

PART C – DECISION UNDER APPEAL

The decision under appeal is the Ministry of Social Development and Poverty Reduction (the ministry) reconsideration decision dated January 22, 2018 which found that the appellant did not meet three of the five statutory requirements of Section 2 of the *Employment and Assistance for Persons with Disabilities Act* for designation as a person with disabilities (PWD). The ministry found that the appellant met the age requirement and that his impairment is likely to continue for at least two years. However, the ministry was not satisfied the evidence establishes that:

- the appellant has a severe physical or mental impairment;
- the appellant's daily living activities (DLA) are, in the opinion of a prescribed professional, directly and significantly restricted either continuously or periodically for extended periods; and,
- as a result of these restrictions, the appellant requires the significant help or supervision of another person, the use of an assistive device, or the services of an assistance animal to perform DLA.

PART D – RELEVANT LEGISLATION

Employment and Assistance for Persons with Disabilities Act (EAPWDA), Section 2

Employment and Assistance for Persons with Disabilities Regulation (EAPWDR), Section 2

PART E – SUMMARY OF FACTS

The evidence before the ministry at the time of the reconsideration decision included the appellant's Persons With Disabilities (PWD) Application comprised of the appellant's information and self-report dated March 27, 2017, a medical report (MR) dated March 31, 2017 completed by a general practitioner (GP) who has known the appellant for 10 years and has met with him for 2 to 10 times in the past 12 months, and an assessor report (AR) dated April 19, 2017 and completed by a registered social worker (SW) who met with the appellant for the first time to complete the AR.

The evidence also included the following documents:

- 1) Medical Imaging Reports dated August 15, 2014, September 8, 2014, and December 14, 2016;
- 2) Rheumatology Consultation Report ("Consultation Report") dated January 4, 2017;
- 3) Questionnaire completed by the GP and dated November 5, 2017; and,
- 4) Request for Reconsideration dated November 6, 2017.

Diagnoses

In the MR, the GP diagnosed the appellant with Degenerative Disc Disease (DDD), with an onset in 2010, and migraine headaches, with an onset in 2007. There was no diagnosis of a condition within the mental disorders diagnostic category of the MR. Asked to describe the mental or physical impairments that impact the appellant's ability to manage daily living activities (DLA), the SW wrote in the AR "DDD with severe chronic pain, migraine headaches; depression symptoms (awaiting appointment with psychologist)."

Physical Impairment

In the MR, the GP reported:

- With respect to his health history, the DDD is "chronic, severe, progressive. Occasional radiation down legs. Uses a cane, shower chair, grab bar, visits ER for analgesia." Regarding the appellant's migraines, they are "intermittent, severe, 1 to 2 times per month, lasting several days."
- The appellant requires an aid for his impairment, specifically: "cane, shower chair, grab bar."
- In terms of functional skills, the appellant can walk 1 to 2 blocks unaided on a flat surface, climb more than 5 steps unaided, lift 2 to 7 kg. (5 to 15 lbs), and remain seated 1 to 2 hours.
- The appellant is not restricted with mobility inside the home, and is continuously restricted with mobility outside the home. Regarding the degree of restriction, the GP

wrote “chronic back pain.”

- In the additional comments to the MR, the GP wrote “DDD likely to progress with time.”

In the Questionnaire, the GP added:

- He has known the appellant for 20 years and has known about his chronic back pain for more than 15 years.
- The appellant has chronic back pain secondary to DDD, and migraine headaches. The appellant has chronic pain, weakness, decreased mobility, decreased function. Migraines cause episodic nausea, headache, and dizziness.
- When asked whether the appellant suffers from either a severe mental or a severe physical impairment, the GP wrote: “moderate physical impairment. Has a hard time walking, climbing stairs, or sitting for extended periods. Difficulty with bending/lifting as well. Sometimes uses a cane.”

In the Consultation Report dated January 4, 2017, the rheumatologist reported:

- Imaging in the fall of 2014 confirmed DDD and also an L4/5 slipped disc.
- The appellant has tried physiotherapy, IMS, painkillers, muscle relaxants, and has had no relief.
- In the last couple of months, he has developed pain from the forearm to the fingers. He has pain in his right groin when he flexes his hip. Every morning when he wakes up he has “pain in his bones.”

