Undated letter in which the appellant’s friend wrote:
   - He has known the appellant for more than 30 years.
   - The complication arising from minor throat surgery has had a profound effect on his overall health.
   - He has witnessed the deterioration in the appellant’s mental acuity as well as a slow decline in his physical health. This has resulted in an inability to hold any kind of steady employment.
   - While he would have hired the appellant in the past, his progressive state of forgetfulness and general cognitive impairment have made that untenable.
   - The appellant has forgotten songs that they have played together as musicians hundreds of times in the past.

At the hearing, the appellant provided a handwritten letter in which his wife wrote:

- She has been with the appellant for more than 35 years and has notice progressive changes in both his physical and mental health.
- The appellant has a hard time focusing on simple or hard tasks and she has to constantly remind him to do things like make phone calls, pay bills, errands, and even to go to sleep.
- She watches him to make sure he takes his medication because he often forgets. Bills are always paid late.
- When he goes shopping for groceries with a list, he comes back hours later with items not on the list.
- The appellant has to take long breaks (15 to 30 minutes) when cleaning or even doing dishes.
- In their son’s care, what used to take 1 hour now takes 2 hours, with frequent stops for rests due to chronic back pain and breathing problems (COPD).

- He has trouble falling and staying asleep and wakes up regularly in the night gasping and choking.
- Anything that requires multi-tasking is now almost completely impossible to achieve.

At the hearing, the appellant's brother stated:

- He is the appellant's younger brother and he remembers how the appellant used to be a "power house" physically and mentally. He was in top physical shape, being involved in various sports, and was mentally sharp.
- In December 1994, his brother went in to the hospital for a routine surgery in his neck and, due to what they believe was malpractice, the appellant ended up in a "code blue" situation going without oxygen for 4 to 5 minutes.
- Ever since that day in the hospital, they believe there was severe brain trauma due to the loss of oxygen.
- The appellant forgets to take action on important issues, like suing the hospital for his own injuries and also for injuries that his son sustained when in hospital. The limitation periods have now passed and this has affected their lives in significant ways.
- The appellant was in a MVA that furthered his deterioration. Now, every day is a struggle for him.
- With the lack of cognition, it is a miracle that the appellant remembers to take care of his son. He has to work as a team with his wife. They have been looking after their son at home on a full-time basis for about a year.
- It takes the appellant about an hour and a half to make a meal like spaghetti.
- If it takes an hour and a half for the appellant to wash the dishes, he may be "independent" but it takes so much longer that it is problematic.
- The appellant is not doing any housework other than clearing the path to get to their son. A photo on his cell phone shows the kitchen with boxes and items piled up all over the counters and floor and lots of clutter. He suggested to the appellant a year ago that he would help him clean up the kitchen but the appellant said he would do it.
- The appellant needs assistance with his DLA. He has to phone the appellant often to remind his to do his activities, whether things are getting done. The letter from the appellant's wife also shows that she has to remind him to pay bills, take his medications, and to get items on the shopping list.
- Although the doctor indicated the appellant requires periodic assistance with managing his medications and paying bills, the assistance that the appellant needs is actually continuous.
- The appellant does not do a consistent job of regulating his diet.
- The appellant likely has sleep apnea as he is often waking up at night.
- The appellant's friends are constantly taking care of him.
- It is part of the appellant's cognitive dissonance that may have resulted in the materials not being properly prepared at first. He believes that the PWD application was compromised because of the appellant's cognitive problems.
- The appellant told his doctor that he could get on and off of a chair with no problem but when he sees the appellant do so, he is stiff and groans in pain.
- The appellant has difficulty lifting more than 2 lbs. in weight.
- The appellant's condition is also getting worse. He has trouble sitting and going up and down stairs. His conditions are progressive, both physically and mentally.
- Regarding the appellant's social functioning, the doctor did not spend the time to evaluate this area. The appellant does not go out as often as he used to and he will arrive 2 hours late to events. He also forgets that he has already told a story and will tell it again within a couple of hours. He is compromised in his ability to function socially.

