

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 May 7, 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.

In addition, the ministry found that the appellant was not one of the prescribed classes of persons who may be eligible for PWD designation on alternative grounds (*Employment and Assistance for Persons with Disabilities Regulation*, Part 1.1, section 2.1).

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 the appellant's Self-Report (SR) dated January 8, 2018, a Medical Report (MR) completed by the appellant's general practitioner (the Physician) dated January 11, 2018, an Assessor Report (AR) completed by a volunteer dated January 21, 2018, and an Assessor Report (AR2) completed by a social worker (the Social Worker) dated March 3, 2018.

The appellant's request for PWD designation was denied on April 12, 2018. On April 24, 2018 the ministry received the appellant's Request for Reconsideration dated April 24, 2018 (RFR) and an attached letter prepared by the appellant's advocate dated April 19, 2018 and handwritten note from the Physician indicating that she agrees with the information in the letter (the "Letter").

Summary of relevant evidence

Diagnoses

In the MR, the Physician indicates that the appellant has been diagnosed with left peroneal nerve deficit with motor and sensory changes, date of onset November 2017. The Physician indicates that the appellant has been a patient at the medical clinic for seven years and she has seen him 2-10 times in the past 12 months.

In the AR, the volunteer indicates that the appellant's impairments that impact his ability to manage DLA are his limited ability to walk due to a left lower leg injury.

In the AR2, the Social Worker indicates that the appellant's impairments that impact his ability to manage DLA are nerve damage in the left lower leg and foot, pinched nerves in both feet, and severe arthritis in right wrist. The Social Worker indicates that she has known the appellant for 2 months and has seen him 2-10 times in the past 12 months.

Physical Impairment

In the MR for Functional Skills, the Physician indicates that the appellant is able to walk less than 1 block unaided on a flat surface, can climb 2 to 5 steps unaided, has no limitations in lifting and can remain seated less than 1 hour. In the Health History portion of the MR, the Physician indicates that the appellant has moderate-severe sensory and motor function loss in his left lower leg and foot with difficulty ambulating a short distance. The Physician indicates that the appellant is unable to work in his own profession and nerve conduction studies show reduced motor and sensory nerve function in his left leg. The Physician indicates that a CT lumbar spine is pending.

In Part F – Additional Comments, the Physician indicates that the appellant's left leg symptoms are causing significantly disability, particularly in his field of work.

In the AR, the volunteer indicates that the appellant uses an assistive device and takes significantly longer than typical with all noted aspects of mobility and physician mobility, explaining that the appellant requires a cane with walking indoors.

In the AR2, the Social Worker indicates that the appellant is independent with all noted aspects of mobility and physical ability but that he uses an assistive device and takes significantly longer than typical with all aspects. The Social Worker indicates that the appellant requires a cane and has extremely poor balance and cannot manage without a cane.

In the SR, the appellant states that he has a diagnosed pinched nerve in his lower left leg and needs a cane to assist with walking. The appellant states that he cannot walk more than one half block without his left foot losing strength and function without the cane. The appellant states that his problem is mobility and that he cannot work with this condition so his quality of life has seriously suffered due to lack of adequate income.

The appellant states that he saw a neurologist who performed an EMG test and determined that the appellant has nerve issues in his lower left leg. The appellant states that the neurologist ordered a CT scan for his lower back but the appellant has no idea when that will take place.

The appellant states that both of his feet are numb at the bottom of the "balls" of his feet and he has zero balance on one foot and poor balance on both. The appellant states that his left foot has been tingling across the top of the arch with tingling on top of the big toe and that his big toe stings to the touch which makes it very difficult to wear weak/shoes/boots for walking with/without the cane.

In the Letter, the Physician indicates that the appellant has numbness in both feet, which increases the pain with any physical activity. The Physician indicates that the appellant lacks balance and must use a cane for mobility. The Physician indicates that the appellant is able to walk only with the assistance of a cane and that without the cane, he is able to walk approximately half a block before his left foot becomes numb and starts "flopping around" so he loses his balance, which puts him at danger of falls. The Physician indicates that after the appellant has ceased walking and sits down for five to 10 minutes, he is able to return to walk a further half block and repeat. With the cane, the Physician indicates that the appellant is able to walk about two blocks before the pain in his leg forces him to stop and rest for 10-20 minutes to recover.