In the AR, the SW reported:

- The appellant is assessed as taking significantly longer than typical and using an assistive device with walking indoors, walking outdoors (note: “1 to 2 blocks maximum”), climbing stairs (note: “needs handrail and only a few”), standing (note: “less than 5 minutes”), lifting (note: “10 lbs. maximum”), and carrying and holding (note: “10 lbs. maximum”). The appellant also requires periodic assistance from another person with lifting and carrying and holding. The SW commented that “all moving about takes at least 4 to 5 times longer and he requires use of cane. Severe pain and restricted range of motion increase with any activity.”
- In the section of the AR relating to assistance provided, the SW identified a cane as an assistive device “for mobility.”

In his self-report, the appellant wrote:

- His back pain (lower back, neck pain) and associated restrictions have become severe. His doctor has told him that he has DDD and that his vertebrae are pinching nerves in his back.
- Since 2015, his pain has been ongoing daily. His pain is exacerbated significantly by basic activities like lifting, walking, sitting for extended periods, lying down for extended periods, and bending.
- He can only walk without his cane for short periods of time (20 to 30 meters) and he needs the cane for all outdoor mobility.

- He cannot walk more than a block without his cane. It takes him much longer to get around and he needs regular breaks. His indoor mobility can be difficult when his back pain is particularly severe as well.
- He also has migraine headaches a few times a month, which further contribute to his overall daily restrictions. When he has a migraine, which occurs 1 to 2 times per month, they can last for several days at a time. The last time he had a migraine, it last 4 or 5 days and he was in so much pain he could not even open his eyes.

Mental Impairment

In the MR, the GP reported:

- There are no difficulties with communication.
- The appellant has no significant deficits with cognitive and emotional function.
- The appellant is not restricted with his social functioning.

In the Questionnaire, the GP added that there is no mental impairment.

In the AR, the SW indicated:

- The appellant has a good ability to communicate in hearing and satisfactory ability with speaking, reading, and writing. The SW wrote: “satisfactory communications for short periods only and not during migraine episodes. During migraines, he is unable to communicate effectively, which can last for days and months.”
- With respect to daily impacts to the appellant’s cognitive and emotional functioning, the SW assessed major impacts to bodily functions, emotion and motivation. There are moderate impacts to attention/concentration, executive, and memory. There are no impacts in the remaining listed areas. The SW commented that the appellant “has taken anti-depressants in the past and is currently experiencing symptoms of depression. He has been referred to mental health clinic and psychologist.”
- The appellant is independent in aspects of his social functioning, specifically: with making appropriate social decisions and securing assistance from others. He requires periodic support/supervision from another person with developing and maintaining relationships (note: “withdrawn and isolated”) and with interacting appropriately with others. The appellant requires continuous support/supervision with dealing appropriately with unexpected demands (note: “stressed and overwhelmed”).
- The appellant has marginal functioning in his immediate and his extended social networks.
- Asked to describe the support/supervision required to help maintain the appellant in the community, the SW wrote: “counselling for depression and chronic pain.”

Daily Living Activities (DLA)

In the MR, the GP reported:

- The appellant has been prescribed pain relief medication that interferes with the appellant's ability to perform DLA and the anticipated duration is "probably ongoing."
- The appellant is continuously restricted with the basic housework DLA, the daily shopping DLA, and the aspect of mobility outside the home. Regarding the degree of restriction, the GP wrote: "chronic back pain."
- The appellant is not restricted with the personal self care DLA, the meal preparation DLA, the management of medications DLA, the use of transportation DLA, the management of finances DLA, and the aspect of mobility inside the home.

In the Questionnaire, the GP added:

- The appellant "needs assistance with ADL's [DLA] that require physical exertion (cleaning, carrying groceries, etc.)."
- The appellant "sometimes uses a cane" and "often requires assistance from friends/family to manage ADL's [DLA]."