- In the AR, where the doctor indicated that his mobility and physical ability are all independent, he must have put on a “brave face” because they all take him significantly longer than typical.
- The appellant can walk for no longer than 5 minutes.

At the hearing, the appellant stated:

- He used to work two jobs, in sales and in security. He was quick-thinking and physically strong.
- He had gone into the hospital to have surgery to treat ‘diverticulitis’ in his throat, with a pouch where food would get caught, and he ended up with a hematoma and his breathing got worse. As he was not in the ICU, it took about 5 minutes and 55 seconds to get him to the part of the hospital where they could get oxygen into his system.
- His son is in bed 24 hours per day and he needs to handle his son physically. They have a care aid that comes to their home in the morning to help clean his son, but he must do the lifting and a “static hold” to allow this work to be done. Although this is painful for him, he does not want his son to feel like a burden. Either he or his wife has to be at home at all times to monitor their son.
- The care of his son is “physical” but it something he has to do and he gets through it awkwardly. He suffers from back pain because of his efforts but caring for his son is more important than his personal comfort.
- They do not get any help with housework, so both he and his wife take care of cleaning, such as dishes, sweeping, keeping the bathroom clean. His wife will wash the dishes if he does not get them done. They concentrate on the areas that “have to be clean” to care for their son. He supposes that he has gotten used to his place being a “disaster.”
- Everything hurts when he is doing tasks like washing dishes so he will sit down and stop for a rest. He will rest 2 or 3 times before he has completed washing the dishes. The length of his rest will depend on whether he is having trouble breathing or whether his back goes into spasm, which affects his whole back into his neck.
- He sleeps on the floor in the living room so that he can be “within ear shot” of his son’s bedroom. He does not get much sleep and has not had a solid 8 hours sleep in years. He probably has sleep apnea because he wakes up often coughing.
- It takes him a lot longer to do things than it used to. Something that used to take 2 hours now takes him 8 hours.
- He realized that there were pages in the PWD application that were not filled out and that he may have put on a “brave face” for the doctor. He does not want to admit how much he needs help. For the doctor to say that he could perform his DLA “independently” makes him think that he gave the doctor improper information. He likes to think of himself as being independent but he thinks he may be in denial of reality, especially based on what his friends say.
- He did not consult an advocate right away and he may have underestimated the difficulty he has doing his DLA.
- He is taking medication for depression but he was resistant to taking anything that might have stupefying effects. His wife needs to help him remember to take his medication and she now watches to make sure he takes them and “babysits” him. She views him as being volatile or disagreeable without the medications. If he was home alone, his medications would not be remembered.
- He “remembers” to take his medication for his COPD because he needs the inhaler to control an attack.
- The management of his finances is a “complete mess.” In the last 2 years, his phone service has been disconnected twice and his cable service has been disconnected 8 to 9 times for late payment. He is good at talking to them and getting the service re-connected but then he forgets to make the payment as part of the payment plan or arrangement made.

- If he is vacuuming or cleaning the floor, he has to stop and rest and he thought it was for only about 10 to 15 minutes, but he suspects that it may be longer than that.
- His back pain is at a pain level of 75 to 80 on a scale of 100 as the worse. His day-to-day living is painful and stressful, and his lungs are getting worse. His inhaler medications are not controlling his condition like they used to.
- He used to play music with his friend who wrote the letter and now he is forgetting how to play songs that were very familiar to him before.

