

## 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 December 6, 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 and duration requirements, but was not satisfied that:

- 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 those restrictions, 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

## PART E – Summary of Facts

The information before the ministry at the time of reconsideration included the appellant's PWD application comprised of a Medical Report (MR) and an Assessor Report (AR) both completed by the appellant's general practitioner (the "Physician") dated June 21, 2017, and the appellant's Self-Report (SR) dated August 1, 2017.

The appellant's request for PWD designation was denied on October 23, 2017. On November 27, 2017 the ministry received the appellant's request for reconsideration (the "RFR") dated November 22, 2017.

On December 12, 2017, the tribunal received the appellant's Notice of Appeal dated December 10, 2017.

### Summary of relevant evidence

#### Diagnoses

In the MR, the Physician indicates that the appellant has been diagnosed with lumbar disc herniation and depression.

The Physician indicates that the appellant has been his patient for three years and that he has seen him 11 or more times in the past 12 months.

#### Physical Impairment

In the MR for Functional Skills, the Physician indicates that the appellant is able to walk less than 1 block unaided on a flat surface, can climb 2 to 5 steps unaided, can lift 2 to 7 kg and can remain seated less than 1 hour. In the Health History portion of the MR, the Physician indicates that the appellant has severe back pain that radiates to his leg, that he is not a surgical candidate, and he is unable to lift more than 20 pounds.

In the AR, the Physician indicates that the appellant is independent with standing but requires continuous assistance from another person with lifting and carrying and holding, explaining that the appellant is unable to lift/carry more than 15 pounds. With respect to walking indoors, walking outdoors, and climbing stairs, the Physician indicates that the appellant takes significantly longer than typical (2-3x longer) and uses an assistive device with climbing stairs.

In the SR the appellant states that his back pain does not allow him to sleep well because the pain is constant. The appellant states that he cannot work because of his back pain and that he cannot stand up for long or drive for long because he cannot sit for more than 20 minutes. The appellant states that he cannot lift more than 15 pounds and bending is impossible. The appellant states that even though he was diagnosed with diabetes 7 years ago, he continued working in construction as a carpenter but three years ago his life changed totally and he is unable to work.

#### Mental Impairment

In the MR, the Physician indicates that the appellant has significant deficits with cognitive and emotional function in the areas of memory, emotional disturbance, motivation, impulse control, and attention or sustained concentration. In the Health History portion of the MR the Physician indicates that the appellant's mood is labile and that he has anger outbursts and poor concentration.

In the AR, the Physician indicates that the appellant's ability to communicate with speaking, reading, writing and hearing is satisfactory. For Cognitive and Emotional Functioning the Physician indicates that the appellant has major impact to emotion and attention/concentration, moderate impact to bodily functions (sleep disturbance), impulse control, insight and judgment, memory, motivation, and other emotional or mental problems (hostility), and no impact in the areas of consciousness, executive, motor activity, language, psychotic symptoms, or other neuropsychological problems.

In the SR, the appellant states that he takes medication for his depression.

### DLA

In the MR the Physician indicates that the appellant has not been prescribed medications that interfere with his ability to perform DLA. In the Health History portion of the MR, the Physician indicates that the appellant cannot repetitively bend as it interferes with his DLA.

In the AR, the Physician indicates that with respect to personal care the appellant is independent with feeding self and regulating diet but takes significantly longer than typical with dressing, grooming, bathing and toileting (2-3x longer as he has to sit to perform tasks) and he takes significantly longer than typical with transfers (in/out of bed) and transfers (on/off chair), explaining that he takes longer.

The Physician indicates that the appellant requires continuous assistance with laundry and basic housekeeping explaining that he "needs help". With respect to shopping, the Physician indicates that the appellant is independent with reading prices and labels, making appropriate choices and paying for purchases but requires continuous assistance from another person with going to and from stores (takes significantly longer than typical and needs a ride) and carrying purchases home (*needs help*).

With respect to meals, the Physician indicates that the appellant is independent with meal planning and safe storage of food but that he requires periodic assistance from another person with food preparation and cooking, explaining that he cannot stand for long periods and has decreased motivation.

The Physician indicates that the appellant is independent with all aspects of paying rent and bills and medications.

With respect to transportation, the Physician indicates that the appellant is independent with using public transit and using transit schedules and arranging transportation but takes significantly longer than typical with getting in and out of a vehicle (takes 2x longer).

