

## **PART C – DECISION UNDER APPEAL**

The decision under appeal is the reconsideration decision of the Ministry of Social Development and Poverty Reduction (the ministry) dated February 2, 2018, which held that the appellant did not meet 3 of the 5 statutory requirements of section 2 of the *Employment and Assistance for Persons with Disabilities Act* for designation as a person with disabilities (PWD). The ministry found that the appellant met the age and duration requirements, but 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 those restrictions, the appellant requires an assistive device, the significant help or supervision of another person, or the services of an assistance animal to perform DLA.

## **PART D – RELEVANT LEGISLATION**

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

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

## **PART E – SUMMARY OF FACTS**

The information before the ministry at the time of reconsideration included the appellant's PWD application comprised of a Medical Report (MR) and an Assessor Report (AR), both completed by the appellant's general practitioner (the "Physician") dated August 21, 2017, and the appellant's Self-Report (SR) dated June 22, 2017.

The appellant's request for PWD designation was denied on December 5, 2017. On January 5, 2018 the ministry received the appellant's Request for Reconsideration (the "RFR") dated January 5, 2018 in which he stated that he had not had a chance to obtain an appointment with his doctors but has appointments set for January 10 and 17, 2018.

### Summary of relevant evidence

#### Diagnoses

In the MR, the Physician indicates that the appellant has anxiety, substance abuse (in remission), trigger finger, right hand, date of onset not indicated and Tourette's syndrome, date of onset 1993. degenerative disc disease, date of onset not known, and chronic pain, date of onset December 2015. The Physician indicates that the appellant has been her patient for seven years. The Physician indicates that the appellant is 175 cm and weighs 88.1 kg.

In the AR, the Physician indicates that the appellant's impairments that impact his ability to manage DLA are severe anxiety, depression, past substance abuse (in remission), Tourette's syndrome, difficulty in executive functioning, in memory, focus/concentration and in social interaction. The Physician indicates that she has seen the appellant 2-10 times in the last year.

#### Physical Impairment

In the MR for Functional Skills, the Physician indicates that the appellant is able to walk 4+ blocks unaided on a flat surface, can climb 5+ steps unaided, has no limitations with lifting or remaining seated.

In the AR, the Physician indicates that the appellant is independent with walking indoors, walking outdoors, climbing stairs, standing, lifting and carrying and holding.

#### Mental Impairment

The MR indicates that the appellant has significant deficits with cognitive and emotional function in the areas of executive, calculations, memory, emotional disturbance, motivation, and motor activity. The Physician indicates that the appellant does not have any difficulties with communication.

In the Health History portion of the MR, the Physician indicates that the appellant has longstanding, significant anxiety and depression and he has struggled with drug use in the past, in an attempt to manage his anxiety symptoms. The Physician indicates that the symptoms include low mood, sadness, poor energy, poor motivation, poor concentration and poor focus. The physician indicates that the appellant's sleep is disrupted and that he has a hard time leaving the house when his anxiety is high. The Physician indicates that the appellant has panic attacks once a week, or occasionally more often with accompanying shortness of breath, palpitations, anxiety and a sense of doom. The Physician indicates that the appellant's anxiety worsens his Tourette's (presents as constant throat clearing), which is embarrassing to him, which then heightens his anxiety. The Physician indicates that the appellant's symptoms are occurring every day and that his symptoms make it very hard to communicate with others and to leave the house.

In the AR, the Physician indicates that the appellant's ability to communicate with speaking is satisfactory explaining that it can be interrupted by tics, which can be severe at times. The Physician indicates that the appellant's ability to communicate with reading, writing and hearing is good. The Physician indicates that the appellant has major impact to emotion, attention/concentration, executive, memory and motivation, moderate impact to impulse control, insight and judgment, motor activity and language, minimal impact to consciousness and no impact to bodily functions, psychotic symptoms, other neuropsychological problems or other emotional or mental problems.

In the SR, the appellant states that his disability is anxiety, panic attacks and Tourette's syndrome, which have made him feel different emotions (frustration, angry) and impacts his ability to eat, speak or breathe. The appellant states that he has daily panic attacks that make it hard for him to concentrate on himself and his children.

