

## **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 05 June 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.

## **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 26 February 2018. The Application contained:
  - A Self Report (SR).
  - A Medical Report (MR) dated 22 February 2018, completed by a general practitioner (GP) who has known the appellant for 3 years and seen him 2-10 times over the past year.
  - An Assessor Report (AR) dated 22 February 2018, completed by the same GP.
2. The appellant's Request for Reconsideration submission dated 29 May 2018, providing a number of advocate-prepared statements based on information provided by the appellant with which the GP has indicated by her initials her agreement with each statement (the reconsideration statements or RS). The GP also signs this document with this statement: "I, [GP's name], have confirmed the above information by my initials."

In the MR, the physician provides the following diagnosis related to the appellant's impairment: osteoarthritis of right ankle (onset 2017).

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

### Severity of impairment

#### *Physical impairment*

MR:

Under Health History, the GP writes that the appellant has a history of a fracture in the right ankle, and as a result has developed severe osteoarthritis in that ankle. He has been suffering severe pain and swelling for about one year and became disabled from work in October 2017 – he had a very physical job and he became unable to keep up at that time. The GP states that the appellant has severe pain with walking, standing, and going up stairs. He has been seen by an orthopaedic surgeon and had a steroid injection in December 2017, but this did not provide any relief.

RS:

[Entries here should be understood to be prefaced by "With her initials, the GP indicated agreement with the statement that the appellant..."(summarized for brevity)].

- Has developed severe osteoarthritis in his right ankle, following a fracture and subsequent surgery 14 years ago. Chronic ankle pain and swelling has become increasingly severe over the past year. Pain and swelling made worse by physical activity.

MR:

Regarding Functional Skills, the GP reports that the appellant can walk 2 to 4 blocks unaided on a flat surface, can climb 5+ steps unaided, is limited to lifting 15 to 35 lbs., and there are no limitations to remaining seated.

The GP indicates that the appellant's height and weight are relevant: 5 ft. 11 in, and 160 lbs.

The GP indicates that the appellant has not been prescribed any medication and/or treatments that interfere with his ability to perform DLA. She also indicates that the appellant requires an aid to compensate for his impairment: he uses a cane to steady himself when walking.

AR:

Respecting Mobility and Physical Ability, the GP assesses the appellant as taking significantly longer than typical for walking indoors, walking outdoors, climbing stairs, and standing; the GP assesses the appellant as independent for lifting and for carrying and holding.

RS:

- Walking: Requires a cane for all mobility outside the home. This is needed to steady him and to redistribute pressure from his ankle. Even with a cane, maximum distance is 2 blocks before requiring a break to rest his ankle. His gait has also significantly slowed, taking him at least 3 times longer to walk any distance.
- Stairs: Has been advised to avoid all stairs due to the risk of falling because of ankle weakness. When unavoidable, takes 3 – 4 times longer to climb safely with resulting severe pain. The cane does not provide enough support for stairs and he relies on a person or multiple walls/banisters and cannot climb without.
- Lifting/carrying: While physically capable of lifting up to 15 lbs., unable to carry weight of more than 4 – 5 lbs. for any distance due to ankle weakness and increased pain.
- Standing: Experiences constant pain while standing. If required to stand for a couple of minutes or more, requires a cane to reduced pressure on ankle. Even with a cane, cannot stand for more than 5 to 10 minutes before needing to rest.

### *Mental impairment*

MR:

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

The GP indicates that the appellant has no significant deficits with cognitive and emotional function.

AR:

The GP assesses the appellant's ability to communicate as good in all listed areas: speaking, reading, writing, and hearing.

In the section relating to Cognitive and Emotional Functioning as a result of a mental impairment or brain injury, the GP indicates no impact on daily functioning in any of the listed cognitive or emotional areas.

RS:

- Cognitive/emotional restrictions: Had a difficult time adjusting to chronic pain and his physical limitations. Largely confined to his house and no longer able to participate in any of the activities he previously enjoyed. This has taken a toll on his mental health and social function. Experiences symptoms of depression and is largely isolated from his peers.
- Pain also disrupts sleeping patterns, waking up at least 5 to 6 times a night due to pain and is often slow to fall back asleep, leading to chronic fatigue.