The Physician indicates that the appellant is completely unstable on stairs and requires a handrail, is in danger of falling, and avoids stairs when at all possible. The Physician indicates that the appellant is only able to sit for approximately 20-30 minutes before his left leg goes numb, then he must get up and move around until sensation returns to his foot and leg. The Physician indicates that the appellant can lift most things but cannot carry things for any distance.

Mental Impairment

The MR indicates that the appellant does not have any difficulties with communication and does not have any significant deficits with cognitive and emotional function.

In the AR, the volunteer indicates that the appellant's ability to communicate in all areas is good. The volunteer indicates that there is no impact on daily functioning due to an identified mental impairment or brain injury.

In the AR2, the Social Worker indicates that the appellant's ability to communicate in all areas is good. The Social Worker indicates that there is no impact on daily functioning due to an identified mental impairment or brain injury.

DLA

In the MR, the Physician indicates that the appellant's impairment directly restricts his DLA of personal self-care, daily shopping and mobility outside the home. The Physician indicates that the DLA of personal self care and daily shopping are continuously restricted. The Physician indicates that the appellant has not been prescribed medications that interfere with his ability to perform DLA. The Physician indicates that the appellant's DLA of meal preparation, management of medications, basic housework, mobility inside the home, use of transportation, management of finances and social functioning are not restricted.

In the AR, the volunteer indicates that the appellant uses an assistive device and takes significantly longer than typical with going to and from stores and carrying purchases home, noting that he uses a heavy back-pack to carry purchases home. The volunteer indicates that the appellant is independent with all aspects of meals, paying rent and bills, and medications. With respect to transportation the volunteer indicates that the appellant is independent with using transit schedules and arranging transportation, requires periodic assistance from another person with getting in and out of a vehicle, and uses an assistive device (cane) with using public transit. The volunteer indicates that the appellant is independent with all aspects of social functioning.

In the AR2, the Social Worker indicates that the appellant is independent with all aspects of personal care but notes that he uses an assistive device (grab bars) and takes significantly longer than typical with dressing, grooming, bathing, toileting, and transfers (in/out of bed), and uses an assistive device (grab bars) for transfers (on/off of chair). The Social Worker indicates that the appellant is independent with laundry but requires continuous assistance with basic housekeeping and that he uses an assistive device with both tasks. The Social Worker explains that it is very hard for the appellant to lift/carry laundry and that he relies on his roommate for basic housekeeping. With respect to shopping, the Social Worker indicates that the appellant is independent with going to and from stores, reading prices and labels, making appropriate choices, and paying for purchases, but uses an assistive device (cane) and takes significantly longer than typical with going to and from stores. The Social Worker also indicates that the appellant requires periodic assistance from another person with carrying purchases, uses an assistive device and takes significantly longer than typical explaining that he has difficulty carrying with one arm.

The Social Worker indicates that the appellant is independent with meal planning but uses an assistive device and takes significantly longer than typical with food preparation and cooking, explaining that reaching is one-handed and that the appellant's abilities are quite limited while balancing on one foot.

The Social Worker indicates that the appellant is independent with all aspects of paying rent and bills, medications and transportation, but that he uses an assistive device (cane) and takes significantly longer than typical with getting in and out of a vehicle and using public transit.

The Social Worker indicates that the appellant is independent with all aspects of social functioning and has good functioning with respect to his immediate and extended social networks.

The Social Worker explains that the appellant urgently needs home physiotherapy and an occupational therapy assessment, plus additional equipment in his home.

In the SR, the appellant states that his balance is seriously affected and that he has to lean on something or sit down to put his pants on. He states that taking a shower is dangerous, as his balance on a wet surface requires him to hold on with one hand while washing with the other. He states that with the lack of adequate funds, he is having a very difficult time affording public transit to attend the multiple medical appointments among the required shopping trips.