#### DLA

In the MR, the Physician indicates that it is unknown if the appellant's impairment directly restricts the appellant's ability to perform DLA. The Physician indicates that the appellant has restrictions to DLA in the area of meal preparation, no restrictions to mobility inside or outside the home, and it is unknown if there are restrictions in the areas of personal self care, management of medications, basic housework, daily shopping, use of transportation or management of finances. The Physician indicates that the appellant's social functioning is continuously restricted due to severe anxiety, depression and Tourette's. The Physician indicates that the appellant has been prescribed medications that can cause drowsiness, but at the current doses the appellant does not complain of significant drowsiness.

In the AR, the Physician indicates that the appellant is independent with all aspects of personal care, shopping, and transportation. For basic housekeeping, meals, paying rent and bills, the Physician indicates "unknown". For medications, the Physician indicates that the appellant requires periodic assistance from another person with filling/refilling prescriptions and that he is independent with taking medications as directed and safe storage and handling of medications.

For social functioning, the Physician indicates that the appellant requires periodic support/supervision with making appropriate social decisions (history of substance misuse, supportive environment needed to prevent relapses), developing and maintaining relationships (needs support-wife ("partner), interacting appropriately with others, (needs support-partner) and dealing appropriately with unexpected demands (needs support-partner, MD, has been referred for counselling). The Physician indicates that the appellant is independent with securing assistance from others. The Physician indicates that the appellant has marginal functioning with his immediate social network.

In the SR, the appellant states that his impairments impact him on a daily basis and he goes through embarrassment of feeling someone is watching him or hearing him when he is out in public. He wants to be alone until his symptoms pass. He states that his disability has affected his life a lot as it is hard in his home for himself as he has little energy to do things. He states that if it weren't for his partner who helps him with his medications, doctors' appointments and his children, he would be lost.

#### Need for Help

In the AR, the Physician indicates that the appellant needs support and assistance from his partner and he has been referred to counselling but it has not yet been initiated.

In the SR, the appellant states that he requires assistance from his partner.

#### **Additional information provided**

In his Notice of Appeal dated February 15, 2018, the appellant states that he felt that he did not have enough time when he applied and that because it was before Christmas, he did not have his appointment with a mental health provider until after Christmas. The appellant also states that his anxiety is getting worse in being around people. The appellant also submitted a letter from a concurrent disorder clinician (the "Clinician") dated February 13, 2018 indicating that the appellant has been attending their clinic for health and addiction services. The Clinician indicates that their team includes, but is not limited to psychiatrists, counsellors, nurses, case managers and support workers.

By email dated March 7, 2018 the ministry advised that the ministry's submission would be the reconsideration summary provided in the Record of Ministry Decision.

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

**Admissibility of New Information**

The panel has admitted the information in the appellant's Notice of Appeal and the letter from the Clinician as it is evidence in support of information and records that were before the ministry at the time of reconsideration, in accordance with section 22(4) of the *Employment and Assistance Act*. In particular, the information in the Notice of Appeal corroborates the information regarding the appellant's counselling appointments and anxiety and the letter from the Clinician corroborates the Physician's statement about the appellant being referred for counselling.

## PART F – REASONS FOR PANEL DECISION

### Issue on Appeal

The issue on appeal is whether the ministry's decision to deny the appellant designation as a PWD was reasonably supported by the evidence or was a reasonable application of the applicable enactment in the circumstances of the appellant. In particular, was the ministry reasonable when concluding it was not satisfied that

- a severe physical or mental impairment was established;
- the appellant's daily living activities (DLA) are, in the opinion of a prescribed professional, directly and significantly restricted either continuously or periodically for extended periods; and
- as a result of those restrictions, in the opinion of a prescribed professional, the appellant requires help, as it is defined in the legislation, to perform DLA?

### Relevant Legislation

#### **EAPWDA**

2 (1) In this section:

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

"**daily living activity**" has the prescribed meaning;

"**prescribed professional**" has the prescribed meaning.

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

- (a) in the opinion of a medical practitioner or nurse practitioner is likely to continue for at least 2 years, and
- (b) in the opinion of a prescribed professional
  - (i) directly and significantly restricts the person's ability to perform daily living activities either
    - (A) continuously, or
    - (B) periodically for extended periods, and
  - (ii) as a result of those restrictions, the person requires help to perform those activities.

