

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 19 April 2018 that denied the appellant designation as a person with disabilities (PWD). The ministry determined that the appellant did not meet all of the required criteria for PWD designation set out in section 2 of the *Employment and Assistance for Persons with Disabilities Act*, section 2. Specifically, the ministry determined that the information provided did not establish that the appellant has a severe mental or physical impairment that in the opinion of a prescribed professional

(i) directly and significantly restricts his ability to perform daily living activities (DLA) either continuously or periodically for extended periods; and,

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

The ministry determined that the appellant satisfied the other 2 criteria: he has reached 18 years of age and his impairment in the opinion of a medical practitioner is likely to continue for at least 2 years.

The ministry also found that it has not been demonstrated that the appellant is in one of the prescribed classes of persons who may be eligible for PWD designation on the alternative grounds set out in section 2.1 of the *Employment and Assistance for Persons with Disabilities Regulation*. As there was no information or argument provided by the appellant regarding alternative grounds for designation, the panel considers this matter not to be at issue in this appeal.

PART D – RELEVANT LEGISLATION

Employment and Assistance for Persons with Disabilities Act (EAPWDA) – section 2
Employment and Assistance for Persons with Disabilities Regulation (EAPWDR) – sections 2 and 2.1.

PART E – SUMMARY OF FACTS

The evidence before the ministry at reconsideration consisted of the following:

1. The appellant's PWD Designation Application dated 07 October 2017. The Application contained:
 - A Self Report (SR).
 - A Medical Report (MR) dated 16 November 2017, completed by a general practitioner (GP) who has seen the appellant 2-10 times in the past year.
 - An Assessor Report (AR), undated, completed by a registered psychiatric nurse (RPN) who met with the appellant once.
2. A letter from the GP dated 30 September 2017 relating to the appellant's employability and another dated 01 March 2018 in response to questions raised by the ministry adjudicator.
3. The appellant's Request for Reconsideration dated 04 April 2018.

In the MR, the GP provides the following diagnoses related to the appellant's impairment: right knee severe osteoarthritis, with onset given as "chronic." The GP explains that the appellant has been referred for orthopaedic surgery and most likely will need knee replacement with a wait time of around 2 years.

The RPN describes the appellant's impairment as follows: "Depression. Irritability. Right knee osteoarthritis. On list for knee replacement (2 year wait). Has only one lung due to blood clot in 2013. Gets out of breath+++ . Cracked right shoulder collarbone unhealed. Chronic pain for 8 years." The RPN reports that the appellant takes pain medication.

The panel will first summarize the evidence from the MR and the AR as it relates to the PWD criteria at issue in this appeal.

Severity/health history

Physical impairment

MR:

Under Health History, the GP writes that the appellant "has badly damaged osteoarthritis and deformed right knee associated with fixed flexion deformity and abnormal gait."

Regarding functional skills, the GP reports that the appellant can walk less than 1 block unaided on a flat surface, can climb 2 to 5 steps unaided, his limitations in lifting are "no lifting" and there are no limitations to remaining seated.

The GP indicates that the appellant's height and weight are relevant: 177 cm [~ 5 ft. 10 in], and 225 lbs.

The GP indicates that the appellant has not been prescribed any medication and/or treatments that interfere with his ability to perform DLA. He also indicates that the appellant does not require any prostheses or aids to compensate for his impairment.

AR:

Respecting mobility and physical ability, the RPN assesses the appellant as taking significantly longer than typical for walking indoors ("small home"), walking outdoors ("8 yards maximum PAIN"), and climbing stairs ("very painful"). She assesses the appellant as requiring an assistive device for standing ("has to hold on ~ 10 min.") and independent for lifting and carrying and holding ("very painful").

Mental impairment

MR:

The GP indicates that the appellant has no difficulties with communication.

The GP indicates that the appellant has no significant deficits with cognitive and emotional function, and none are indicated in any of the listed areas.

AR:

The RPN assesses the appellant's ability to communicate as good for speaking, writing, and reading, and poor for hearing ("Deteriorated due to [previous employment]").

The RPN assesses the appellant's mental impairment as having the following impacts on functioning:

- Major impact: bodily functions, consciousness, emotion, impulse control, insight and judgment, motivation, motor activity, and other neuropsychological problems.
- Moderate impact: memory.
- Minimal impact: none
- No impact: attention/concentration, executive, language, and psychotic symptoms.

The RPN comments:

"Great difficulty sleeping due to pain.

Often gets groggy, he feels, due to lack of exercise.

