

PART C – DECISION UNDER APPEAL

The decision under appeal is the Ministry of Social Development and Poverty Reduction (the Ministry) reconsideration decision dated January 30, 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/her impairment is likely to continue for at least two years. However, the Ministry was not satisfied that the evidence establishes that:

- the Appellant has a severe physical or mental impairment;
- the Appellant's daily living activities (DLA) are, in the opinion of a prescribed professional, directly and significantly restricted either continuously or periodically for extended periods; and,
- as a result of 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 PWD Application comprised of the applicant information and self report (SR) dated September 25, 2017, a medical report (MR) dated August 30, 2017 and completed by the Appellant's general practitioner (GP) who has known the Appellant since September 2012 and who has seen him 2 - 10 times in the past year, and an assessor report (AR) dated August 30, 2017 completed by the GP.

The evidence also included the following documents:

- 1) Request for Reconsideration (RFR), signed on January 16, 2018, stating that the Appellant is unable to work as a result of severe injuries and that he is unable to stay on his leg too long or concentrate long enough to hold a job. He also states that he has no sense of smell and has many impairments confirmed by his GP, adding "torn brain";
- 2) Letter in support of the Appellant's appeal, dated January 16, 2018, and prepared by the GP (Support Letter);
- 3) Undated two page community service agency PWD pain chart (Pain Chart) completed by the Appellant with the assistance of another person;
- 4) Two page musculoskeletal outcome measures form (MOM Form) in the name of the appellant dated May 15 (year not specified);
- 5) Four page community service agency DLA for PWD Form dated June 13, 2017 presumably on behalf of the Appellant but where the name of the subject is not given in the space provided, signed by the Appellant's Mother;
- 6) Partially obscured and partially duplicated hand-written letter prepared by the Appellant's Mother (Mother's Letter) and dated May 16, 2017;
- 7) Four page consultation report summary providing summary reports of three separate consultations by three different medical practitioners on three dates: August 20, 2016 (August 20 Consultation Report), September 18, 2016 (September 18 Consultation Report), and September 29, 2016 (September 29 Consultation Report); and
- 8) Four page Neuropsychological Evaluation prepared by a Neuropsychologist and dated February 23, 2017.

Diagnoses

In the MR, the GP diagnosed the Appellant with traumatic brain injury with an onset of August 2016.

In the August 20 Consultation Report, the medical practitioner indicated that the Appellant's initial neurosurgical evaluation and trauma treatment assessment following the injury in August 2016 demonstrated evidence of "an acute subarachnoid and probable bifrontal subdural hematomas with a hemorrhagic contusion of the right frontal lobe in addition to a basilar skull fracture of the right frontal

bone He was also determined to have complex facial fractures on both sides with a notable irregularity in the left internal carotid artery. There is evidence of a right optic nerve injury, a fractured mandible and a fractured right patella and femur.”

Physical Impairment

In the MR and the AR, the GP reported that:

- In terms of health history, the Appellant fell from height resulting in a fracture (of face), right femur, closed head injury (adding “larger left epidural hematoma; right frontal lobe hypodensity; left occipital hemorrhage contusion; mild right frontoparietal subarachnoid and right frontal subdural hematomas) and pain in his right leg post fracture, worse when walking, limiting walking ability, pain in his jaw, and recurrent dental infections.
- The Appellant does not require any prostheses or aids for his impairment.
- In terms of functional skills, the Appellant can walk less than one block unaided on a flat surface, climb 5 or more steps unaided, can lift 5 - 15 lbs., and has no limitations with respect to remaining seated.
- In the section of the AR relating to assistance provided, the GP indicated that none of the listed assistive devices are applicable to the Appellant and the Appellant does not have an assistance animal.

In the SR, the Appellant wrote that he had suffered a severe traumatic brain injury resulting from a seventy foot drop on his skull from a roof.

In the Support Letter the GP states that the Appellant has “physical issues” with prolonged standing and walking which are secondary to his “memory issues” and which, on their own, are “not severe enough to warrant disability”.

