

PART C – DECISION UNDER APPEAL

The decision under appeal is the Ministry of Social Development and Poverty Reduction (the ministry) reconsideration decision dated March 6, 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 November 5, 2017, a medical report (MR) and an assessor report (AR) both dated October 17, 2017 and completed by a rheumatologist who has known the appellant since January 2016 and has seen him 9 times in the past 12 months.

The evidence also included the following documents:

- 1) Clinical Health Assessment Questionnaire dated May 25, 2017; and,
- 2) Request for Reconsideration dated February 12, 2018.

Diagnoses

In the MR, the rheumatologist diagnosed the appellant with Non-erosive Seropositive Rheumatoid Arthritis, with an onset in January 2016 and "rheumatoid symptoms since 2013" and L2-S1 Degenerative Lumbar Spine, with an onset in 1996. 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 rheumatologist wrote in the AR "severe inflammatory polyarthritis with mechanical lumbar spine pain from osteoarthritis."

Physical Impairment

In the MR and the AR, the rheumatologist reported:

- With respect to the appellant's health history, "regarding his rheumatoid arthritis, he has severe disease as evident by his CDAI (Clinical Disease Activity score) of 42 on 25 May 2017 (15 swollen, 21 tender, pain 9/10, patient and physician global score 9) with 90 minutes of morning stiffness prior to starting [medication]."
- The appellant does not require an aid for his impairment.
- In terms of functional skills, the appellant can walk 1 to 2 blocks unaided on a flat surface, climb 2 to 5 steps unaided, lift 2 to 7 kg. (5 to 15 lbs), and remain seated less than 1 hour. The rheumatologist also wrote "see attached HAQ (Health Assessment Questionnaire of 25 May 2017 and 17 October 2017.)"
- In the additional comments to the MR, the rheumatologist wrote "...he has significant polyarthritis in his wrists, MCP and MTP joints with 45 to 60 minutes of morning stiffness with severe limitations in range of motion. Prior to [medication] he had 2 to 3 hours of morning stiffness."
- The appellant is assessed as taking significantly longer than typical with walking indoors and walking outdoors (note: "2 to 3 times longer"). The appellant requires periodic assistance from another person with standing, with no comments provided to explain. The appellant requires continuous assistance from another person with lifting (note: "always help from someone else"), and with carrying and holding (note: "needs assistance from friend"). The rheumatologist commented that "above reflects inflammatory polyarthritis- he currently is working part-time as a [labour position] to help with income but has severe pain."

- In the section of the AR relating to assistance provided, the rheumatologist did not identify an assistive device as routinely used by the appellant, and wrote “unable to afford, but would benefit from bathing aids, device to pick up clothing from floor.”

In his self-report, the appellant wrote:

- He has Rheumatoid and Osteo arthritis as well as bone spurs on his spine. He has a bulge in his lower back (L3-L4) and plantar fasciitis in both feet.
- His walking is diminished where he cannot walk more than a block without assistance.
- Bending or standing for more than 15 to 20 minutes cause unbelievable pain and discomfort.
- He takes his four different prescribed medications as well as pain medication 2 to 3 times daily just to function.
- In the page from the MR completed by the appellant, he indicated that he is continuously restricted with mobility inside and outside the home. Regarding the degree of restriction, the appellant wrote “need help getting up in morning because of inflammation as my condition of RA has worsened, this is daily.”

In his Request for Reconsideration, the appellant wrote:

- He tries to walk a block a day, but his inflammation has gotten worse and he has started another medication.
- His room-mate massages his legs every day for at least an hour.