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

- (a) a person who has a severe mental impairment includes a person with a mental disorder, and
- (b) a person requires help in relation to a daily living activity if, in order to perform it, the person requires
  - (i) an assistive device,
  - (ii) the significant help or supervision of another person, or
  - (iii) the services of an assistance animal.

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

#### **EAPWDR**

#### **Definitions for Act**

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

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

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

- (vii) perform personal hygiene and self care;
- (viii) manage personal medication, and

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

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

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

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

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

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

- (i) an authority, as that term is defined in section 1 (1) of the [Independent School Act](#), or
- (ii) a board or a francophone education authority, as those terms are defined in section 1 (1) of the [School Act](#),  
if qualifications in psychology are a condition of such employment.

(3) The definition of "parent" in section 1 (1) applies for the purposes of the definition of "dependent child" in section 1 (1) of the Act.

### **Alternative grounds for designation under section 2 of Act**

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

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

### **Panel Decision**

#### **Severity of Impairment**

The legislation provides that the determination of severity of an impairment is at the discretion of the minister, taking into account all of the evidence including that of the appellant. However, the legislation is also clear that the fundamental basis for the analysis is the evidence from a prescribed professional respecting the nature of the impairment and its impact on daily functioning. While the legislation does not define "impairment", the MR and AR define "impairment" as a "loss or abnormality of psychological, anatomical or physiological structure or functioning causing a restriction in the ability to function independently, effectively, appropriately or for a reasonable duration." While this is not a legislative definition, and is therefore not binding on the panel, in the panel's opinion, it reflects the legislative intent and provides an appropriate analytical framework for assessing the degree of impairment resulting from a medical condition.

When considering the evidence provided respecting the severity of impairment, the ministry must exercise its decision-making discretion reasonably by weighing and assessing all of the relevant evidence.

### Severe Physical Impairment

The ministry's position is that the information provided does not establish a severe physical impairment. The reconsideration decision indicates that a diagnosis of a serious medical condition does not in itself determine PWD eligibility or establish a severe impairment.

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

The panel finds that the ministry reasonably determined that the information provided does not establish that the appellant has a severe physical impairment. In particular, the functional skills reported in the MR and the AR indicate that the appellant has a high level of functional mobility and ability, is independent with walking indoors, walking outdoors, climbing stairs, standing, and carrying and holding, and requires periodic assistance with lifting as he cannot lift heavy objects usually.

While the Physician indicates that the appellant has trigger finger, right hand, the MR indicates that the appellant can walk 4+ blocks unaided on a flat surface, can climb 5+ steps unaided, and has no limitations with lifting or remaining seated and the AR indicates that the appellant is independent with all aspects of mobility and physical ability.

The information provided focuses mainly on the appellant's mental impairment and as there are no physical limitations indicated, the panel finds that the ministry reasonably determined that the information provided does not establish that the appellant has a severe physical impairment.

### Severe Mental Impairment

The ministry's position is that the information provided does not establish a severe mental impairment. The reconsideration decision indicates that the Physician indicates that the appellant has longstanding, significant anxiety and depression with symptoms of low mood, sadness, poor energy, poor motivation, poor concentration, poor focus and sleep disruption. The reconsideration decision also notes that the Physician had indicated that it's difficult for the appellant to leave the house "...when his anxiety is night". (The panel notes that the reference to "night" is presumably a typographical error and that the reconsideration decision was meant to say "high" as is noted in the Health History portion of the MR). The reconsideration decision also indicates that it considered the Physician's information that the appellant experiences panic attacks once a week or more which includes symptoms of shortness of breath, palpitations, and a sense of doom and that the appellant's anxiety worsens his Tourette's (which presents a constant throat clearing), which causes him embarrassment and heightens his anxiety. The reconsideration decision indicates that while the Physician's information is compelling in considering the severity of the appellant's impairments, the Physician indicates that the appellant is independent in many DLA, particularly tasks which require the appellant to leave the home and interact with others (i.e. shopping, using public transport).

The ministry also notes that the Physician indicates that the appellant's ability to communicate is good in reading, writing, and hearing and satisfactory (not poor or unable) with speaking, explaining that the appellant's speech can be interrupted by tics, which can be severe at times, but the Physician does not explain how often this occurs. The ministry's position is that if this occurred often, then it would be expected that the Physician would have indicated 'poor' to reflect the difficulty the appellant experiences when speaking.