In the AR, the SW reported:

- The appellant takes significantly longer than typical and uses an assistive device with walking indoors and walking outdoors and "all moving about takes at least 4 to 5 times longer and he requires use of cane. Severe pain and restricted range of motion increase with any activity."
- For the personal care DLA, the appellant is independent with the task of feeding self. The appellant requires periodic assistance from another person, uses an assistive device and takes significantly longer than typical with the tasks of dressing, grooming, and bathing (note with respect to all: "pain, fatigue, poor motivation"). The appellant uses an assistive device and takes longer with the task of toileting. The appellant requires periodic assistance from another person and takes significantly longer with the task of regulate diet (note: "pain, fatigue, poor motivation"). The appellant uses an assistive device and takes significantly longer than typical with the tasks of transfers in/ out of bed and transfers on/off of chair.
- Regarding the basic housekeeping DLA, the appellant requires continuous assistance from another person, uses an assistive device and takes significantly longer than typical with the tasks of doing laundry and basic housekeeping (note: "needs ongoing help or unable").
- For the shopping DLA, the appellant takes significantly longer than typical with the tasks of reading prices and labels, making appropriate choices and paying for purchases. He requires continuous assistance from another person, uses an assistive device and takes significantly longer with the tasks of going to and from stores and carrying purchases home. The SW commented that the appellant "requires significant support and assistance with household cleaning, laundry, food shopping, and periodic support for self-care as a direct result of his impairments. All moving about/attempting tasks take at

least 4 to 5 times longer and he requires the use of cane, bathroom grab bars and shower bench. Due to severe pain and poor range of motion, he requires help with foot care.”

- Regarding the meals DLA, the appellant requires periodic assistance from another person and takes significantly longer with the task of meal planning (note: “poor planning”). The appellant requires continuous assistance from another person, uses an assistive device and takes significantly longer than typical with the tasks of food preparation (note: “pain, fatigue, poor range of motion”) and cooking (note: “needs ongoing help”). The appellant takes significantly longer than typical with the tasks of safe storage of food.
- With respect to the pay rent and bills DLA, the appellant is independent and takes significantly longer than typical with the tasks of budgeting and paying rent and bills (note: “needs ongoing help”) and he uses an assistive device and takes significantly longer with the task of banking (note: “pain, fatigue, poor mobility”).
- Regarding the medications DLA, the appellant is independent with the tasks of taking as directed, and safe handling and storage, and uses an assistive device and takes significantly longer with the task of filling/refilling prescriptions (note: “pain, fatigue, poor mobility”).
- For the transportation DLA, the appellant is independent with using transit schedules and arranging transportation and takes significantly longer than typical with getting in and out of a vehicle. The appellant requires periodic assistance from another person, uses an assistive device, and takes significantly longer than typical with using public transit (note: needs seat or ride”).
- The SW added comments that the appellant “requires support and assistance with meal preparation and cooking, ADL’s [DLA] requiring mobility and transportation (bus very painful- gets rides to appointments, etc.) as a direct result of impairments. All moving about/attempting tasks takes at least 4 to 5 times longer due to severe pain, poor range of motion, lack of flexibility and fatigue.”
- For additional information to the AR, the SW wrote that “the combination of conditions means client’s ability to perform ADL’s [DLA] is severely restricted and he requires significant, ongoing support and assistance on a regular basis in all areas of daily functioning as a direct result of his impairments. If help is not available, ADL’s [DLA] take significantly longer or are neglected. Took medication for depression several years ago.”

In his self-report, the appellant wrote:

- He cannot do any grocery shopping independently. His sister and her husband help him with this.
- He has not been able to do his laundry for 5 years. He cannot clean the bathroom or vacuum/sweep the floor.
- He can microwave basic things but needs ongoing help from his sister with preparing foods.
- He gets rides from his family for going most places. Often when his family is busy, he cannot go somewhere himself. He does not use the bus much because ambulating between bus stops and his destination is very difficult.

- It is difficult for him to bend over to wash his face. He uses a seat and a grab bar in the shower.

Need for Help

- With respect to the assistance needed, the GP reported in the MR that the appellant requires aids for his impairment, specifically cane, shower chair, grab bar. The appellant requires assistance with shopping, housework, and mobility outside the home.
- In the AR, the SW reported that the appellant lives with family and that his family “helps with all ADL’s [DLA]” and “he is unable to live on his own- cannot complete ADL’s [DLA] adequately.”
- In the section of the AR relating to assistance provided, the SW identified a cane for mobility as routinely used by the appellant.

