

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 17 November 2017 that denied the appellant designation as a person with disabilities (PWD). The ministry determined that the appellant did not meet all of the required criteria for PWD designation set out in section 2 of the *Employment and Assistance for Persons with Disabilities Act*, section 2. Specifically, the ministry determined that the information provided did not establish that the appellant has a severe mental or physical impairment that in the opinion of a prescribed professional

(i) directly and significantly restricts his ability to perform daily living activities (DLA) either continuously or periodically for extended periods; and,

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

The ministry determined that the appellant satisfied the other 2 criteria: he has reached 18 years of age and his impairment in the opinion of a medical practitioner is likely to continue for at least 2 years.

PART D – RELEVANT LEGISLATION

Employment and Assistance for Persons with Disabilities Act (EAPWDA) – section 2
Employment and Assistance for Persons with Disabilities Regulation (EAPWDR) – sections 2 and 2.1.

PART E – SUMMARY OF FACTS

The evidence before the ministry at reconsideration consisted of the following:

1. The appellant's PWD Designation Application dated 21 June 2017. The Application contained:
 - A Self Report (SR).
 - A Medical Report (MR) dated 26 July 2017, completed by a general practitioner ("GP1") who has known the appellant for 20 years and seen him 2-10 times in the past 12 months.
 - An Assessor Report (AR) dated 26 July 2017, completed by the same general practitioner.
2. The appellant's Request for Reconsideration, dated 07 November 2017, to which is attached the MR and AR as amended by a second general practitioner ("GP2") on 24 October 2017, with GP2 noting that GP1 has retired. Also attached is a letter of support from the appellant's Employment Case Manager dated 17 October 2017 (see below).

In the MR, GP1 provides the following diagnoses related to the appellant's impairment: laceration & permanent loss of extensor carpi radialis / extensor pollicis brevis (onset October 2016); right ankle instability / osteoarthritis (onset Spring 2016); and dyslexia (onset at birth). In the AR, GP1 describes the appellant's impairments as 1. Persistent weakness/pain in left wrist secondary to tendon loss for extension, and 2. Right ankle OA.

The panel will first summarize the evidence from the MR and the AR as it relates to the PWD criteria at issue in this appeal. Amendments by GP2 are shown in *italics*.

Severity of physical impairment

MR:

Under Health History, GP1 writes:

1. "Permanent loss exterior muscles of left wrist. Weakness with ADL. Frequent dropping of things." GP2 adds, "*Weakening is worsening.*"
2. Pain walking/lifting especially over uneven terrain."

Under Additional Comments, GP1 writes:

1. "Persistent weakness left wrist (loss of tendon for wrist extension) requiring brace for ADL. Has young baby [<6 months] – will only lift over bed/couch due to once giving way of wrist.
2. OA [osteoarthritis] – right ankle with hypermobility."

GP1 gives the appellant's height and weight as relevant: 6 ft. 0 in. and [<150] lbs.

Regarding functional skills, GP1 reports that the appellant can walk 4+ blocks unaided on a flat surface, can climb 5+ steps unaided, is limited to lifting 5 to 15 lbs. (GP2 adds "*Unable to lift with left hand*") and is limited to 1 to 2 hours remaining seated.

GP1 indicates that the appellant has not been prescribed any medication and/or treatments that interfere with his ability to perform DLA.

GP1 also indicates that the appellant requires prostheses or aids to compensate for his impairment, explaining that he uses a left wrist splint for the left wrist weakness and a crutch for right ankle pain/OA – uses 2-3 times/month when he exerts himself (cutting lawn).

AR:

Respecting mobility and physical ability, the GP assesses the appellant as independent for walking indoors and standing; uses an assistive device for walking outdoors (commenting, “intermittent use crutch”); takes significantly longer than typical for climbing stairs (commenting, “pain after 5 steps”); and requiring periodic assistance from another person for lifting and carrying and holding (commenting, “drops things left hand”).

Under Additional Information, GP1 writes that prior to the accident in October 2016 the appellant was able to function as a labourer but ankle instability/OA was becoming a greater problem. After the laceration of his forearm and resultant weakness in the left forearm, ADL had become difficult. His left grip is weak and unpredictable.

Mental impairment

MR:

Under Health History, GP1 writes, “Lifelong difficulty in reading. Prolonged time to read simple material.”

GP1 indicates that the appellant has no difficulties with communication.