The reconsideration decision also states that although the Physician indicates several areas of cognitive and emotional functioning which have a major impact on the appellant's daily functioning (emotion, attention/concentration, executive, memory, motivation), the Physician provides no comments in the large space provided, making it difficult to understand these impacts.

The reconsideration decision also indicates that while the Physician indicates that the appellant requires periodic support/supervision with most aspects of social functioning, and support from his wife, the Physician does not indicate that the appellant requires continuous assistance with any aspects of social functioning, but that it is difficult to determine to what extent the appellant requires help from his partner as it is generally in the nature of the duty of family members to help each other when in need, so it does not necessarily establish that such help is required as a result of the appellant's impairment. The reconsideration decision also indicates that while the Physician reports that the appellant has marginal functioning with his immediate social network it is not 'very disrupted functioning' and no assessment is provided with respect to the appellant's extended social networks.

The reconsideration decision also states that given the Physician's comments that the appellant has longstanding, significant anxiety and depression, it would be expected that the appellant would have required counselling in the past, but there is no mention of visits with a counsellor or mental health assessment performed by a mental health expert such as a psychiatrist, or visits with a specialist in Tourette's such as a neurologist. The ministry's position is that if the Tourette's symptoms were considered severe, it would be expected that the appellant would benefit from visits with a medical professional that specializes with this condition. The ministry's position is that the Physician's comment that the appellant has been referred to counselling but that this has 'not yet initiated' does not suggest longstanding, severe anxiety and depression.

The reconsideration decision indicates that while the minister recognizes that the appellant experiences medical conditions, which impact his life and ability to perform tasks, the evidence provided does not sufficiently describe or portray a severe impairment.

The appellant's position is that he has severe anxiety, depression, panic attacks, Tourette's syndrome and that his mental impairment affects him on a daily basis. The appellant's position is that the information provided establishes that he has a severe mental impairment.

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

The Physician in the MR indicates that the appellant has significant deficits with cognitive and emotional function in the areas of executive, calculation, memory, emotional disturbance, motivation and motor activity, and the AR indicates major impact to impulse control, attention/concentration, executive, memory and motivation, the AR indicates moderate impact to motor activity, impulse control and language. In the reconsideration decision the ministry indicates that the Physician had not provided any comments in the space provided, making it difficult to understand these impact. The panel finds that the ministry's statement in this regard is not accurate, as the Physician comments "[a]s described in page 2. Tics can also interfere with communication – when they are severe has near constant throat clearing". When reviewing page 2, which is the Health History portion of the MR, the Physician indicates that the appellant's symptoms include low mood, sadness, poor energy, poor motivation, poor concentration, poor focus, sleep disruption, and that the appellant has difficulty leaving the house when his anxiety is high. The Physician also indicates that the appellant has panic attacks once a week or occasionally more often with accompanying shortness of breath, palpitations, anxiety, and a sense of doom. The Physician also indicates that the appellant's anxiety worsens his Tourette's (presents as constant throat clearing), which is an embarrassment to him, which then heightens his anxiety. The Physician also indicates that the appellant's symptoms are occurring every day and that his symptoms make it hard to communicate with others, and to leave the house.

While the panel finds that the ministry's statement that the Physician did not provide further comments is not accurate the panel finds that the ministry was still reasonable in determining that the information provided makes it difficult to understand the impacts of the deficits. For example, the Physician does not indicate how often the appellant has panic attacks more than once a week or the frequency of the term "occasionally". While the Physician indicates that the appellant's symptoms occur daily, she does not indicate whether the symptoms are present all day or for a short time each day. While the Physician indicates that the appellant's symptoms low mood, sadness, poor energy, poor motivation, poor concentration, poor focus and sleep disruption, the Physician describes the appellant's depression as significant not severe and does not provide further information on how long the symptoms last each day. While the Physician indicates that the appellant has longstanding, significant anxiety and depression, and has been prescribed medications including an anti-anxiety and anti-psychotic medication, the Physician does not indicate that the appellant has been prescribed any anti-depressant medications or explain why counselling was not tried previously. In addition, if the restrictions were severe, it would be reasonable to expect that there would be more impacts to DLA.

The panel notes that the Physician indicates that the appellant was referred for counselling and the letter from the Clinician indicates that the appellant is now attending for counselling. However the letter from the Clinician does not provide further information regarding the appellant's impairment or impacts to his daily functioning.

