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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 November 5, 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 dated June 29, 2018 comprised of the appellant's Self-Report letter dated May 25 2018 (SR) a Medical Report (MR) and an Assessor Report (AR), both completed by the appellant's general practitioner (the "Physician") dated June 19, 2018
2. Appellant's Request for Reconsideration form dated October 02, 2018 (RFR) requesting an extension of time to submit further documentation
3. Appellant's RFR statement dated October 31, 2018 (the "RFR Statement")
4. Letter from the Physician dated October 31, 2018 (the "Letter")
5. Statement prepared by the appellant's advocate and signed by the Physician dated October 31, 2018 (the "Physician's Statement")

Summary of relevant evidence

Diagnoses

In the MR, the Physician indicates that the appellant has been diagnosed with chronic derangement left arm (biceps rupture) and chronic pain left shoulder/upper arm, date of onset for both conditions being April 2014. The Physician indicates that the appellant has been a patient for 3 years and he has been seen once 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 and disability left arm.

In the Letter, the Physician indicates that the appellant suffers from chronic pain as a result of a chronic left shoulder derangement that is inoperable. The Physician indicates that as a result of his disability the appellant is unable to obtain and maintain employment. The Physician also indicates that the appellant suffers from chronic depression as a result of his disability.

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 5+ steps unaided, is unable to lift with his left arm, and has no limitations with respect to being seated.

In the health history portion of the MR, the Physician indicates that the appellant has a derangement of the left shoulder/upper arm as a result of a biceps muscle rupture in April 2014. The Physician indicates that the appellant has developed chronic pain syndrome of the left upper limb and has limited strength/usage of the left arm as a result.

In Part F – Additional Comments, the Physician indicates that there are no surgical options available to the appellant. The Physician indicates that chronic pain leads to very limited physical activity or exertion and that the appellant is unable to lift objects or obtain/manage firewood for heat. The Physician indicates that the appellant has one to four episodes of severe pain daily that require a recovery period.

In the AR the Physician indicates that the appellant is independent with walking indoors, walking outdoors, climbing stairs, and standing but requires continuous assistance from another person with lifting and carrying and holding explaining that the appellant has pain, weakness, and limited range of motion and cannot use his left arm. The Physician indicates that the appellant requires assistance to lift or carry anything.

In the SR, the appellant says that he has left shoulder pain almost constantly and any kind of movement can cause pain. He states that he has to be constantly aware of his movements and if he puts too much weight on one side the pain is severe. The appellant says that the pain feels like a "hot poker" in the ligament of his shoulder. The

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appellant says that two or three times per day his shoulder is aggravated resulting in intense pain that requires him to sit and rest for about an hour to recover. The appellant says that he cannot sleep on his left side or on his back. He says that if he moves in the night he wakes up and it takes an hour or more to get back to sleep.

In the RFR Statement, the appellant says that he has constant pain in his shoulder, arm and hand and is extremely limited in what he can do with his left arm/hand. The appellant says that he cannot do any activities that require two hands. He says that if he sleeps on his left shoulder, his whole left arm goes "dead" and his shoulder is in pain so he has to sleep on his right side with a pillow to prop up his left arm to relieve pressure on it. The appellant says that when he sits or walks he has to prop up his arm and have it supported so there is no pressure on it.

Mental Impairment

In the MR, the Physician indicates that the appellant does not have any difficulties with communication. The Physician did not check off the box stating yes to indicate that the appellant has significant deficits with cognitive and emotional function but did indicate that the appellant has deficits evident in the area of emotional disturbance (depression) related to his injury and chronic pain.

In the AR, the Physician indicates that the appellant's ability to communicate in the areas of speaking, reading, writing, and hearing is good. For cognitive and emotional functioning the Physician indicates that the appellant has major impact to emotion (depression due to pain) and motivation (pain), moderate impact to bodily functions, and no impact in the areas of consciousness, impulse control, insight and judgment, attention/concentration, executive, memory, motor activity, language, psychotic symptoms, other neuropsychological problems and other emotional or mental problems.

In the Letter, the Physician indicates that the appellant suffers from chronic depression as a result of his disability.

In the RFR Statement, the appellant says that he suffers from depression because of his injury and the chronic pain. The appellant also says that he has no motivation for anything.

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 toileting, transfers (in/out of bed), and transfers (on/off chair) but takes significantly longer (2-3 x longer) than typical with dressing, grooming, bathing, feeding self and regulating diet.

