

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 October 5, 2017, which held that the appellant did not meet 3 of the 5 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 a medical practitioner has confirmed that the appellant's impairment is likely to continue for at least 2 years.

However, the ministry was not satisfied that:

- 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 those restrictions, in the opinion of a prescribed professional, the appellant requires an assistive device, the significant help or supervision of another person, 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

Information before the ministry at reconsideration

- PWD application comprised of the appellant's Self-Report (SR) dated May 23, 2017, a Medical Report (MR) completed by the appellant's psychiatrist who has known the appellant since 2011 and seen him 11 or more times in the past 12 months and an Assessor Report (AR) completed by a Registered Nurse (RN) who has met the appellant once to complete this assessment. Both the MR and AR were dated June 16, 2017.
- Appellant's Personal Medication History dated from January 19, 2012 until May 28, 2017.
- Support Letter dated September 22, 2017 from the RN which confirms the appellant's diagnosis by the psychiatrist. The RN writes that the appellant's depression is prolonged and severe, it interferes with his ability to perform DLA and he is unable to maintain concentration. "He requires continuous assistance with personal self-care, meal preparation, medication management, basic housework, shopping, use of transportation, management of finances and social functioning. The psychiatrist has seen him for 6 years." The RN states that the appellant has total social isolation, his mother has come from out of town to care for him because he is in total collapse, church members have also helped him and many days he is not even out of bed. In her opinion the appellant has a very severe mental impairment.
- Appellant's Request for Reconsideration dated September 25, 2017.

In the Notice of Appeal dated October 18, 2017, the appellant writes that the only way he is able to survive is through assistance from his church because otherwise he is socially isolated. Poor memory puts him at risk to follow through or remember appointments, etc.

Diagnoses

In the MR, the psychiatrist diagnosed the appellant with Major Depressive Disorder, - recurrent/ severe. In the AR where asked to describe the appellant's mental or physical impairments that impact his ability to perform daily living activities, the RN wrote major Depressive Disorder – Severe.

Physical Impairment

In the MR, the psychiatrist reported that:

- In terms of health history, the appellant suffers from a major depressive disorder which has been recurrent and prolonged and severe enough that it has significantly interfered with his ability to perform daily living activities.
- For functional skills, the appellant can walk 4+ blocks unaided, climb 5+ steps unaided, and has no limitation to remain seated. While no lifting is indicated, it appears to be a typo as no lifting is indicated twice while no limitation is absent in this part of the report.

In the AR, the RN reported that the appellant is Independent in all areas of Mobility and Physical Ability to include; walking indoors and outdoors, with climbing stairs, standing, with lifting and carrying and holding.

Mental Impairment

In the MR, the psychiatrist reported:

- The appellant has no difficulties with communication.
- The appellant has significant deficits for his cognitive and emotional functioning in the areas of emotional disturbance, motivation and attention or sustained concentration. No significant deficits were reported for consciousness, executive, language, memory perceptual psychomotor, psychotic symptoms impulse control and motor activity.

In the AR, the RN reported:

- The appellant has a good level of ability to communicate in the area of hearing, while speaking is satisfactory, reading (very slow) and writing are poor.
- For the 13 /14 completed areas of the AR assessing impacts to cognitive and emotional functioning and social functioning, the RN indicates 9 major impacts with; bodily functions,, consciousness, emotion, impulse control, insight and judgement, attention/concentration, executive, memory and motivation, 2 moderate impacts with language and other neuropsychological problems and 1 minimal impact with motor activity.

Under comments it is noted that the appellant is awake from 1-5 am and up at 8 am.

In his Self-Report, the appellant has dictated the following information to his advocate:

- He has disrupted sleep, is on the edge of a nervous breakdown, his mom has flown out to help him find a place to rent and get organized.
- He has papers all over, has difficulty managing medications because he gets side tracked, has poor time management which means things get forgotten.
- Since the beginning of the month, 5 out of 7 days he has had major depression.
- He had a councillor at mental health but that broke down because he couldn't follow through with appointments, now on a list to get a new one.
- He sees his psychiatrist once a month and they are working on new medication.
- He goes through mood swings from high anxiety to despondent and it is not predictable.
- First suicide attempt at 16.