Additional information

In his Notice of Appeal dated January 26, 2018, the appellant expressed his disagreement with the ministry’s reconsideration decision and wrote that his case was denied due to a delay in the application filing but he requested the ministry to re-check his case on the basis of his health conditions and not on the basis of the time limitations.

At the hearing, the appellant stated:

- His doctor has said that surgery is a possibility for him. He is meeting with his doctor again tomorrow and he is also seeing a specialist, a rheumatologist. He has waited a long time to get an appointment with the specialist. He wishes to go ahead with the hearing despite not having an updated report by the specialist available.
- His doctor’s office is in another community and it is hard for him to travel for appointments so he tends to go to a walk-in clinic of the emergency room at a hospital for any immediate concerns.
- He has experienced more problems since the time the PWD application reports were completed. His vision has been blurry and he has been getting dizzy. He has migraine headaches 1 to 2 days per month. Sometimes his migraine headaches can last up to 15 days. The time between migraines varies. He had surgery for his sinuses because they thought this might be the cause of the headaches, but they did not get better.
- He goes to the ER for injections of morphine when he could not walk. When they did the CT scan, they discovered that the discs are missing and the bones are grinding together.
- His doctor told him he cannot carry things and he is not supposed to bend, but his life would be miserable if he did nothing. He has to live with the pain and if he tries to do anything, he has to lie down in bed afterwards.
- If he tries to walk, he is in more pain.
- His family is helping him now, but how long will they be able to help him? He cannot do normal things.
- He has tried everything to help himself. He has gone to physiotherapy for 4 months, and has tried to use muscle relaxants, but these did not help. He also tried acupuncture treatments, but these did not help either.

- He has recently experienced numbness in his hands and arms. The doctor discovered that there is also a problem in his neck. The specialist will be looking at this problem.
- He was doing his own laundry and then he slipped and fell on the floor in pain. His family helps him with doing the laundry since then.
- Once, when trying to put his clothes on, he was in so much pain and he could not bend to put his pants on. He was so unhappy when he had to ask someone to do these simple things for him.
- His family cooks for him and does the shopping. He feels badly because they are not employed to help him. He does not know what he would do without them.
- He asked his doctor if there was any help that would allow him to be normal. His doctor said his condition will be getting worse and he will have to live with it.
- He is wondering if the medications have side effects because he has been losing his memory and has to post notes every where to remember things. He worries how he will cope in the future. There are so many things in his life that he is not happy with, he has felt very angry at times, and he needs to talk to someone. He had requested that his family doctor make a referral to a psychologist, but an appointment has not yet been scheduled.
- The last 10 years has been “a disaster” for him and has been very hard. His family does not refuse to help him, but it is hard for them. He used to be a person with lots of energy.
- He left the application with his family doctor, who said he would fill it out later. He realizes that his doctor did not provide much detail.

The ministry relied on the reconsideration decision, as summarized at the hearing.

Admissibility of Additional Information

The panel considered that there was no additional information for which a determination of admissibility was required under Section 22(4)(b) of the *Employment and Assistance Act*.

PART F – REASONS FOR PANEL DECISION

The issue on appeal is whether the ministry's reconsideration decision, which found that the appellant is not eligible for designation as a PWD, was reasonably supported by the evidence or was a reasonable application of the applicable enactment in the circumstances of the appellant. The ministry found that the evidence does not establish that the appellant has a severe mental or physical impairment and that his DLA are, in the opinion of a prescribed professional, directly and significantly restricted either continuously or periodically for extended periods. Also, as a result of those restrictions, it could not be determined that the appellant requires the significant help or supervision of another person, the use of an assistive device, or the services of an assistance animal to perform DLA.

The criteria for being designated as a PWD are set out in Section 2 of the EAPWDA as follows:

Persons with disabilities

2 (1) In this section:

"assistive device" means a device designed to enable a person to perform a daily living activity that, because of a severe mental or physical impairment, the person is unable to perform;

"daily living activity" has the prescribed meaning;

"prescribed professional" has the prescribed meaning.