The Physician indicates that the appellant requires continuous assistance from another person with laundry and basic housekeeping explaining that he is unable to do laundry or housekeeping. The Physician indicates that with respect to shopping, the appellant is independent with going to and from stores, reading prices and labels, making appropriate choices and paying for purchases but requires periodic assistance and takes significantly longer than typical (2-3x longer) with carrying purchases home. The Physician indicates that the appellant's left arm pain and weakness limits his physical activities and that he is very limited with lifting and carrying.

With respect to meals, the Physician indicates that the appellant is independent with meal planning and safe storage of food but requires continuous assistance and takes significantly longer than typical (2-3x longer) with food preparation and cooking, explaining that the appellant needs help in the kitchen

The Physician indicates that the appellant is independent with all aspects of paying rent and bills, medications and transportation.

The Physician indicates that the appellant is independent with all aspects of social functioning but has marginal functioning with his immediate and extended social networks.

In the SR, the appellant says that without help from his roommate he would not be able to do jobs around his house

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that require two hands such as sweeping the floor, chopping or carrying firewood. The appellant says that lifting his hands to wash his hair can trigger pain and he can only use his right hand to wash his hair so it takes twice as long to wash his hair. The appellant says that putting on clothes, especially his jeans, is like hard labour. The appellant says that he has to be careful when he is cooking and lifting items such as a fry pan is difficult. He says that meal preparation takes about 45 minutes for breakfast or lunch. The appellant says that vacuuming takes him twice as long as the average person and that he is unable to mop or do any tasks that require moving a stick in a variety of different directions. The appellant says that he is unable to do any heavy lifting. The appellant says that when he goes grocery shopping he has to unpack his groceries from his truck in many trips and has to carry small batches of groceries.

In the RFR Statement, the appellant says that he needs help with all tasks requiring two hands such as sweeping, mopping, cleaning the bathroom, lifting/carrying, peeling/chopping, getting groceries home and putting them away. The appellant says that he has to keep his arm propped up when sitting or walking to take the pressure off his arm. The appellant says that dressing takes him 2-3 times longer than typical and he has to move slowly and think carefully about every movement to avoid "tweaking" his arm.

The appellant says that because of his depression he has no motivation to get things done and does not go out much because of pain and depression.

The Physician Statement indicates that he has read the appellant's SR and the RFR Statement and says that he is not surprised by the details that the appellant describes. The Physician indicates that he would expect a person in the appellant's condition to experience the types of restrictions to his everyday living activities that the appellant describes. The Physician says that he does not have the ability to watch his patients perform DLA and must rely on his patients for their information together with his knowledge of their condition. The Physician says that he accepts the appellant's information as a credible description of the types of limitations a person in his condition would face.

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 help from his roommate and friends and relies on his roommate for chores and firewood. The Physician indicates that the appellant does not routinely use any assistive devices and does not have an assistance animal.

Additional information provided

In his Notice of Appeal dated November 15, 2018, the appellant states that he does not believe the ministry's decision was reasonable and he believes that he meets the criteria to qualify for PWD designation.

Prior to the hearing the appellant provided a six page submission dated November 29, 2018 (the "Submission" containing the following documents:

1. Medical Document Authorizing the use of Cannabis for Medical Purposes under the Access to Cannabis for Medical Purposes Regulations (the Medical Document) completed by the Physician on May 4, 2018. The Medical Document authorizes the appellant to use a maximum of five grams of marijuana per day for 12 months.
2. Statement of the appellant dated November 28, 2018 (the "Appeal Statement") providing additional information regarding his condition. The appellant says that he has unbearable left shoulder/arm pain 1-4 times per day depending on this activity. The appellant says that when he has this unbearable pain he has to sit down, lean forward, cradle his arm and wait for the pain to subside, which typically takes one hour or more. The appellant says that his roommate is now very unwell and unable to help with the tasks around his home, which has made things even more difficult. The appellant describes the challenging process for him just to bring in three sticks of firewood weighing approximately 7 pounds and that it took approximately four hours to recover after that task. The appellant says that he asks anyone coming to his house to bring in firewood. The appellant says that he uses cannabis daily to control the pain. The appellant says that he

does not see the Physician very often because two specialists have told him they cannot operate and there is not much the Physician can do for him.

3. Document titled PWD eligibility criteria: Judicial Review sets standards (Eligibility Excerpt) completed by the appellant's advocate and containing information regarding *Hudson v Employment and Assistance Appeal Tribunal, 2009 BCSC 1461* ("Hudson").