In the Letter, the Physician indicates that the appellant has profound problems with DLA. The Physician indicates that the appellant has ongoing problems with balance, getting in and out of tubs, on and off the toilet, standing to dress or brush his teeth which all present problems with personal self care and danger of falls and injury. The Physician indicates that the appellant requires grab bars for the bath and getting up and down. The Physician indicates that for meal preparation, the required standing presents balance problems as it is difficult to manage a knife to chop vegetables and hold on to a cane or counter at the same time. Moving pots and dishes present similar problems. The Physician indicates that there is an ongoing danger of falls, burns and cuts when working in the kitchen.

The Physician indicates that basic housework can only be done in spurts as the appellant is unable to maintain balance and clean at the same time, and has an ongoing danger of injuries and falls. The Physician indicates that management of medication and finances are somewhat limited by time spent in lines which aggravate the appellant's numbness and pain and cannot be managed without a cane. The Physician indicates that any trips to the bank, pharmacy, grocery store, food bank, or doctor's office will necessitate several hours rest to recover when the appellant gets home.

Need for Help

In the MR, the Physician indicates that the appellant requires a cane to walk. In the RFR, the Physician indicates that the appellant would greatly benefit from a bus pass.

In the AR, the volunteer indicates that the appellant routinely uses a cane to help compensate for his impairment.

In the AR2, the Social Worker explains that the appellant urgently needs home physiotherapy and an occupational therapy assessment, plus additional equipment in his home. The Social Worker indicates that the appellant requires help with home support, grocery delivery and Handidart. The Social Worker indicates that the appellant routinely uses a cane, and toileting aids (grab bars) and bathing aids (grab bar) to help compensate for his impairment. The Social Worker indicates that the appellant requires a reacher/grabber and a bar or pole by the bed. The appellant does not have an Assistance Animal.

Additional information provided

In his Notice of Appeal dated May 18, 2018 (NOA), the appellant states that he has a severe impairment that directly and significantly restricts DLA. The appellant states that assistance is required but unavailable.

At the hearing the appellant stated that everything is difficult for him including housework because he has difficulty standing and balance problems due to his impairment. The appellant stated that if someone saw him, they would understand how debilitating his condition is.

At the hearing, the appellant's advocate stated that the appellant does not have any family or friends to provide help and he cannot afford to hire any help but the fact that help is not available does not mean that the appellant does not need help. The appellant's advocate stated that the initial PWD application had some serious deficiencies but the RFR addresses various DLA and should be sufficient to find that the appellant meets the legislative criteria for PWD designation. In particular, the advocate indicates that the Physician states that the appellant cannot get around with a cane, has serious balance issues, is in danger of falling and cannot stand to make a meal. The appellant's advocate stated that the appellant can only vacuum in spurts, working for 10 minutes, then having to take a break for 20 minutes.

Admissibility of New Information

The panel has admitted the appellant and his advocate's oral testimony 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 oral testimony corroborates the information regarding the appellant's impairment and impact to DLA.

The panel accepts the information in the NOA as argument.

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 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).

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 a diagnosis of a serious medical condition does not in itself determine PWD eligibility or establish a severe impairment and that the information provided does not establish a severe physical impairment. In particular, the reconsideration decision indicates that while it is reported that the appellant has extremely poor balance and requires the use of a cane for walking, climbing stairs, standing, lifting and carrying, and that he uses grab bars for bathing, toileting and transferring in/out of bed, the extent of help required is unclear, with the exception of the cane and grab bars. The ministry notes that it is not reported that the appellant requires help from other people periodically for extended periods or continually with any of his activity, and is only reported to require some help from his roommate for some of the housework. The ministry's position is that having to use a cane and grab bars, with no help required from others, is not indicative of a severe physical impairment.

The reconsideration decision states that while the appellant has been unable to return to work in his chosen profession, employability is not a factor when determining PWD designation.

The ministry's position is that while the appellant has some functional impairment, balance issues, and pain in both feet, the ministry is unable to conclude that the restrictions the appellant is experiencing from his nerve deficit severely restrict his ability to function independently or effectively.

