

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 21, 2017, which held that the appellant did not meet 4 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 requirements, but was not satisfied that:

- the evidence establishes that the appellant’s impairment is likely to continue for at least 2 years;
- 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 August 24, 2017, and the appellant's Self-Report (SR) dated August 6, 2017.

The appellant's request for PWD designation was denied on October 25, 2017. On December 8, 2017 the ministry received the appellant's Request for Reconsideration (the "RFR") dated December 7, 2017.

The information at the time of reconsideration also included the following:

- Referral letter from a pain specialist (the "Specialist") dated October 24, 2017 (the "Referral Letter")
- Letter from the Physician dated November 3, 2017 (the "Letter")

On January 11, 2018 the tribunal received the appellant's Notice of Appeal dated January 10, 2018.

Summary of relevant evidence

Diagnoses

In the MR, the Physician indicates that the appellant has degenerative disc disease, date of onset not known, and chronic pain, date of onset December 2015. The Physician indicates that the appellant has been his patient since May 2017 and he has seen him 2-10 times since then.

In the AR, the Physician indicates that the appellant's physical impairments that impact his ability to manage DLA are chronic pain in neck and shoulder.

In the Referral Letter, the Specialist indicates that the appellant was first seen on July 19, 2017 for chronic left sided neck and shoulder pain originating from a workplace injury in December 2015. The Specialist states that the appellant has a diagnosis of left cervical and shoulder girdle myofascial pain with central sensitization. The Specialist indicates that the appellant has had a left shoulder ultrasound, MRI arthrogram, and cervical spine MRI but the results of those examinations are non-contributory to the current diagnosis.

In the Letter, the Physician indicates that the appellant is unable to work doing physical tasks without aggravation of the pain in his left shoulder girdle and cervical region.

In the SR, the appellant states that he had an ultrasound on March 17, 2016 that did not show any significant findings. He states that he had an MRI cervical spine on May 4, 2017 that showed "evidence of mild multilevel degenerative disc disease and facet arthrosis" but "no cord compression or myelopathic change". The appellant states that he had a left shoulder arthrogram that identified rotator cuff tendinosis but no tears.

Duration

In the MR, the Physician indicates that estimated duration of the appellant's impairment is unknown and ongoing treatment options are being pursued.

In the Letter, the Physician states that he cannot comment on the appellant's prognosis but would consider it variable from patient to patient with this sort of presentation.

Physical Impairment

In the MR for Functional Skills, the Physician indicates that the appellant is able to walk 4+ blocks unaided on a flat surface, can climb 5+ steps unaided, is limited to lifting under 5 pounds, and can remain seated less than 1 hour. In the Health History portion of the MR, the Physician indicates that the appellant is unable to physically exert himself or do any heavy lifting without exacerbation of his pain and neurological symptoms. The Physician indicates that this is present at all times, to varying degrees, and that the appellant can have episodes for days at a time in which he is bed-ridden, unable to help around the house, prepare meals, or take care of children. Under

Part F – Additional Comments, the Physician indicates that the appellant has not found any successful treatment even though he has seen orthopedic specialists, pain specialist, and has attended physiotherapy, massage, and acupuncture.

In the AR, the Physician indicates that the appellant is independent with walking indoors, walking outdoors, climbing stairs, standing and carrying and holding but requires periodic assistance from another person with lifting, explaining that the appellant cannot lift heavy objects usually.

In the SR, the appellant states that he has a longstanding disability affecting his neck and head as well as his left shoulder and arm after a workplace injury on December 31, 2015 when he was doing food deliveries. The appellant states that his injury causes him constant moderate-severe pain, which becomes unbearable when he engages in physical exertion, especially lifting, pushing/pulling, and reaching. The appellant reports that he returned to work for April and May 2016 but was laid off on June 2, 2016. He states that on April 11, 2017 he had an extreme flare-up of pain, which rendered him unable to move his head or neck due to stabbing pain, swelling, and stiffness, and he was driven to a hospital. The appellant states that he continues to experience periodic muscle spasms, episodes of uncontrollable shaking in his left hand, and reduced nerve sensation in his left foot and leg and left arm and hand. The appellant states that with acupuncture, massage and deep tissue treatments he experiences some relief but it is only temporary. The appellant states that he is waiting for a neuromuscular consultation and nerve conduction studies and hopes that this procedure will explain why he has been suffering with this pain for the last year and a half.

