PART C – DECISION UNDER APPEAL

The decision under appeal is the Ministry of Social Development and Poverty Reduction (the ministry) reconsideration decision dated November 21, 2017 which found that the appellant did not meet three 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 his impairment is likely to continue for at least two years. However, the ministry was not satisfied the evidence establishes 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 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

The evidence before the ministry at the time of the reconsideration decision included the appellant's Persons With Disabilities (PWD) Application comprised of the appellant's information and self-report dated June 20, 2017, a medical report (MR) and an assessor report (AR) both dated July 18, 2017 and completed by a general practitioner (GP) who has known the appellant for 5 years and has seen him 2 to 10 times in the last year.

The evidence also included the following documents:

1) First page of a Medical Report- Employability dated September 23, 2014;
2) Radiology Report dated July 13, 2016 to investigate heart murmur, history of polycystic kidney disease and COPD;
3) Respiratory Report dated July 13, 2016;
4) Letter dated September 9, 2016 to the GP from a cardiologist;
5) "Abnormal ECG" graph with a fax date of September 11, 2016;
6) Letter dated September 14, 2016 to the GP from a nephrologist;
7) Letter dated April 4, 2017 to the GP from a nephrologist;
8) Letters dated January 5, 2017 and April 19, 2017 to the GP from another physician;
9) Excerpts of second MR and AR completed by the GP on November 1, 2017; and,
10) Request for Reconsideration dated October 13, 2017.

Diagnoses

In the MR, the GP diagnosed the appellant with kidney disease, stage 3 CKD [chronic kidney disease] with an onset in 1978, HTN [hypertension], significant, contributing to CKD, with an onset in 2007, moderate aortic valvular insufficiency with an onset in 2015, multilevel DDD [degenerative disc disease] and OA [osteoarthritis] facets with an onset in 2007, and chronic pain syndrome, low back pain with an onset in 2007. There was no diagnosis of a condition within the mental disorders diagnostic category of the MR. Asked to describe the mental or physical impairments that impact the appellant's ability to manage daily living activities (DLA), the GP wrote in the AR that the appellant: "has chronic day in, day out mechanical back pain that grossly limits his ability to do any physical work. This chronic pain causes significant mood disorder."

Physical Impairment

In the MR and the AR, the GP reported:

- With respect to his health history, the appellant "…suffers disabling low back pain on a daily basis. He takes Tylenol with codeine daily and uses marijuana at night to allow him to sleep. His chronic pain and poor sleep pattern have likely exacerbated his hypertension, which has likely exacerbated his chronic renal insufficiency. He is followed by the renal clinic specialists and a nephrologist. His DDD is not amenable to surgical correction."
- The appellant does not require any prostheses or aids for his impairment.
- In terms of functional skills, the appellant can walk less than 1 block unaided on a flat surface, climb 2 to 5 steps unaided, lift 2 to 7 kg. (5 to 15 lbs), and remain seated less than 1 hour.
- In the additional comments to the MR, the GP wrote that the appellant "...has attempted many jobs but all have been too physically demanding. He is very discouraged by his financial situation but simply cannot work."
- The appellant is assessed as taking significantly longer than typical with walking indoors, walking outdoors, climbing stairs, lifting, and carrying and holding. The appellant is independent with standing. The GP commented that "he moves much more slowly than expected [for his age]."
- In the section of the AR relating to assistance provided, the GP did not identify any of the listed assistive devices, which includes mobility devices such as a cane or walker, as being required by the appellant. The GP wrote "N/A [not applicable] at this time" and "he may benefit from trial of a cane- thus far he has been stubborn and avoided."