Ability to perform DLA

AR:

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

- Personal care – independent for dressing, bathing, toileting, feeding self, and regulating diet; takes significantly longer than typical for transfers in/out of bed and transfers on/off chair (takes about twice the amount of time that others would for both);
- Basic housekeeping – independent for all aspects: laundry and basic housekeeping;
- Shopping – independent for reading prices of labels, making appropriate choices, paying for purchases, and carrying purchases home; takes significantly longer than typical for going to and from stores (takes much longer as he has to walk slowly & rest);
- Meals – independent for meal planning, food preparation, and safe storage of food; takes significantly longer than typical for cooking (unable to stand for prolonged periods);
- Pay rent and bills – Independent for all aspects: banking, budgeting, and paying rent and bills;
- Medications – independent for all aspects: filling/refilling prescriptions, taking as directed, and safe handling and storage;
- Transportation – independent for using transit schedules and arranging transportation; takes significantly longer than typical for getting in and out of the vehicle and using public transit.

RS:

- Personal care: activities take twice as long to carry out because of physical limitations – e.g. because of ankle weakness, can only dress while sitting. Shower is quite small therefore he can currently use the walls to balance himself in the shower and in and out. Any other shower would require grab bars. Transferring in/out of bed also takes at least twice as long.
- Basic housekeeping: relies on continual assistance from his mother [with whom he lives] for all basic housekeeping, as these activities severely aggravate his ankle pain and swelling. Unable to carry the weight of a full laundry basket or vacuum, or stand long enough with his cane to wash dishes or sweep.
- Shopping: as symptoms have become increasingly severe, has been unable to independently shop for necessities. Can no longer get to and from stores without help, has difficulties getting around the store, and is unable to carry purchases home. He relies on continual help from friends or delivery services.
- Meal preparation/cooking: because of physical restrictions, meal preparation and cooking are difficult and he relies on the continual help from his mother.
- Transportation: unable to take public transportation because of difficulties getting to and from bus stops as well as the fall risk if unable to find a seat. Relies on continual help

from friends driving to and from appointments. Takes twice as long to get in and out of vehicles.

- Banking/medications: relies on ongoing help from friends to get to and from the bank and pharmacy. Also requires his cane if he has to stand in line for any length of time.

### *Social functioning*

AR:

The GP assesses the appellant as independent for all listed areas where support/supervision may be required to compensate for a mental impairment: making appropriate social decisions, developing and maintaining relationships, interacting appropriately with others, dealing appropriately with unexpected demands, and securing assistance from others.

The GP assesses the appellant's relationship with his immediate and extended social networks as good functioning.

### Help provided/required

MR:

The GP indicates that the appellant uses a cane to steady himself when walking.

AR:

The GP indicates that the appellant routinely uses a cane – a standard cane for walking to provide support.

The GP indicates that assistance is provided by family.

### **Self Report**

In describing his disability, the appellant writes that he broke his ankle, which now has multiple pins and plates. Arthritis and constant pain/swelling make him unable to walk without the use of a cane. Doctors have tried pain relievers and he has seen a specialist who gave him injections, but none of these have helped. He is scheduled for surgery to fuse the bones in his foot, but this will leave him with a clubfoot and the only advantage will be to reduce pain and swelling. However, his doctor says he will still need a cane to walk and mobility will still be a hardship.

He explains that he worked for a construction company for many years and one weekend at home he fell and broke his ankle. He spent a week in hospital and after surgery was told his ankle would never be the same and things like arthritis will affect him in time. He did a year of rehab and he couldn't walk properly and his employer said he would not be able to work for them with his injuries and limitations. He has worked since then with a relative, but could help only for short periods and limited duties because his ankle was always swelling and he was in constant pain.

The appellant writes that he is now not able to work at all because he is very limited in the time he can stand or walk and always needs to use a cane.

He states that he has moved in with his elderly mother since he now needs help with money and daily living, and he now feels that he has become a burden to her.

He now needs help with stairs, cooking meals and all aspects of daily living, since he cannot walk without help from others and the use of a cane.

## **Notice of Appeal**

The appellant's notice of appeal is dated 18 June 2018. Under Reasons for Appeal, he writes, "The decision is not a reasonable application of the legislation & is not reasonably supported by the evidence."

## **The hearing**

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

At the hearing, the appellant's advocate spoke to a 9-page submission that went to argument (see Part E, Reasons for Panel Decision, below).