GP1 indicates that the appellant has significant deficits with cognitive and emotional function, indicating that the appellant has a significant deficit in the area of language, underlining auditory, written comprehension, commenting: “Dyslexic – moderate. Able to read but very slow.”

AR:

GP1 assesses the appellant's ability to communicate as good for speaking and hearing, and poor for reading and writing, commenting: “dyslexia.”

GP1 assesses the degree of impact of the appellant's mental impairment on daily functioning as follows:

- Major impact – language.
- Moderate impact – impulse control and attention/concentration.
- Minimal impact – insight and judgment.
- No impact – bodily functions, consciousness, emotion, executive, memory, motivation, motor activity, psychotic symptoms, other neuropsychological problems, and other emotional or mental problems.

GP1 comments, “Dyslexia, ADD.”

Ability to perform DLA

MR:

GP1 did not complete this section of the MR. *GP2 assesses the appellant as restricted on a continuous basis for personal self care, meal preparation, basic housework, and daily shopping. He assesses the appellant as independent for management of medications, mobility inside the home, mobility outside the home, use of transportation, management of finances, and social functioning. GP2 comments, "Severe limitation in hand. Will worsen over time."*

GP2 provides the following additional comment regarding assistance with DLA:

"Requires help with meal prep, dressing self, lifting or carrying objects at home. Unable to carry infant. Not independent with household chores."

AR:

GP1 provides the following assessments of the assistance the appellant requires in performing DLA (GP1's comments in parentheses, GP2's in *italics*):

- Personal care – takes significantly longer than typical for dressing (difficult zippers/tying laces); independent for grooming, bathing, toileting, feeding self, regulating diet, transfers in/out of bed, transfers on/off chair. *(Requires assistance from spouse to get dressed.)*
- Basic housekeeping – independent for laundry and basic housekeeping.
- Shopping – Independent for going to and from stores and carrying purchases home; continuous assistance from another person for reading prices and labels, making appropriate choices, and paying for purchases ([spouse] manages all money & decisions)
- Meals – continuous assistance from another person for meal planning and food preparation *(done by spouse)*; periodic assistance from another person for cooking; and independent for safe storage of food.
- Pay rent and bills – continuous assistance from another person required for banking, budgeting, and paying rent and bills *(ADD/dyslexia)*.
- Medications – independent for all tasks: filling/refilling prescriptions, taking as directed, and safe handling and storage.
- Transportation – independent for all tasks: getting in and out of a vehicle, using public transit, and using transit schedules and arranging transportation.

GP1 added the comment, "Wife does all ADL requiring reading/math."

With respect to social functioning, GP1 assesses the appellant is requiring periodic support supervision for making appropriate social decisions ([patient history] drug abuse); and independent for ability to develop and maintain relationships, interacting appropriately with others, dealing appropriately with unexpected demands and securing assistance from others.

GP1 indicates that how the appellant's mental impairment impacts his relationship with others is marginal functioning with both his immediate and his extended social network

Help provided/required

AR:

GP1 indicates that assistance is provided by family.

Regarding assistive devices, GP1 indicates that the appellant routinely uses crutches and braces. GP2 added, "*Left wrist brace for support (weak). Crutches 40% of the time to offload right ankle.*"

Self Report

In his SR, the appellant lists his medical conditions as left wrist tendon surgery (2016), substance abuse (adulthood), right ankle osteoarthritis due to injury at age 18, and attention deficit disorder (childhood).

In describing how his disability affects his life and his ability to take care of himself, the appellant writes that when he was 18 years old, he broke his right ankle in a fall. Since then, he is always had trouble with that ankle. The ankle swells up, gets red and inflamed, and causes him pain about once or twice a year. The flare-up can last for two weeks to a month. This appears to be related to bone fragments that move around

More recently he has had two surgeries for his left wrist. He severed a tendon with a power tool. He is right-handed and even more so now and must do almost everything with his right hand. He has difficulty chopping food and peeling fruits and vegetables. He can only lift with his right hand and he can't squeeze, use a can opener, or open a jar with his left hand. It is mostly the thumb part of his hand that doesn't work properly. He struggles to grab, pinch, and squeeze, and has reduced strength in the hand. Fine motor control has decreased as well. He is doing exercises from the physiotherapy program and clinic in another city.