The Referral Letter indicates that the appellant presented with ongoing left sided neck and shoulder pain described as tightness, throbbing, aching pain with occasional paresthesia to left fingers.

In the Letter, the Physician indicates that the appellant sustained an aggravation to his previous work place injury from which he had never completely recovered, which was then worsened and aggravated with further insults. The Physician indicates that the appellant's injury may have worsened further with the development of chronic pain syndrome and chronic myofascial dysfunction with central sensitization. The Physician indicates that the appellant is unable to work doing physical tasks without aggravation of pain in that region, is unable to be in a static position for extended time without aggravation of his pain.

In the RFR the appellant states that due to his physical disability he is unable to support or fully take care of himself, his common law spouse and five young children (ages 1 to 7). The appellant states that he has constant pain and requires various treatments. He states that he has been disabled for almost two years, since December 31, 2015 and his condition is only worsening without sufficient interventions.

Mental Impairment

The MR indicates that the appellant does not have any difficulties with communication and does not have any significant deficits with cognitive and emotional function. Under Part F – Additional Comments the Physician indicates that the appellant has not been able to work or enjoy hobbies, which has caused low mood and frustration. In the AR, the Physician did not indicate the appellant's level of ability with speaking, reading, writing or hearing. The Physician did not complete section 4, cognitive and emotional functioning.

In the Referral Letter the Specialist states that the appellant would benefit from counselling (minimum duration 12 weeks) to address mental health implications of ongoing chronic pain that is interrupting his ability to work and interact with his children and family. The Specialist states that addressing mental health impacts in turn can help to reduce central sensitization and improve function.

DLA

In the AR, the Physician indicates that the appellant is independent with all aspects of personal care, paying rent and bills, personal care, paying rent and bills, medications and transportation. The Physician indicates that the appellant requires periodic assistance with laundry and basic housekeeping, explaining that on bad days he cannot do housekeeping or laundry. The Physician indicates that with respect to shopping, the appellant is independent with going to and from stores, reading prices and labels, making appropriate choices and paying for purchases but requires periodic assistance with carrying purchases home, explaining that he cannot carry heavy objects. For

meals, the Physician indicates that the appellant is independent with meal planning and safe storage of food but requires periodic assistance with food preparation and cooking, explaining that when things are bad the appellant cannot cook or prepare food. For additional comments, the Physician indicates that the appellant's partner needs to help him with housework, laundry and carrying heavy objects most of the time and needs to cook and prepare food when the appellant's pain is severe in nature.

The Physician did not complete the section for social functioning.

In the SR, the appellant states that his injuries affect every part of his life, every day. The appellant states that he has to take frequent breaks from everyday activities and sit down or relax to take pressure from his neck and despite medication, his pain never totally goes away, fluctuating from moderate to severe in intensity. The appellant states that at worst, his pain is crippling and renders him helpless for a period of time. He states that routine housework such as mopping, dusting, scrubbing and vacuuming has become a challenge and now he cannot do it without help. The appellant states that his common law partner does much of the housework, though he does as much as he can on better days. He states that his partner does much of the cooking because standing in the kitchen taxes his injury.

The appellant states that he lives on a large property that requires a certain degree of outdoor work to maintain, but he cannot do yard work anymore and had to purchase a ride on lawnmower using credit in order to maintain the lawn. He states that he cannot plow snow from his driveway either and cannot afford hired help so he has to park on the road in the winter and walk his children to and from the vehicle when the snow level is high. He states that he lives in an older home and had planned to renovate it but is not able to do so as he cannot lift, bend, reach or turn the way he needs to in order to paint, repair, or refinish the house.