In his Notice of Appeal, the appellant writes that his poor memory puts him at risk to follow through and remember appointments, etc.

Daily Living Activities (DLA)

In the MR, the psychiatrist reports that the appellant has been prescribed medication that interferes with his ability to perform DLA. Noted is that it can slow down reaction time and that the anticipated duration of the medications is indefinite.

The psychiatrist also reports continuous restrictions in the appellant's ability to perform the following DLA: personal self -care, meal preparation, management of medications, basic housework, daily shopping, use of transportation, management of finances and social functioning – severe anxiety disorder prevents the appellant from functioning in social situations. Mobility inside and outside the home is not restricted.

In the AR, the RN reports:

- Under Personal care – dressing (some days), bathing (needs reminding), toileting, feeding self, regulating diet (once a day), transfers in/out of bed (many days doesn't get up) and transfers on/off chairs - are managed independently, while continuous assistance from another person is required for grooming.
- Basic housekeeping- laundry and basic housekeeping- is managed independently.
- Under Shopping – going to and from stores (very difficult, avoids it or takes a friend), reading prices and labels, making appropriate choices, paying for purchases and carrying purchases home - require continuous assistance from another person or unable (very difficult, avoids it or takes a friend).

- Under Meals - meal planning and food preparation (only when his son is visiting), - cooking (opens cans/sandwich, Kraft dinner). No indication of restriction is given for safe storage of food.
- Under Paying rent and bills - banking, budgeting and pay rent and bills - require continuous assistance from another person or unable.
- Under Medications – filling/refilling prescriptions, taking as directed and safe handling and storage - require continuous assistance from another person or unable.
- Under Transportation – getting in and out of a vehicle is indicated as being independent and under using public transit is noted that the appellant is too anxious to take the bus. There is no restriction indicated for using transit schedules and arranging transportation.
- Under Social Functioning the appellant is reported to require periodic support/supervision with appropriate social decisions (has a few friends who are very busy), ability to develop and maintain relationships, interact appropriately with others, ability to deal appropriately with unexpected demands and ability to secure assistance from others.
- Marginal functioning is reported with both immediate and extended social networks. (Functions better when his mother visits. Daily activities are very difficult.)

In his Self-Report the appellant states that:

- He gets stressed out about his poor ability to manage his household and imaginary conversations in his head make him anxious.
- Shopping is limited by anxiety, some days he can't do it at all. He is not able to maintain nutrition because he can't plan regularly and can go all day without eating, has a poor appetite due to depression.
- Laundry gets way behind and then he beats himself up for not doing it.
- Has anxiety in social situations - withdrawn, tends to sit in the corner.
- He can't keep track of finances.
- Depression affects his personal hygiene, doesn't care about anything.
- Has his own vehicle, couldn't cope with public transportation due to stress.

Need for Help

In the MR when asked "What assistance does your patient need with DLA?" the psychiatrist has no response.

In the AR, the RN indicates that some friends and his church help him under assistance provided by others. In the section of the AR relating to assistance provided through the use of assistive devices, the RN does not respond.

In his Notice of Appeal, the appellant writes that the only way he is able to survive is through assistance from his church because otherwise he is isolated.

Hearing

At the hearing the appellant's advocate presented the following:

1. E-Mail Letter from the appellant's mother dated November 6, 2017.

To Whom It May Concern:

As the appellant's mother, the following is information as I remember it about his mental health since he was a child.