While the Physician indicates that the has difficulties with communication as the tics can interfere with his communication and when they are severe, the appellant has near constant throat clearing, the Physician does not describe how frequently the symptoms are severe and in the AR, indicates that the appellant's ability to communicate with speaking is satisfactory. The panel finds that the ministry's decision was reasonable in determining that if the appellant's symptoms were severe that the Physician would have indicated that the appellant's ability to speak is 'poor' rather than satisfactory.



While the information provided indicates that the appellant's anxiety, depression, and Tourette's syndrome impact the appellant's life and ability to perform some tasks, the panel finds that the ministry reasonably determined that the information does not establish that the appellant has a severe mental impairment as required by EAPWDA section 2(2).

Restrictions in the ability to perform DLA

Section 2(2)(b)(i) of the EAPWDA requires that the minister be satisfied that in the opinion of a prescribed professional, a severe mental or physical impairment directly and significantly restricts the appellant's ability to perform DLA either continuously or periodically for extended periods. While other evidence may be considered for clarification or support, the ministry's determination as to whether or not it is satisfied that the legislative criteria are met, is dependent upon the evidence from prescribed professionals. The term "directly" means that there must be a causal link between the severe impairment and the restriction. The direct restriction must also be significant. Finally, there is a component related to time or duration – the direct and significant restriction may be either continuous or periodic. If periodic, it must be for extended periods. Inherently, any analysis of periodicity must also include consideration of how frequently the activity is restricted. All other things being equal, a restriction that only arises once a year is less likely to be significant than one that occurs several times a week. Accordingly, in circumstances where the evidence indicates that a restriction arises periodically, it is appropriate for the ministry to require evidence of the duration and frequency of the restriction in order to be "satisfied" that this legislative criterion is met.

DLA are defined in section 2(1) of the EAPWDR and are listed in both the MR and the AR sections of the PWD application with the opportunity for the prescribed professional to check marked boxes and provide additional narrative. DLA, as defined in the legislation, does not include the ability to work.

The ministry's position is that the information provided is not sufficient to establish that the appellant has a severe impairment that, in the opinion of a prescribed professional, directly and significantly restricts the appellant's ability to perform DLA. The reconsideration decision indicates that as the Physician indicates that the appellant is independent in a large majority of DLA's, or writes 'unknown', this does not suggest that the appellant is significantly restricted.

The reconsideration decision indicates that the Physician indicates that the appellant requires periodic assistance with filling/refilling prescriptions explaining that the appellant often forgets to pick up his medications so his partner does it for him. The ministry's position is that while the appellant's partner may help him with filling/refilling prescriptions and other aspects of social functioning it is in the nature of the duty of family members to help each other when in need but this does not necessarily establish that such help is required as a result of the impairment. The reconsideration decision questions whether the appellant would be capable of using other tools to remember to pick up his prescriptions if his wife were not available, such as writing it down, or would he require a care aid worker to perform this tasks for him.

The ministry's position is that while it acknowledges that the appellant has certain limitations as a result of his medical conditions, the information provided does not establish that an impairment significantly restricts DLA continuously or periodically for extended periods.

The appellant's position is that his severe impairment impacts him daily, that without his partner he would be lost, and that there are times when he just wants to be alone until his symptoms pass. The appellant states that he is embarrassed when he is out in public and he feels that people are watching him or hearing him and that his panic attacks make it hard for him to concentrate on himself or his children. The appellant states that his impairment has "*cost me a lot in working like I would*".

The panel finds that the ministry reasonably determined that the assessments provided are not indicative of a severe level of impairment requiring more indicative of a moderate rather than severe level of impairment that directly and significantly restricts the appellant's DLA either continuously or periodically for extended periods as required by EAPWDA section 2(2)(b).

In the MR, the Physician indicates that it is unknown if the appellant's impairment directly restricts the appellant's ability to perform DLA. However the Physician then indicates that the appellant has restrictions to DLA in the area of meal preparation, no restrictions to mobility inside and outside the home, and it is unknown if there are restrictions in the areas of personal self care, management of medications, basic housework, daily shopping, use of transportation or management of finances. The Physician indicates that the appellant's social functioning is continuously restricted due to severe anxiety, depression and Tourette's.