Suffers from depression and irritability – 'fed up.'

Can't stop eating, snaps at people.

Has gained 40 – 50 lbs. in last year.

'Snaps at people' e.g. screams at someone who is slow crossing the street.

Feels like he is losing his memory.

Has seen person 'in the corner of the room' over 30 times (not there).

Also 'hears music' (not there).

Has only one lung due to blood clot in 2013."

Ability to perform DLA

MR:

The GP reports the following with regard to the appellant's ability to perform DLA:

- Restricted: mobility outside the home.
- Not restricted: personal self care, meal preparation, management of medications,

mobility inside the home, use of transportation, management of finances, and social functioning.

- Unknown: basic housework and daily shopping.

AR:

The RPN provides the following assessments of the assistance the appellant requires in performing DLA (the RPN's comments in parentheses):

- Personal care – independent for dressing, toileting, feeding self, regulating diet (“cheap stuff”, poor diet), transfers in/out of bed, and transfers on/off chair; takes significantly longer than typical for grooming and bathing (no interest – poor, for both).
- Basic housekeeping – independent for laundry and basic housekeeping.
- Shopping – continuous assistance from another person or unable for going to and from stores and carrying purchases home (Mom & brother); independent reading prices and labels and paying for purchases; take significantly longer than typical for making appropriate choices (very poor diet).
- Meals – independent for all tasks: meal planning (poor nutrition), food preparation, cooking, and safe storage of food (poor nutrition).
- Pay rent and bills – continuous assistance from another person required for banking (Mom takes him), budgeting (Poor), and paying rent and bills (rent not paid).
- Medications – independent for all tasks: filling/refilling prescriptions, taking as directed, and safe handling and storage.
- Transportation – independent for getting in and out of a vehicle; (No) for using public transit and for using transit schedules and arranging transportation (no bus service where he lives).

With respect to social functioning, the RPN assesses the appellant as requiring periodic support/supervision for making appropriate social decisions (snaps at people) and requiring continuous support/supervision for developing and maintaining relationships (no friends, has withdrawn), interacting appropriately with others (no friends, “fed up”), dealing appropriately with unexpected demands (lashes out) and securing assistance from others (can't).

The RPN describes how appellant's mental impairment impacts his relationship with his immediate social network as very disrupted functioning (very socially isolated) and with his extended social network as very disruptive functioning (socially isolated & irritable – “Snaps at people”)

Help provided/required

MR:

The GP indicates that the appellant does not require any prostheses or aids to compensate for his impairment.

AR:

The RPN indicates the appellant requires the use of crutches

The RPN indicates that assistance is provided by family.

Self Report

In his SR, the appellant writes that as a child his right knee was badly damaged and it was operated on. After years of working on his feet, by 2006 he began to notice pain and that he had started limping. Despite the pain he continued working; by 2015 and it had become a lot worse and he had much difficulty walking. He went to his doctor, who gave him an injection but that didn't make much difference so he continued to endure the pain and lack of mobility so that he could continue to work. But now he can hardly walk – his knee is so weak that he has collapsed onto the floor and he can only climb up and down stairs with great difficulty and pain.

He also explains that in 2013 he woke up unable to move the left side of his body. He went to the hospital and they found a blood clot in his lung. The doctors put him on blood thinners, which he took for a few months while continuing to work despite the risk. In 2015 he went to a drop-in clinic with a lot of pain in his lungs and short of breath. The clinic was unable to do anything for him and referred him to the hospital in the nearest city. He was unable to get there and he went back to work – this is a continuing problem for him and since then his breathing has become much harder.

He states that these issues have made it impossible to work anymore, leaving him completely destitute. He can only afford to rent at his mother's, who has a small apartment on top of her garage, and he couldn't even pay that rent for a few months.

He writes that, given the state of his knees, he has difficulty with stairs leading up to the apartment, as well as difficulty in dressing himself – socks, shoes, underwear, trousers – but he manages regardless of the pain. He has no transport anywhere – there are no bus routes in his local area, he has no car, and he cannot ride a bicycle because of his health issues. If he needs to go anywhere, he must beg for a ride. He feels that he is a prisoner in the apartment, unable to live an independent life, making him become isolated from the world – introverted, very depressed, and totally bored. The depression has become terrible and he has been having suicidal ideations. Being unable to exercise, he has put on weight -- due to his financial circumstances he does not eat healthy foods. He worries that this may also start to result in other health problems.

