

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 22, 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 following:

1. Appellant's PWD application comprised of the appellant's Self-Report (SR) dated January 1, 2018, a Medical Report (MR) and an Assessor Report (AR), both completed by the appellant's general practitioner (the Physician) dated January 15, 2018
2. Checklist of DLA completed by the appellant, undated (the "Checklist")
3. Questionnaire completed by the Physician dated April 26, 2018 (the "Questionnaire")
4. Letter from the appellant's live in manager, undated

The appellant's request for PWD designation was denied on March 8, 2018. On April 30, 2018 the ministry received the appellant's Request for Reconsideration dated April 23, 2018 (RFR).

Summary of relevant evidence

Diagnoses

In the MR, the Physician indicates that the appellant has been diagnosed with chronic neck and back pain, bilateral knee pain, and headaches, date of onset being in the appellant's teen years. The Physician indicates that the appellant has been a patient for 7 years and he has been seen 11 or more times in the past 12 months.

In the AR, the Physician indicates that the appellant's impairments that impact his ability to manage DLA are "chronic pain – intense – short episodes of activity followed by resting".

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, climb 2 to 5 steps unaided, lift 15 to 35 pounds, and can remain seated less than 1 hour.

In the health history portion of the MR, the Physician indicates that the appellant has been in several accidents over the years resulting in chronic wide spread pain and migraines. The Physician indicates that the appellant is 6'1" and weighs 185 pounds.

In the AR, the Physician indicates that the appellant is independent with walking indoors but takes significantly longer than typical (2x as long) with walking outdoors, climbing stairs, standing, lifting, and carrying and holding.

In the SR, the appellant states that he has been involved in several accidents over the years leading to ever worsening chronic and debilitating pain, requiring opiate medications most of his adult life. The appellant states that he has also been on the methadone program for the last ten years. The appellant states that he works from time to time helping people with renovations, property maintenance, mowing lawns or shovelling snow but after a few days he is crippled up and bed ridden for several more days which causes him to seek out other sources of pain relief. The appellant states that this is a self-defeating cycle from which he needs to escape. The appellant states that he is not capable of full time employment and that his "addictions are like a prison of its own". The appellant states that the methadone program seemed like a good choice but that over time, it has affected his bone density, and decreased his testosterone, leaving him feeling weak, tired, and impotent. The appellant states that his knees are "hooped" and "pop in and out constantly". The appellant also states that his neck and lower back were further aggravated when a vehicle that fled the accident scene struck him.

On the Questionnaire, the Physician indicates that the appellant has chronic low back pain and that if he does too much he will end up in bed and inactive for a couple of days (i.e. no shower, self care, or housework).

On the Checklist, the appellant indicates that his impairment makes moving about indoors difficult, namely: going up and down stairs or ramps, bending to pick things off the floor, and kneeling and getting up from a kneeling position. The appellant indicates that moving about outdoors is difficult with respect to going up or down stairs or

ramps.

Mental Impairment

In the Health History portion of the MR, the Physician indicates that the appellant has chronic dysthymia. The MR indicates that the appellant does not have any difficulties with communication. The Physician indicates that the appellant has significant deficits with cognitive and emotional function in the areas of emotional disturbance, motivation, impulse control, motor activity, and attention or sustained concentration.

In the AR, the Physician indicates that the appellant does not have any difficulty with speaking, reading, writing, or hearing. For cognitive and emotional functioning the Physician indicates that the appellant has major impact to bodily functions, moderate impact to emotion, impulse control, motivation, and motor activity, and minimal impact to memory, and other emotional or mental problems. The Physician indicates that the appellant does not have any impact to consciousness, insight and judgment, executive, language, or psychotic symptoms. For other neuropsychological symptoms, the Physician has checked off both "no impact" and "minimal impact". The Physician comments that the appellant has dyslexia.

In the SR, the appellant states that he has depression from all of the pain.

On the Questionnaire, the Physician indicates that the appellant has generalized anxiety disorder, which limits his interactions with others. The Physician indicates that the appellant isolates and avoids social situations.