Putting the groceries in the shopping cart and taking them out has to be done with just his right hand. Washing dishes is hard because he needs to hold with one hand and scrub with the other. Gripping the vacuum cleaner is awkward. Little things that require fine motor skills, such as wringing out a washcloth, or cutting fingernails, are difficult. Clothing items such as buttons, shoelaces, zippers and belts are harder. This all takes him longer than normal.

Due to his ADD, it is hard for him to remember information. He has a hard time remembering appointments, and short-term memory retention is a problem. He can't keep focused on tasks that he is doing and has difficulty concentrating. He forgets to pay the bills on time and has an issue with impulse buying. His wife now takes care of all the financial matters due to the debt he has incurred. There is more stress in their relationship because he can't do as much as he used to, and this makes him frustrated. He continues to see counsellors to help him manage addiction issues, although he has been dry and clean for over three years and is trying to get off methadone treatment.

Request for Reconsideration

In addition to the MR and AR as amended by GP2, the appellant submitted a letter dated 17

October 2017 from his Employment Case Manager, who writes that "... with the physical barriers that [the appellant] has, added to the fact that his condition is worsening and documentation from his physician stating that it will not improve, he is a very viable candidate for PWD."

Notice of Appeal

The appellant's Notice of Appeal is dated 28 November 2017. Under Reasons, the appellant writes:

"My physical impairment and dyslexia has left me in a condition of very high stress and is contributing to my mental well being. I would like to speak to someone in person and not by phone or letter and explain how my physical impairment is seriously affecting my home life, family, etc. (health)."

On 21 December 2017, the appellant submitted a Release of Information (ROI) form for an advocate he wished to attend the hearing. Attached to the ROI was another Notice of Appeal, dated 20 December 2017, in which he gives as Reasons "Physical impairment (hand, ankle, severe). Mental stress & memory lapses."

The hearing

At the hearing, the appellant stated that he has been trying to find work, but has been unsuccessful in keeping a job, as he always has to take time off because of his restrictions. At home, he cannot pick up the baby because of the risk of dropping her. His injury to his left wrist can result in dropping things and prevents him from washing dishes and doing meal preparation such as opening packages or peeling or cutting vegetables. He has no difficulty eating, except he needs help when using a knife, such as cutting a steak. While he often wears slip-on footwear, his spouse helps him tying the laces of his boots. His spouse will also often help him bathing, using a scrub brush for areas that he can't manage by himself because of his wrist injury. He does not do any shopping and his spouse or his mother does his laundry.

The appellant also explained that the osteoarthritis in his right ankle is getting worse – he experiences flare-ups once every couple of weeks instead of twice a year, and during these periods he uses his crutches. The brace for his left wrist has worn down and he does not wear it any more. He cannot afford a new brace.

The appellant's spouse testified that their relationship is being put under much stress because of his impairments – not only because of their financial situation living on income assistance, but also because, in addition to caring for the baby, she is expected to attend to a man with his restrictions. She can't go out on her own, or get a job, because the appellant cannot be left to look after the baby – for example, because of his restrictions he cannot change the baby's diapers or clean-up after her.

In answer to a question, the appellant stated that he not only drops things out of his left hand, but often out of his right hand as well, explaining that he has osteoarthritis and hypermobility in his right thumb. The appellant acknowledge that there is no reference in the information before the ministry and reconsideration to any restrictions relating to the use of his right hand.

Admissibility of additional information

Section 22(4) of the *Employment and Assistance Act* (EAA) provides that panels may admit as evidence the information and records that were before the minister when the decision being appealed was made and “oral or written testimony in support of the information and records” before the minister when the decision being appealed was made. These limitations reflect the jurisdiction of the panel established under section 24 of the EAA – that is, panels are limited to determining if the ministry’s decision is reasonably supported by the evidence or a reasonable application of the legislation in the circumstances of the appellant. Thus, panels are not to assume the role of decision-makers of the first instance by considering information that presents a new or different picture of the impairment or restrictions than that which was before the ministry when it made its reconsideration decision.

The ministry objected to the admissibility of the information provided by the appellant in his testimony regarding the OA in his right thumb.

With the exceptions noted below, the panel finds that the information provided by the appellant in the Notices of Appeal and in his testimony at the hearing, and by the appellant's spouse in her testimony at the hearing, are in support of the information and records before the ministry at reconsideration. The panel therefore admits this information as evidence pursuant to section 22(4) of the *Employment and Assistance Act*.