- anxiety since a young lad about age 5 or 6 - mood swings since about age 12, 13 - attempted suicide age 15 with an overdose of over the counter drug - multiple cuttings throughout teen years - saw private specialist re possible diagnosis for ADHD - Dr. confirmed he didn't have, but he was deeply concerned saying he was very depressed - attempted suicide age 19 with an overdose of over the

counter drug - hard worker at different jobs since age 15, but struggles with anxiety and depression which caused many sick days and continues to this day - he has always made an effort to get to work or find a job, and employees always said when he was there, he was consistently a hard worker - many days he was unable to get out of bed and face people from teen years to today, sometimes for a week at a time which affected his ability to sustain employment, although has kept some for 1 - 2 years at a time - has always struggled with remembering appointments and information - was catatonic when there this summer - curled up in a ball, and shaking - was debilitated with the thought of moving - due to his illness, I had to do all the packing and cleaning getting ready to move, although no place had been found (we found an apartment 12 hours prior to having to move) - went to his Psychiatrist appointment with him to confirm his state, and Dr. confirmed that he was diagnosed with Severe Recurrent Depressive Disorder - when he went to his Psychiatrist appointment in August, he found out at the office that his doctor had moved out of town without informing him - struggles to remember to take his medication, which affects his ability to do normal activities - despite his best intentions and willingness to work, he is unable to cope with a job at this time.

2. Judicial Review summary: Hudson v. Employment and Assistance Appeal Tribunal, 2009 BCSC 1461.
3. Mayo Clinic: Definition of Clinical Depression

At the hearing, the appellant testified that he has not seen his psychiatrist since the MR was completed and has missed appointments with the psychiatrist as well as with a mental health councillor and is now waiting to be re-assigned to another mental health councillor. He is seeing his general practitioner - last week he saw him because of his migraines. The appellant stated that he could not fill out the application for PWD, although he started to, his mind shut down so he dictated the notes to his advocate. The appellant indicated that after his breakdown his mother spent a month with him from May through June and after she left he needed someone to check up on him and help around the house. Friends occasionally check up on him.

When asked how the appellant spends his day, he indicated that after 2-5 hours of sleep he gets up he makes a tea or coffee and mostly watches television or reads. He stated that 5 out of 7 days are bad. There were days when he does not get up at all. He tries to go out 1-2 times a week to meet with people who understand his problems but recently he did not get out of his house for 6-7 days in a row. Whenever he has a bad day he calls his parents and friends. When asked about the assistance he receives from friends and his church, the appellant stated that they visit him but that he does not ask for help with his DLA; their presence alone helps him to get his housework done.

The appellant stated that while he often wishes he was dead, because of his son he has not had any desire to attempt suicide. He takes his anti-depressant medication every day and his anti-anxiety medication as needed. In response to a question from the panel, the appellant indicated that recently he receives daily calls from his mother who reminds him to take his medication and that his parents help him financially with car insurance and bills when they can. He indicated that he needs his own car and can't cope with using public transit because figuring out schedules is too stressful and it is difficult for him to be in a crowd.

At the hearing, the ministry relied on its reconsideration decision.

Admissibility of information provided on appeal

Section 22(4) of the *Employment and Assistance Act* (EAA) provides that panels may admit as evidence (i.e. take into account in making its decision) the information and records that were before the minister when the decision being appealed was made and "oral and written testimony in support of the information and records" before the minister when the decision being appealed was made – i.e. information that substantiates or corroborates the information that was before the minister at

reconsideration. These limitations reflect the jurisdiction of the panel established under Section 24 of the EAA – to determine whether the ministry’s reconsideration decision is reasonably supported by the evidence or a reasonable application of the enactment in the circumstances of an appellant. That is, panels are limited to determining if the ministry’s decision is reasonable and are not to assume the role of decision-makers of the first instance. Accordingly, panels cannot admit information that would place them in that role.

The panel determined that the information in the Notice of Appeal and the letter from the appellant’s mother for the most part corroborated the information at reconsideration and was therefore admissible in accordance with Section 22(4) of the Employment and Assistance Act, as it was in support of the information at reconsideration.

The arguments of both parties are set out in Part F of this decision.