For social functioning, the Physician indicates that the appellant is independent with making appropriate social decisions and interacting appropriately with others, but requires periodic support/supervision with developing and maintaining relationships, dealing appropriately with unexpected social demands and securing assistance from others, commenting "Depression Sx". The Physician indicates that the appellant has marginal functioning in his immediate and extended social networks.

In the SR, the appellant states that he has constant back pain, poor sleep, and depression that make it difficult for him to perform small tasks.

### Need for Help

In the MR, the Physician indicates that the appellant does not require any prosthesis or aids for his impairment.

In the AR, the Physician indicates that the help required for DLA is provided by the appellant's family. The Physician indicates that the appellant uses a bath bar and toilet aid. The Physician indicates that the appellant does not have an Assistance Animal.

### **Additional information provided**

In his Notice of Appeal dated December 10, 2017 the appellant states that he disagrees with the reconsideration decision because he has severe depression, chronic back pain, and cannot work due to his back pain and diabetes related illness. The appellant states that he will be going through back surgery next year (2018). The appellant states that he would like to request that his medical prescriptions be paid for, because what he receives now isn't enough to pay for them.

At the hearing the appellant stated, through an interpreter, that he does not have enough income to cover his monthly bills and pay for his prescriptions. The appellant stated that after he pays his rent, car insurance, phone bill, and blood glucose monitoring strips he does not have enough money for food or prescriptions. He is asking that the ministry pay for his prescriptions, as he cannot afford them. The appellant states that he has severe back pain, cannot work, severe depression, and his back pain has worsened in the last 1-2 months, particularly after he had a back injection. The appellant stated that he used to be able to lift up to 15 pounds but now, because his condition has worsened, he cannot lift more than 5 pounds. The appellant states that he is seeing a specialist later this month to find out the date for his back surgery.

At the hearing the appellant stated that the Physician completed the MR and the AR and gave him the forms but that he did not have an interpreter to translate the information for him. The appellant stated that while the reconsideration decision had not been translated to him he understood that the ministry relied heavily on the information in the MR and the AR in denying his application for PWD designation.

The ministry did not attend the hearing. Having confirmed that the ministry was notified of the hearing the panel proceeded in the ministry's absence, in accordance with section 86(b) of the *Employment and Assistance Regulation*.

### **Admissibility of New Information**

The panel has admitted the information in the appellant's Notice of Appeal and oral testimony regarding his back pain, inability to work, financial circumstances, depression, and diabetes as it is evidence that is in support of information and records that were before the ministry at the time of reconsideration, in accordance with section 22(4) of the *Employment and Assistance Act*.

However the panel has not admitted the information in the Notice of Appeal or the appellant's oral testimony indicating that he is now unable to lift more than 5 pounds or that he is going for back surgery in 2018 as that is new information that was not before the ministry at the time of reconsideration.

## PART F – Reasons for Panel Decision

### **Issue on Appeal**

The issue on appeal is whether the ministry's decision to deny the appellant 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. In particular, was the ministry reasonable when concluding it was not satisfied that

- a severe physical or mental impairment was established;
- 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 help, as it is defined in the legislation, to perform DLA?

### **Relevant Legislation**

#### **EAPWDA**

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 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).

#### **EAPWDR**

## 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.

(3) The definition of "parent" in section 1 (1) applies for the purposes of the definition of "dependent child" in section 1 (1) of the Act.

## 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).

### **Panel Decision**

The legislation provides that the determination of severity of an impairment is at the discretion of the minister, taking into account all of the evidence including that of the appellant. However, the legislation is also clear that the fundamental basis for the analysis is the evidence from a prescribed professional respecting the nature of the impairment and its impact on daily functioning. While the legislation does not define "impairment", the MR and AR define "impairment" as a "loss or abnormality of psychological, anatomical or physiological structure or functioning causing a restriction in the ability to function independently, effectively, appropriately or for a reasonable duration." While this is not a legislative definition, and is therefore not binding on the panel, in the panel's opinion, it reflects the legislative intent and provides an appropriate analytical framework for assessing the degree of impairment resulting from a medical condition.

When considering the evidence provided respecting the severity of impairment, the ministry must exercise its decision-making discretion reasonably by weighing and assessing all of the relevant evidence.

### **Severe Physical Impairment**

The appellant argues that he has a severe physical impairment as he has chronic back pain and diabetes that prevent him from working. He stated that he has to use a railing when climbing stairs, that he cannot bend over as it causes severe back pain, and that he cannot drive more than 15 minutes at a time. He stated that he wants the ministry to pay for his prescriptions, as he cannot afford them.