(2) The minister may designate a person who has reached 18 years of age as a person with disabilities for the purposes of this Act if the minister is satisfied that the person is in a prescribed class of persons or that the person has a severe mental or physical impairment that

(a) in the opinion of a medical practitioner or nurse practitioner is likely to continue for at least 2 years, and

(b) in the opinion of a prescribed professional

(i) directly and significantly restricts the person's ability to perform daily living activities either

(A) continuously, or

(B) periodically for extended periods, and

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

(3) For the purposes of subsection (2),

(a) a person who has a severe mental impairment includes a person with a mental disorder, and

(b) a person requires help in relation to a daily living activity if, in order to perform it, the person requires

(i) an assistive device,

(ii) the significant help or supervision of another person, or

(iii) the services of an assistance animal.

(4) The minister may rescind a designation under subsection (2).

The EAPWDR provides as follows:

Definitions for Act

2 (1) For the purposes of the Act and this regulation, "**daily living activities**" ,

(a) in relation to a person who has a severe physical impairment or a severe mental impairment, means the following activities:

- (i) prepare own meals;
- (ii) manage personal finances;
- (iii) shop for personal needs;
- (iv) use public or personal transportation facilities;
- (v) perform housework to maintain the person's place of residence in acceptable sanitary condition;
- (vi) move about indoors and outdoors;
- (vii) perform personal hygiene and self care;
- (viii) manage personal medication, and

(b) in relation to a person who has a severe mental impairment, includes the following activities:

- (i) make decisions about personal activities, care or finances;
- (ii) relate to, communicate or interact with others effectively.

(2) For the purposes of the Act, "**prescribed professional**" means a person who is

(a) authorized under an enactment to practise the profession of

- (i) medical practitioner,
- (ii) registered psychologist,
- (iii) registered nurse or registered psychiatric nurse,
- (iv) occupational therapist,
- (v) physical therapist,
- (vi) social worker,
- (vii) chiropractor, or
- (viii) nurse practitioner, or

(b) acting in the course of the person's employment as a school psychologist by

- (i) an authority, as that term is defined in section 1 (1) of the Independent School Act, or
- (ii) a board or a francophone education authority, as those terms are defined in section 1 (1) of the School Act,

if qualifications in psychology are a condition of such employment.

Part 1.1 — Persons with Disabilities

Alternative grounds for designation under section 2 of Act

2.1 The following classes of persons are prescribed for the purposes of section 2 (2) [persons with disabilities] of the Act:

- (a) a person who is enrolled in Plan P (Palliative Care) under the Drug Plans Regulation, B.C. Reg. 73/2015;
- (b) a person who has at any time been determined to be eligible to be the subject of payments made through the Ministry of Children and Family Development's At Home Program;
- (c) a person who has at any time been determined by Community Living British Columbia to be eligible to receive community living support under the Community Living Authority Act;
- (d) a person whose family has at any time been determined by Community Living British Columbia to be eligible to receive community living support under the Community Living Authority Act to assist that family in caring for the person;
- (e) a person who is considered to be disabled under section 42 (2) of the Canada Pension Plan (Canada).

Severe Physical Impairment

In the reconsideration decision, the ministry was not satisfied that the information provided establishes a severe physical impairment. The ministry acknowledged that the GP diagnosed the appellant with DDD, which is “chronic, severe, progressive” with “occasional radiation down legs” and migraine headaches, which are “intermittent, severe, 1 to 2 times per month, lasting several days.” In the Questionnaire provided at reconsideration, the GP added that he has known the appellant for 20 years and has known about his chronic back pain for more than 15 years. The GP wrote that the appellant has chronic pain, weakness, decreased mobility, decreased function, and migraines cause episodic nausea, headache, and dizziness. In the Consultation Report, the rheumatologist reported that the Imaging in 2014 confirmed DDD and also an L4/5 slipped disc, for which the appellant has tried physiotherapy, IMS, painkillers, and muscle relaxants, and has had no relief. The rheumatologist wrote that the appellant has recently developed pain from the forearm to the fingers, he has pain in his right groin when he flexes his hip, and every morning when he wakes up he has “pain in his bones.” At the hearing, the appellant stated that he has recently experienced numbness in his hands and arms and the doctor discovered that there is also a problem in his neck, which the specialist will be looking into further during his next appointment.