The panel does not admit as evidence the testimony of the appellant regarding the OA in his right ankle worsening to the point where flare-ups occur once every couple of weeks, as all references to a worsening condition in the information before the ministry of reconsideration related to his left wrist condition. Similarly, the information provided in appellant's testimony regarding OA in his right thumb, and consequent dropping of things out of his right hand, was not before the ministry at reconsideration. Accordingly, these parts of the appellant's testimony cannot be said to support any information before the ministry at reconsideration, and therefore cannot be admitted as evidence for this appeal.

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. Specifically, the ministry determined that the information provided did not establish that the appellant has a severe physical or mental impairment that, in the opinion of a prescribed professional,

(i) directly and significantly restricts his ability to perform daily living activities (DLA) either continuously or periodically for extended periods; and,

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

The ministry determined that the appellant satisfied the other 2 criteria: he has reached 18 years of age; and his impairment in the opinion of a medical practitioner is likely to continue for at least 2 years.

The following section of the EAPWDA applies 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 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 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.

Analysis

The legislation is clear that the determination of severity of impairment is at the discretion of the minister, taking into account all of the evidence. The legislation requires that for PWD designation, the minister must be "satisfied" that the person has a severe mental or physical impairment. For the minister to be "satisfied" that the person's impairment is severe, the panel considers it reasonable for the ministry to expect that the information provided by the independent and professional medical practitioner and prescribed professional (in this case GP1 and GP2) completing the application provides the minister with a comprehensive overview of the nature and extent of the impacts of the person's medical conditions on daily functioning. It is therefore reasonable for the minister to expect that the MR and the AR include explanations, descriptions or examples in the spaces provided.

Severity of physical impairment

The position of the appellant is that the limitations to his mobility due to the OA in his right ankle and the restrictions in his use of his left hand arising from an injury to his wrist constitute a severe physical impairment.

In the reconsideration decision, based on the assessments provided by GP1 as amended by GP2, the appellant's SR and the letter from his employment case manager, while acknowledging while the appellant is limited with regard to his ability to lift with his left hand, the ministry found that a severe impairment of his physical functioning has not been established.

As the ministry noted, the diagnosis of a serious medical condition does not in itself determine PWD eligibility or establish a severe impairment. To assess the severity of impairment, the ministry must consider the nature of the impairment and the extent of its impact on daily functioning as evidenced by limitations/restrictions and mobility, physical ability, and functional skills. The panel finds this approach reasonable, considering the focus of the legislation is on restrictions and the resulting help required.

Consistent with this approach, the ministry reviewed the assessments in the MR and AR provided by GP1, as amended by GP2 (see Part E above under Severity of physical impairment) with regard to the appellant's manual abilities. In its review, the ministry noted that although in the MR GP2 states that the appellant cannot lift with his left hand, he does not describe limitations in lifting with his right hand/arm, while GP1 indicates that the appellant can lift 5 to 15 lbs. The ministry further noted that while under Additional Comments in the MR GP1 gives further information regarding persistent weakness/loss of tendon in the appellant's left wrist, GP1 does not describe any limitations/restrictions to the use of the appellant's right hand/arm. In addition, in the AR GP1 does not describe the frequency or duration of periodic assistance from another person required with lifting and carrying/holding. The ministry held that with GP1's assessment that the appellant can lift 5 to 15 pounds, this is considered sufficient ability to lift a variety of household and shopping items.

Considering that, as noted by the ministry, there was insufficient evidence before the ministry at reconsideration that the appellant is in any way impaired in using his right arm/hand, with no narrative that would explain why he could not manage most activities using mainly that hand, the panel finds that the ministry was reasonable in determining that the information provided did not establish a severe physical impairment of the appellant's manual functioning.

With regard to mobility, the ministry noted that, although in the AR GP1 indicates that he appellant uses a crutch with walking outdoors, in the PR he indicates that the appellant can walk 4+ blocks unaided, with "unaided" meaning without the assistance of another person, assistive device, or assistance animal. The ministry also noted that GP1 does not describe how much longer than typical the appellant takes with climbing stairs, and the ability to climb 5 steps is not indicative of a severe impairment of physical functioning. The ministry also noted that in the AR, GP2 comments that "crutches 40% of the time to offload right ankle," but does not state how far the appellant can walk unaided – i.e. GP2 did not amend GP1's assessment that the appellant can walk 4+blocks unaided.