Correspondence between the ministry and the GP

On 01 March 2018 an adjudicator from the ministry's Health Assistance Branch sent a fax to the GP, referring to the AR where the RPN noted that the appellant has significant depression and identified a number of major impacts to cognitive and emotional function, and to the SR where the appellant noted his suicidal ideation. The adjudicator asked whether the GP agreed that the appellant has now become more depressed and isolated, whether that interferes with his financial management and social functioning, and whether he now has deficits with his cognitive and emotional function.

In his response dated 01 March 2018, the GP writes:

"I don't have any information about patient diagnosis of depression or cognitive impairment. Patient not assessed in this office for these matters.

However I don't exclude these problems as physical impairment and poverty often leads to

social isolation, depression & hence cognitive problems.”

In a subsequent note dated 19 March 2018, the GP writes: “His R knee severe osteoarthritis is physically impairing his ability to walk normally ever. He can walk <100 metres before the pain is unbearable. His brother helps him with manual labour tasks such as lifting/moving heavy objects.”

Request for Reconsideration

In his submission at reconsideration, the appellant refers to a letter dated 20 September 2017 from his GP. This letter states that the appellant is complaining of rapidly progressive pain to right knee. Pain is worse with movement, weight bearing and sleep. He is limping and dragging feet all the time. He shows antalgic gait walking in and out of the office. His exams show significant restriction of range of movements of the right knee. X-rays show significant narrowing and degenerative changes in all three compartments of the joint. The GP writes that he is referred the appellant to an orthopaedic surgeon and most likely will need knee replacement and a period of rehabilitation before he will be able to work again. The process of referral and surgery can take an average of between 12-18 months. The GP states that he does not believe that the appellant is able to work during this period.

The appellant writes that he has seen two specialists, one an orthopaedic surgeon, who also agrees that his knee is in need of replacement and that he is on a semi-urgent waiting list for the operation. He explains that due to his physical limitations, he is restricted to his home (mostly sitting) and he can stand and walk, but in pain and not long before it becomes unbearable.

He states that he is aware that the ministry wrote to the GP only once, on 01 March 2018, but did not ask the doctor about his disability, but only asked about the state of his mental health. (He notes that the assessor that he was sent to is a psychiatric nurse.) He states that his mental health is not the main issue in this case – he asks that his application be reconsidered, and that the ministry not ignore the physical problems that he faces.

Notice of Appeal

In his Notice of Appeal, dated 04 April 2018, the appellant writes:

“As my doctor pointed out, I have a severely damaged right knee and I am on the semi-urgent waiting list for a replacement. It has also been pointed out that due to my severely damaged knee I am in pain which becomes worse when I stand up and walk – as such I rarely leave my home and have become isolated – I need help.”

The hearing

The appellant did not attend the hearing. After confirming that the appellant was notified of the hearing, the hearing proceeded in accordance with section 86(b) of the Employment and Assistance Regulation.

The ministry stood by its position at reconsideration.

PART F – REASONS FOR PANEL DECISION

The issue in this appeal is whether the ministry decision that determined that the appellant did not meet three of the five statutory requirements of Section 2 of the EAPWDA for designation as a person with disabilities (PWD) is reasonably supported by the evidence or is a reasonable application of the legislation in the circumstances of the appellant. Specifically, the ministry determined that the information provided did not establish that the appellant has a severe physical or mental impairment that, in the opinion of a prescribed professional,

(i) directly and significantly restricts his ability to perform daily living activities (DLA) either continuously or periodically for extended periods; and,

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

The ministry determined that the appellant satisfied the other 2 criteria: he has reached 18 years of age; and his impairment in the opinion of a medical practitioner is likely to continue for at least 2 years.

The following section of the EAPWDA applies to this appeal:

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 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.

The following section of the EAPWDR applies to this appeal:

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.

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) 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).

Analysis

Severity of impairment

The legislation is clear that the determination of severity of impairment is at the discretion of the minister, taking into account all of the evidence. The legislation requires that for PWD designation, the minister must be "satisfied" that the person has a severe mental or physical impairment. For the minister to be "satisfied" that the person's impairment is severe, the panel considers it reasonable for the ministry to expect that the information submitted by the independent and professional medical practitioner and prescribed professional (in this case the GP and the RPN) completing the application provides the minister with a comprehensive overview of the nature and extent of the impacts of the person's medical conditions on daily

functioning. It is therefore reasonable for the minister to expect that the MR and the AR include explanations, descriptions or examples in the spaces provided.