At the hearing, the appellant's friend stated:

- He has known the appellant for about 15 years through their volunteering for a benevolent society. He knew that the appellant was not working and was having problems.
- He realized that the appellant needs a lot of help and he has helped him. He has come to the conclusion that the appellant is not employable.
- He has talked with the appellant and observed him and he realized that "mentally there was something wrong." He found out about the surgery at the hospital that had gone awry. He talked to a retired surgeon who acknowledged that the reports indicated the appellant had suffered brain damage. He understands the appellant still has a deviated esophagus.
- The appellant means well, but it is a huge challenge for him to get organized.
- He understands from one of the appellant's previous employers that the appellant had a very strong memory before and that he was "a different person" after the surgery.
- He has seen the appellant getting worse.
- His financial stuff is a disaster and, although he means to, he has trouble getting things done on time.
- He believes the appellant is physically and psychologically compromised. He is an asthmatic and he seems to have less control over this condition.
- When they are engaged in their volunteer work, he has observed that the appellant will work for about 10 to 15 minutes and then he will sit down for 30 minutes to rest. Over an 8 hour period, the appellant likely worked a total of about 2 hours. Sometimes his breaks would last 60 minutes. His lungs are terrible and are getting worse.
- If the appellant was able to get more support, it might allow him and his wife to get out and relieve their stress once in a while.
- The appellant collects things and there is only a small path in their house for them to be able to cook.
- The appellant used to do janitorial work at their benevolent society's lodge. Over time, he had to help the appellant more and more. The appellant was sitting down more and helping less. He once showed up 2 hours after an event started.
- There was a job opportunity that the appellant explored and he did not get because he showed up a day late for the scheduled interview. He has a "disconnect" with details.

At the hearing, another friend of the appellant stated:

- He has been friends with the appellant since 1985. His work gives him grounding in the area of disability.
- He sees that the appellant struggles to maintain a regular life. His house and his car look like a thrift store exploded inside.
- The appellant shows compulsive behavior whereby he cannot let go of things and gets into hoarding. He also obsesses over one small detail, such as when they are hosting a charitable event and the appellant obsesses over one task and loses sight of the overall goal. He will obsess over which shirt to wear and he is always dressed impeccably.
- He assessed that the appellant was not capable of the overall tasks involved in foster care.

- There are some things that the appellant does very well. His dishes will be very clean, but there will be things piled up and sitting around in his house. His house is full of unnecessary items. They have all tried to offer to clean out the clutter but the appellant keeps saying that he will get to it. The situation at his home is "grim."
- They are all getting older, but the appellant's lungs are "terrible." He wishes the appellant would quit smoking.
- The biggest change more recently is that the appellant needs to rest more often.

The ministry relied on its reconsideration decision as summarized at the hearing.

Admissibility of Additional Information

The ministry did not object to the admissibility of any of the additional documents submitted by the appellant, including the photograph viewed on his brother's cell phone, and did not raise an objection to the admissibility of the oral testimony on behalf of the appellant. The panel considered the information from the appellant as being in support of, and tending to corroborate, the impact from medical conditions referred to in the PWD application, which was before the ministry at reconsideration. Therefore, the panel admitted this oral testimony in accordance with 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 PWD designation, 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 has a severe physical impairment, though not a severe mental impairment, but his DLA are not, in the opinion of a prescribed professional, directly and significantly restricted either continuously or periodically for extended periods and that it could not be determined, as a result of those restrictions, 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).

At reconsideration, the ministry was satisfied that the information provided is sufficient evidence of a severe mental impairment. The panel considers it relevant to consider the severity of the appellant's physical impairment to determine how this impairment needs to be factored in when addressing the "Direct and significant restrictions in the ability to perform DLA" criterion discussed below.

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 COPD and chronic neck and back pain and noted that the GP commented that the appellant has "severe COPD," "gross SOB" and "…chronic pain in neck and back moderate to severe impairment." Provided with an opportunity to elaborate in the Questionnaire dated September 26, 2017, the GP wrote that "COPD is a very major issue. Severe shortness of breath with activity especially. Continued cigarette smoking addiction worsens his breathing. Neck and back pain daily and chronic. Exacerbated by any activity." In his self-report, the appellant wrote that his asthma and COPD leave him with limited energy. At the hearing, the appellant stated that his lungs are getting worse and his inhaler medications are not controlling his condition like they used to. The appellant stated that his back pain is at a pain level of 75 to 80 on a scale of 100 as the worse, and his day-to-day living is "painful and stressful." The appellant's brother and his friends all reiterated that the appellant's COPD has gotten worse and the medications are not controlling his condition as well, and that he is taking more frequent and longer breaks.