On the Checklist, the appellant indicates that because of his mental health disability, he experiences a lot of anxiety, agitation, stress or depression, has difficulty doing the most important things first and finishing tasks, has difficulty making rational (good) choices, has difficulty remembering information and remembering appointments, has difficulty interacting with friends, family and/or partner, has difficulty interacting with strangers in public, has difficulty establishing and maintaining relationships with people, has difficulty asking for help when he needs it, and experiences difficulty being able to deal with unexpected situations. The appellant also indicates that with respect to communication, he has difficulty making himself understood by others when he speaks or writes, has difficulty hearing what others say to him in person or on the phone, and feels anxious or scared when he speaks to or listens to other people.

DLA

In the MR, the Physician indicates that the appellant has not been prescribed medications that interfere with his ability to perform DLA.

In the AR, the Physician indicates that with respect to personal care the appellant is independent with dressing, toileting, feeding self, transfers (in/out of bed) and transfers (on/off of bed) but takes significantly longer than typical with grooming, bathing and regulating diet. With respect to regulating diet the Physician comments "\$". The Physician indicates that the appellant is independent with laundry and basic housekeeping. With respect to shopping, the Physician indicates that the appellant is independent with reading prices and labels (needs new glasses) and paying for purchases, but takes significantly longer than typical with going to and from stores, making appropriate choices (\$), and carrying purchases home.

With respect to meals, the Physician has not indicated the appellant's level of ability but explains that the appellant's issue is no money and that the appellant is not able to access the food bank. The Physician indicates that the appellant is independent with all aspects of paying rent and bills and medications. With respect to transportation, the Physician indicates that the appellant is independent with using public transit and using transit schedules and arranging transportation but takes significantly longer than typical with getting in and out of a vehicle.

For social functioning, the Physician indicates that the appellant is independent with interacting appropriately with others and dealing appropriately with unexpected demands explaining that the appellant procrastinates. With respect to making appropriate social decisions the Physician did not check off the support/supervision required but explains that the appellant avoids social situations. With respect to developing and maintaining relationships the

Physician did not check off the level of support/supervision required but explains that the appellant avoids regular interactions with others. With respect to securing assistance from others the Physician did not check off the level of support/supervision required but explains that the appellant likes to be independent if possible. The Physician indicates that the appellant has marginal functioning with respect to his immediate and extended social networks.

On the Questionnaire the Physician indicates that the appellant takes significantly longer than typical to perform DLA explaining that it takes him much longer than a healthy person to do personal/work related tasks. The Physician indicates that the appellant is socially isolated and that he is restricted with interpersonal interactions. The Physician indicates that the appellant's is significantly restricted from performing DLA on a daily basis with some days being much worse and is bed bound and up only to use the bathroom. The Physician indicates that the appellant's self care is not done on many bad days and that the appellant is thin as his ability to eat, prepare food, and shop is limited. The Physician also indicates that the appellant's household tasks are done to a minimal extent.

On the Checklist the appellant states that he has difficulty with the following:

- a) personal care routines: (remembering or having motivation to do at least basic hygiene daily);
- b) preparing and eating meals: (standing at the sink, counter and stove, and remembering to take food off the stove or out of the oven, remembering to throw out expired food, and remembering or having motivation to eat regular meals and healthy foods);
- c) keeping the home clean: (doing dishes and putting them away, cleaning, vacuuming, dusting, cleaning windows, carrying, doing and folding laundry, and remembering or having motivation to keep his home clean);
- d) shopping for personal needs: (taking the groceries home and not getting anxious, scared, frustrated, or angry in stores because of crowds)
- e) using public or personal transportation: (walking to and standing at the bus stop, and standing on the bus)
- f) managing personal finances: (understanding bills and remembering to pay them on time, and budgeting for groceries and other things he needs)

Need for Help

In the MR, the Physician indicates that the appellant does not require any prostheses or aids for his impairment.

In the AR, the Physician comments that the appellant needs better housing and nutrition, physiotherapy, and gym pass. The Physician indicates that the appellant receives help from Health Authority Professionals and Community Service Agencies. The Physician indicates that the appellant does not routinely use any assistive devices and does not have an assistance animal.

On the Questionnaire the Physician indicates that the appellant requires help because he takes much longer than typical to complete routine tasks.

On the Checklist the appellant indicates that he gets or needs help from community agencies, friends, and health care professionals. The appellant also indicates that he gets or needs help from a cane, communication devices and orthotics.