Mental Impairment

In the MR and the AR, the rheumatologist reported:

- There are difficulties with communication. The rheumatologist did not indicate the cause of the difficulties.
- The appellant has significant deficits with cognitive and emotional function in the areas of language, memory, emotional disturbance, and motivation. The rheumatologist wrote “contusion to left frontal lobe following MVA [motor vehicle accident] 1996.”
- The appellant has a satisfactory ability to communicate in speaking and hearing and poor ability with reading, and writing, described by the rheumatologist as “poor comprehension.”
- With respect to daily impacts to the appellant’s cognitive and emotional functioning, the rheumatologist assessed no major impacts, with moderate impacts to bodily functions, emotion, impulse control, memory, motivation and motor activity. There are minimal impacts in the areas of consciousness, insight and judgment, attention/concentration, executive, language, and other emotional or mental problems. The rheumatologist commented that the appellant has “contusions to left frontal lobe following MVA in 1996/1997. Withdraws and spends time in his room, lack of motivation, sleeps a lot. Irritability noted by friends. Depressive symptoms. Lack of motivation/socialization.”
- The appellant is independent in aspects of his social functioning, specifically: with making appropriate social decisions, interacting appropriately with others, and securing assistance from others. He requires periodic support/supervision from another person with developing and maintaining relationships (note: “withdrawal from social interaction”) and with dealing appropriately with unexpected demands.

- The appellant has marginal functioning in both his immediate and his extended social networks.
- Asked to describe the support/supervision required to help maintain the appellant in the community, the rheumatologist wrote: “relies on friend assistance.”

In his self-report, the appellant wrote:

- Mentally the stress of being told by the ministry that he is not disabled and being forced to go through the process of proving his pain causes depression for him.
- In the page from the MR completed by the appellant, he did not indicate that he is restricted with his social functioning.

Daily Living Activities (DLA)

In the MR and the AR, the rheumatologist reported:

- The appellant has not been prescribed medication and/or treatments that interfere with the appellant’s ability to perform DLA.
- The appellant takes significantly longer than typical with walking indoors and walking outdoors and these take 2 to 3 times longer.
- For the personal care DLA, the appellant is independent with the task of feeding self and regulating diet (note: “friend helps out meal”). The appellant requires periodic assistance from another person with dressing (note: “help putting on shoes; 2 to 3 times longer”) and grooming. The appellant requires continuous assistance from another person with bathing (“takes showers; friend pulls him out of bathtub”), transfers in/out of bed and transfers on/off chair (note: “friend- usually needs help lifting out of bed/chair”).
- Regarding the basic housekeeping DLA, the appellant requires continuous assistance from another person with the tasks of doing laundry and basic housekeeping (note: “always has help”).
- For the shopping DLA, the appellant is independent with the tasks of making appropriate choices and paying for purchases. He requires periodic assistance with reading prices and labels. The appellant requires continuous assistance with the tasks of going to and from stores (note: “friend always buys for him”) and carrying purchases home (note: “always has friend to carry/drive”). The rheumatologist commented that the appellant “relies on friend as explained above.”
- Regarding the meals DLA, the appellant is independent with the task of safe storage of food and requires periodic assistance from another person with the tasks of meal planning (note: “does 10% of cooking”) and cooking (note: “will control heat, not cook independent”). The appellant requires continuous assistance from another person with the task of food preparation (note: “usually friend”).
- With respect to the pay rent and bills DLA, the appellant is independent with the tasks of banking and budgeting. He requires periodic assistance with the task of paying rent and bills (note: “has friend to physically pay rent”).
- Regarding the medications DLA, the appellant is independent with all of the tasks of filling/refilling prescriptions, taking as directed, and safe handling and storage.
- For the transportation DLA, the appellant requires periodic assistance with all tasks, specifically: getting in and out of a vehicle, using public transit, and using transit schedules and arranging transportation.

- The rheumatologist added comments that the appellant “does 10% of food prep- can’t do cutting/peeling- essentially checks on food as it is heating and able to stir but needs friend’s assistance (as above).”

In the Clinical Health Assessment Questionnaire dated May 25, 2017, the appellant indicated:

- For the past week, he has experienced much difficulty with dressing and grooming, arising (stand up from chair, get in/out of bed), walking, hygiene, reaching, shopping and housework. He indicated that he usually needs help from another person with dressing and grooming and arising.
- The appellant experienced some difficulty with eating and gripping (car doors and faucets).