In the excerpts of the second MR and AR, the GP added:

- The appellant's DDD is not amenable to surgical intervention.
- The appellant's kidney function is worsening due to HTN.
- His mobility issues and financial struggles impede his ability to access medical appointments. He suffered a cycling accident in the summer and fractured his ankle. His only means of transportation is gone as it is winter.
- The appellant's conditions can only worsen, despite medical treatment. He has been prescribed medications that he cannot afford, both for pain, arthritis, and HTN in light of his renal disease.
- For climbing 2 to 5 steps unaided, the GP added: "not repeatedly."
- For additional comments to the MR, the appellant's "causes of unemployment have increased in that he now has weakness/decreased mobility post ankle fracture. He also now requires eye glasses and cannot see safely to drive his bicycle."
- Regarding the appellant's mobility and physical ability, the GP noted that the appellant "takes 3 to 4 times as long as the average person his age to walk 100 m., cook a meal, accomplish bathing."
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In the Medical Report- Employability dated September 23, 2014, the GP indicated that the appellant's primary medical condition was osteoarthritis lumbar facets and multilevel DDD, with secondary medical conditions of COPD and HTN, and the associated restrictions are "...significant daily mechanical back pain that restricts his ability to perform any job requiring physical exertion."

The Respiratory Report dated July 13, 2016 indicated findings of mild COPD [chronic obstructive pulmonary disease].

In the letter dated September 9, 2016, the cardiologist wrote that surgical intervention is not considered unless the aortic root is greater than 5 cm. and the arch greater than 5.5 and the appellant's root is "very close to that dimension" and, because of this, "it is crucial to establish very tight blood pressure control as this is going to be the principle determinant with respect to possible progressive aortic root enlargement."

In the letter dated April 4, 2017, the nephrologist provided an impression that included finding the appellant has "relatively stable stage 3A chronic kidney disease in the settling of a solitary kidney and underlying ADPKD" and the plan to "focus on his cardiovascular risk factors with the biggest issue being his blood pressure control."

In the letters dated January 5, 2017 and April 19, 2017, the physician wrote that the appellant was referred by the GP for "mixed lower urinary tract symptoms," with treatment recommendations including pelvic floor muscle training exercises to help with urinary control.

In his self-report, the appellant wrote:

- He had hoped to be ready to work again but unfortunately his health has been failing.
- He found out he has high blood pressure, which has led to problems with his heart.
- He finds the new prescription is totally exhausting him. For the most part, in the last few months he has been sleeping until afternoon.
- Every day he has bad hypertension with pulsing in his chest and his whole body.
- Every day he has pain in his neck and his back that travels down the front of his leg almost to his knee.
- His day-to-day is so tiring.

In his Request for Reconsideration, the appellant wrote:

- He will try to emphasize the severity of his situation.
- Just to eat is very difficult since he has no molars on the top and he keeps biting down on his tongue.
- His ID has expired and just to get across town is very difficult. He needs to get into another appointment with his eye doctor but it is too far for him to get there.
- He cannot sleep through the night and is probably up 4 or more times.

- Last year he severely damaged his left ankle and then a while ago he broke the right ankle and he is limping on both and needs an aid for his mobility.
- He does not have time to tell the doctor about all the small stuff.
- He lives day after day with extreme pain.
- On a good day he could maybe go see his niece, if he was very lucky, but on the bad days, it is very hard.
- Tests are still being done to investigate his heart problems.

Mental Impairment

In the MR and the AR, the GP reported:

- There are no difficulties with communication.
- The appellant has significant deficits with cognitive and emotional function in the area of consciousness, emotional disturbance, motivation, and attention or sustained concentration. The GP commented: "chronic pain syndrome has resulted in depression, anxiety, poor concentration, disorientation and loss of interest."
- The appellant has a good ability to communicate in all areas, specifically with speaking, reading, writing and hearing.
- With respect to daily impacts to the appellant's cognitive and emotional functioning, the GP assessed a major impact to bodily functions. There are moderate impacts to emotion, attention/concentration, executive, and motivation. There are minimal impacts to consciousness and memory, and no impact in the remaining areas. The GP did not provide any additional comments.
- The appellant is independent in all aspects of his social functioning, specifically: with making appropriate social decisions, developing and maintaining relationships, interacting appropriately with others, dealing appropriately with unexpected demands, and securing assistance from others, and there are no comments added by the GP.
- The appellant has good functioning in his immediate social network and marginal functioning in his extended social network, with no comments added.
- Asked to describe the support/supervision required to help maintain the appellant in the community, the GP left this section of the form blank.