The appellant states that his social life has suffered and he is unable to participate in activities he used to enjoy such as golf, cycling and skiing and he has had to limit his volunteer activity. The appellant states that his deepest joy is his family and he enjoys activities with his children but cannot roughhouse or swing the boys like he used to, or carry his baby in her car seat carrier.

Need for Help

In the MR, the Physician indicates that the appellant does not require any prostheses or aids for his impairment. In the AR, the Assessor indicates that help for DLA is provided by family.

In the Referral Letter, the Specialist indicates that the appellant will need ongoing multi-disciplinary care from a team of practitioners (minimum duration 12 weeks), as well as counselling of same duration to address mental health implications of ongoing chronic pain.

In the Letter, the Physician indicates that the appellant needs ongoing physiotherapy and visits with the pain specialists.

In the SR, the appellant states that he requires help from his partner with housework and cleaning, help with yard work and ongoing treatment with physiotherapy, acupuncture and massage therapy for temporary relief.

In the RFR, the appellant states that treatments recommended for his condition are: physiotherapy, occupational therapy, chiropractor visits, deep tissue massage therapy and prolotherapy.

Additional information provided

In his Notice of Appeal dated January 10, 2018, the appellant states that he is incapacitated due to a work injury and has been unable to work for over two years. The appellant states that he has no income and no way to support himself. The appellant states that he is appealing to another agency to fund his recovery so that he can work again but has been unsuccessful so far. The appellant states that he is significantly disabled and in great need of financial support.

By email dated February 5, 2018 the ministry advised that the ministry's submission will be the reconsideration summary provided in the Record of Ministry Decision.

With the consent of both parties, the hearing was conducted as a written hearing pursuant to section 22(3)(b) of the *Employment and Assistance Act*.

Admissibility of New Information

The panel has admitted the information in the appellant's Notice of Appeal as it is evidence 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*. In particular, the information regarding the appellant's disability and need for financial support was 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

- the evidence establishes that the appellant's impairment is likely to continue for at least 2 years;
- 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 practice 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

Duration

The appellant's position is that he has been significantly disabled for over two years and that despite medications and treatment; he continues to have pain that is crippling at times.

The ministry's position is that the Physician did not indicate that the appellant's impairment is likely to continue for two years or more and notes "unknown duration – ongoing treatment options being pursued". The ministry's position is that the legislative criteria has not been met.

As the Physician has not confirmed that the appellant's impairment is likely to continue for two years or more as is required by section 2(2)(a) of the EAPWDA, the panel finds that the ministry was reasonable in concluding that the legislative criterion was not met.

Severity of Impairment

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's position is that he has a severe physical impairment due to a workplace injury in his neck, back and shoulder that became extremely exacerbated in April 2017. The appellant's position is that his moderate to severe pain is always present, every day, and at times becomes unbearable and crippling. The appellant's position is that his physical impairment has forced him to limit his mobility, restrict his activities and adapt his lifestyle in order to minimize the ever present pain.

The ministry's position is that the information provided does not establish a severe physical impairment. The reconsideration decision indicates that a diagnosis of a serious medical condition does not in itself determine PWD eligibility or establish a severe impairment. The ministry notes that in terms of physical functioning, the Physician indicates that the appellant can walk 4+ blocks unaided, can climb 5+ steps unaided, can lift under 5 pounds and remain seated less than 1 hour. While the Physician indicates that the appellant requires periodic assistance with lifting, noting that the appellant "can not lift heavy objects usually", there is no information provided to explain the frequency or the degree of the periodic assistance required to manage lifting.

The reconsideration decision indicates that the Letter primarily focuses on the appellant's employability and vocational abilities but that, for the purpose of determining PWD eligibility, employability or vocational ability is not taken into consideration.

The ministry's position is that while the appellant experiences pain and some limitations, particularly with lifting, the functional skill limitations described by the Physician do not describe a severe degree of physical impairment.