In his self-report, the appellant wrote:

- His room-mate does 90% of his cooking and meal preparation.
- He cannot do house cleaning, vacuuming, sweeping, or laundry. These are all done by his room-mate.
- He can only shower because it is almost impossible to get out of the tub without help.
- Overall, every day is a terrible struggle where what he used to be able to do is now done by others.
- In the page from the MR completed by the appellant, he indicated that he is continuously restricted with the meal preparation DLA, the management of medications DLA, the basic housework DLA, the daily shopping DLA, the move about indoors and outdoors DLA, and the use of transportation DLA.
- The appellant indicated that he is not restricted with the management of finances DLA.
- Asked to describe the assistance needed with DLA, the appellant wrote: “I get help from my room-mates with arising, housework, cooking/cutting my toe/finger nails, which now happens several times a day, every day about 3 hours per day.”

In his Request for Reconsideration, the appellant wrote:

- His day starts with his room-mate getting him up from the bed every day as he is stiff with pain for almost an hour, where it is hard to pull himself up.
- His room-mate and her daughters make him breakfast before they are off for the day.
- He tries to walk

Need for Help

- In the AR, the rheumatologist reported that the appellant’s friends help with his DLA as his family lives in other provinces.
- In the section of the AR relating to assistance provided, the rheumatologist did not identify any of the listed assistive devices as being required by the appellant but indicated that equipment is required that is not currently being used and wrote: “unable to afford but would benefit from bathing aids, device to pick up clothing from floor.”

Additional information

In his Notice of Appeal dated March 14, 2018, the appellant expressed his disagreement with the ministry's reconsideration decision and wrote that he believes that the ministry has not reviewed all his responses correctly. The appellant wrote that the ministry has said that he did not specify his length of assistance, which he has in many paragraphs.

At the hearing, the appellant's room-mate stated:

- If the appellant stands or sits for too long, such as for cooking, it is painful for him. To prepare a meal takes him a long time. He is okay with standing or sitting for 10 to 15 minutes but he starts to cramp up after 20 to 30 minutes of standing or sitting. He has to take a break to continue. He is much better off if he lies down for something like watching television.
- She does the cooking and laundry for the appellant because every day is a struggle for him.
- He gets swelling when he has spasms in his legs, knees and hands. His condition has gotten worse since the application process started.
- He often "has to count to 10" before he takes the next step.
- The appellant cannot bathe because he cannot get down into the bathtub. He has to shower instead and is able to step over into the bathtub.
- It is a struggle for him to do anything, especially anything repetitive, like yard work, as this will cause swelling and pain.
- His condition is pretty consistent although some days are worse. She has noticed that if it is cold, it seems to affect him. Applying heat seems to help.
- She is the primary person available to assist the appellant. She works and will make dinner for her daughters and the appellant when she gets home.
- When she is at work, the appellant lies and rests and takes short walks to stretch out. He has not had any accidents while she has been at work. If the spasms are bad, he would not be able to do things except get up to go to the washroom.
- Occasionally, she will help him to get up out of bed or a chair. He does not require any assistance in the bathroom or with walking inside the home. There is a bar above the bathtub that the appellant can hang onto.
- She will do most of the shopping and pick up the appellant's prescriptions because it is much easier for her.
- She drives the appellant to get his blood work done and to medical appointments.

At the hearing, the appellant stated:

- He took the application forms to his specialist, who has been through this process before. The rheumatologist spent 2 hours with him going over the application and does not understand why the appellant's application was not accepted.
- His type of arthritis is a severe condition. His numbers had doubled so the rheumatologist put him on new medications. The medications are not working but they will give it 6 months to see if the new medication starts to make a difference. He hopes that the new medication will work, but currently he is in "limbo."
- He completed the DLA checklist to show that most of his DLA are continuously restricted and this is the same as what his doctor is saying.