An “impairment” is a medical condition that results in restrictions to a person’s ability to function independently or effectively or for a reasonable duration. The panel finds that the ministry reasonably concluded that a diagnosis of a serious medical condition does not in itself determine PWD eligibility or establish a severe impairment. The panel finds that the ministry reasonably required sufficient evidence to determine the nature of the impairment and the extent of its impact on daily functioning in order to assess the severity of the impairment.

The ministry reasonably considered the impacts of the appellant's diagnosed medical condition on his daily functioning, beginning with the assessments provided in the MR as well as the Questionnaire provided by the GP. The panel finds that, where there were inconsistencies between the information in the MR and the AR, the ministry reasonably placed more weight on the evidence of the GP who has known the appellant for 20 years, whereas the SW only met with the appellant once for the purposes of completing the AR.

The ministry considered that the GP assessed the appellant's functional skills in the MR as being able to walk 1 to 2 blocks unaided, climb more than 5 steps unaided, lift 5 to 15 lbs, and remain seated 1 to 2 hours. When asked in the Questionnaire whether the appellant suffers from a severe physical impairment, the GP wrote: "moderate physical impairment", the appellant "has a hard time walking, climbing stairs, or sitting for extended periods" and "difficulty with bending/lifting as well." The ministry pointed out in the reconsideration decision that the GP did not provide additional information in the Questionnaire about the appellant's functional skill limitations, which had been described in the MR to be in the moderate range.

In his self-report, the appellant wrote that since 2015, his pain has been ongoing daily and his pain is exacerbated significantly by basic activities like lifting, walking, sitting for extended periods, lying down for extended periods, and bending. The appellant wrote that he can only walk without his cane for short periods of time (20 to 30 meters), he needs the cane for all outdoor mobility, and he cannot walk more than a block without his cane. The appellant wrote that it takes him much longer to get around, he needs regular breaks, and his indoor mobility can be difficult when his back pain is particularly severe as well. While the GP wrote in the MR that the appellant "uses a cane, shower chair, grab bar, visits ER for analgesia," the GP clarified in the Questionnaire that the appellant "sometimes" uses a cane. Also, the GP reported in the MR that while the appellant's mobility outside the home is continuously restricted, his mobility inside the home is not restricted.

The ministry considered the SW's assessment that the appellant takes significantly longer than typical and uses an assistive device with walking indoors, walking outdoors (note: "1 to 2 blocks maximum"), climbing stairs (note: "needs handrail and only a few"), standing (note: "less than 5 minutes"), lifting (note: "10 lbs. maximum"), and carrying and holding (note: "10 lbs. maximum"). The panel finds that the ministry reasonably determined that handrails on the stairs do not fall within the definition of an "assistive device" in Section 2(1) of the EAPWDA, which means "a device designed to enable a person to perform a DLA that, because of a severe mental or physical impairment, the person is unable to perform," and no assistive device other than handrails was specified by the SW. The ministry pointed out the discrepancy between the SW's assessment and that of the GP, which indicated the appellant can climb 5 or more steps "unaided," or without the use of an assistive device. The SW also did not specify the assistive device used for lifting or carrying and holding, as noted by the ministry.

The SW reported that the appellant requires periodic assistance from another person with lifting

and carrying and holding, and the ministry wrote that the SW does not describe the frequency or duration of the assistance required. The panel notes that the appellant can lift and carry and hold up to 10 lbs. maximum and that the assistance may be required for heavier weights in excess of this maximum. The panel finds that the ministry reasonably considered that the ability to lift 10 lbs. is considered sufficient ability to lift a variety of household and shopping items.

The SW commented that “all moving about takes at least 4 to 5 times longer and he requires use of cane” and “severe pain and restricted range of motion increase with any activity,” and the ministry wrote that a “blanket” assessment indicating the need to take significantly longer with all mobility is unhelpful in determining the nature of the specific restrictions. The panel finds that the ministry was unreasonable in concluding that SW assessment is unhelpful in determining the nature of the specific restrictions as the SW wrote in her assessment that the appellant takes 4 to 5 times longer with “all” activities that require “moving.” However, the panel finds that the ministry reasonably placed more weight on the assessment by the GP, which indicate independent functional skill limitations in the moderate range and only occasional use of an assistive device.