The ministry's position is that the information provided does not establish a severe physical impairment. The reconsideration decision indicates that the assessments provided by the Physician are problematic in that they are contradictory in nature. In particular, the reconsideration decision notes that the Physician states that the appellant requires continuous assistance or is unable to lift, carry and hold, but he also indicates that the appellant is able to lift, carry and hold items that are less than 15 pounds. As such, the ministry is not satisfied that the appellant requires continuous assistance to lift, carry, and hold.

The reconsideration decision indicates that in the MR, the Physician indicates that the appellant can climb 2-5 stairs unaided, but in the AR, the Physician indicates that the appellant requires an assistive device to climb stairs. The ministry's position is that this discrepancy makes it difficult to determine the appellant's ability to climb stairs. The reconsideration decision also indicates that although the Physician indicates that it takes the appellant 2-3 times longer to walk indoors, walk outdoors and climb stairs, the minister does not consider taking 2-3 times longer to be reflective of a severe physical impairment.

The ministry acknowledges that the appellant has limitations to his physical functioning due to his chronic back pain but finds that the information provided by the Physician does not establish the presence of a severe physical impairment.

The panel finds that the ministry reasonably determined that the functional skills reported by the Physician in the MR and the AR, when considered with the appellant's evidence, are not indicative of a severe physical impairment and that some information is contradictory in nature. For example, while the Physician indicates in the AR that the appellant requires continuous assistance or is unable to lift carry and hold, he indicates in the PR that the appellant is able to lift, carry and hold items that are less than 15 pounds. The panel finds that the ministry was reasonable in determining that based on the information provided, the appellant does not require continuous assistance to lift, carry, and hold. In addition, the Physician indicates that the appellant is able to lift 2 to 7 kg, which is sufficient ability to lift a variety of household and shopping items.

Although the Physician indicates that it takes the appellant 2-3 times longer to walk indoors, walk outdoors and climb stairs, the panel finds that the ministry reasonably determined that taking 2-3 times longer is not reflective of a severe physical impairment, particularly taking into account that the majority of the appellant's functioning is independent.

The appellant's evidence is that he has chronic back pain that is constant and that prevents him from being able to sit or stand for lengthy periods of time. In the SR, the appellant indicates that his pain prevents him from getting a good sleep and he has difficulty performing even small tasks. In the SR, the appellant states that he cannot spend too much time standing up and he cannot sit for more than 20 minutes. He states that he cannot lift more than 15 pounds and bending is impossible.

At the hearing, the appellant's oral argument focused more on the fact that he is unable to work and that he does not have enough income to pay his monthly expenses and purchase his medications. Although the appellant stated that he understood that the ministry relied heavily on the Physician's assessments in the MR and the AR, the appellant's arguments indicated a lack of understanding of the legislation and the criteria required to meet the eligibility for PWD designation. In particular, the panel notes that employability is not a criterion for designation as PWD.

Based on the foregoing, the panel therefore finds that the ministry reasonably determined that a severe physical impairment has not been established.

### Severe Mental Impairment

In the SR, the appellant states that he is depressed. At the hearing, the appellant stated that his depression is bad. He also stated that he cannot afford to purchase the medications required to treat his depression.

The ministry's position is that while the Physician indicates that the appellant has significant deficits with cognitive and emotional functioning in the areas of memory, emotional disturbance, motivation, impulse control and attention or sustained concentration, in the AR the Physician describes emotion and attention/concentration as having a major impact and all other areas to have a moderate impact or no impact on the appellant's daily functioning.

The ministry's position is that although the appellant has some deficits to his cognitive and emotional functioning, he is assessed as being able to independently perform activities, which are typically difficult for someone with a severe mental impairment. In particular, the ministry notes that the



Physician confirms that the appellant does not need assistance to pay rent and bills, manage medication or use public transportation. The ministry's position is that the assessments of the appellant's cognitive and emotional functioning are more reflective of a moderate impairment of his mental functioning.

The reconsideration decision notes that for social functioning, the Physician indicates that the appellant requires periodic support or supervision to develop and maintain relationships, deal appropriately with unexpected demands, and to secure assistance from others. The Physician also indicates that the appellant has marginal functioning with respect to his immediate and extended social networks. However, the ministry notes that the Physician does not describe the support or supervision that the appellant requires to be maintained in the community and he does not indicate there are any safety issues. The ministry's position is that the assessments provided make it difficult to determine the appellant's overall level of social functioning and therefore, the minister is unable to establish the presence of a severe mental impairment.