The appellant argues, through his advocate that the information confirms that he has serious balance issues, that he cannot get around without a cane, is in danger of falling and cannot stand to make a meal. The appellant argues that the information provided, particularly the additional information in the Letter confirms 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. While the Physician, in the Letter, indicates that the appellant has profound problems with DLA, the information in the Health History portion of the MR indicates that the appellant has moderate to severe sensory and motor function loss in his left lower leg and foot. In the SR, the appellant states that both of his feet are numb at the bottom of the "balls" of his feet, and in the AR2 the Social Worker indicates that the appellant has pinched nerves in both feet but in the MR, the Physician does not make any mention of any problems with the appellant's right foot. The RFR indicates that the appellant has numbness in both feet which increases to pain with any physical activity and although the Physician has indicated that she agrees with the statements, the panel notes that the appellant's advocate prepared the letter for the Physician to review and sign but there is no information to indicate when the appellant began having problems with his right foot, or the nature or severity of his right foot condition. The lack of additional information from the Physician regarding the appellant's right foot numbness makes it difficult to obtain a clear picture of the appellant's impairment to his right foot.

The panel notes that while the AR2 indicates that the appellant has severe arthritis in his right wrist, the Physician, in the MR and the RFR, did not provide any information regarding any right wrist problems. In particular, the Physician indicates that the appellant has no limitations with respect to lifting. While it may be that the appellant has severe right wrist arthritis, the lack of any diagnosis from the Physician and information describing the severity of the arthritis or the impacts to the appellant's function, make it difficult to understand whether this condition has any impact on the appellant.

The appellant argues that although help is not available that does not mean that he does not need help, but the panel notes that the Physician only indicates that the appellant requires the use of a cane to ambulate. In the AR2, the Social Worker does not indicate that the appellant requires periodic assistance from another person or continuous assistance for any of the mobility and physical ability tasks, and for DLA, the Social Worker only reports that the appellant requires continuous assistance from another person with basic housekeeping and periodic assistance with carrying purchases home.

The information indicates that the appellant has some functional impairment, balance issues, pain, difficulty standing, difficulty making meals, is in some danger of falling due to his balance problems, and requires a cane to walk. However, the panel finds that the ministry reasonably concluded that the extent of help required is unclear, and that having to use a cane and grab bars, with little or no help required from others, is not indicative of a severe physical impairment.

The panel finds that the ministry reasonably concluded that they could not rely on the assessment in the AR as it was completed by a volunteer who is employed at a health authority and he is not registered with a professional regulatory body, so he is not a prescribed professional as required by section 2(1)(a) of the EAPWDA.

The panel also notes that while it is distressing to the appellant that he is unable to return to work because of his impairment, employability is not a criterion for designation of PWD so the ministry was reasonable in concluding that the appellant's employability is not indicative of a severe physical impairment.

Severe Mental Impairment

The ministry's position is that the appellant is not reported to have any mental health conditions or impairments and therefore does not have a severe mental impairment.

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

The MR indicates that the appellant does not have any difficulties with communication and does not have any significant deficits with cognitive and emotional function. In the AR2, the Social Worker indicates that the appellant's ability to communicate in all areas is good. The Social Worker indicates that there is no impact on daily functioning due to an identified mental impairment or brain injury.

As there are no reports of mental health conditions or impairments to the appellant's cognitive and emotional function, the panel finds that the ministry reasonably determined that the information provided does not establish that the appellant has a severe mental impairment.

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 states that while the Physician indicates that the appellant's impairment directly restricts the appellant's ability to perform DLA, the only reported restrictions are to personal self-care, shopping, and mobility outside the home. The ministry notes that in the Letter the Physician also reports restrictions with meal preparation (balance), that basic housework can only be done in spurts, and any trips in the community such as doctor's office, grocery store, etc. necessitate several hours of rest to recover. The ministry notes that the Physician reports that the appellant manages independently with the use of a cane and some grab bars, and although there is a danger of falling due to balance issues, the appellant does not require significant assistance from another person to manage DLA.

The reconsideration decision notes that the Social Worker indicates that the appellant is independent with all DLA's and has not indicated if assistance is required with the exception of the cane, nor has she reported how much longer than typical the appellant takes to complete each of his activities. The ministry's position is that it is unable to establish that the appellant's medical condition significantly restricts his DLA either continuously or periodically for extended periods.