The panel notes that due to some inaccuracies and gaps found in the assessments provided by GP1 in the original application, GP2 took upon himself the responsibility for amending the PR and AR for the appellant at reconsideration. The panel considers it reasonable that the ministry would expect the amended version of the PR and AR to resolve any inconsistencies arising from any new or changed assessments made by GP2. To the extent that any inconsistencies remain, the panel finds that the ministry would have difficulties in obtaining a clear picture of the appellant's restrictions/limitations.

The ministry was presented with the following:

- GP1's assessment that the appellant can walk 4+ blocks unaided and can walk 5+ steps unaided, left not amended by GP2;
- GP2 indicating in the amended MR that the appellant is not restricted for mobility inside and outside the home.
- GP2's statement in the amended AR that the appellant requires the use of crutches 40% of the time to offload right ankle;
- The appellant's statement in his SR that his right ankle swells up, gets red and inflamed, and causes him pain about once or twice a year; these flare-ups can last for two weeks to a month.

It is unclear from these latter two narratives whether GP2 is referring to the appellant only using crutches during flare-ups that might account for 40% of the time, or, despite his assessment that the appellant is not restricted walking indoors and outdoors, uses crutches at other times as well.

The panel finds that, given GP1's assessment that the appellant can walk 4+ blocks unaided and climb 5 steps unaided, left not amended by GP2, and with the contradictory evidence summarized above, the ministry was reasonable in determining that the information provided did not establish a severe impairment in the appellant's mobility.

Based on the foregoing discussion of the information provided regarding the impacts of the appellant's manual and mobility limitations, the panel finds that the ministry was reasonable to determine that a severe physical impairment has not been established.

Severity of mental impairment

The appellant's position is that the information provided regarding the restrictions arising from his dyslexia and related ADD clearly establishes that he has a severe mental impairment.

In the reconsideration decision, the ministry found that, based on the assessments provided by GP1, as amended by GP2, and the appellant's SR and the letter from his employment case manager, a severe impairment of mental functioning has not been established. In making this determination, the ministry reviewed the information provided by GP1, as amended by GP2 (see Part E above under Severity of mental impairment and regarding social functioning under Ability to perform DLA).

In its decision, the ministry noted that in the MR GP1 indicated that the appellant has no difficulties with communication, has a significant deficit with cognitive and emotional functioning

in the area of language, and writes, "Lifelong difficult in reading. Prolonged time to read simple material" and "Dyslexic – moderate. Able to read but very slow." The ministry noted that GP1 does not indicate significant deficits for the majority of listed areas of cognitive and emotional functioning and does not describe how much longer than typical the appellant takes with reading.

The ministry also reviewed the assessments provided by GP1 on the degree of impact of the appellant's mental impairment on daily functioning, noting a major impact to one area of cognitive and emotional functioning, moderate impacts to two areas, and a minimal impact to one area, with no impacts to 10 areas. The ministry found that the cumulative impact to cognitive and emotional functioning, as indicated by GP1 in this impact analysis, it is not considered indicative of a severe impairment of mental functioning.

With regard to social functioning (the term ministry uses to describe the ability to perform the DLA applicable to a person with a mental impairment – i.e. make decisions about personal activities, care, or finances, and relate to, communicate or interact with others effectively) the ministry noted that GP1 assesses the appellant as requiring periodic support/supervision with making appropriate social decisions, but independent with all other listed social functioning abilities, while having marginal functioning with both his immediate and extended social networks. The ministry noted that GP1 does not describe the frequency or duration of periodic support/supervision required with making appropriate social decisions, and does not describe any support/supervision required to help him maintain in the community. The ministry also noted that in the amended MR, GP2 indicated that the appellant is not restricted with social functioning.

In addressing the severity of mental impairment, the ministry did not refer to the assessments by GP1 regarding the management of finances (pay rent and bills) and those tasks of daily shopping involving reading prices and labels, making appropriate choices and paying for purchases, where the continuous assistance of another person (the appellant's spouse) is reported, with GP1 writing, "Wife does all ADL requiring reading/math." The panel notes, however, that in amending the MR, GP2 assesses the appellant as not restricted for management of finances and for social functioning, the latter incorporating the decision-making DLA, which in turn is relevant to any restrictions for the shopping tasks. Given these conflicting assessments, the panel appreciates that the ministry would have had difficulty finding that the appellant has a severe mental impairment based on these assessments of restrictions for shopping and managing finances.