In the letter dated October 3, 2017, the chiropractor wrote that in 2008 the appellant, after treatment, had reached 60% recovery, with chronic adhesions restricting motion mostly in his low back, sacroiliac joints, and hips. The chiropractor wrote that soft tissue injuries have increased the onset of degenerative joint disease, preventing physical lifting, bending, and twisting and, due to time lapse and inability to afford continued treatment, the appellant's "…present day situation is grave."

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, climb 5 or more steps unaided, lift under 5 lbs., and has no limitation with remaining seated. The ministry noted that the appellant does not require an aid for his impairment. At the hearing, the appellant's brother stated that the appellant's condition has been getting worse and the appellant cannot walk for more than 5 minutes, he has trouble sitting for long, has difficulty with going up and down stairs and lifting more than 2 lbs. in weight.

The ministry considered the GP's assessment in the AR of independence with all aspects of mobility and physical ability and the GP's comment that the appellant's "…mobility and physical ability all limited due to chronic back and hip pain- medication is being used as needed." However, the ministry did not review the comments provided by the GP regarding each aspect, specifically: for walking indoors, that he has "continual pain due to weak left hip", and for walking outdoors, that the appellant is "limited, only short distances," and that this has been assessed as less than 1 block unaided. As well, climbing stairs is "limited due to pain and SOB", standing is "for 10 minutes at a time due to ongoing pain" and both lifting and carrying and holding are "limited due to pain." The evidence of the appellant and his brother and friends is that the appellant takes significantly longer than typical with all aspects of mobility and physical ability due to the SOB and pain he experiences, and the GP wrote in the Questionnaire that the appellant has "severe SOB with activity especially" and "neck and back pain …exacerbated by any activity," and the "…breaks are often and lengthy."

Given the GP's description of impacts to the appellant's mobility and physical ability, as a result of both COPD and neck and back pain, as set out in the AR and in the additional Questionnaire, as well as the additional evidence of the chiropractor and the observations of the appellant's brother and his friends, the panel finds that the ministry's determination that there is not sufficient evidence to establish that the appellant has a severe physical impairment under Section 2(2) of the EAPWDA was not reasonable.

Direct and Significant Restrictions in the ability to perform DLA

In the reconsideration decision, the ministry was satisfied that the appellant has a severe mental impairment. However, the determination that a person has a severe impairment does not itself determine eligibility for the PWD designation as Section 2(2)(b) of the EAPWDA requires that a *prescribed professional* provide an opinion that an applicant's severe impairment directly and significantly restricts his ability to perform DLA, either continuously or periodically for extended periods. For the purposes of the Act, "prescribed professional" includes a medical practitioner, registered psychologist, registered nurse or registered psychiatric nurse, occupational therapist, physical therapist, social worker, chiropractor, nurse practitioner, or a school psychologist. In this case, the GP and the chiropractor are the prescribed professionals.

According to Section 2(2)(b) of the EAPWDA, the ministry must assess direct and significant restrictions to the appellant's 'ability to perform DLA' in consideration of the opinion of a prescribed professional. 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 AR and highlighted that the GP reported that the appellant is independent with all of the tasks of several DLA, specifically with the personal care DLA, the shopping DLA, the meals DLA, the transportation DLA, and with social functioning. The ministry noted that the GP reported that the appellant does not use an assistive device to perform any of his tasks of DLA. The ministry went on to consider that the GP indicated that the appellant takes significantly longer to manage basic housekeeping and that the GP noted that "…rests are needed every 10 to 15 minutes due to pain and SOBOE," without an elaboration on how much longer it takes the appellant to complete the tasks of laundry and basic housekeeping.