In the Pain Chart the Appellant wrote that he has constant pain in his right leg, head and upper body which he has experienced since he woke up from a coma after falling “multiple stories, hitting balcony, shattering skull, brain, knee and right femur”. He indicated that activities that placed pressure on his right leg such as walking and lying down make the pain worse and that pain killers are too weak to be effective. He rated the pain as 4 out of 5 on a 5 point scale where 0 was no pain and 5 was excruciating pain. He stated that he is unable to run because his right leg will not bend. As a result of the pain he said that he is always tired, he has to rest constantly and that he is unable to work. He identifies other symptoms associated with the injuries as dizziness and tiredness with sleep problems.

In the MOM Form the Appellant rated the pain as 8 out of 10 (“severe pain”) and that in the past week he has felt tired and lacking energy and had trouble sleeping constantly, and that he has often (“very much”) had headaches and needed to lie down during the day. He stated that he has no confidence that he can live a normal lifestyle and that he takes tablets for pain more than 8 times per day. In terms of physical impairments, the Appellant indicated that he was totally unable to kneel, squat or run and that he found it very difficult to walk 100 meters, to walk 1 kilometer on level ground, climb stairs, bend or stoop, carry 22 lbs. or reach overhead to a high shelf.

In the DLA for PWD Form the Appellant's Mother indicated that on the Appellant's worst days it took him much longer than most people with all aspects of moving around inside the home (walking, climbing stairs, opening and closing doors and drawers, getting in and out of chairs and bed, etc.) and moving around outside the home.

In the Mother's Letter she stated that the Appellant could not work a full 8 hours. She stated that the Appellant has limited strength to lift and carry objects. She described his injuries in detail and expressed concern about what might happen if there was a fire in their home and who would look after her son after she dies.

In the August 20 Consultation Report, the consulting physician summarized the injuries sustained in the Appellant's fall and wrote that a Computed Tomography (CT) Angiogram had been done "which shows good filling of the intracranial vasculature. He also indicated that the Appellant would have to be seen by the orthopedic service and the plastic surgery service regarding his femoral fracture and his facial fracturing.

In the September 18 Consultation Report, the consulting physician also summarized the injuries sustained in the Appellant's fall and indicated that the Appellant underwent "intramedullary nailing of his right femur" and "an open reduction and fixation of his patella". He went on to write "on exam, (the Appellant's) incisions (were) well healed. He is weightbearing as tolerated. He complains of very little pain. He has got range of motion (in his right knee) from full extension to 60 degrees flexion ... With regards to the patella, it is healing very well. It has been fixed very nicely and the range of motion is excellent".

In the September 29 Consultation Report, the consulting physician stated that the Appellant had "good mobility of the shoulders, elbows, wrists and fingers" and "normal power, tone, coordination and sensation to the arms". He indicated that the Appellant "was able to obtain 60 degrees of bend within (his right) knee and (was) able to walk ... without a 2 wheeled walker for short steps".

Mental Impairment

In the MR and the AR, the GP reported that the Appellant:

- Has poor short term memory, is unable to follow directions, and has poor concentration.
- Has cognitive difficulties with communication due to a traumatic brain injury resulting in significant executive (planning, organizing, sequencing, calculating, judgment), memory (ability to learn and recall information) and attention or sustained concentration deficits.
- Has a brain injury which has a sustained major impact on his ability to concentrate and pay attention and to learn and recall new information, a sustained moderate impact on bodily functions (eating problems, toileting problems, poor hygiene, sleep disturbance) and executive functions (planning, organizing, sequencing, abstract thinking, problem-solving, calculating), and sustained minimal impacts on consciousness, emotion, insight and judgment, motivation and other neuropsychological problems.
- With respect to social functioning, requires periodic support or supervision in developing and maintaining relationships, in dealing appropriately with unexpected demands and in securing

assistance from others, without including a description of the degree and duration of the support required other than commenting that his “Mother (is) providing adequate support and supervision”.

- As a result of his mental impairment, has marginal functioning with his immediate social network (family and friends) and his extended social network.

In the Support Letter, the GP states that as a result of his head injury the Appellant has suffered permanent personality changes that impair his ability to function socially, and that he has short term memory problems, gets agitated easily, and struggles to handle conflict and his emotions.

In the Pain Chart, the Appellant states that he “find(s) (himself) thinking about past memories and getting depressed knowing that (he) is brain injured as well as leg problems. (He) sleep(s) odd hours and wake(s) up a lot.”

In the MOM Form, the Appellant states that he cannot manage normal social activities at all.