In the AR, the Physician indicates that the appellant is independent with all aspects of personal care, shopping, and transportation. For basic housekeeping, meals, paying rent and bills, the Physician indicates "unknown". For medications, the Physician indicates that the appellant requires periodic assistance from another person with filling/refilling prescriptions and that he is independent with taking medications as directed and safe storage and handling of medications.

The information in the MR and the AR indicates a high level of independent functioning and minimal impact to DLA. In addition, some of the information is not consistent. For example, in the MR the Physician indicates that the appellant is restricted with meal preparation but in the AR the Physician indicates that the appellant's ability to perform all aspects of the DLA of meals is unknown. In addition, the Physician does not provide any information to describe the frequency of any periodic assistance needed with filling/refilling medications and the Physician does not indicate that any periodic supervision/support is required for any other aspects of DLA.

In the MR, for social functioning, the Physician indicates that the appellant is continuously restricted, due to severe anxiety, depression and Tourette's, but in the Health History portion of the MR, the Physician describes the appellant's anxiety and depression as significant, not severe. In addition, in the AR, the Physician indicates that the appellant requires periodic, not continuous support/supervision with making appropriate social decisions, developing and maintaining relationships, interacting appropriately with others and dealing appropriately with unexpected demands, but does not provide any explanation of the nature or frequency of the periodic support/supervision required. The Physician indicates that the appellant has a history of substance misuse, and that a supportive environment is needed to prevent relapses but no further information is provided to explain what type of supportive environment is needed or the type or frequency of the supports. The Physician indicates that the appellant needs support from his wife, doctor, has been referred for counselling, but does not provide a description of the degree and duration of the support/supervision required. The inconsistencies between the information in the MR and the AR and the lack of further explanation regarding the degree and duration of support/supervision required makes it difficult to obtain a clear understanding of the impacts to the appellant's DLA of social functioning. In addition, in the AR, the Physician indicates that the appellant has marginal functioning with respect to his immediate social networks, but does not provide any information regarding the appellant's functioning with respect to his extended social networks.

The letter from the Clinician indicates that the appellant is attending for services, but does not provide any information regarding the specific treatment provided, the frequency of treatment, or the impacts to the appellant's DLA.

In addition, while the appellant states that his impairment has impacted his ability to work, employability is not a criterion for designation for PWD.

The panel notes that the appellant states that he is embarrassed in public and that he wants to be alone until his symptoms pass and that he requires some periodic support from his partner. Considering all the information together, the panel finds that the ministry was reasonable in determining that the appellant's impairment does not, in the opinion of a prescribed professional, directly and significantly restrict the appellant's ability to perform DLA as required by the legislation.

#### Help to perform DLA

Section 2(2)(b)(ii) of the EAPWDA requires that, *as a result of direct and significant restrictions in the ability to perform DLA*, a person requires help to perform those activities. Help is defined in subsection (3) as the requirement for an assistive device, the significant help or supervision of another person, or the services of an assistance animal in order to perform DLA.

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

The appellant's position is that he requires help, is now attending for counselling, and that without his partner he would be lost.

In the MR, the Physician indicates that the appellant does not require any prostheses or aids for his impairment. In the AR, the Assessor indicates that the appellant needs support and assistance from his partner and has been referred to counselling but not yet initiated. The Physician indicates that family and friends provide the help required for DLA. The Physician does not indicate that the appellant requires any assistive devices or has an Assistance Animal.

The panel finds that the information provided indicates that the appellant requires some help with some aspects of DLA and the letter from the Clinician indicates that the appellant has now initiated counselling but that the information in the MR and the AR indicates a very high level of independence with most DLA.

In addition, as confirmation of direct and significant restrictions with DLA is a precondition of the need for help criterion and as the panel found that the ministry reasonably determined that direct and significant restrictions in the appellant's ability to perform DLA have not been established, the panel also finds that the ministry reasonably concluded that it cannot be determined that the appellant requires help to perform DLA as required by section 2(2)(b)(ii) of the EAPWDA.

Conclusion

The panel finds that the ministry's reconsideration decision, which determined that the appellant was not eligible for PWD designation, was reasonably supported by the evidence and is a reasonable application of the applicable enactment, and therefore confirms the decision. The appellant is not successful on appeal.