ATTACH EXTRA PAGES IF NECESSARY

PART F – REASONS FOR PANEL DECISION

The issue in this appeal is whether the ministry decision that determined that the appellant did not meet three of the five statutory requirements of Section 2 of the EAPWDA for designation as a person with disabilities (PWD) is reasonably supported by the evidence or is a reasonable application of the legislation in the circumstances of the appellant. The ministry found that the appellant met the age requirement and that the appellant's impairment is likely to continue for at least two years.

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

- the appellant has a severe physical or mental impairment;
- the appellant's 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.

The following Sections of the EAPWDA apply 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 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.

Severe Impairment

In the reconsideration decision, the ministry was not satisfied that the information provided establishes a severe physical or mental impairment. Determining a severe physical or mental impairment requires weighing the evidence provided against the nature of the impairment and its reported functional skill limitations. A diagnosis of a serious medical condition does not in itself determine PWD eligibility or establish a severe impairment. "Impairment" is a medical condition that results in restrictions to a person's ability to function independently or effectively for a reasonable duration. To assess the severity of impairment, the ministry must consider the nature of the impairment and the extent of its impact on daily functioning.

Severe Physical Impairment

Ministry Position

The ministry determined that the information provided in the appellant's PWD application by the psychiatrist does not describe a medical condition causing impacts to physical functioning and makes no other indication of limitations/restrictions in physical functioning. The RN indicates that the appellant is independent with all listed areas of mobility and physical ability. Based on the assessments provided by the appellant's psychiatrist and the RN in the PDW application and self-reports, a severe impairment of the appellant's physical functioning has not been established.

In the MR, the psychiatrist diagnosed the appellant with major depressive disorder, recurrent/severe. In the AR where asked to describe the appellant's mental or physical impairments that impact his ability to manage daily living activities, the RN wrote major depressive disorder- severe.

The MR indicates that the appellant's functional skills are: can walk 1 to 2 blocks unaided, climb 5+ steps unaided and no limitation to remain seated. In the AR the RN reports the appellant is independent with walking indoors and outdoors, with climbing stairs, standing, lifting, and carrying and holding.

Appellant's Position

The appellant and his advocate did not submit an argument for a severe physical impairment.

Panel Decision

Based on the above information, the panel finds that the evidence does not demonstrate that the appellant has limitations to his physical functioning. The panel also notes that the appellant did not present any arguments related to a severe physical impairment. The panel concludes that the ministry was reasonable to determine that the psychiatrist's assessment of current physical functioning does not reflect a severe physical impairment. Therefore, the panel finds that the ministry was reasonable in its determination that the evidence does not support a finding that the appellant suffers from a severe physical impairment pursuant to Section 2(2) of the EAPWDA.

Severe Mental Impairment

Ministry Position

The ministry determined that the information provided by the appellant's psychiatrist reports that the appellant has no difficulties with communication and has deficits with cognitive and emotional functioning in the areas of emotional disturbance, motivation and attention/sustained concentration. The ministry noted that no significant deficits were reported for consciousness, executive, language, memory perceptual psychomotor, psychotic symptoms impulse control and motor activity. The ministry also noted that the psychiatrist indicated that the appellant is restricted with social functioning – severe anxiety disorder prevents the appellant from functioning in social situations - but does not describe the frequency of restrictions to social functioning.

In the AR, the RN reported that the appellant has a good level of ability to communicate in the area of hearing, while speaking is satisfactory, reading (very slow) and writing are poor. The RN assessed major impacts to cognitive and emotional functioning in the areas of bodily functions, consciousness, emotion, impulse control, insight and judgement, attention/concentration, executive, memory and motivation; moderate impacts with language and other neuropsychological problems and a minimal impact with motor activity. The ministry noted that major impacts to cognitive and emotional functioning in the areas of consciousness, impulse control, executive and memory as indicated by the RN are not indicated by the psychiatrist as significant deficits to cognitive and emotional functioning. The ministry noted that the RN had met the appellant for the first time when completing the AR, whereas the psychiatrist has known the appellant since 2011 and seen him 11 or more times in the past 12 months; the ministry is inclined to place more emphasis on the assessments provided by the psychiatrist. Therefore, the minister is not satisfied that the information provided is evidence of a severe mental impairment.”