In the DLA for PWD Form, the Appellant’s Mother states that on his worst days the Appellant is unable to socialize without being anxious or scared, interact with his immediate social network, interact with strangers in public, develop or maintain relationships or being able to deal with unexpected situations, adding “we are working on it”. With respect to mental and emotional skills, the Appellant’s Mother indicates that on his worst days the Appellant cannot cope with anxiety and agitation, depression or confusion, cannot plan ahead, attend to the most important things first, control irrational impulses, make rational choices, remember information and appointments, complete tasks or cope with sensitivity to light or motion, again adding “we are working on this”. Regarding communications, the Appellant’s Mother states that on his worst days the Appellant is unable to understand what people are saying to him or say to him over the phone, adding that she is still concerned about his ability to hear.

In the Mother’s Letter, his Mother says that the Appellant repeats stories, has no long-term memory and forgets simple directions. She writes that she gives him a lot of emotional support. She states that he misplaces money all the time.

In the September 22 Consultation Report, the consulting physician writes that the Appellant continues to have some cognitive deficits “with indications of problems in judgment, insight, calculations, recent memory but good ability to provide attention”. In addition, the consulting physician reported that the Appellant had difficulty “calculating down from 100 by 7’s but was able to repeat 7 and digits forward and reverse 5. He remembered 2 out of 3 objects 5 minutes later but was not able to tell (the consulting physician) much about the nature of his injuries”.

In the Neuropsychological Evaluation, the Neuropsychologist indicated that the Appellant was previously seen for an initial neuropsychological evaluation on October 4, 2016 (45 days after the accident) and that that assessment had “revealed “*significant deficits across a number of assessed cognitive domains*”, but also variable speed of information processing and strengths of orientation, visual scanning, alternating visual attention and mental flexibility, sustained and divided auditory attention, and immediate and delayed recall of contextual verbal information”. In the follow-up assessment, conducted on February 9, 2017, the Neuropsychologist indicated that 12 tests were administered, and that “effort and motivation seemed adequate”. He added “at testing, the patient was alert and ... fully orientated to

person, place and time". Results from a "simple speeded scanning" test was average and showed a significant improvement compared the the October 4, 2016 assessment results. Other test results ranged from mild and moderate impairment through severe impairment (for recognition memory, copying of a complex geometric design, delayed recall of the design, fine motor speed). Some tests showed no change from the previous assessment while others showed changes ranging from significant deterioration (for fine motor speed) to some improvement. Mood function screening showed mild depressive and anxiety symptoms to be present. In summary, the Neuropsychologist reported that, on re-assessment, the Appellant "demonstrated strengths across a number of cognitive domains", but that there were "significant deficits noted for the most demanding aspect of working memory, new learning and memory, recognition memory, visuo-spatial constructional analysis, copying/planning of a complex geometric figure, as well as fine motor speed and coordination". The Neuropsychologist concluded that the Appellant "should continue to manage adequately in his day to day, familiar routines and activities' and that as "prognosis-wise he is still only roughly 6 months post a significant (traumatic brain injury), further organic improvements can typically be expected". The Neuropsychologist recommended that the Appellant receive another follow-up neuropsychological evaluation in 3 - 5 months (i.e. in the May - July 2017 timeframe), but that in the meantime, based on the steady improvement observed between the assessments made in October 2016 and February 2017 it was not his impression that from a purely neuropsychological standpoint, the patient meets the criteria for severity, functional impact, or timeline (or prognosis) for a PWD".

Restrictions in the Ability to Perform DLA

In the AR, the GP reported that the Appellant:

- Has suffered a traumatic brain injury resulting in a permanent cognitive impairment that impacts his ability to perform DLA.
- Requires periodic assistance from another person with respect to most aspects of personal care (dressing, grooming, bathing, toileting, feeding self and regulating diet), some aspects of shopping (going to and from stores, reading prices and labels and carrying purchases home), the safe storage and handling of food, taking medications and using public transit, and requires continuous assistance from another person to perform basic housekeeping, in cooking and preparing meals, paying rent and bills and using transit schedules and arranging transportation. The GP did not explain or describe the degree and duration of support and supervision required.

In the Support Letter, the GP indicated that the Appellant could not plan or prepare meals, manage basic housekeeping, or deal with his finances and handle money.