In presenting her submission, the advocate submitted an exchange of correspondence between her and the GP. In a letter dated 20 June 2018, the advocate refers to the reasons for the ministry's denial at reconsideration being the unexplained difference in the information provided in the original application and subsequently in the reconsideration statements ["checklist"]. The advocate asks the GP to provide a brief letter that addresses this difference and confirm that the information provided in the reconsideration statements is consistent with the GP's medical opinion of the appellant's current level of impairment.

In response, in a letter dated 02 July 2018, the GP wrote:

"[The appellant] is a patient in my family practice. I recently completed a PWD application for [him] as well as a checklist after this. It has come to my attention that there were some inconsistencies between the two sources of information. I wanted to clarify the information provided, as I feel that since the original application [the appellant's] condition has further deteriorated. As a result, the information provided in the checklist is more accurate."

In answer to a question, the appellant stated that he had not seen the GP between when she completed the application and when she checked the reconsideration statements. However, the GP had arranged for him to have x-rays and see an orthopaedic surgeon. In response to another question, the appellant stated that in addition to his osteoarthritis in his right ankle, he also had osteoarthritis in his neck, as a result of falling down stairs about a year ago.

## **Admissibility of additional information**

Section 22(4) of the *Employment and Assistance Act* (EAA) provides that panels may admit as evidence the information and records that were before the minister when the decision being appealed was made and "oral and written testimony in support of the information and records" before the minister when the decision being appealed was made. These limitations reflect the jurisdiction of the panel established under section 24 of the EAA - to determine whether the ministry's reconsideration decision is reasonably supported by the evidence or is a reasonable application of the enactment in the circumstances of an appellant. That is, panels are limited to determining if the ministry's decision is reasonable and are not to assume the role of decision makers of the first instance. Accordingly, panels cannot admit information that would place them in that role.

At issue is the admissibility of the 02 July 2018 letter from the GP and in particular the statement, "...I feel that since the original application [the appellant's] condition has further deteriorated. As a result, the information provided in the checklist is more accurate." The appellant's advocate argues that the letter is in support of the information and records before the ministry at reconsideration as the letter corroborates evidence before the minister, with the reconsideration statements containing references to the increasing severity of the appellant's condition. She cites 2 examples:

- "...chronic ankle pain and swelling has become increasingly severe over the past year."
- "As [his] symptoms have become increasingly severe, he has been unable to independently shop for necessities."

The panel finds that this letter is not in support of the information before the ministry at reconsideration: the letter specifically addresses the deterioration of the appellant's condition since the GP completed the MR and AR, information that was not before the ministry at reconsideration, while the examples cited by the advocate refer to either "changes over the past year" or over some indefinite period. Thus this statement in the letter cannot be said to corroborate anything before the ministry at reconsideration. Pursuant to section 22(4) of the EAA, the panel does not admit this letter as evidence.

Similarly, the panel does not admit as evidence the appellant's testimony that he also suffers from osteoarthritis in the neck, as no information to this effect was before the ministry at reconsideration.

The panel accepts the advocate's written submission as argument.

## 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**

#### **Weight of evidence**

In her submission, the appellant's advocate argued that the ministry's decision is not reasonably supported by the evidence because the ministry failed to give sufficient weight to information supplied at reconsideration and as a result also failed to engage with relevant information supplied at reconsideration. In making this argument, the advocate provided several examples.

On reading the reconsideration decision (see detailed analysis below under each criterion at issue), the advocate has a point: it is clear that, while the ministry did not expressly state it was doing so, and while acknowledging the reconsideration statement evidence, it gave greater weight to the assessments provided in the MR and AR than to those in the reconsideration statements.

Considering that:

- As the advocate argues, reconsideration provides the applicant with the opportunity to submit new information and obtain a "new" decision from the ministry. However, the starting point for reconsideration is the original application, so the ministry would examine any new information in the context of that provided with the original application. In the panel's view, it is reasonable for the ministry to expect that any changes in assessments be explained, so as to provide a rationale for the ministry to weigh the new evidence.