The panel finds that although the appellant has been diagnosed with depression, the ministry reasonably concluded that the cumulative impact to cognitive and emotional functioning is not considered indicative of a severe impairment of mental functioning. While the MR indicates that the appellant has significant deficits with cognitive and emotional functioning in the areas of memory, emotional disturbance, motivation, impulse control and attention or sustained concentration, the AR indicates that there is major impact to emotional disturbance and attention or sustained concentration and moderate impact to the areas of memory, motivation and impulse control. The Physician indicates that there is no impact to the other listed areas of consciousness, executive, motor activity, language, psychotic symptoms or other neuropsychological problems. In addition, for DLA where one might expect memory and attention or sustained concentration to be an issue, such as paying rent and bills and medications, the Physician indicates that the appellant is independent.

The panel also notes that while the Physician indicates that the appellant has moderate impact to the area of impulse control, the Physician indicates that the appellant is independent with making appropriate social decisions and interacting appropriately with others so the level of impact does not indicate a severe level of impairment.

The panel notes that for social functioning, the Physician indicates that the appellant requires periodic support or supervision to develop and maintain relationships, deal appropriately with unexpected demands, and to secure assistance from others and that the Physician indicates that the appellant has marginal functioning with respect to his immediate and extended social networks. However, the Physician does not describe the support or supervision that the appellant requires to be maintained in the community, just noting "Depression Sx" so the panel finds that the ministry reasonably concluded that it is difficult to determine the appellant's overall level of social functioning and the presence of a severe mental impairment.

While the evidence must be considered in a broad way, given the lack of description of the appellant's periodic support/supervision needed and his relatively high level of functioning and high level of independence the panel finds that the ministry reasonably determined that the information provided is not evidence of a severe mental impairment.

### Restrictions in the ability to perform DLA

Section 2(2)(b)(i) of the EAPWDA requires that the minister be satisfied that in the opinion of a prescribed professional, a severe mental or physical impairment directly and significantly restricts the appellant's ability to perform DLA either continuously or periodically for extended periods. While other evidence may be considered for clarification or support, the ministry's determination as to whether or not it is satisfied that the legislative criteria are met, is dependent upon the evidence from prescribed professionals. The term "directly" means that there must be a causal link between the severe impairment and the restriction. The direct restriction must also be significant. Finally, there is a component related to time or duration – the direct and significant restriction may be either continuous or periodic. If periodic, it must be for extended periods. Inherently, any analysis of periodicity must also include consideration of how frequently the activity is restricted. All other things being equal, a restriction that only arises once a year is less likely to be significant than one that occurs several times a week. Accordingly, in circumstances where the evidence indicates that a restriction arises periodically, it is appropriate for the ministry to require evidence of the duration and frequency of the restriction in order to be "satisfied" that this legislative criterion is met.

DLA are defined in section 2(1) of the EAPWDR and are listed in both the MR and the AR sections of the PWD application with the opportunity for the prescribed professional to check marked boxes and provide additional narrative. DLA, as defined in the legislation, do not include the ability to work.

The appellant's position is that the ministry should find that he qualifies for PWD designation as he has constant back pain and depression, cannot work and needs financial assistance to pay for the cost of his medications. The appellant's evidence is that he can shop but purchases items "little by little". He can prepare his meals although he often buys items that are easy to cook or microwave and that he cannot clean the bathroom as it is very difficult to bend over due to his back pain.

The ministry's position is that based on the information provided, there is not enough evidence to confirm that the appellant has a severe impairment that significantly restricts his ability to perform DLA continuously or periodically for extended periods. The reconsideration decision notes that while the Physician indicates that the appellant has not been prescribed medications and/or treatments that interfere with his ability to perform DLA.

The reconsideration decision states that although the Physician indicates continuous restrictions to laundry, basic housework, going to and from stores and carrying purchases home, noting that the appellant needs help. However the ministry finds the level of assistance is not supported by the assessments of the appellant's basic physical functioning and activities that require mobility and physical ability. For example, the ministry notes that the Physician indicates that the appellant is not restricted with standing and can walk indoors without assistance, although more slowly; and as the appellant is able to lift, carry and hold up to 15 pounds, the minister determined that the appellant would be able to perform these activities at some level and therefore "*requiring continuous assistance or is unable*" is not an accurate description of the appellant's ability to manage these activities.