As the ministry noted in its decision, the diagnosis of a serious medical condition does not in itself determine PWD eligibility or establish a severe impairment. An impairment is a medical condition diagnosed by a medical practitioner (the GP) who, pursuant to section 2(a) of the EAPWDA, has confirmed that the condition will continue for at least 2 years and that results in restrictions to a person's ability to function independently or effectively for a reasonable duration. To assess the severity of impairment, the ministry must consider the nature of the impairment and the extent of its impact on daily functioning. Considering the emphasis in the legislation on restrictions in the ability to perform DLA and help required, the panel finds the ministry's approach outlined above to be reasonable.

Severity of physical impairment

The position of the appellant, as explained in his Notice of Appeal, is that his GP has provided evidence that shows that he has a severely damaged right knee for which is on the waiting list for replacement. The evidence from his assessor is that his damaged knee causes him constant pain, becoming worse when he stands up and walks. As a result he is confined to his apartment. All this serves to demonstrate that he has a severe physical impairment.

In the reconsideration decision, the ministry found that, based on the information provided, it could not determine that the appellant has a severe physical impairment. Consistent with the approach outlined above, the ministry reviewed the information provided in the MR by the GP and in the AR by the RPN regarding the appellant's basic physical functioning.

The ministry noted that in the MR the GP indicates that the appellant does not require any aids or prostheses for his impairment, while the RPN in the AR indicates that he uses crutches. The ministry noted that the GP assesses the appellant's basic functional skills as being able to walk less than one block unaided, able to climb 2 to 5 steps undated and that he is unable to lift. In the AR, the RPN indicates that the appellant takes significantly longer than typical to be able to manage walking indoors ("small home"), walking outdoors ("8 yards maximum. Pain"), and climbing stairs ("very painful"). The ministry noted, however, that the RPN does not describe how much longer than typical it takes to manage these activities as requested in the PWD application, making it difficult to determine if they represent a significant restriction in the appellant's overall level of physical functioning. The ministry also noted that the RPN indicates that the appellant uses an assistive device to manage standing ("Has to hold on. 10 minutes"), but does not explain the assistive device the appellant requires when standing. Having to hold on when standing does not necessarily mean requiring an assistive device as defined in section 2(1) of the EAPWDA. The ministry further noted that the RPN indicates that the appellant is independently able to manage lifting and carrying and holding ("very painful").

On the basis of this analysis, the ministry found that the information provided demonstrates that the appellant experiences limitations to his physical functioning due to pain and restrictions to the range of motion in his right knee as a result of osteoarthritis. However, the ministry determined that the assessments provided by the GP and RPN and the information in the self-report speak to a moderate rather than a severe physical impairment.

In the panel's view, the ministry analysis summarized above points to the information provided by the GP and the RPN as presenting conflicting information on the nature and extent of the impacts of the appellant's damaged right knee on daily physical functioning, making it difficult to find that a severe physical impairment has been established. For example, the GP reports that the appellant does not require any aid or prostheses to compensate for his impairment, while the RPN indicates that he uses crutches. The GP assesses the appellant as being able to walk less than one block unaided, (and in his letter of 19 March writes, "He can walk <100 metres before the pain is unbearable."), the implication being that he is able to walk up to that distance. However, in the AR, the RPN puts that distance at "8 yards maximum. Pain."

Looking to the evidence on the impact of the appellant's damaged right knee on his ability to perform DLA requiring physical effort, the panel notes that the GP assesses the appellant as not restricted for personal self-care and meal preparation and the RPN as independent in most aspects of these 2 DLA, (except for grooming and bathing, where she assesses him as taking significantly longer than typical – "No interest. Poor"), as well as basic housekeeping. There is no indication that he has any difficulty with transfers in/out of bed or transfers on/off chair, cooking, cleaning his apartment or doing laundry, activities with which it would be expected that a person with a severe mobility impairment be restricted to the point of requiring the use of an assistive device or the assistance of another person.

Based on the foregoing, the panel finds that the ministry was reasonable in determining that a severe physical impairment has not been established.

Severity of mental impairment

In its decision, the ministry found that, based on the information provided, it cannot determine that the appellant has a severe mental impairment. In reaching this conclusion, the ministry reviewed the information provided by the GP and the RPN, noting:

- The GP indicates that the appellant does not experience any significant deficits with his cognitive and emotional functioning.
- However the RPN indicates that the appellant's cognitive and emotional functioning is impacted to a major degree in seven areas, with a moderate impact in one area.
- The comments provided by the RPN (see Part E above), including the appellant suffering from depression and irritability.
- The GP indicates that the appellant has no difficulties with communication and the RPN notes a good level of ability with speaking, reading, and writing while hearing is poor due to previous work experience.
- The GP indicates that the appellant is not restricted with social functioning, while the RPN assesses the appellant as requiring continuous support/supervision in three areas and reports very disruptive functioning with the appellant's immediate and extended social networks.
- The exchange of correspondence on 01 March 2018 between a ministry adjudicator and the GP, in which the GP writes that he does not have any information about his patient's diagnosis of depression or cognitive impairment as he has not been assessed in the office for these matters.