In the MOM Form, the Appellant indicated that it is very difficult for him to work outside the home or perform housework, that is a bit difficult for him to get dressed, bathe or take care of his personal hygiene, and that it is moderately difficult for him to travel by car or public transit.

In the DLA for PWD Form, the Appellant's Mother reports [*with comments summarized below in parentheses*] that on his worst day, the Appellant cannot perform the following tasks without help:

- Timing cooking [*watch for him*], opening jars, knowing when food has gone bad, and remembering when he has food on the stove or in the oven [*watch while he cooks*];
- Able to be in in a crowded store without feeling anxious or scared [*get(s) agitated - talk to him*] and being able to wait in line without becoming frustrated or angry;
- Remembering to be motivated to eat regular meals [*Brother makes breakfast - if not made will not eat*];
- All aspects of housework (washing, cleaning, dusting, laundry, etc) [*Does not do anything or doesn't seem capable*];
- Shaving, brushing his teeth, and remembering to bathe every day [*has to be reminded*]; and
- Taking the right amount of medications and remembering to have prescriptions filled [*Just have to watch just in case he takes too much*].

Need for Help

In the AR, the GP indicated that the Appellant:

- Lives with his Mother as he is unable to live alone.
- Requires help with social functioning and that his Mother is providing adequate support and supervision.
- Requires help with DLA, which is also provided by his Mother.

In the Support Letter, the GP indicated that the Appellant cannot live alone.

In the Mother's Letter she wrote that she does all his laundry and cooking and has to remind him to take a shower. She stated that she also has to clean his room, give him emotional support and that she has to watch how much medication he is taking as she is concerned that he will take too much

In the Neuropsychological Evaluation, the Neuropsychologist indicated in the initial neuropsychological evaluation on October 4, 2016 that the Appellant required support and monitoring in his day-to-day activities because he was not in a position to live independently at that time.

Additional Information submitted after reconsideration

In his Notice of Appeal dated February 5, 2018, the Appellant stated that he did not agree with what the Neuropsychologist said about his recovery and that the Neuropsychologist only saw him once, that he cannot manage on his own because he is "limited to certain aspects", and that his quality of life has gone.

The Ministry did not attend the hearing. After confirming that the ministry was notified of the hearing, the hearing proceeded in accordance with section 86(b) of the EAPWDR. The Appellant was supported at the hearing by his Mother and by a representative of a community services agency (Appellant's Representative).

At the hearing, the Appellant's Mother stated that the second follow-up neuropsychological assessment that the Neuropsychologist had recommended in the Neuropsychological Evaluation take place in the May - August 2017 timeframe had not occurred as there had been a death in the family at about that time and the Appellant's family had been too busy with other matters and too stressed to arrange for the follow-up assessment, but did intend to arrange for one in the future. No other new evidence was presented at the hearing. The Appellant's Mother also confirmed information she had previously provided.

Admissibility of Additional Information

Section 22(4) of the *Employment and Assistance Act* (EAA) provides that panels may admit as evidence (i.e. take into account in making its decision) the information and records that were before the Ministry when the decision being appealed was made and "oral and written testimony in support of the information and records" before the Ministry when the decision being appealed was made – i.e. information that substantiates or corroborates the information that was before the Ministry at reconsideration. These limitations reflect the jurisdiction of the panel established under section 24 of the EAA: to determine whether the Ministry's reconsideration decision is reasonably supported by the evidence or a reasonable application of the enactment in the circumstances of an appellant. That is, panels are limited to determining if the Ministry's decision is reasonable and are not to assume the role of decision-makers of the first instance. Accordingly, panels cannot admit information that would place them in that role.

The Panel considered the information in the Notice of Appeal to be argument.

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, it could not be determined that, as a result of those 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.