For the ministry to be “satisfied” that an impairment is severe, the panel considers it reasonable for the ministry to expect that the information provided by the medical practitioner and prescribed professional presents a comprehensive overview of the nature and extent of the impacts of the medical conditions on daily functioning, including by providing the explanations, descriptions or examples in the spaces provided in the MR and in the AR forms.

The appellant wrote in his self-report that he also has migraine headaches a few times a month, which further contribute to his overall daily restrictions. The appellant wrote that when he has a migraine, which occurs 1 to 2 times per month, they can last for several days at a time. The last time he had a migraine, it lasted 4 or 5 days and he was in so much pain he could not even open his eyes. At the hearing, the appellant stated that sometimes his migraine headaches can last up to 15 days, and the time between migraines varies. Given an opportunity to provide more information about the impact of the migraine headaches to the appellant’s physical functioning, the GP indicated in the Questionnaire that migraines “cause episodic nausea, headache, and dizziness” and that, overall, the appellant has a moderate physical impairment.

Given the GP’s assessment of functional skills within the moderate range and more weight put on the GP’s assessment of physical functioning where it conflicts with the assessment by the SW, the panel finds that the ministry reasonably determined that there is not sufficient evidence to establish that the appellant has a severe physical impairment under Section 2(2) of the EAPWDA.

Severe Mental Impairment

In the reconsideration decision, the ministry was not satisfied that the information provided was sufficient evidence of a severe mental impairment. The ministry considered that there was no

diagnosis by the GP of a condition within the mental disorders diagnostic category of the MR, and the GP reported that the appellant has no significant deficits with cognitive and emotional function and no difficulties with communication. The ministry noted that the SW reported in the AR that the appellant has a good or satisfactory ability to communicate in all areas and that his ability is diminished during times he experiences a migraine. While the SW indicated daily impacts to the appellant's cognitive and emotional functioning, the GP had reported no significant deficits and the panel finds that the ministry reasonably placed more weight on the evidence of the appellant's long-time GP when a discrepancy occurred, as previously discussed. The SW also indicated a need for support/supervision with aspects of the appellant's social functioning; however, the GP reported that the appellant is not restricted with his social functioning.

At the hearing, the appellant stated that he is wondering if the pain medications have side effects because he has been losing his memory and has to post notes everywhere to remember things. The appellant stated that he has felt very angry at times as there are so many things in his life that he is not happy with, and he needs to talk to someone. He requested that his family doctor make a referral to a psychologist. The SW commented in the AR that the appellant "has taken anti-depressants in the past and is currently experiencing symptoms of depression" and "he has been referred to mental health clinic and psychologist." While a referral has been made to mental health, the appellant stated at the hearing that an appointment has not yet been scheduled, and there was no further information available from a mental health specialist on the appeal. In the Questionnaire, the appellant's long-time GP added that there is "no mental impairment."

Given the insufficient evidence of significant impacts to the appellant's cognitive, emotional, or social functioning, the panel finds that the ministry reasonably determined that a severe mental impairment was not established under Section 2(2) of the EAPWDA.

Restrictions in the ability to perform DLA

In the reconsideration decision, the ministry was not satisfied that the appellant has a severe physical or mental impairment that, in the opinion of the prescribed professional, directly and significantly restricts DLA either continuously or periodically for extended periods of time.

According to the legislation, Section 2(2)(b) of the EAPWDA, the ministry must assess direct and significant restrictions to DLA in consideration of the opinion of a prescribed professional, in this case the appellant's GP and the SW. This does not mean that the other evidence is not factored in as required to provide clarification of the professional evidence, but the legislative language makes it clear that a prescribed professional's evidence is fundamental to the ministry's determination as to whether it is "satisfied." The panel notes that both the MR and the AR forms direct the person completing those forms to explain in more detail the nature of any continuous restrictions and/or the nature, frequency and duration of any periodic restrictions to an applicant's ability to perform DLA. Therefore, the prescribed professional completing the

assessments has the opportunity to indicate which, if any, DLA are significantly restricted by the appellant's impairments either continuously or periodically for extended periods.