In the AR, the appellant was indicated to require periodic support/supervision with all listed areas of social functioning and to have marginal functioning with both his immediate and extended social networks. The ministry noted that the RN does not describe the frequency or duration of periodic support/supervision required and indicates that the appellant is provided assistance by friends. For these reasons and as there are no indication of safety issues with regards to social functioning, it is difficult to establish a severe impairment of mental functioning

based on the RN's assessment of social functioning. The ministry also noted that although the RN stated the appellant needs continuous assistance with social functioning in her letter, she had indicated periodic support/supervision with social functioning in the PWD application.

Upon review, the ministry acknowledged that the appellant experiences limitations to his cognitive and emotional functioning due to depression; however, based on the assessments provided in his PWD application and self-reports, the ministry finds that the appellant has a moderate as opposed to severe impairment of mental functioning.

Appellant's Position

The appellant's advocate argues that In *Hudson v. Employment and Assistance Appeal Tribunal*, 2009 BCSC 1461, the Supreme Court of BC made several findings with respect to the eligibility criteria for designation as a person with disabilities under the Employment and Assistance for Persons with Disabilities legislation. The Court held that:

An application is sufficient if: 1. Either the medical practitioner or the assessor confirms that a person's severe impairment directly and significantly restricts their ability to perform daily living activities. There is no statutory requirements for confirmation from both; Or 2. The medical practitioner and the assessor's evidence, when read together confirm that a person has a severe impairment that directly and significantly restricts their ability to perform daily living activities. There is no statutory basis for reading Parts 2 and 3 of the PWD application discretely.

The Ministry finding that the appellant has a moderate as opposed to severe impairment of mental functioning is refuted by the evidence of the applicant, the psychiatrist and the assessor. On his self-report, the appellant states "since the beginning of the month 5 days out of 7, | have had major depression." Neither the psychiatrist nor the assessor disputed this. Both the psychiatrist and the assessor have confirmed daily living activities are continuously restricted. In the Hudson decision it held that: "The ordinary meaning of the plural 'activities'....dictates that there must be evidence from a prescribed professional indicating a direct and significant restriction on at least two daily living activities." There is no statutory requirement that more than two daily living activities be restricted.

The appellant also argues that the assessor who is an RN and meets the definition of a "prescribed professional" under the legislation should have more emphasis given to her assessment by the ministry.

Panel Decision

Legislation requires that the minister must be satisfied that a person has a mental impairment that is severe. While the appellant indicated that because of his major depressive disorder, the only way he is able to survive is through assistance from his family, friends and church, the panel finds there is not sufficient evidence of a severe mental impairment; while the psychiatrist indicates deficits in cognitive and emotional functioning in the areas of emotional disturbance, motivation and attention/sustained concentration, and while he states that the appellant's severe anxiety disorder prevents him from functioning in social situations, the specialist doesn't provide any details as to how these deficits impact the appellant's functioning. The panel notes that while the appellant's mother stated that she found his son in a catatonic state there was no mention of this in the psychiatrist's report which was done in the company of both the appellant and his mother during that visit.

The panel also finds that the ministry was reasonable to place more emphasis on the psychiatrist's report due to the appellant being his patient since 2011 and for seeing the appellant 11 or more times in the past 12 months over one assessment completed on a new and unknown client. The panel finds that the ministry reasonably determined that both the assessments provided by the psychiatrist and the RN do not establish a severe mental impairment pursuant to Section 2(2) of the EAPWDA.

Restrictions in the ability to perform DLA

Ministry Position

The ministry relies on the medical opinion and expertise from the appellant's prescribed professionals to determine that the appellant's impairment significantly restricts his ability to perform DLA either continuously or periodically for extended periods. The ministry makes the decision regarding Persons with Disabilities eligibility based on the physical, mental and daily living assessments provided by the appellant's prescribed professionals as well as the appellant's self-report.