The live in manager states that he has observed and assisted the appellant over several years due to the appellant's physical and mental disability. The live in manager indicates that the appellant's dependency on the methadone program prevents him from returning to a full time occupation. The live in manager states that he has provided assistance to the appellant with transportation due to fatigue. The live in manager states that the appellant is very honest and deserves PWD designation.

Additional information provided

In his Notice of Appeal dated June 5, 2018, the appellant states that the Physician has confirmed that his condition is severe, that it affects his DLA and that he needs assistance. The appellant states that the ministry has unreasonably denied him eligibility for PWD status.

[REDACTED]

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 accepted the information in the Notice of Appeal as argument.

ATTACH EXTRA PAGES IF NECESSARY

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, 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 the Physician's assessment of the appellant's basic functional skills is not indicative of a severe impairment of physical functioning.

The ministry's position is that the functional skills reported by the Physician in the MR with respect to walking unaided, climbing stairs unaided, and lifting, are not considered indicative of a severe impairment of physical functioning. In particular, the ministry notes that the Physician did not indicate how much less than 1 hour the appellant can remain seated.

The reconsideration decision also finds that while the AR indicates that the appellant takes twice as long as typical in performing acts of mobility/physical ability, this is not considered indicative of a severe impairment of physical functioning. The ministry notes that stairs, handrails, and furniture are not considered assistive devices when establishing limitations to mobility/physical ability. The ministry also notes that although the Physician, in the AR, indicates that the appellant has "chronic pain – intense-short episodes of activity followed by resting", the Physician does not describe the duration of short episodes of activity that the appellant can accomplish, or the duration or rest periods required following short episodes of activity. The ministry's position is that it is difficult to establish a severe impairment of physical functioning based on the Physician's assessments.

The ministry notes that in the Questionnaire, the Physician indicated that the appellant has a severe physical impairment and chronic low back pain but that the Physician does not describe the duration/amount of activity that the appellant can accomplish without ending up in bed for a couple of days.

The appellant's position is that he has a severe physical impairment with knee pain and chronic back pain from several prior motor vehicle accidents that restrict his mobility, cause considerable fatigue, and limit him from performing DLA and working full time. The appellant states that although he does some work from time to time helping with renovations, property maintenance, mowing lawns or shovelling snow, after a few days of doing these things, he finds himself crippled up and bed ridden for several more days. The appellant also states that he is dependent on the methadone program and that the side effects of fatigue from the methadone contribute to his 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 the MR, the Physician indicates that the appellant has chronic neck, back, and knee pain bilaterally, left more than right, but the panel finds that the ministry reasonably determined that the functional assessments, which indicate that the appellant can walk 4+ blocks unaided on a flat surface, can climb 2 to 5 steps unaided, and can lift 15 to 35 pounds, do not reflect a severe level of impairment. Although the Physician indicates that the appellant can remain seated less than 1 hour the Physician does not indicate how much less than 1 hour the appellant can remain seated.

Although the AR indicates that the appellant takes twice as long as typical in performing acts of mobility/physical ability, the panel finds that the ministry reasonably determined that this is not considered indicative of a severe impairment of physical functioning. The panel finds that the ministry also reasonably determined that stairs, handrails, and furniture are not considered assistive devices when establishing limitations to mobility/physical ability. Although the appellant in the Checklist indicates that he gets or needs help from a cane, the Physician, in the MR, indicates that the appellant does not require any aids for his impairment.

In the AR, the Physician indicates that the appellant has "chronic pain – intense-short episodes of activity followed by resting", but the Physician does not describe the duration of short episodes of activity that the appellant can accomplish, or the duration or rest periods required following short episodes of activity. Although the Physician provided further information in the Questionnaire, the Physician did not describe the duration/amount of activity that the appellant can accomplish without ending up in bed for a couple of days.

The panel finds that the ministry reasonably determined that it is difficult to establish a severe impairment of physical functioning based on the Physician's assessments.

The panel also notes that in the Checklist the appellant states that he has difficulty standing at the sink, counter and stove, keeping the home clean, carrying groceries to the bus, going up and down stairs or ramps, bending to pick things off the floor and kneeling and getting up from a kneeling position. At the same time, the appellant also indicates that he does work from time to time performing fairly physical tasks including renovations, mowing lawns, and shovelling snow. While the appellant states that he can do this work but then is bed bound for a couple of days, neither the appellant nor the Physician provided further information describing how long he can perform this work before he is bed bound. In addition, neither the appellant nor the Physician provided further information to explain how the appellant is able to perform these physical tasks but has difficulty with some of the lighter tasks of keeping his home clean, particularly when the Physician, in the AR, indicates that the appellant is independent with respect to basic housekeeping.