- Both “packages” cover the same ground – detailed assessments and explanations regarding the full range of issues in dispute in this appeal: the severity of the appellant's physical impairment and assessments of his ability to perform DLA and the resulting help required.
- On review, each package provides a substantially different picture of the degree of the appellant's impairment and the impact on his ability to perform DLA. Example: In the AR, the GP assesses the appellant as independent for laundry and housekeeping, while in the reconsideration statements, the GP has agreed to the statement that the appellant “relies on continual assistance from his mother for all basic housekeeping, [...] Unable to carry the weight of a full laundry basket or vacuum, or stand long enough with his cane to wash dishes or sweep.”
- With such conflicting information across the whole range of assessments, the most reasonable approach is to consider each package separately.
- The advocate argues that the legislation does not prevent the ministry giving equal weight to evidence from a medical practitioner that is not in the prescribed PWD form and submits that the information confirmed by the GP in the reconsideration statements ought to be considered equally with the information provided by the GP in the MR and PR. While all the evidence needs to be given consideration, the panel finds, given the conflicting information, that the ministry would be reasonable in determining that one set of evidence be given more weight than another.
- With the two sets of assessments considered as separate packages, it would be unreasonable to expect the ministry to “pick and choose” a specific assessment from the reconsideration statements and use it in conjunction with, or replace it by, an assessment in the PR/AR. For example, it would be unreasonable for the ministry to replace the assessment in the PR that the appellant is limited to lifting 15 to 35 lbs. and in the AR that he is independent for lifting and carrying and holding, with the reconsideration statement that “while physically capable of lifting up to 15 lbs., unable to carry weight of more than 4 – 5 lbs. for any distance due to ankle weakness and increased pain.” Put another way, giving weight to an assessment from one package requires giving weight to all assessments from that package.
- There was insufficient information before the ministry at reconsideration that would explain the differences between the two packages of assessments (see also above under Admissibility of additional information).
- In panel's view, it is reasonable for the ministry to expect that the opinions of a medical practitioner or prescribed professional, as contemplated in the legislation, be based on examinations and observations of, references to previous medical reports concerning, or at least direct discussion with, the applicant. In the case of the reconsideration statements, the information was based on the appellant's self-reporting, conveyed through a third-party (the advocate), and agreed to by the GP without her direct involvement and with no explanation before the ministry of the reasons for the differences between the assessments made in the MR/AR and those appearing in the reconsideration statements.

For these reasons, the panel finds that the ministry reasonably gave more weight to the assessments provided in the MR and AR and, while acknowledging the information provided in the reconsideration statements, reasonably gave that information little weight.

## Severity of impairment

### *Physical impairment*

The position of the appellant, as explained in the advocate's submission, is that the ministry's determination that a severe physical impairment has not been established is not reasonably supported by the evidence.

The submission refers to information provided in the reconsideration statements that the advocate argues demonstrate a severe physical impairment, such as:

- The appellant requires a cane for all mobility outside the home; and even with a cane the maximum distance he can walk is 2 blocks before he needs to take a rest; and it takes him 3 times longer to walk any distance.
- Avoids stairs due to the risk of falling; when unavoidable, takes 3 – 4 times longer to climb safely.
- While physically capable of lifting up to 15 lbs., unable to carry weight of more than 4 – 5 lbs. for any distance due to ankle weakness and increased pain.
- Experiences constant pain while standing; if required to stand, requires a cane to reduce pain on ankle; even with a cane cannot stand for more than 5 to 10 minutes.

In the reconsideration decision, the ministry noted the assessments provided by the GP in the MR (i.e. the appellant is able to walk unaided 2 to 4 blocks, climb 5+ steps unaided, lift 15 – 35 lbs., and has no limitations sitting.) and in the AR (independent with lifting, carrying and holding, and independence with DLA, although it takes about twice as long with transfers in/out of bed and on/off chairs, takes significantly longer than typical for getting in/out of a vehicle and using public transit, and unable to stand for prolonged periods).

The ministry acknowledged the information provided in the reconsideration statements – referring to it as “self reported by you and acknowledged by your physician.” The ministry noted that the GP's assessment of the appellant's basic functional skills, as indicated in the PWD application, is not considered indicative of a severe impairment of physical functioning. Although the ministry acknowledges his additional self-report, which reports him to be more impaired than originally reported by his GP, the ministry found that his overall impairment is not indicative of a severe physical functional impairment. The ministry stated that it is unclear why the appellant reports the level of impairment in so many areas of functioning, given the original assessment by his GP and the fact that there are no other reported medical conditions beyond the arthritis in the ankle. The ministry concluded that it acknowledges that the appellant is required to use a cane for walking and climbing stairs, but he can lift 15 lbs., can stand 5 to 10 minutes, and has no limitations sitting.

Considering the panel's discussion above regarding weight of evidence, and the level of physical functionality reported by the GP in the MR and the AR, the panel finds that the ministry was reasonable in determining that a severe physical impairment has not been established.