Considering that GP1 identifies only one deficit to cognitive and emotional functioning, one major impact of mental impairment on daily functioning, and the reported level of independence for the social functioning abilities, and taking into account as well GP2's assessments that the appellant is not restricted for managing personal finances and social functioning, the panel finds that the ministry was reasonable in determining that the information provided does not establish a severe mental impairment.

Direct and significant restrictions in the ability to perform DLA

In the reconsideration decision, the ministry held that it is not satisfied that the appellant has a severe impairment that, in the opinion of the prescribed professional, directly and significantly restricts his ability to perform the DLA set out in the legislation. The ministry noted that while the legislation does not specifically require the frequency and duration of restrictions to be explained, the ministry finds such information valuable in determining the significance of the restrictions.

The panel notes that, according to the legislation, the direct and significant restriction in the ability to perform DLA must be the result of a severe impairment, a criterion not established in this appeal. The legislation – section 2(2)(b)(i) of the EAPWDA – requires the minister to assess direct and significant restrictions to DLA in consideration of the opinion of a prescribed professional, in this case the GP. This does not mean that other evidence should not be factored in as required to provide explanation of the professional evidence, but the legislative language is clear that a prescribed professional's evidence is fundamental to the ministry's determination whether it is "satisfied." And for the minister to be "satisfied," it is reasonable for the ministry to expect that a prescribed professional provides a clear picture of the extent to which the ability to perform DLA is restricted, as assessed in terms of the nature and duration of help required, in order for the ministry to determine whether the restrictions are "significant."

In the AR, GP1 provides the following assessments:

- Independent for all aspects of personal care except dressing for which he takes significantly longer than typical, and all aspects of basic housekeeping, medications and transportation.
- Requiring continuous assistance from another person or unable for those aspects of the DLA shopping usually restricted by a mental impairment – reading prices and labels, making appropriate choices, and paying for purchases, and independent for going to and from stores and carrying purchases home.
- Requiring continuous assistance from another person or unable for all aspects of paying rent and bills.
- For the DLA of meals, requiring continuous assistance from another person or unable for meal planning and food preparation, requiring periodic assistance from another person for cooking, and independent for safe storage of food.

In amending the AR at reconsideration, GP2 added the comments "Requires assistance from spouse to get dressed," regarding personal care/dressing, and "Done by spouse," regarding meals/meal planning and food preparation.

In the MR, GP2 indicates that the appellant is restricted on a continuous basis for the activities of personal self-care, meal preparation, basic housework and daily shopping. GP2 indicates that the appellant is not restricted to the management of medications, mobility inside the home, mobility outside the home, use of transportation, and management of finances. In making these assessments, GP2 comments, "Requires help with meal prep, dressing self, lifting or carrying objects at home. Unable to carry infant. Not independent with household chores."

In reviewing these assessments, the ministry noted the following:

- While in the amended MR, GP2 indicates continuous restrictions to personal self-care, in the AR GP1 indicates that the appellant is independent with seven of eight listed areas of personal care.
- While in the amended MR, GP2 indicates continuous restrictions to basic housework, in the AR GP1 indicates that the appellant is independent with laundry and basic housekeeping..
- In the AR, GP1 does not describe the frequency or duration of periodic assistance from another person required with cooking or for much longer than typical he takes with dressing.

As discussed above under Severity of mental impairment, the panel notes that in the amended MR, GP2 indicated that the appellant is not restricted with respect to management of finances and social functioning, while in the AR GP1 assessed the appellant as requiring continuous assistance from another person for the decision-making aspects of shopping and for paying rent and bills. Considering that social functioning includes the DLA of making decisions about personal activities care or finances, it would be difficult for the ministry, given these conflicting assessments, to determine the appellant was significantly restricted in his ability to perform these DLA based on the continuous assistance assessments by GP1.

Given that a severe impairment has not been established, and considering the above analysis of conflicting assessments and the overall level of independence reported by GP1 and GP2, including for social functioning, the panel finds that the ministry was reasonable in determining that the information provided did not confirm that the appellant has a severe impairment that significantly restricts his ability to perform DLA continuously or periodically for extended periods, and that this legislative criterion has therefore not been met.

Help required

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 GP1 and GP2 report that the appellant benefits from the assistance of his spouse and requires the use of a wrist brace and the intermittent use of a crutch, since 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 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, was reasonably supported by the evidence. The panel therefore confirms the ministry's decision. The appellant is thus not successful on appeal.