The panel also notes that while the appellant states that he is not able to work, employability is not a criterion for designation of PWD.

Severe Mental Impairment

The ministry's position is that while the Physician indicates that the appellant has chronic pain and subsequent disability leading to dysthymia and significant deficits with cognitive and emotional functioning in the areas of emotional disturbance, motivation, impulse control and motor activity, the Physician indicates moderate impact to these areas. The ministry also notes that while the Physician indicates significant impacts to cognitive and emotional functioning in the area of attention/sustained concentration, in the AR, the Physician indicates minimal to moderate impacts to this area. The ministry also notes that while the Physician indicates that the appellant has dyslexia, the Physician also indicates that the appellant has no difficulties with communication, good ability with speaking, reading, and writing, and satisfactory ability with hearing. The ministry notes that the Physician does indicate that the appellant has major impact to cognitive and emotional functioning in the area of bodily functions but that the cumulative impact of the information provided is not considered indicative of a severe impairment of mental functioning.

The ministry notes that in the AR the Physician indicates that the appellant avoids social situations and avoids regular contact with others but that the Physician does not indicate restrictions to any listed areas of social functioning and does not indicate that the appellant requires support/supervision with any listed areas of social functioning.

The ministry notes that in the Questionnaire the Physician indicates that the appellant has a severe mental impairment with generalized anxiety disorder that limits interactions with others, and that the appellant's ability to cope with stressors in daily life and make appropriate decisions in a timely manner and interact with other people is significantly restricted. However the ministry notes that this information is not consistent with the information provided in the AR where the Physician indicates that the appellant is independent with interacting appropriately with others. The ministry states that the Physician did not describe a worsening of the appellant's medical condition

since the completion of the PWD application. The ministry also notes that the Physician did not describe the support/supervision required to help the appellant maintain in the community.

The ministry's position is that based on the assessments provided, the letter from the live in manager, and the appellant's self-reports, a severe impairment of mental functioning has not been established.

The appellant's position is that the information provided establishes that he has a severe mental impairment. The appellant's information, as set out in the SR and the Checklist is that because of his mental health disability he experiences a lot of anxiety, agitation, stress, or depression, has difficulty making rational (good) choices, has difficulty interacting with friends, family and strangers, has difficulty asking for help when he needs it and experiences difficulty being able to deal with unexpected situations. The appellant's position is that because of his chronic pain he will end up in bed for a couple of days which leads to depression and wondering whether he can ever obtain any relief. The appellant states that his addictions, which are controlled with methadone, are like a "prison of its own".

The panel finds that the ministry reasonably determined that the information provided does not establish a severe mental impairment. In particular, while the Physician, in the MR, indicates that the appellant has chronic pain and subsequent disability leading to dysthymia and significant deficits with cognitive and emotional functioning in the areas of emotional disturbance, motivation, impulse control and motor activity, the Physician indicates moderate impact to these areas. Although the Physician indicates significant impacts to cognitive and emotional functioning in the area of attention/sustained concentration, in the AR, the Physician indicates minimal to moderate impacts to this area.

The panel notes that in the AR, the Physician indicates that the appellant is independent with interacting appropriately with others and dealing appropriately with unexpected demands and did not provide any indication of the appellant's ability with making appropriate social decisions or his ability to develop and maintain relationship, only explaining that the appellant avoids social situations and interactions with others. However, the Physician does not indicate that the appellant requires any support/supervision with any listed areas of social functioning.

The panel notes that in the Questionnaire the Physician indicates that the appellant has a severe mental impairment with generalized anxiety disorder that limits interactions with others, and that the appellant's ability to cope with stressors in daily life and make appropriate decisions in a timely manner and interact with other people is significantly restricted. However the panel also notes that the Physician did not provide further information describing a worsening of the appellant's condition since the PWD application was completed and does not provide further information explaining the differences between the information provided in the MR and AR as compared to the information in the Questionnaire. For example there is no mention of a diagnosis of generalized anxiety disorder in the MR or AR.