In the MR, the psychiatrist reports that the appellant has been prescribed medication that interferes with his ability to perform DLA, "can slow down reaction time"/ "indefinite."

The psychiatrist reports continuous restrictions in the appellant's ability to perform personal self-care, meal preparation, management of medications, basic housework, daily shopping, use of transportation, management of finances and social functioning while he does not describe the severity of restriction, or the nature of assistance the appellant needs with DLA. Therefore, it is difficult to establish significant restrictions to DLA based on these assessments.

The RN does not describe the frequency or duration of restrictions to dressing, bathing, transferring in/out of bed and cooking. Limiting a diet to canned and boxed foods is not considered indicative of severe restrictions to cooking. For these reasons, and as a severe impairment has not been established, it is difficult to establish significant restrictions to DLA based on this assessment.

The ministry noted that in the letter from the RN, it indicates continuous restrictions to personal self-care, meal preparations and basic housework whereas in the PWD application the RN indicates that the appellant is independent with 4 areas of personal care, basic housekeeping and does not indicate restrictions to meals. There is no explanation why there is a discrepancy in assessments by the RN.

Based on the assessments provided in the appellant's PWD application, the assessments in the MR and AR and the self-reports, the ministry finds there is not enough evidence to confirm that the appellant has a severe impairment that significantly restricts his ability to perform daily living activities continuously or periodically for extended periods. Therefore the legislative criteria have not been met.

Appellant's Position

The appellant's advocate argues that in the Hudson decision it held that: "The ordinary meaning of the plural 'activities'....dictates that there must be evidence from a prescribed professional indicating a direct and significant restriction on at least two daily living activities." There is no statutory requirement that more than two daily living activities be restricted.

The appellant's position is that he has demonstrated that he is severely restricted by his Major Depressive Disorder. It has been confirmed that as a side effect of his medication, it can slow down his reaction time which is a further restriction. He lives alone and has testified about assistance he gets from family, friends and the church to assist him to manage daily living activities but for the majority of the time he is house bound by depression and daily living activities are minimal due to depression and anxiety. In the words of his psychiatrist his condition is "prolonged and severe enough that has significantly interfered with his ability to perform daily living activities."

Panel Decision

According to the legislation, the ministry must assess direct and significant restrictions to 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." The prescribed professionals completing the assessments have 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 opinion of a prescribed professional, a person's ability to perform daily living activities must be directly and significantly restricted either continuously, or periodically for extended periods.

The panel finds that the ministry's determination that this criterion is not met is a reasonable application of the legislation as there is insufficient information as to the frequency, nature and duration of the periodic and continuous assistance that is required and no indication as to how much longer the appellant takes to perform DLA, thus it is difficult to determine if his restriction is significant. The panel finds that the ministry was reasonable in its determination that there is not enough evidence to confirm that the appellant's impairment significantly restricts DLA continuously or periodically for extended periods pursuant to Section 2(2)(b)(i) of the EAPWDA.

Help to perform DLA

Ministry Position

The ministry finds that as it has not been established that DLA are significantly restricted continuously or periodically for extended periods, it therefore cannot be determined that significant help is required from other persons.

Appellant's Position

The appellant argues that because of his medical condition he needs help - without the help of family, friends and his church he is not able to function. Without his mother's daily calls he would forget to take his medication and ignore his financial obligations, and without being motivated by his friends and the church he does not look after himself or his household.

Panel Decision

Section 2(2) (b) (ii) of the EAPWDA requires that, as a result of direct and significant restrictions in the ability to perform DLA, a person requires help to perform those activities. 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.

The panel finds that while the appellant has indicated that friends, family and church provide assistance to him, it is not clear that it is significant help required to perform DLA.

With consideration for the above, the panel finds that the ministry reasonably determined that as direct and significant restrictions in the appellant's ability to perform DLA have not been established, it cannot be determined that the appellant requires help to perform DLA as a result of those restrictions, as defined by Section 2(3)(b) of the EAPWDA.

Conclusion

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