In the reconsideration decision, the ministry reviewed the information provided in the MR and considered that the GP reported that the appellant has been prescribed pain medication that interferes with his ability to perform DLA. The ministry also considered that the GP reported that the appellant is continuously restricted with performing the basic housework DLA and the daily shopping DLA as well as the mobility outside the home aspect of the move about indoors and outdoors DLA. Regarding the degree of restriction, the GP wrote: "chronic back pain," and the panel finds that the ministry reasonably considered that this comment was not helpful in clarifying the degree of restriction. The ministry wrote that given the GP's assessment of moderate functional skills, being able to walk 1 to 2 blocks unaided, climb 5 or more stairs unaided, and lift 5 to 15 lbs, it is difficult to establish the reason for continuous restrictions to these DLA.

At the hearing, the appellant stated that he was doing his own laundry one time and he slipped and fell on the floor in pain, and his family has helped him with doing the laundry since then. In his self-report, the appellant wrote that he has not been able to do his laundry for 5 years, and he cannot clean the bathroom or vacuum/sweep the floor. The appellant wrote that he cannot do any grocery shopping independently and his sister and her husband help him with this.

In the AR, the SW indicated that the appellant requires continuous assistance with the tasks of the basic housekeeping DLA as he "needs ongoing help or unable," he uses an assistive device, and takes much longer than typical. Although the SW indicated that the appellant requires the use of a cane as an assistive device, the GP had reported in the MR that the appellant is not restricted with his mobility inside the home and, in the Questionnaire, that he "sometimes" uses a cane. For the shopping DLA, the SW indicated that the appellant requires continuous assistance with the tasks of going to and from stores and carrying purchases home, he uses an assistive device, and he takes much longer than typical. The SW also indicated that the appellant takes longer than typical with the tasks of reading prices and labels, making appropriate choices and paying for purchases. The ministry wrote that it is difficult to establish that the appellant takes significantly longer with the mental functioning tasks as the GP did not diagnose nor describe a mental impairment, as previously discussed.

The ministry considered that the GP assessed the appellant in the MR as having no restriction with performing the personal self care DLA, the meal preparation DLA, the management of medications DLA, the use of transportation DLA, the management of finances DLA, as well as the mobility inside the home aspect of the move about indoors and outdoors DLA. While the SW assessed the need for assistance with some tasks of these DLA, the panel finds that the ministry reasonably considered that some of the restrictions were attributed to "poor motivation" and "poor planning," or a mental impairment for which the appellant was not diagnosed, and more weight was placed on the GP's assessment of no restrictions with these DLA.

Given an opportunity to clarify the restrictions to DLA, the GP wrote in the Questionnaire that the appellant “needs assistance with ADL’s [DLA] that require physical exertion (cleaning, carrying groceries, etc.)” The GP also wrote that the appellant “sometimes uses a cane” and “often requires assistance from friends/family to manage ADL’s [DLA].”

Given the GP’s report of the appellant’s independence with his ability to perform most DLA, the restrictions related to physical exertion by the appellant, and physical abilities assessed by the GP in the moderate range, the panel finds that the ministry reasonably determined that the evidence is insufficient to show that the appellant’s overall ability to perform his DLA is significantly restricted either continuously or periodically for extended periods, pursuant to Section 2(2)(b)(i) of the EAPWDA.

Help to perform DLA

In the reconsideration decision, the ministry held that, as it has not been established that DLA are significantly restricted, it cannot be determined that significant help is required. Section 2(2)(b)(ii) of the EAPWDA requires that, as a result of being directly and significantly restricted in the ability to perform DLA either continuously or periodically for extended periods, a person must also require help to perform those activities. That is, the establishment of direct and significant restrictions under section 2(2)(b)(i) is a precondition of meeting the need for help criterion. Help is defined in subsection (3) as the requirement for an assistive device, the significant help or supervision of another person, or the services of an assistance animal in order to perform a DLA.

While the SW indicated that the appellant lives with family and that help for DLA is provided by his family, and the GP indicated that the appellant requires a shower chair and grab bar and “sometimes” uses a cane as an assistive device, as the ministry reasonably determined that direct and significant restrictions in the appellant’s ability to perform DLA have not been established, the panel finds that the ministry also reasonably concluded that, under section 2(2)(b)(ii) of the EAPWDA, it cannot be determined that the appellant requires help to perform DLA.

Conclusion

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