In addition, there are inconsistencies between the information provided by the appellant and the Physician. For example, in the AR the Physician indicates that the appellant is independent with dealing appropriately with unexpected demands, explaining that the appellant procrastinates, but in the Checklist the appellant indicates that he experiences difficulty being able to deal with unexpected situations.

There are also inconsistencies in the information provided regarding the appellant's ability to communicate. In the MR, the Physician indicates that the appellant has no difficulties with communication and in the AR the Physician indicates that the appellant's ability to communicate with speaking, reading, and writing is good and hearing is satisfactory. For cognitive and emotional functioning the Physician indicates dyslexia but does not provide any other information indicating that the appellant has difficulties with communication. In the Checklist the appellant states that he has difficulty making himself understood by others when he speaks or write, has difficulty hearing what others say to him in person or on the phone, and feels anxious or scared when he speaks to or listens to other people.

While the live in manager states that the appellant is limited, both physically and mentally, and indicates that the appellant is prevented from full time work, the information does not assist to describe the impacts to the appellant's impacts on functioning.

Although the appellant may have some difficulties with dysthymia due to chronic pain and generalized anxiety with some impact to social interactions, 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. In particular, the reconsideration decision notes that in the MR, the Physician indicates that the appellant is not prescribed any medications or treatments that interfere with his ability to perform DLA and in the AR, the Physician indicates that the appellant is independent with the large majority of listed areas of DLA.

The reconsideration decision notes that although the Physician in the AR indicates that the appellant takes significantly longer than typical with grooming, bathing, regulating diet, going to and from stores, making appropriate choices, carrying purchases home, and getting in and out of a vehicle, the Physician does not describe how much longer than typical it takes the appellant to perform those DLA. While the Physician indicates "\$" with respect to regulating diet and making appropriate choices, the ministry's position is that financial limitations are not considered indicative of restrictions to DLA due to a physical or mental impairment.

The ministry's position is that while the Physician in the Questionnaire indicates that the appellant takes significantly longer than normal to perform many DLA and takes much longer than a healthy person to do personal/work related tasks and that his level of activity is significantly reduced due to his impairments, the Physician did not describe how much longer than typical the appellant takes with DLA. The ministry also notes that while the Physician indicates that some days are worse with the appellant being bed bound and up only to go to the bathroom, the Physician does not describe how often this occurs or the frequency/duration of periods during which the appellant cannot perform self-care.

The ministry also notes that the Physician does not describe the nature of restrictions to food preparation, shopping and household tasks and in the AR, the Physician indicated that the appellant was independent with laundry and basic housekeeping.

The ministry's position is that it is difficult to establish significant restrictions to DLA based on the assessment provided.

The appellant's position is that the information provided establishes that he meets the criteria for PWD designation.

The appellant's position is that he has chronic and debilitating pain and that after a couple of days of physical labour he is crippled up for at least two more days which he spends in bed either sleeping after laying there getting depressed.

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 has not been prescribed any medication or treatments that interfere with his ability to perform DLA. In the AR, the Physician indicates that the appellant is independent with most aspects of personal care, basic housekeeping, meal planning, paying rent and bills, medications and transportation. The Physician indicates that the appellant takes significantly longer than typical with grooming, bathing, regulating diet, going to and from stores, making appropriate choices, carrying purchases home and getting in and out of a vehicle. However, the Physician does not provide any explanation or description of how much longer than typical it takes the appellant with these aspects of DLA. In the Questionnaire, the Physician indicates that it takes the appellant much longer than a healthy person to do personal/work related tasks but does not provide any further information indicating how much longer than typical it takes.

In the Questionnaire the Physician indicates that the appellant is significantly restricted in performing DLA by one or more of his conditions daily, explaining that some days are much worse and that the appellant is bed bound, and up only to go to the bathroom. However the Physician does not describe the frequency or duration of the bed bound occurrences and does not indicate that the appellant requires any support or supervision. In addition the appellant states, in the SR, that after a few days of physical labour he will end up in bed for a few days, trying to sleep and find some pain relief. However the appellant does not indicate that any of the listed aspects of DLA are the items that result in him being bed bound. On the Checklist the appellant indicates that he has difficulty with preparing or eating meals (standing at the sink, counter and stove and remembering to take food off the stove or out of the oven) and keeping the home clean (doing dishes and putting them away, vacuuming, dusting, cleaning windows, carrying, doing and folding his laundry and putting it away, and remembering or having motivation to keep his home clean). However, in the AR, the Physician indicates that the appellant is independent with laundry and basic housekeeping and with respect to meals, the Physician indicates that the appellant does not have enough money and is not able to access the food bank.