In the Questionnaire, the GP wrote that the appellant "…by self-report states needs 15 to 30 minute breaks doing simple housework (i.e. dishes, sweeping, cleaning)." The appellant wrote in his self-report that very often even the simplest of daily task (dishes, cleaning house, etc.) causes him to use his inhaler and he has to slow down or stop for a while. The appellant also wrote that "doing household chores is manageable but has pain and weakness," and "prolonged activity is impossible" and his duties to care for his disabled son over the years have become more difficult, going from uncomfortable to very painful. In his October 3, 2017 letter, the chiropractor indicated that the appellant needs to rest after 30 minutes of household work "…due to VAS pain scale being a 9 out of 10" and that "…this makes it difficult to be a full-time care giver to his son."

At the hearing, the appellant stated that they do not get any help with housework, so both he and his wife take care of cleaning, such as dishes, sweeping, and keeping the bathroom clean. The appellant stated that "everything hurts" when he is doing tasks like washing dishes so he will sit down and stop for a rest. He will rest 2 or 3 times before he has completed washing the dishes and the

length of his rest will depend on whether he is having trouble breathing or whether his back is in spasm. At the hearing, the appellant stated that he does vacuum and wash the floor, but he has to stop and rest. The appellant's wife wrote in her letter that the appellant has to take long breaks (15 to 30 minutes) when cleaning or even doing dishes. The appellant stated that his wife will wash the dishes if he does not get them done. The appellant brother stated at the hearing that if it takes an hour and a half for the appellant to wash the dishes, he may be "independent" but it takes so much longer that it is problematic. One of the appellant's friends stated at the hearing that when they are engaged in their volunteer work, he has observed that the appellant will work for about 10 to 15 minutes and then he will sit down for 30 minutes to rest and sometimes his breaks would last as long as 60 minutes. The friend stated that the appellant's lungs are "terrible" and are getting worse. The appellant stated that he and his wife concentrate on the areas that "have to be clean" to care for their son, that they do what they "have to" do, and he supposes that he has gotten used to his place being a "disaster."

The appellant's brother stated that the appellant is not doing any housework other than clearing the path to get to their son. A photo on his cell phone showed the kitchen in the appellant's home with boxes and items piled up all over the counters and floor and lots of clutter. One of the appellant's friends stated that there are some things that the appellant does very well and his dishes will be very clean, for example, but there will be things piled up and sitting around in his house and his house is full of unnecessary items. The friend stated that they have all tried to offer to clean out the clutter but the appellant keeps saying that he will get to it and does not. The friend stated that he believes the appellant shows compulsive behavior whereby he cannot let go of things and gets into hoarding. However, the evidence of the appellant's apparent lack of motivation to perform the task of the basic housekeeping was not addressed by the GP or by another prescribed professional, such as one with expertise in mental health issues.

The ministry also considered that the GP assessed the appellant as requiring periodic assistance from another person with all of the tasks of the pay rent and bills DLA and the medications DLA, without providing information to explain the type, the degree, or the duration of the assistance that the appellant requires. The ministry pointed out that the GP provided no comments regarding the medications DLA and that the comment "…given stress in regards to the finances [the appellant] copes by avoiding, denying or procrastinating" does not specify how often the appellant requires assistance.

In her letter, the appellant's wife wrote that she watches the appellant to make sure he takes his medication because he often forgets and that bills are always paid late. At the hearing, the appellant stated that his wife needs to help him remember to take his medication and she "babysits" him and, if he was home alone, his medications would not be remembered. He "remembers" to take his medication for his COPD because he needs the inhaler to control an attack. The appellant stated at the hearing that the management of his finances is a "complete mess." In the last 2 years, his phone service has been disconnected twice and his cable service has been disconnected 8 to 9 times for late payment. The appellant stated that he is good at making an arrangement to get the service re-connected but then he forgets to make the payment as part of the payment plan. At the hearing, the appellant's brother stated that although the doctor indicated the appellant requires periodic assistance with managing his medications and paying bills, the assistance that the appellant needs is continuous.