On this basis ministry determined that the information provided does not establish a severe mental impairment.

The legislation requires that a person have a severe mental or physical impairment that in the opinion of a medical practitioner or nurse practitioner is likely to continue for at least two years. While the ministry has found that the appellant met the 2-year duration criterion, this was only in respect to the right knee osteoarthritis as diagnosed by the GP. The GP, as the medical practitioner, has not diagnosed the appellant with any mental health condition or significant deficit with cognitive and emotional functioning. As a medical practitioner has not identified a mental impairment that will continue for at least 2 years, the panel finds that the ministry was reasonable in determining that, despite the assessments provided by the RPN, a severe mental impairment has not been established.

Direct and significant restrictions in the ability to perform DLA

In the reconsideration decision, the ministry held that it is not satisfied that the appellant has a severe impairment that, in the opinion of the prescribed professional, directly and significantly restricts his ability to perform the DLA set out in the legislation.

The panel notes that, according to the legislation, the direct and significant restriction in the ability to perform DLA must be the result of a severe impairment, a criterion not established in this appeal. The legislation – section 2(2)(b)(i) of the EAPWDA – requires the minister to assess direct and significant restrictions to DLA in consideration of the opinion of a prescribed professional, in this case the GP or the RPN. This does not mean that other evidence should not be factored in as required to provide explanation of the professional evidence, but the legislative language is clear that a prescribed professional's evidence is fundamental to the ministry's determination whether it is "satisfied." And for the minister to be "satisfied," it is reasonable for the ministry to expect that a prescribed professional provides a clear picture of the extent to which the ability to perform DLA is restricted, as assessed in terms of the nature and duration of help required, in order for the ministry to determine whether the restrictions are "significant."

In making its determination on this criterion, the ministry reviewed the assessments provided by the GP and RPN. The ministry noted the following:

- The GP indicates that the appellant's impairment restricts his ability to perform mobility outside the home, but does not describe if the restriction is continuous or periodic and does not indicate the severity of the restriction.
- The GP indicates as unknown if the appellant's impairment restricts his ability to perform the DLA of basic housework and daily shopping, and as not restricted for the DLA of personal care, meal preparation, management of medications, mobility inside the home, use of transportation and management of finances.
- When asked what assistance the appellant needs with DLA, the GP puts a pen stroke across the question, as if indicating no assistance with DLA is required.
- In the AR, the RPN indicates that the appellant requires continuous assistance to manage going to and from stores ("mom and brother"), carrying purchases home ("mom and brother"), banking ("mom take him"), budgeting ("poor"), and paying rent and bills

("rent not paid").

- The RPN assesses the appellant as taking significantly longer than typical to manage grooming ("no interest – poor"), bathing ("no interest – poor") making appropriate choices when shopping ("very poor diet" and "diet restricted due to lack of money").

The ministry noted that the need for assistance for banking, budgeting, paying rent and bills and making appropriate choices when shopping is not a direct result of his impairment but due to a lack of finances.

Considering the conflicting assessments provided by the GP and the RPN, the panel views the evidence as confirming that the appellant is restricted as a *direct result of his impairment* to the point of requiring help for the outdoors aspect of the DLA of moving about indoors and outdoors, the going to and from a bank aspect of the DLA of managing personal finances, and the going to and from stores and carrying purchases home aspects of the DLA of shopping for personal needs. Given that these restrictions in the ability to perform DLA are limited to these aspects of DLA, considering the level of independence otherwise reported by the GP, and taking into account that a severe impairment has not been established, the panel finds that the ministry was reasonable in determining that the information provided does not confirm that the appellant has a severe impairment that *directly and significantly* restricts his ability to perform DLA continuously or periodically for extended periods, and that this legislative criterion has therefore not been met.

Help required

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 appellant benefits from the help of his mother and brother and the RPN reports that the appellant uses a crutch, since 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 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, was reasonably supported by the evidence. The panel therefore confirms the ministry's decision. The appellant is thus not successful on appeal.