The panel finds that the ministry reasonably determined that the assessments provided are not indicative of a 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 the appellant's restriction to personal self care is continuous, but in the AR2 the Social Worker indicates that the appellant is independent with all aspects of personal care but uses an assistive device (grab bars) and takes significantly longer than typical with dressing, grooming, bathing, toileting, transfers (in/out of bed) and transfers (on/off chair). However, the Social Worker does not describe how much longer than typical it takes the appellant with these aspects of personal care. In the Letter, the Physician indicates that the appellant has ongoing problems with balance, getting in and out of tubs, on and of the toilet, standing to dress or brush his teeth and that he requires grab bars for the bath and getting up and down. However, the additional information from the Physician does not provide any further information to indicate that the appellant needs continuous or periodic assistance.

In the MR, the Physician indicates that the appellant's restriction to daily shopping is continuous but in the AR2, the Social Worker indicates that the appellant is independent with going to and from stores, reading prices and labels, making appropriate choices, paying for purchases, and requires periodic assistance from another person with carrying purchases home. While the Social Worker indicates that the appellant uses assistive devices (cane) for going to and from stores, and has difficulty carrying with one arm, and takes significantly longer than typical with these aspects of shopping, the Social Worker does not explain how much longer than typical it takes the appellant or the frequency or duration of periodic assistance needed.

In the MR, the Physician indicates that the appellant is restricted with respect to mobility outside the home but does not indicate whether the restriction is continuous or periodic. In the AR2, the Social Worker indicates that the appellant is independent with transportation but uses an assistive device (cane) with getting in and out of a vehicle and using public transit and takes significantly longer than typical with these tasks, but the Social Worker does not provide any information describing how much longer than typical it takes. In the Letter, the Physician indicates that the appellant's mobility inside and outside the house are both impaired, but the Physician does not provide any further information describing the appellant's need for periodic or continuous assistance.

While the appellant argues that the additional information in the Letter provides the necessary information to confirm that he meets the legislative criteria, the information provided still does not indicate that the appellant requires continuous or periodic assistance.

While the Social Worker recommends that the appellant have a referral to an occupational therapist and physical therapy for leg/foot and wrist exercises and equipment, the AR2 indicates that the appellant requires continuous assistance with basic housekeeping and periodic assistance with carrying purchases home, but all other aspects of DLA are noted as being independent.

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 but cannot afford it.

In the MR, the Physician indicates that the appellant requires the use of a cane to ambulate.

In the AR2, the Social Worker explains that the appellant urgently needs home physiotherapy and an occupational therapy assessment, plus additional equipment in his home. The Social Worker indicates that the appellant requires help with home support, grocery delivery and Handidart. The Social Worker indicates that the appellant routinely uses a cane, and toileting aids (grab bars) and bathing aids (grab bar) to help compensate for his impairment. The Social Worker indicates that the appellant requires a reacher/grabber and a bar or pole by the bed. The appellant does not have an Assistance Animal.

The panel finds that the information provided indicates that the appellant uses a cane and grab bars and would benefit from some additional assessments. However, 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.

PART G – ORDER

THE PANEL DECISION IS: (Check one)

UNANIMOUS

BY MAJORITY

THE PANEL

CONFIRMS THE MINISTRY DECISION

RESCINDS THE MINISTRY DECISION

If the ministry decision is rescinded, is the panel decision referred back to the Minister for a decision as to amount? Yes No

LEGISLATIVE AUTHORITY FOR THE DECISION:

Employment and Assistance Act

Section 24(1)(a) or Section 24(1)(b)

and

Section 24(2)(a) or Section 24(2)(b)

PART H – SIGNATURES

PRINT NAME

Helene Walford

SIGNATURE OF CHAIR

DATE (YEAR/MONTH/DAY)

2018/06/10

PRINT NAME

Connie Simonsen

SIGNATURE OF MEMBER

DATE (YEAR/MONTH/DAY)

2018/06/10

PRINT NAME

Reece Wrightman

SIGNATURE OF MEMBER

DATE (YEAR/MONTH/DAY)

2018/06/10