- He can walk 1 to 2 blocks but it takes him 2 to 3 times longer and it is not always unaided. He does not walk 1 to 2 blocks unaided every day. Taking 2 to 3 times longer is indicative of severe pain as it will take him 15 minutes to walk somewhere instead of the 5 minutes it would normally take.
- The rheumatologist indicated that the appellant's impairment will last more than 2 years, and it does affect his daily functioning.
- When everything locks up with spasms, he cannot do anything except lie in bed.
- His room-mate and her daughters give him assistance daily. If she is home, she will do the task and if she is not there, he does not do it.
- He may have downplayed the impact to his mental functioning because of a reluctance to show weakness in this area. The rheumatologist indicated that he has significant deficits in language, memory, emotional disturbance and motivation. He gets into a bad mood and feels frustration. He was in a MVA and damage occurred to the lobe of his brain and he is now noticing memory problems.
- He had been working part-time up until about 2 months ago. He found that the strain of physical work was making his condition worse. His contribution to the team of 3 or 4 people was helpful but not really functional. He did the lighter duties and nothing too strenuous. He was not expected to do lifting and the others did the "heavier" work.
- He feels like he is in a "Catch 22" situation because he needs money but it makes his condition worse.
- He does not have any stairs in his house. He can get around in his house.
- He sometimes has a "good day," when he has taken pain medication to numb the pain. For those days, he can stand and do some cooking but it is usually too much for him.
- For the help with the task of paying rent and bills, he gives his rent cheque to his room-mate and she pays the landlord to make it simpler.
- He cannot do any sweeping, laundry or yard work. Laundry involves too much heavy lifting and bending. Some days he could do some light lifting, but most days bending is impossible.
- He has experienced spasms ever since the MVA and they occur for 3 or 4 days per week, and then he will have a day or two with no spasms. They last for 10 to 30 minutes on an off during the day. He gets spasms in his hands and fingers and along his spine in his back.
- He does not take public transit because the stop is a block and a half away and he cannot stand if the bus is full and he does not want to take an elderly person's seat.
- He experiences restrictions daily, which is "continuous," and he should not have to keep a diary of all his movements. His condition is getting worse every month.

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 rheumatologist diagnosed the appellant with Non-erosive Seropositive Rheumatoid Arthritis, with an onset in January 2016 and "rheumatoid symptoms since 2013" and L2-S1 Degenerative Lumbar Spine, with an onset in 1996. In his self-report, the appellant wrote that he has Rheumatoid and Osteoarthritis as well as bone spurs on his spine, he has a bulge in his lower back (L3-L4) and plantar fasciitis in both feet. The ministry considered that the rheumatologist wrote that the appellant has "...severe disease as evident by his Clinical Disease Activity score of 42 on 25 May 2017 (15 swollen, 21 tender, pain 9/10, patient and physician global score 9) with 90 minutes of morning stiffness prior to starting [medication]." In the additional comments to the MR, the rheumatologist wrote that the appellant has "...significant polyarthritis in his wrists, MCP and MTP joints with 45 to 60 minutes of morning stiffness with severe limitations in range of motion. Prior to [medication] he had 2 to 3 hours of morning stiffness." The panel notes that the rheumatologist did not refer to the condition of planar fasciitis and the information in the MR about the length of time the appellant experiences morning stiffness prior to starting medications is not consistent, being stated as both 90 minutes and also as 2 to 3 hours.

At the hearing, the appellant stated that his type of arthritis is a severe condition. The appellant stated that his condition is getting worse and his "numbers had doubled" so the rheumatologist put him on new medications. The appellant also stated that he has experienced spasms ever since the MVA in 1996 and they occur for 3 or 4 days per week, and then he will have a day or two with no spasms. The spasms last for 10 to 30 minutes on an off during the day. When everything locks up with spasms, he cannot do anything except lie in bed. The appellant stated that his room-mate massages his legs every day for at least an hour. At the hearing, the appellant's room-mate stated that the appellant gets swelling when he has spasms in his legs, knees and hands, and his condition has gotten worse since the application process started. The rheumatologist did not provide information regarding the exacerbations in the appellant's impairment through spasms and the appellant stated at the hearing that he had requested additional information from the rheumatologist but it was not available in time for the appeal.

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 and the AR. The ministry considered that the rheumatologist assessed the appellant’s functional skills in the MR as being able to walk 1 to 2 blocks unaided, climb 2 to 5 steps unaided, lift 5 to 15 lbs, and remain seated less than 1 hour. The appellant stated at the hearing that he can walk 1 to 2 blocks but it takes him 2 to 3 times longer and it is not always unaided, and he does not walk 1 to 2 blocks unaided every day. The ministry pointed out in the reconsideration decision that while the rheumatologist reported that the appellant has “severe limitation in range of motion,” the rheumatologist did not provide additional information in the MR about the appellant’s functional skill limitations, which had been assessed to be in the moderate range.