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

Severity of Impairment

An "impairment" is a medical condition which results in restrictions to a person's ability to function independently or effectively. Section 2(2) of the EAPWDA requires that, in determining whether a person may be designated as a PWD, the Ministry must be satisfied that the individual has a *severe* physical or mental impairment. As the Ministry reasonably states in its Reconsideration Decision, a diagnosis of a serious medical condition does not in itself determine PWD eligibility or establish a *severe* impairment. With respect to assessing the severity of an impairment, Section 2(2)(b)(i) of the EAPWDR requires that a mental or physical impairment *directly and significantly* restrict the person's ability to perform DLA either *continuously*, or *periodically for extended periods*. Therefore, to assess the severity of an impairment, the Ministry must consider both the nature of the impairment and the extent to which it

impacts daily functioning as evidenced by functional skill limitations and the degree to which the ability to perform DLA is restricted. In making its determination the Ministry must consider all the relevant evidence, including that of the Appellant. However, the legislation is clear that the fundamental basis for the analysis is the evidence from prescribed professionals, in this case the Appellant's GP and the Neuropsychologist (with respect to the severity of the Appellant's mental impairment), taking into account the amount of detailed information provided in that evidence.

Physical Functioning

In its Reconsideration Decision, the Ministry was not satisfied that the information provided establishes a severe physical impairment. In making its assessment, the Ministry noted that the GP stated in the MR that the Appellant had limited walking ability, and in the AR he stated that the Appellant required periodic assistance from another person while walking indoors, suggesting that the Appellant experienced periods of independence in walking indoors. The Ministry also pointed out that the GP stated in his Support Letter that the Appellant's limitations with prolonged walking and standing are "not severe enough to warrant disability". The Ministry further noted that the GP does not describe the frequency or duration of periodic assistance from another person required with walking outdoors, climbing stairs, standing, lifting, or carrying and holding, and that it considers the ability to lift 5 to 15 lbs. as sufficient ability to lift a variety of household and shopping items.

At the hearing, the Appellant's Mother stated that, while he shuffles when he walks, the Appellant can walk a short distance ("less than one block") on a flat surface without assistance, but that he needs someone with him to assist him with walking outdoors (i.e. on an uneven surface) at all times.

Panel Decision

In the "Physical Functioning" section of the Reconsideration Decision, the Ministry argues that a severe impairment of the Appellant's physical functioning has not been established partly because the GP has not described the frequency and/or duration of periodic assistance from another person required with walking outdoors, climbing stairs, standing, lifting, and carrying and holding. The Ministry's position is that when impairments are periodic or episodic rather than continuous, the nature, frequency and duration of those periodic impairments is crucial in assessing the severity of the impairment.

The Panel notes that the section of the AR that deals with mobility and physical ability specifically asks the prescribed professional to "explain and specify assistive device(s)" where assistance from another person is required, and that space is provided for additional comments. The Panel also notes that there are no mobility and physical activity functions for which the need for the continuous assistance of another person are identified. The Panel further notes that while the GP indicated that periodic assistance was required with walking outdoors, climbing, standing, and carrying and lifting, he did not provide any explanations, details or other elaboration. In addition, in the MR the GP indicated that the Appellant does not require any prostheses or aids for his impairment (such as a cane or a walker), in the AR reports that walking indoors is managed without any noted limitation, and in his support letter refers to problems with "prolonged" walking and standing. The Panel also notes that, while the Appellant's Mother indicated in the DLA for PWD Form that on the Appellant's worst days it took him much longer than most people with all aspects of moving around inside the home and moving around outside the home, detailed information about the nature, frequency and duration of any assistance provided by family members on those occasions was not provided.

The Panel finds that the Ministry reasonably concluded, based on the lack of information regarding the nature, frequency and duration of periodic assistance provided and the GP's overall assessment in his Support Letter that the Appellant's physical limitations are not significant enough to represent a severe disability, that there is not sufficient evidence to establish that the Appellant has a severe physical impairment which directly and significantly restricts his ability to perform DLA either *continuously or periodically for extended periods* pursuant to Section 2(2) of the EAPWDA.