The reconsideration decision indicates that while the Physician indicates that the appellant takes significantly longer than typical with dressing, grooming, bathing toileting, transfers in and out of bed, transfers on and off chair (*takes 2-3 times longer, has to sit to perform tasks*), going to and from stores (*needs help*) and getting in and out of a vehicle (*takes 2 times longer*), the ministry's position is that taking 2-3 times longer is not reflective of a significant restriction.

The reconsideration decision also notes that the Physician indicates that the appellant does not require assistance to feed self and regulate diet, read prices and labels, make appropriate choices and pay for purchases, plan meals, safely store food, bank, budget and pay rent and bills, fill/refill prescriptions, take medications or safely handle and store medication.

The ministry's position is that there is not enough evidence to establish that the appellant's ability to manage DLA is significantly restricted either continuously or periodically for extended periods of time and that as a result, he requires significant assistance from others to complete them.

The panel finds that the ministry reasonably determined that there is not enough evidence to establish that the appellant's ability to manage DLA is significantly restricted either continuously or periodically for extended periods of time and that as a result, he requires significant assistance from others to complete them.

While the panel finds that the appellant has some restrictions to DLA, the information provided makes it difficult to determine whether the appellant has significant restrictions to DLA. In particular, while the Physician indicates continuous restrictions to laundry, basic housework, the Physician's assessments of the appellant's basic physical functioning and activities that require mobility and physical ability appears to contradict that information. For example, the Physician indicates that the appellant is not restricted with standing and can walk indoors without assistance, although more slowly; and as the appellant is able to lift, carry and hold up to 15 pounds, the assessments provided do not provide a clear picture of the appellant's ability to perform DLA. The panel finds that the ministry reasonably determined that based on the information provided, the appellant would be able to perform these activities at some level and therefore "*requiring continuous assistance or is unable*" is not an accurate description of the appellant's ability to manage these activities.

The panel also finds that the ministry reasonably determined that while the Physician indicates that the appellant takes significantly longer than typical with dressing, grooming, bathing toileting, transfers in and out of bed, transfers on and off chair (*takes 2-3 times longer, has to sit to perform tasks*), going to and from stores (*needs help*) and getting in and out of a vehicle (*takes 2 times longer*), taking 2-3 times longer is not reflective of a significant restriction.

In addition, although the Physician indicates that the appellant requires periodic assistance with food preparation and cooking, he did not provide any further information as to the nature of frequency of assistance needed and the appellant's evidence was that he is able to cook his meals.

With respect to social functioning, the Physician indicates that the appellant requires periodic support/supervision with developing and maintaining relationships, dealing appropriately with unexpected demands and securing assistance from others, noting "*Depressive Sx*", but he does not provide any further information to describe the degree and duration of support/supervision required.

It may be that the appellant's DLA are more restricted than the information provided in the MR and the AR but based on the above, given the inconsistencies in the information provided and the lack of descriptions regarding the frequency and duration of his periodic restrictions, the panel finds that the ministry reasonably determined that the information provided does not demonstrate that the appellant has a severe impairment that significantly restricts his ability to perform DLA continuously or periodically for extended periods.

### Help to perform DLA

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 DLA.

The appellant's position is that he requires help with DLA because he has back pain, depression, diabetes, and he cannot work. The appellant states that he requires financial assistance to purchase his medications.

The ministry argues that because it has not been established that DLA are significantly restricted, it cannot be determined that help is required. The reconsideration decision also notes that in the MR the Physician confirms that the appellant does not require any prostheses or aids as a result of his impairment but in the AR the Physician indicates that the appellant uses bathing and toileting aids. The ministry's position is that this discrepancy makes it difficult to assess the level of assistance that the appellant requires.

The panel notes that in the MR, the Physician indicates that the appellant does not require any prosthesis or aids for his impairment but in the AR, the Physician indicates that the appellant uses a bath bar and toileting aids. The panel finds that the ministry reasonably determined that this discrepancy makes it difficult to assess the level of assistance that the appellant requires.

In addition however, given that confirmation of direct and significant restrictions with DLA is a precondition of the need for help criterion and as the panel found that the ministry reasonably determined that direct and significant restrictions in the appellant's ability to perform DLA have not been established, the panel also finds that the ministry reasonably concluded that it cannot be determined that the appellant requires help to perform DLA as required by section 2(2)(b)(ii) of the EAPWDA.

### Conclusion

The panel finds that the ministry's reconsideration decision, which determined that the appellant was not eligible for PWD designation, was reasonably supported by the evidence and is a reasonable application of the applicable enactment, and therefore confirms the decision. The appellant is not successful on appeal.