In the excerpts of the second MR and AR, the GP added:

- The appellant has difficulties with communication. The GP wrote that the appellant "does have significant issues with literacy, both written and spoken, as his understanding/comprehension is less that I have understood."
- Regarding the significant deficits to cognitive and emotional functioning, the GP noted that the appellant's attention or sustained concentration is "poor" and that "he cannot afford appropriate mood improving agents."
- With respect to daily impacts to the appellant's cognitive and emotional functioning, the GP changed the assessment for the aspects of emotion, attention/concentration, and motivation from moderate impact to major impact. For memory, the assessment changed from minimal impact to moderate impact, and for language, the assessment changed

from no impact to moderate impact. The GP wrote that the appellant "does have significant cognitive and emotional health issues directly related to his physical health issues. His inability to work and support himself has had a very negative impact on his mental health and his QOL [quality of life]."

Daily Living Activities (DLA)

In the MR and the AR, the GP reported:

- The appellant has not been prescribed medication that interferes with his ability to perform DLA.
- In the additional comments to the MR, the GP wrote that the appellant "...has attempted many jobs but all have been too physically demanding. He is very discouraged by his financial situation but simply cannot work."
- The appellant takes significantly longer than typical with walking indoors and walking outdoors and he "moves much more slowly than expected [for his age]."
- The appellant is independent with all of the tasks of the pay rent and bills DLA (including banking and budgeting), the medications DLA (filling/refilling prescriptions, taking as directed, and safe handling and storage), and the transportation DLA (getting in and out of a vehicle, using public transit, and using transit schedules and arranging transportation).
- For the personal care DLA, the appellant is independent with the tasks of feeding self, regulating diet, transfers in/out of bed, and transfers on/off chair. The appellant takes significantly longer than typical with the tasks of dressing, grooming, bathing, and toileting.
- Regarding the basic housekeeping DLA, the appellant takes significantly longer than typical with doing laundry and basic housekeeping.
- For the shopping DLA, the appellant is independent with the tasks of reading prices and labels, making appropriate choices and paying for purchases. He takes significantly longer with going to and from stores and carrying purchases home. The GP commented that "his mobility issues require him to allow for twice the amount of time he needs to take to perform these activities. He has assistance from his girlfriend for housekeeping and meal preparation. He feels he should be able to do more."
- Regarding the meals DLA, the appellant is independent with the tasks of meal planning and safe storage of food, and takes significantly longer than typical with food preparation and cooking.

In the excerpts of the second MR and AR, the GP added:

- The appellant has been prescribed medication that interferes with his ability to perform DLA as "his Tylenol #3 is sedating but he cannot function without some relief. He has substituted medical marijuana but it also sedates him throughout the day." The anticipated duration is "lifelong as he is not a surgical candidate, at least not at this time."
- For the tasks of the personal care DLA, the basic housekeeping DLA, and the shopping DLA, the appellant takes "twice the average time minimally."

Need for Help

- With respect to the assistance needed, the GP reported in the AR that the appellant receives help from his family and friends.
- In the section of the AR relating to assistance provided, the GP did not identify any of the listed assistive devices as being required by the appellant. The GP wrote "N/A [not applicable] at this time" and "he may benefit from trial of a cane- thus far he has been stubborn and avoided."

Additional information

In his Notice of Appeal dated November 28, 2017, the appellant expressed his disagreement with the ministry's reconsideration decision and wrote that he believes his daily living activities are significantly restricted and this impacts him negatively on a daily basis. He struggles with day-to-day living.

At the hearing, the appellant's advocate stated:

- She has not known the appellant that long but has read through the ministry's denial, and the ministry does not always consistently refer to the most limiting assessment by the doctor as the ministry stated it would do.
- The ministry seemed to be "picky" with requiring that the doctor specify how much less than an hour the appellant can remain seated or with how much longer it takes him to climb stairs. The ministry stated that the doctor has not elaborated enough.
- Overall, the appellant's life really is significantly impacted.
- The appellant does need help from another person with housekeeping and meal preparation and while the doctor does not say how much help he needs, she is not sure how this can be quantified.
- The appellant does not have glasses and his vision is getting worse and worse. He has difficulty stepping off a curb.
- The appellant is in constant pain every day.
- The paperwork provided documents that he has decreased lung and kidney function and how severe that is. He requested an updated report but could not get to the office to pick it up.