The ministry considered the rheumatologist’s assessment that the appellant takes significantly longer than typical with walking indoors and walking outdoors and wrote that taking 2 to 3 times longer than typical in performing acts of mobility and physical ability is not considered indicative of a severe impairment of physical functioning. At the hearing, the appellant stated that taking 2 to 3 times longer is indicative of severe pain as it will take him 15 minutes to walk somewhere instead of the 5 minutes it would normally take. The ministry reasonably considered that the appellant does not require an aid for his impairment. The ministry wrote that although the rheumatologist indicated that the appellant requires continuous assistance from another person with climbing stairs, lifting and carrying/holding, the rheumatologist also reported that the appellant is able to perform these activities “unaided” in a moderate range. The ministry notes that the appellant can climb up to 5 steps and lift and carry and hold up to 15 lbs. maximum and the panel notes that the assistance from another person may be required for climbing more than 5 steps or for lifting and carrying/holding heavier weights in excess of this maximum. The panel finds that the ministry reasonably considered that the ability to lift 15 lbs. is considered sufficient ability to lift a variety of household and shopping items.

The ministry considered that the rheumatologist commented regarding the appellant’s mobility and physical ability that he was working in a physical labour job to help with income but he had severe pain doing the work. At the hearing, the appellant stated that he had been working in this job until about 2 months ago and he feels like he is in a “Catch 22” situation because he needs money but doing this work makes his condition worse. The appellant clarified that he found that the strain of physical work was making his condition worse, even though he did the lighter duties and nothing too strenuous. He was not expected to do lifting and the others on the team of 3 or 4 workers did the “heavier” work.

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.

At the hearing, the appellant stated that he sometimes has a “good day,” when he has taken pain medication to numb the pain. In his self-report, the appellant wrote that he takes his 4 different prescribed medications as well as pain medication 2 to 3 times daily just to function. In the page from the MR completed by the appellant, he indicated that he is continuously restricted with mobility inside and outside the home and, regarding the degree of restriction, the appellant wrote “need help getting up in morning because of inflammation as my condition of RA has worsened, this is daily.” At the hearing, the appellant explained that he experiences restrictions daily, which is “continuous,” and he should not have to keep a diary of all his movements. The appellant reiterated that his condition is getting worse every month. At the hearing, the appellant’s room-mate stated that the appellant’s condition is pretty consistent although some days are worse, especially if it is cold. She stated that if the appellant’s spasms are bad, he would not be able to do things except get up to go to the washroom.

Given the rheumatologist’s assessment of independent functional skills within the moderate range that, until recently, has permitted physical labour work, as well as a lack of information from the rheumatologist regarding the frequency and duration of the exacerbations in the appellant’s impairment due to spasms, 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 panel notes that although there was no diagnosis by the rheumatologist of a condition within the mental disorders diagnostic category of the MR, the ministry considered that the rheumatologist wrote that the appellant experienced a contusion to the left frontal lobe of his brain following a MVA in 1996. The ministry reasonably considered that although the rheumatologist reported in the MR that the appellant has significant deficits to his cognitive and emotional functioning in the areas of language, memory, emotional disturbance and motivation, he also assessed moderate or minimal impacts in these areas in the AR. The ministry reasonably considered that the rheumatologist did not assess major impacts to any of the areas of the appellant’s daily cognitive and emotional functioning.

While the rheumatologist indicated a need for periodic support/supervision with aspects of the appellant’s social functioning, the ministry reasonably considered that the comment by the rheumatologist “withdrawal from social interaction” did not indicate the frequency or duration, or the degree of the periodic support/supervision required. In the page from the MR completed by the appellant, he did not indicate that he is restricted with his social functioning. At the hearing, the appellant stated that he may have downplayed the impact to his mental functioning because

of a reluctance to show weakness in this area. The appellant argued that the rheumatologist indicated that he has significant deficits in language, memory, emotional disturbance and motivation. The appellant stated that he gets into a bad mood and feels frustration and he is now noticing memory problems from the damage to his brain during the MVA. The appellant's room-mate did not comment regarding the appellant's mental functioning.