Mental Functioning

In its Reconsideration Decision, the Ministry found that the GP's assessments in the MR provided evidence of significant deficits with respect to cognitive and emotional functioning in the areas of executive functions, memory and attention or sustained concentration, but that in the AR the GP indicates satisfactory or good ability with all areas of communication and only moderate impacts to executive functions. In the AR, the Ministry noted that the GP indicated major impacts to 2 areas of cognitive and emotional functioning (attention/concentration and memory), moderate impacts to 2 areas, minimal impacts to 5 areas, and no impact to the remaining 5 areas of cognitive and emotional functioning. With regard to social functioning, the Ministry noted that the GP had assessed the Appellant with requiring periodic support or supervision in being able to develop or maintain relationships, in dealing appropriately with unexpected demands and being able to secure assistance from others, and that the Appellant had marginal functioning with both his immediate and extended social networks. The Ministry further noted that the GP did not describe the frequency or duration of the periodic support or supervision required. The Ministry also pointed out that the Neuropsychological Evaluation concluded that the Neuropsychologist's impression was that "from a purely neuropsychological standpoint, the [Appellant does not meet] the criteria for severity, functional impact, or timeline (or prognosis) for a PWD". On balance the Ministry found that, based on the GP's assessment and the Neuropsychologist's Evaluation, the cumulative impact on cognitive and emotional functioning was not indicative of a severe impairment to mental functioning.

At the hearing, the Appellant's Mother stated that, while the Appellant has a lot of mental and physical challenges, his mental challenges are more significant, particularly with respect to his memory and his sense of smell, and that anyone who spends a couple of hours with the Appellant will realize that he has a significant mental impairment. The Appellant's Representative argued that the Panel should not assign much weight to the Neuropsychologist's assessment that the Appellant did not meet the criteria for a PWD designation because the Neurologist might not be aware of the legislative criteria for establishing a PWD designation in the EAPWDA.

Panel Decision

The Panel notes that the legislation does not identify the number of areas of cognitive and emotional functioning in which an applicant must demonstrate a severe impact, or the number of impacts that must be found to be major or moderate, or even that a majority of areas must be impacted. Instead, the legislation requires evidence of a severe mental or physical impairment that directly and significantly restrict the person's ability to perform DLA either continuously, or periodically for extended periods.

While it is not necessary for a prescribed professional to identify major or moderate impacts to particular number of areas of cognitive and emotional functioning in order for there to be evidence of a severe mental impairment, the Panel finds that the Ministry was reasonable in finding that the GP did not

provide sufficient evidence of a severe mental impairment because he did not describe the frequency or duration of the periodic support or supervision required. With respect to the weight assigned to the conclusions drawn by the Neuropsychologist in the Neurological Evaluation, the Panel does not accept the Appellant's Advocate's argument that little weight should be assigned to that conclusion as it is reasonable for the Ministry to assume that a prescribed professional licenced to practice in British Columbia would have experience in providing assessments of patients' mental impairments in the context of a PWD application under the EAPWDA and would be expected to have knowledge of the criteria required in establishing a severe mental impairment under that legislation. Additionally, in this case, the Neuropsychologist specifically references "PWD" in his final conclusions and has addressed his findings in terms of the appellant's ability to manage day to day familiar routines and activities. The Panel notes that the Neuropsychological Evaluation, though conducted 11 months before the Reconsideration Decision was made, was very detailed and included the results of 12 tests covering a wide-ranging assessment of mental acuity. The Panel notes that the Neuropsychologist's assessment in the Neuropsychological Evaluation concluding that the Appellant did not make the criteria for a PWD designation was conditional: it was based on the (then) current assessment made in February 2017, and that "further organic improvement can typically be expected" over time. The Panel finds that, while the Ministry would have benefitted from the results of the recommended follow-up assessment, which might or might not have demonstrated that the Appellant experienced the organic improvements typically expected, the Ministry reasonably relied in part on the available evidence in the form of the February 2017 Neuropsychologist's assessment in determining that a *severe* mental impairment was not established pursuant to Section 2(2) of the EAPWDA.

Restrictions in the ability to perform DLA

In its Reconsideration Decision, the Ministry acknowledges that the GP indicates a variety of restrictions to DLA in the AR, including restrictions requiring continuous assistance from another person, but that it is difficult to establish the level of restriction considering his assessments of the Appellant's physical and mental functioning. The Ministry also argues that there are discrepancies between the assessments made by the GP in the MR and the AR, and, by way of example, points out a discrepancy in the GP's assessment of the Appellant's restrictions to DLA relating to cognitive ability, arguing that while the DLA section of the AR identifies cognitive restrictions (a permanent cognitive impairment), in the mental or physical impairment section of the AR he indicates major impacts to only two areas of cognitive and emotional functioning and moderate impacts to only two other areas, with minimal or no impact to the remaining 10 areas, stating that "the Ministry does not consider (this) indicative of a severe impairment of mental functioning". The Ministry also noted that the Neuropsychologist wrote that the Appellant "appears to be managing reasonably well in his day to day tasks and responsibilities", while acknowledging that the GP states in the Support letter that the Appellant cannot live alone, cannot perform DLA and needs assistance in dealing with finances. The Ministry further notes that the GP does not describe the frequency and duration of periodic support in social functioning activities.