At the hearing, the appellant stated:

- His back pain is severe, chronic and daily.
- His respiration is so bad he sometimes has to stop to catch his breath when he is eating.
- His groin is really bothering him and he does not know if that is part of his kidney problems or something else. With his renal condition, he is bound to have other problems.
- He is extremely tired and out of breath. He wonders if the fatigue might be due to the blood pressure medication.

- He does not go shopping any more since it is too exhausting and he tires quickly. If he is "feeling good," he will go to his niece's place.
- It is too painful to walk too far. A year ago, he broke his left ankle and then he broke his right ankle and now it is difficult to ride his bicycle. He cannot get out like he used to.
- He does not do any cooking. He gets exhausted by standing in the kitchen to try to prepare something. He might just microwave a frozen dinner or something simple. His room-mate will cook extra for him when she's cooking.
- His room-mate keeps the unit clean.
- He showers with difficulty. He had a fall in the bathtub and has to be careful. He has shortness of breath all the time and not just periodically.
- He really struggles every day. He has trouble reading.
- He has a chronic pain on the left side of his chest and it might be part of his health issues but he has not got a straight answer from the doctor.
- Any stress at all, and he feels like he needs to vomit. He cannot lift or exert himself anymore.
- Getting dressed takes longer because it is difficult for him to bend over to put on his socks and shoes. He has pain in his back and in his groin. He does not need help, but he is slow.
- When he walks, he feels groin and back pain and maybe a cane would help him but it is hard to go from being a healthy person to walking with a cane. When he walks, he has to stop and rest and will lean on something and this is why he is so slow. He cannot run at all anymore.
- Going to his eye doctor involves taking a couple of buses and some walking and he has not been going to the appointments because it is too difficult for him.
- His doctor is not able to spend much time with him and he felt a bit disappointed with the report. He dropped off the form at the doctor's office for her to complete them.
- Some of the simplest tasks and the everyday small stuff are now extremely difficult for him.

The ministry relied on the reconsideration decision, as summarized at the hearing. The ministry stated that a number of different professionals are qualified to complete the AR who may have more time to dedicate than a medical practitioner, such as a registered nurse, an occupational therapist, physical therapist, or social worker.

Admissibility of Additional Information

The ministry did not raise an objection to the admissibility of the appellant's oral testimony. 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 appeal is whether the ministry's reconsideration decision, which found that the appellant is not eligible for designation as a 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 evidence does not establish that the appellant has a severe mental or physical impairment and that his DLA are, in the opinion of a prescribed professional, directly and significantly restricted either continuously or periodically for extended periods. Also, 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).

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 provided an amended MR and an amended AR at reconsideration and reasonably considered the assessment throughout that was indicative of greater impairment/ restrictions. The ministry acknowledged that the GP diagnosed stage 3 chronic kidney disease, hypertension, moderate aortic valvular insufficiency, multilevel DDD and OA facets, and chronic pain syndrome with low back pain. In his Request for Reconsideration, the appellant wrote that eating is very difficult for him since he has no molars on the top and he keeps biting down on his tongue, although he does not tell his doctor about all the small stuff. At the hearing, the appellant stated that his groin is really bothering him and he does not know if that is part of his kidney problems or something else. The GP did not refer to either the appellant's problems with chewing or his groin condition in the amended MR or the AR, although the GP wrote that the appellant now requires eye glasses and cannot see safely to drive his bicycle. At the hearing, the appellant's advocate stated that the appellant does not have glasses and his vision is getting worse and worse and he has difficulty even stepping off a curb. At the hearing, the appellant acknowledged that his eye doctor has called him in for an appointment but he has found it too difficult to take the two buses and walk from the bus stop to the doctor's office.

In the letters dated January 5, 2017 and April 19, 2017, the physician wrote that the appellant was referred by the GP for "mixed lower urinary tract symptoms," with treatment recommendations including pelvic floor muscle training exercises to help with urinary control, and the GP did not refer to impacts to the appellant's physical functioning as a result of this condition.

The ministry considered the Medical Report- Employability dated September 23, 2014, in which the GP indicated that the appellant's primary medical condition was osteoarthritis lumbar facets and multilevel DDD, with secondary medical conditions of COPD and HTN, and the associated restrictions are "...significant daily mechanical back pain that restricts his ability to perform any job requiring physical exertion." The Respiratory Report dated July 13, 2016 indicated findings of "mild" COPD. The panel finds that the ministry reasonably determined that employability is not a criterion for determining PWD designation as it is not set out in section 2(2) of the EAPWDA nor is it listed among the prescribed DLA in section 2 of the EAPWDR.