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 rheumatologist. 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 rheumatologist reported that the appellant has not been prescribed any medications or treatments that interfere with his ability to perform DLA. The ministry also considered that, in the AR, the rheumatologist indicated that the appellant takes 2 to 3 times longer with the move about indoors and outdoors DLA and with the task of dressing as part of the personal care DLA and that this is not indicative of a significant restriction, as previously discussed.

For most of those tasks that require periodic assistance from another person, specifically: dressing and grooming, reading prices and labels when shopping, pay rent and bills, and all tasks of the transportation DLA, the ministry wrote that the rheumatologist does not describe the frequency or duration of the periodic assistance required in order for the ministry to determine that the assistance is required for extended periods of time. In the page from the MR completed by the appellant, he indicated that he is not restricted with the management of finances DLA. At the hearing, the appellant clarified that he gives his rent cheque to his room-mate and she physically pays the landlord, to make it simpler and not because he requires assistance. The appellant stated that he does not take public transit because the bus stop is a block and a half away and he cannot stand if the bus is full and he does not want to take a seat from an elderly

person. The panel notes that for the tasks of meal planning and cooking the rheumatologist indicated that the appellant can only do 10% of the cooking and, in his self-report, the appellant wrote that his room-mate does 90% of his cooking and meal preparation, and this would indicate a need for assistance for extended periods of time with these tasks of the meals DLA.

Regarding the rheumatologist's assessment of the need for continuous assistance with the tasks of the personal care DLA (bathing, transfers in/out of bed, transfers on/off chair), the basic housekeeping DLA (including laundry), tasks of the shopping DLA (going to and from stores and carrying purchases home) as well a task of the meals DLA (food preparation), the ministry wrote that this is not consistent with the assessment of the appellant's basic functional ability, which has been reported to be in the moderate range. As previously discussed, the ministry also considered that the rheumatologist commented regarding the appellant's mobility and physical ability that he was working in a physical labour job to help with income, although he experienced pain performing his duties.

In his self-report, the appellant wrote that he cannot do house cleaning, vacuuming, sweeping, or laundry and these tasks are all done by his room-mate. At the hearing, the appellant clarified that the task of doing laundry involves too much heavy lifting and bending. The appellant stated that some days he could do some light lifting, but most days it is impossible for him to bend. The appellant's room-mate stated at the hearing that it is a struggle for the appellant to do anything, especially anything repetitive, like yard work, as this will cause swelling and pain. She stated that "occasionally" she will help the appellant to get up out of bed or a chair, and he does not require any assistance in the bathroom or with walking inside the home. The appellant's room-mate stated that the appellant cannot bathe because he cannot get down into the bathtub, and he showers instead and is able to step over into the bathtub.

In the page from the MR completed by the appellant, he indicated that he is continuously restricted with the meal preparation DLA, the management of medications DLA, the basic housework DLA, the daily shopping DLA, the move about indoors and outdoors DLA, and the use of transportation DLA. In the AR, the rheumatologist assessed the appellant as being independent with all of the tasks of the medications DLA, specifically filling/refilling prescriptions, taking as directed, and safe handling and storage. At the hearing, the appellant's room-mate stated that she will do most of the shopping and pick up the appellant's prescriptions "because it is much easier" for her. The appellant described the assistance needed with his DLA, as with the tasks of "arising" (transfer out of bed), housework, cooking, cutting my toe/finger nails (grooming) and that this help occurs "...several times a day, every day about 3 hours per day." The ministry reasonably considered that the rheumatologist, as the prescribed professional, did not provide information to confirm this degree of daily assistance as described by the appellant.

Given the rheumatologist's assessment of functional skills in the moderate range, his reference to the appellant's physical labour, and the lack of information to describe the nature of any exacerbations to the appellant's impairment and the degree of assistance required, 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 rheumatologist indicated that help for DLA is provided by the appellant's friend and equipment is required by the appellant that is not currently being used, specifically bathing aids and a device to pick up clothing from floor, 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.