The panel finds that the ministry reasonably determined that the information provided does not establish that the appellant has a severe physical impairment. In particular, the functional skills reported in the MR and the AR

indicate that the appellant has a high level of functional mobility and ability, is independent with walking indoors, walking outdoors, climbing stairs, standing, and carrying and holding, and requires periodic assistance with lifting as he cannot lift heavy objects usually.

In the MR, the Physician indicates that the appellant is unable to physically exert himself or do any heavy lifting without exacerbation of his pain and neurological symptoms. The Physician indicates that this is present at all times, to varying degrees and that the appellant can have episodes for days at a time in which he is bed-ridden and unable to help around the house, prepare meals or take care of his children. However, the Physician does not provide any further information to explain the frequency or duration of these episodes and he indicates that the appellant does not require any prosthesis or aids for his impairment.

In the SR, the appellant states that he has constant moderate to severe pain that becomes unbearable when he engages in physical exertion, especially lifting, pushing/pulling. The Letter indicates that the appellant's condition has never recovered, and the Referral Letter indicates that the appellant described his pain as tightness, throbbing, and aching. While the appellant's description of his impairment appears to be more severe than the information provided by the Physician and the Specialist, even the appellant describes his impairment as moderate to severe and there is no additional information from a prescribed practitioner describing the severity of the appellant's impairment or the frequency or duration of the episodes in which the appellant's pain is severe.

The panel notes that the Letter does focus primarily on the appellant's employability and vocational abilities but that employability is not a criterion for PWD designation as the ministry states in the reconsideration decision.

While the information provided indicates that the appellant has chronic pain, particularly in his left shoulder girdle, and has some limitations particularly with lifting, the panel finds that the ministry reasonably determined that the information provided does not establish that the appellant has a severe physical impairment.

Severe Mental Impairment

The appellant did not argue that he has a severe physical impairment.

The ministry's position is that the Physician did not indicate that the appellant has any deficits to cognitive and emotional functioning and there is no information provided regarding impacts to daily functioning as a result of cognitive and emotional functioning. The reconsideration decision notes that the Physician indicates that the appellant has no difficulties with communication and no information is provided to describe the appellant's level of ability to communicate, specifically reading, writing, hearing and speaking. The ministry's position is that the information provided is not evidence of a severe mental impairment.

The panel finds that the ministry reasonably determined that the information provided does not establish that the appellant has a severe mental impairment.

In the MR, under Part F – Additional Comments the Physician indicates that the appellant has not been able to work or enjoy hobbies, which has caused low mood and frustration. In the Referral Letter, the Specialist states that the appellant would benefit from counselling (minimum duration 12 weeks) to address mental health implications of ongoing chronic pain that is interrupting his ability to work and interact with his children and family. The Specialist states that addressing mental health impacts in turn can help to reduce central sensitization and improve function.

However, there is no diagnosis of a mental impairment and the MR indicates that the appellant does not have any significant deficits with cognitive and emotional function. In addition, the MR indicates that the appellant does not have any difficulties with communication and in the AR; the Physician did not indicate the appellant's level of ability with speaking, reading, writing or hearing or complete section 4, for cognitive and emotional functioning.

While the information provided indicates that the appellant's chronic pain may cause some low mood and frustration, the panel finds that the ministry reasonably determined that the information did not establish that the appellant has a severe mental impairment as required by EAPWDA section 2(2).

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, does not include the ability to work.

The appellant's position is that his severe physical impairment impacts every part of his life, every day and that the pain is so great he cannot do many of the things he used to do in order to take care of himself and his home. The appellant states that if he pushes himself beyond the limits of his injury, then the pain is greatly exacerbated and he needs to rest for days or weeks in order to recover back to a moderate pain level. The appellant's position is that housework has become a challenge for him and he cannot do it without help. He states that his partner has to do much of the cooking as standing in the kitchen taxes his injury. The appellant states that he does as much as he can on better days but there is always a price to pay when he does too much.