### *Mental impairment*

In her submission, the appellant's advocate stated that the appellant accepts the ministry's conclusion that he does not have a severe mental impairment. Considering that the GP has not diagnosed the appellant with a mental health condition or brain injury, has not identified any significant deficit in cognitive and emotional functioning, and has not indicated any impacts of a mental health condition on daily functioning, the panel finds that the ministry was reasonable in determining that a severe mental impairment has not been established.

### *Direct and significant restrictions in the ability to perform DLA*

The appellant's position, as explained in the advocate's submission, is that the ministry's finding that the information provided does not establish that the appellant's impairment directly and significantly restricts daily living activities either continuously or periodically for extended periods is not reasonably supported by the evidence or a reasonable application of the legislation.

The submission refers to the information provided in the reconsideration statements, including:

- The appellant suffers from chronic ankle pain, weakness, and swelling made worse by physical activity,
- Uses a cane for all mobility outside the home,
- Basic housekeeping severely aggravates the ankle pain and swelling; unable to carry the weight of a full laundry basket or vacuum; cannot stand long enough without cane to wash dishes,
- As symptoms have become increasingly severe, he can no longer get to and from stores without help, has difficulty getting around store, and is unable to carry purchases home.
- Needs cane if standing more than a couple minutes, suggesting restrictions to food preparation and cooking.
- Has difficulties getting to and from the bus stop; fall risk if unable to find a seat on the bus.
- Needs cane to stand in line for any length of time at bank or pharmacy.

In the reconsideration decision, the ministry stated that the prescribed professional's opinion is fundamental to the determination of whether the ministry is satisfied that impairment directly and significantly restricts the ability to perform DLA. Considering the wording of section (2)(b) of the EAPWDA ("in the opinion of a prescribed professional..."), the panel finds that it is reasonable for the ministry to base its determination for this criterion on what the ministry is satisfied most appropriately represents the considered opinion of the prescribed professional.

The ministry noted that in the AR the GP reported that the appellant is independent with all his DLA, including personal care, basic housekeeping, shopping, meals, bills, medications, transportation, and social functioning. She did not report periodic or continuous assistance is required with any of his DLA, nor did she report that he used assistive devices with any of these activities, though she did note that he uses a cane routinely for support with walking. She did not report or check if any other assistive devices were being used.

The ministry then summarized the information provided in the reconsideration statements, including that the appellant relies on his mother continuously for all basic housekeeping, meal preparation and cooking.

The ministry acknowledged that the GP reports in the MR that the appellant has had severe pain and swelling in the right ankle over the past year and had to stop working in December as a result. However, the ministry found that there is not enough new information provided from the GP to support that his medical condition directly and significantly affects his ability to manage his DLA. The ministry stated that it is unclear why the appellant was initially assessed in February as fully independent with all his DLA, by a physician who has known him for three years, to then reporting to his physician in May that he relies on his mother and friends to manage so many of his DLA. It is also unclear how much assistance is provided on a daily basis because of his medical condition, and why he would not be able to manage more of household activities given that he can manage his personal care with no assistance, can lift 15 pounds, can walk 2 blocks without resting, and uses no other assistive devices with the exception of standard cane for walking.

As the ministry argued in the reconsideration decision, the panel notes that there is not enough new information provided by the GP to explain the differences in her assessments of the appellant's ability to perform DLA between those reported in the AR and those included in the reconsideration statements: from independent for most DLA in the AR to requiring the continuous assistance from his mother and friends in the reconsideration statements. Similarly, there is little new information provided by the GP that would describe, given his medical condition and functional abilities, why and to what extent the appellant's ability to manage DLA is as restricted as he reports in the reconsideration statements. Considering the level of independence in the appellant's ability to perform DLA reported by the GP in the AR, the panel finds that the ministry was reasonable in determining that the information provided did not confirm that the appellant has a severe impairment that, in the opinion of a prescribed professional, 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 use of a cane and the help of his mother and friends, 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.

**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

Richard Roberts

SIGNATURE OF CHAIR

DATE (YEAR/MONTH/DAY)

2018 August 09

PRINT NAME

Donald McLeod

SIGNATURE OF MEMBER

DATE (YEAR/MONTH/DAY)

2018 August 09

PRINT NAME

Don Storch

SIGNATURE OF MEMBER

DATE (YEAR/MONTH/DAY)

2018 August 09