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. 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.

Provided an opportunity to clarify his assessment in the Questionnaire, when asked whether the appellant's impairment significantly restricts his ability to perform a range of DLA on a continuous basis, or periodically for extended periods, the GP indicated both "continuously" and "periodically" and wrote: "…continuous level of SOB, pain" and "SOBOE flares up symptoms requiring more breaks." The GP agreed that the appellant requires significant help with DLA and wrote: "…breaks are often and lengthy," without specifying how often the appellant requires breaks. The GP also commented that the appellant's impairments are "more cognitive" and that they have been "well described in information provided."

Considering the two "social functioning" DLA that are specific to a severe 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 in either. Regarding the 'decision making' DLA, the GP reported in the AR that the appellant independently manages most decision-making components of DLA, specifically with: personal care (regulate diet), shopping (making appropriate choices and paying for purchases), meals (meal planning and safe storage of food), and transportation (using transit schedules and arranging transportation). At the hearing, the appellant's brother stated that the appellant does not do a consistent job of regulating his diet and making meals for himself, and that his wife wrote that he often makes errors in purchasing items on the shopping list; however, the GP as the prescribed professional assessed the appellant as independent in these aspects, with no comments to qualify his assessment. For the decision making components of pay rent and bills (including budgeting) and medications (taking as directed and safe handling and storage), the GP has not specified how often or for how long the appellant requires assistance from another person with these tasks. The GP reported in the AR that the appellant is independent with making appropriate social decisions, with no further comment by the GP.

Regarding the DLA of 'relating effectively' with others, the GP assessed the appellant as independent with developing and maintaining relationship and with interacting appropriately with others. The ministry considered that the GP indicated that the appellant has good functioning in both his immediate and his extended social networks. The GP reported in the MR that the appellant has cognitive difficulties with communication and, in the AR, the GP assessed the appellant with a poor ability to communicate in reading (note: "inability to focus for years"), writing (note: "sentence structure is almost impossible"), and hearing (note: "right ear hearing is poor"), and he has a good ability with speaking. At the hearing, the appellant's brother stated that the appellant's social functioning is compromised. He stated that doctor did not spend the time to evaluate this area of functioning, that the appellant does not go out as often as he used to, and he sometimes arrives 2 hours late to events. He also forgets that he has already told a story and will tell it again within a couple of hours. However, the GP did not elaborate on the appellant's ability to perform the two DLA specific to a person with a severe mental impairment, although provided an opportunity to do so in the Questionnaire.

At the hearing, the appellant's brother stated that it is part of the appellant's cognitive dissonance that may have resulted in the materials not being properly prepared at first, and he believes that the PWD application was compromised because of the appellant's cognitive problems. The appellant's brother pointed out that, in the AR, where the doctor indicated that the appellant's mobility and physical ability

are all independent, the appellant must have been putting on a "brave face" because all the activities take the appellant significantly longer than typical. The appellant stated at the hearing that, based on what his friends have said, he thinks he may have been in denial of the reality that he needs help. He likes to think of himself as being independent. He realized that there were pages in the PWD application that were not filled out and that he may have put on a "brave face" for the doctor. The appellant stated that for the doctor to say that he could perform his DLA "independently" makes him think that he gave the doctor improper information.

Given the GP's report that the appellant is independent with all of the tasks of several DLA, with no descriptive information from the GP regarding how much longer it takes the appellant with some tasks or how often there are exacerbations to his pain or SOB flare-ups, as well as the absence of evidence of significant restrictions to those DLA that relate to a person with a severe mental impairment, 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 reported that the appellant receives help for DLA from family, friends and health authority professions and the appellant's brother, wife, and friends described the assistance they provide, 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

The panel finds that the ministry's reconsideration decision, which determined that the appellant was not eligible for PWD designation pursuant to Section 2(2) of the EAPWDA, was reasonably supported by the evidence. The panel therefore confirms the ministry's decision. The appellant's appeal, therefore, is not successful.