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 as well as the excerpts to the amended MR and AR. The ministry considered that the GP assessed the appellant's functional skills as being able to walk less than 1 block unaided, climb 2 to 5 steps unaided and the GP added "not repeatedly," lift 5 to 15 lbs, and remain seated less than1 hour. At the hearing, the appellant's advocate stated that it seemed "picky" for the ministry to require a description of how much less than 1 hour the appellant can remain seated. At the hearing, the appellant stated that it is too painful to walk too far and he cannot ride his bicycle to get out like he used to. The panel notes that while the appellant's ability to remain seated and to walk are at the more restricted end of the scale of physical functioning, the ministry reasonably determined that the appellant's ability to climb stairs and to lift are in the middle of the range.

The ministry considered the GP's assessment that the appellant takes significantly longer than typical with walking indoors and walking outdoors, climbing stairs, lifting, and carrying and holding, and wrote that the GP's comment that "he takes 3 to 4 times as long as the average person his age to walk 100 m." relates only to his ability to walk outdoors. For additional comments to the amended MR, the appellant's "causes of unemployment have increased in that he now has weakness/decreased mobility post ankle fracture." However, the GP reported in the MR that the appellant does not require an aid for his impairment and, in the AR the GP did not identify any of the listed assistive devices, which includes mobility devices such as a cane or walker, as being required by the appellant. The GP wrote "not applicable at this time" and "he may benefit from trial of a cane- thus far he has been stubborn and avoided." At the hearing, the appellant stated that when he walks, he feels groin and back pain and maybe a cane would help him but it is hard to go from being a healthy person to walking with a cane. The appellant

explained that when he walks, he has to stop and rest and lean on something and this is why he is so slow. The GP's comment in the AR that the appellant "moves much more slowly than expected [for his age]" does not describe how much longer than typical the appellant takes with climbing stairs, lifting or carrying/holding.

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 PR and in the AR forms.

In the letter dated September 9, 2016, the cardiologist wrote that while the appellant's condition is "very close" to being eligible for surgical intervention, the recommended treatment was "very tight blood pressure control." In the letter dated April 4, 2017, the nephrologist provided an impression that included finding the appellant has "relatively stable stage 3A chronic kidney disease" and the plan to "focus on his cardiovascular risk factors with the biggest issue being his blood pressure control." In his self-report, the appellant wrote that every day he has bad hypertension with pulsing in his chest and his whole body. The appellant wrote that he found out he has high blood pressure and he finds the new prescription is totally exhausting him. At the hearing, the appellant stated that he is extremely tired and out of breath, and he wonders if the fatigue might be due to his blood pressure medication. The appellant stated that any stress at all, and he feels like he needs to vomit. Considering the overall assessment of the appellant's physical functioning, the ministry acknowledged that the appellant experiences limitations to his ability to walk long distances, but the ministry was not satisfied that the combination of his functional skills and mobility and physical abilities exhibits a severe physical impairment.

Given the emphasis placed on the appellant's inability to work, an assessment of functional skills within the moderate range with the exception of walking for which no mobility aid is currently required, 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 of a severe mental impairment. The ministry considered that, while there was no diagnosis of a condition within the mental disorders diagnostic category of the MR, the GP reported "chronic pain syndrome has resulted in depression, anxiety, poor concentration, disorientation and loss of interest" and the appellant has significant deficits with cognitive and emotional function in the area of consciousness, emotional disturbance, motivation, and attention or sustained concentration. With respect to daily impacts to the appellant's cognitive and emotional functioning, the GP provided an amended assessment of major impacts to bodily

functions, emotion, attention/concentration, and motivation. There are moderate impacts to executive, memory, and language. There is a minimal impact to consciousness and no impact in the remaining areas. In the comments to the amended AR, the GP wrote that the appellant "does have significant cognitive and emotional health issues directly related to his physical health issues. His inability to work and support himself has had a very negative impact on his mental health and his quality of life." As previously discussed, the panel finds that the ministry reasonably concluded that employability is not a criterion for determining PWD designation.