The ministry's position is that the information provided is not sufficient to establish that the appellant has a severe impairment that, in the opinion of a prescribed professional, directly and significantly restricts the appellant's ability to perform DLA. The reconsideration decision acknowledges that the appellant experiences pain as a result of his medical condition and has limitations in managing DLA. The reconsideration decision notes that while the Physician indicates that the appellant requires periodic assistance on "bad days", the frequency, degree and duration of the assistance that the appellant requires remains unclear. The ministry's position is that it is unable to establish that the appellant is significantly restricted continuously or periodically for extended periods, particularly as the Physician indicates that the appellant is independently able to manage many other activities of DLA including personal care, shopping, meals, paying rent and bills, medications, and transportation.

The ministry also notes that with regards to social functioning the Physician does not provide information regarding the appellant's ability to manage social functioning and no information is provided to describe the appellant's relationships with both his immediate and extended social networks. The ministry's position is that the legislative criteria has not been met.

The panel finds that the ministry reasonably determined that the assessments provided are more indicative of a moderate rather than severe level of impairment. In the MR, the Physician indicates that the appellant has not been prescribed any medication and/or treatments that interfere with his ability to perform DLA. In the AR, the Physician indicates that the appellant is independent with all aspects of personal care, paying rent and bills, personal care, paying rent and bills, medications and transportation. The Physician indicates that the appellant requires periodic assistance with laundry and basic housekeeping, explaining that on bad days he cannot do housekeeping or laundry. The Physician indicates that with respect to shopping, the appellant is independent with going to and from stores, reading prices and labels, making appropriate choices and paying for purchases but requires periodic assistance with carrying purchases home, explaining that he cannot carry heavy objects. While the AR indicates that the appellant needs some periodic assistance with some aspects of DLA and while the appellant states that he needs help with housework, yard work and cooking, the frequency, degree and duration of the assistance that the appellant requires remains unclear.

The reconsideration decision states that the AR indicates that the appellant is independent with meals, but the

panel notes that is not accurate. The AR indicates that the appellant is independent with meal planning and safe storage of food but requires periodic assistance with food preparation and cooking, explaining that when things are bad the appellant cannot cook or prepare food. Again however, there is no further information to indicate how much assistance is required or how often the appellant's pain is severe in nature.

The panel notes that although the appellant states that his social life has suffered, the Physician did not complete the section for social functioning or describe how the appellant's impairment impacts the appellant's immediate or social networks. At the same time however, the AR indicates that the social functioning section is to be completed if the appellant has an identified mental impairment and the Physician did not identify any mental impairment.

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. Considering all the information together, the panel finds that the ministry was reasonable in determining that the appellant's impairment does not, in the opinion of a prescribed professional, directly and significantly restrict the appellant's ability to perform DLA as required by the legislation.

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 some help with some aspects of DLA because of his severe physical impairment, particularly housework, cooking, lifting and yard work and that he needs financial assistance in order to fund his ongoing treatments required including chiropractic care, physiotherapy, massage therapy, prolotherapy and occupational therapy. In the RFR, the appellant states that he needs PWD as he has not other options to survive financially.

The ministry's position is that because it has not been established that DLA are significantly restricted, it cannot be determined that help is required.

In the MR, the Physician indicates that the appellant does not require any prostheses or aids for his impairment. In the AR, the Assessor indicates that help for DLA is provided by family. In the AR, the Physician does not indicate that the appellant requires any assistive devices or has an Assistance Animal.

In the Referral Letter, the Specialist indicates that the appellant will need ongoing multi-disciplinary care from a team of practitioners (minimum duration 12 weeks), as well as counselling of same duration to address mental health implications of ongoing chronic pain.

In the Letter, the Physician indicates that the appellant needs ongoing physiotherapy and visits with the pain specialists.

The panel finds that the information provided indicates that the appellant requires some help with some aspects of DLA and may benefit from various treatments, at least to provide some temporary relief. 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.