Given the inconsistencies between the information provided by the appellant and the Physician, in combination with the lack of further information from the Physician regarding the frequency and duration of any bed bound periods, and lack of information on how much longer than typical it takes the appellant to perform DLA, the panel finds that the ministry reasonably determined that there was not enough evidence to confirm that the appellant has a severe impairment that significantly restricts his ability to perform DLA continuously or periodically for extended periods.

With respect to regulating diet and making appropriate choices in shopping, the Physician comments "\$" but the panel finds that the ministry was reasonable in determining that financial limitations are not considered indicative of restrictions to DLA due to a physical or mental impairment.

For DLA of social functioning the Physician has not indicated that the appellant requires any support or supervision and has indicated that the appellant is independent with interacting appropriately with others and dealing appropriately with unexpected demands. While the Physician indicates that the appellant avoids social situations and regular contact with others, the Physician does not indicate the appellant's level of independence with making appropriate social decisions or developing and maintaining relationship. While the Physician indicates that the appellant has marginal functioning with respect to his immediate and extended social networks the Physician does not indicate that any support or supervision is required with these aspects of DLA.

The panel also notes that the additional information provided by the Physician on the Questionnaire is very general and does not provide further explanation to confirm that the appellant has a severe impairment that significantly restricts DLA as required by section 2(2) of the EAPWDA, which are specified as follows:

(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.

The panel finds that while the appellant may have some difficulty and may take longer than typical with some aspects of DLA and have some periods where he is bed bound after a few days of physical labour, the information provided indicates that the appellant is independent with the large majority of DLA and does not require support or supervision with any DLA.

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 from friends, community agencies, health professionals, use of a cane, orthotics, and communication devices. His position is that he requires help because it takes him much longer than typical with DLA.

In the MR, the Physician indicates that the appellant does not require any prostheses or aids for his impairment.

In the AR, the Physician comments that the appellant needs better housing and nutrition, physiotherapy, and gym pass. The Physician indicates that the appellant receives help from Health Authority Professionals and Community Service Agencies but does not provide any specific information regarding the nature of the help. The Physician indicates that the appellant does not routinely use any assistive devices and does not have an assistance animal.

The live in manager states that he has provided transportation assistance to the appellant as the appellant struggles with fatigue.

While the information provided indicates that the appellant could likely benefit from increased income and better nutrition, financial hardship is not an aspect to be considered in determining whether the appellant requires help due to a severe impairment. While the Physician has provided some information describing that the appellant requires some help, the AR does not indicate that the appellant requires periodic assistance or continuous assistance from another person with any aspects of 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.

PART G – ORDER	
THE PANEL DECISION IS: (Check one) <input checked="" type="checkbox"/> UNANIMOUS <input type="checkbox"/> BY MAJORITY	
THE PANEL <input checked="" type="checkbox"/> CONFIRMS THE MINISTRY DECISION <input type="checkbox"/> 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? <input type="checkbox"/> Yes <input type="checkbox"/> No	
LEGISLATIVE AUTHORITY FOR THE DECISION:	
<i>Employment and Assistance Act</i>	
Section 24(1)(a) <input checked="" type="checkbox"/> or Section 24(1)(b) <input type="checkbox"/>	
and	
Section 24(2)(a) <input checked="" type="checkbox"/> or Section 24(2)(b) <input type="checkbox"/>	

PART H – SIGNATURES	
PRINT NAME Helene Walford	
SIGNATURE OF CHAIR	DATE (YEAR/MONTH/DAY) 2018/07/25

PRINT NAME Jean Lorenz	
SIGNATURE OF MEMBER	DATE (YEAR/MONTH/DAY) 2018/07/25
PRINT NAME Robert Kelly	
SIGNATURE OF MEMBER	DATE (YEAR/MONTH/DAY) 2018/07/25