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 in either. Regarding the 'decision making' DLA, the GP reported in the AR that the appellant independently manages all of the decision-making components of DLA, specifically: personal care (regulating diet), 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), transportation (using transit schedules and arranging transportation) and making appropriate social decisions, requiring no support or supervision from another person.

Regarding the DLA of 'relating effectively', the GP reported in the AR that the appellant is independent with developing and maintaining relationships and with interacting appropriately with others. The GP assessed good functioning in the appellant's immediate social network and marginal functioning in his extended social network and the panel notes that, when asked to describe the support/supervision required that would help to maintain the appellant in the community, the GP left this section incomplete. While the GP reported in the MR that the appellant has no difficulties with communication, the GP amended this assessment and indicated that the appellant "does have significant issues with literacy, both written and spoken, as his understanding/comprehension is less that I have understood."

Given the emphasis placed on the impact to cognitive and emotional functioning from the appellant's inability to work and the insufficient evidence of significant impacts to the two social functioning DLA that are specific to a 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 AR as well as the amended MR and AR and considered that the GP reported that the appellant has been prescribed medication that interferes with his ability to perform DLA as "his Tylenol #3 is sedating but he cannot function without some relief" and "he has substituted medical marijuana but it also sedates him throughout the day." The ministry also considered the comments by the GP in the amended AR that the appellant "takes 3 to 4 times as long as the average person his age to walk 100 m., cook a meal, accomplish bathing" and the GP also commented that all tasks of the personal care DLA, including bathing, take "twice the average time minimally." The ministry reasonably considered that the GP also commented that the tasks of the basic housekeeping DLA and the shopping DLA take twice the average time minimally and determined that twice as long as typical is not considered indicative of significant restrictions in these areas.

The ministry noted that the use by the GP of the word "minimally" suggest that the appellant sometimes takes longer than twice the typical amount of time, but the GP does not describe the frequency or duration of periods when the appellant takes more than twice the typical amount of time. At the hearing, the appellant stated that he showers with difficulty and he has to be careful and he has shortness of breath all the time and not just periodically. The appellant stated that getting dressed takes longer because it is difficult for him to bend over to put on his socks and shoes since he has pain in his back and in his groin. The appellant stated that he does not need help, but he is slow. The appellant stated that he does not go shopping any more since it is too exhausting and he tires quickly.

The GP commented in the AR that the appellant "has assistance from his girlfriend for housekeeping and meal preparation" and "he feels he should be able to do more"; however, the GP did not indicate whether the assistance required is continuous or periodic and, if periodic, whether for extended periods of time. At the hearing, the appellant's advocate stated that the appellant does need help from another person with housekeeping and meal preparation and while the doctor does not say how much help he needs, she is not sure how this can be quantified. The panel notes that when given the opportunity to provide further clarification regarding the level of assistance required, the GP did not elaborate in the amended AR. The appellant stated at the hearing that he does not do any cooking because he gets exhausted by standing in the kitchen to try to prepare something. The appellant stated that he will just

microwave a frozen dinner or something simple and his room-mate will cook extra for him when she's cooking. His roommate also keeps the unit clean.

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.

The ministry considered that the appellant is independent with all of the tasks of the pay rent and bills DLA (including banking and budgeting), the medications DLA (filling/refilling prescriptions, taking as directed, and safe handling and storage), and the transportation DLA (getting in and out of a vehicle, using public transit, and using transit schedules and arranging transportation). The panel notes that in the AR, when asked to describe the mental or physical impairments that impact the appellant's ability to manage DLA, the GP wrote that the appellant: "has chronic day in, day out mechanical back pain that grossly limits his ability to do any physical work" and "this chronic pain causes significant mood disorder." As previously discussed, the panel finds that the ministry reasonably concluded that employability is not a criterion for determining PWD designation.

At the hearing, the appellant stated that his doctor is not able to spend much time with him and he felt a bit disappointed with the report. He dropped off the form at the doctor's office for her to complete them and he feels the assessments did not fully show the level of his restrictions.

Given the GP's report of the appellant's independence with his ability to perform most DLA, taking twice as long with some tasks, and a lack of description of the extent of assistance required for some tasks of DLA, 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 and friends, 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.