The Appellant's position is that he needs unable to perform several DLA and needs continuous assistance with many of them, including basic housekeeping and shopping. At the hearing, the Appellant's Mother explained that DLA he was able to perform on a given day was dependent on how much sleep he had had the night before and how he felt that day, and that he would not be able to live on his own.

Panel Decision

Section 2(2)(b) of the EAPWDA requires that the Ministry be “satisfied” that a prescribed professional has provided an opinion that an applicant’s severe impairment *directly* and *significantly* restricts his DLA, continuously or periodically for extended periods. In this case, the GP and the Neuropsychologist are the prescribed professionals. DLA are defined in Section 2(1) of the EAPWDR and are also listed in the MR and, with additional details, in the AR. Therefore, the prescribed professionals completing these forms have the opportunity to indicate which, if any, DLA are significantly restricted by the Appellant’s impairments either continuously or periodically for extended periods, and to further elaborate so that the nature and extent of the restrictions to DLA are clear. Prescribed professionals are further encouraged to elaborate on the nature and extent of the limitations or restrictions in the instructions provided in those sections of the application forms. For example, in Part C of the AR the assessor is instructed to identify whether assistance is required in each case with respect to the full range of DLAs, and if the applicant is not independent, to describe the type and amount of assistance required.

In the AR, the GP reports, with no accompanying narrative, that the basic housekeeping and paying rent and bills DLA require continuous assistance from another person, as do some listed tasks of the shopping, meals and transportation DLA. Some of these restrictions are clearly related to mental functioning while others may have a physical component; in the absence of further description, it is not entirely clear. However, as previously discussed under severity of impairment, the Panel finds that the Ministry has reasonably concluded that the prescribed professionals’ assessments did not establish either a severe mental or physical impairment. As previously noted, the GP expressly states that the Appellant’s physical functional limitations are not sufficient to warrant disability, and the Neuropsychologist concludes that from a neuropsychological standpoint, the Appellant is managing reasonably well in his day to day tasks and responsibilities. Accordingly, the Panel considers the Ministry reasonable to conclude that this level of restriction with DLA is not supported. Additionally, the Panel notes that, as argued by the Ministry in its Reconsideration Decision, the GP does not describe the frequency and duration of periodic support and supervision required by the Appellant for the tasks of the social functioning DLA (being able to develop and maintain relationships, in being able to deal appropriately with unexpected demands, or being able to secure assistance from others) or the tasks of the other DLA requiring periodic assistance. In conclusion, the Panel finds that the Ministry reasonably concluded 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 with DLA

In its Reconsideration Decision, the Ministry states that it cannot be determined that significant help is required because it has not been established that DLA are significantly restricted.

The Appellant’s position is that he needs continuous assistance with 11 DLA [the Panel notes that there are 10 DLA as defined in the legislation and that the GP indicated in the AR that the Appellant required continuous assistance with some or all aspects of 5 of them], periodic assistance with many more and that he needs so much help with his DLA that he cannot live on his own because his family has to look after him on a daily basis. At the hearing, the Appellant’s Representative argued that it was not

necessary for the GP to elaborate for those DLA where continuous assistance was required by the Appellant.

Panel Decision

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. 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.

The Panel finds that the Ministry reasonably determined that, as direct and significant restrictions in the Appellant's ability to perform DLA have not been established, it cannot be determined that the Appellant requires help to perform DLA as a result of those restrictions, as defined by Section 2(3)(b) of the EAPWDA.

Conclusion

Having reviewed and considered all of the evidence and relevant legislation, the Panel finds that the Ministry's Reconsideration Decision, which determined that the Appellant was not eligible for PWD designation under Section 2 of the EAPWDA, was reasonably supported by the evidence and was a reasonable application of the enactment in the circumstances of the Appellant, and therefore confirms the decision. The Appellant's appeal, therefore, is not successful.