At the hearing the appellant described that the pain in his left shoulder is like having a headache in that part of his body that increases with movement. The appellant stated that he is right handed but that with his left hand he cannot hold more than 2-3 pounds, cannot hold his arms straight out and turn them and that he has no options for surgery. He has tried a brace but that did not provide much relief. The appellant says that he uses cannabis for pain control and has to do what activities he can with one hand. The appellant says that he cannot hold a pot with two handles and has broken numerous glasses. The appellant says that he is depressed and feels like his house is a prison.

At the hearing, the appellant's advocate reviewed the Submission and argued that the number of episodes of pain and limitations are sufficient to demonstrate that the appellant has a severe physical impairment as set out in *Hudson*.

Admissibility of New Information

The ministry did not object to the appellant's new information. The panel has admitted the appellant's oral testimony, the Medical Document, and the Appeal Statement into evidence 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 new information supports the appellant's information regarding his physical condition, pain and ability to perform DLA.

The panel has accepted the information in the Notice of Appeal, the advocate's oral argument, the Submission, and the Eligibility Excerpt 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.

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 functional skills reported by the Physician in the MR with respect to walking unaided, climbing stairs unaided, and no limitation in the duration that the appellant can remain seated are not indicative of a severe physical impairment, particularly as there are no reported restrictions with the appellant's right arm.

The reconsideration decision indicates that although the appellant reports that he "tweaks" his left arm one or more times a day and needs to recovery from the intense pain he feels, requiring a rest from 1/2 hour to ½ day makes it difficult to determine how often, and for how long, the appellant typically experiences severe pain requiring recovery.

The ministry's position is that while the appellant has restrictions when lifting and carrying and holding items with his left arm, a severe impairment to his physical functioning has not been established on the basis that the appellant can complete all aspects of his mobility and the remainder of his physical abilities independently.

The appellant's position is that he has a severe physical impairment in his left arm/hand with chronic, unbearable pain. The appellant argues that the evidence provided is sufficient to establish his eligibility for PWD designation. Relying on *Hudson*, the appellant argues, through his advocate, that as the EAPWDA and EAPWDR do not define the term "severe", any ambiguity with respect to the interpretation of the term "severe" must be resolved in favour of the appellant.

The panel notes that although the Physician indicates that the appellant is unable to work, employability is not a criterion for designation of PWD.

The panel finds that the ministry was not reasonable in determining 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 derangement left arm from a biceps rupture and chronic left shoulder/upper arm pain. The Physician describes the appellant's condition as a "severe shoulder injury and chronic pain", and notes that the appellant has seen two orthopaedic surgeons and there are no surgical options.

While the Physician indicates in the MR, that the appellant can walk 4+ blocks unaided on a flat surface, can climb 2 to 5 steps unaided, and is not limited with respect to his seating duration, the Physician indicates that the appellant is unable to lift with his left arm. Similarly, in the AR, the Physician indicates that the appellant is independent with walking indoors, walking outdoors, climbing stairs and standing but cannot use his left arm due to pain and weakness and requires continuous assistance from another person with lifting and carrying and holding.

Although the MR indicates that the appellant has not been prescribed medications and/or treatments that interfere with his ability to perform DLA, the Appeal Statement and the Medical Document indicate that the appellant has been prescribed medical marijuana, which he relies on to help reduce his pain.

Although the Physician does not provide information with respect to any limitations with the appellant's right arm/hand, the panel finds that the ministry did not reasonably consider the level of the appellant's chronic pain in combination with his limitations and significant restrictions with activities requiring both arms/hands. While the ministry's position is that it is difficult to determine the appellant's required periods of recovery after his shoulder/arm pain is aggravated, the appellant's information, as supported by the Physician is clear that he has episodes of increased shoulder pain one to four times per day that require at least one hour after each episode to recover. In addition, in the Physician Statement, the Physician confirms that the restrictions and limitations reported by the appellant are reasonable given his condition.

In the AR, the Physician indicates that the appellant takes significantly longer than typical (2-3x longer) with many aspects of personal care and meals, and that he cannot do laundry or housekeeping and requires continuous assistance with these tasks. The Physician also explains that the pain and weakness in the appellant's left arm limits the appellant's physical activities and that he is very limited with lifting and carrying. Although the appellant is

independent in several areas of mobility and physical ability, the panel finds that the ministry was not reasonable in determining that the restrictions to the appellant's left shoulder/arm and resulting chronic pain were not sufficient to establish a severe physical impairment.

Taking all of the evidence into account, the panel finds that the ministry was not reasonable in determining that the appellant does not have a severe physical impairment.

Severe Mental Impairment

The ministry's position is that while the Letter indicates that the appellant has chronic depression, the Physician did not, in the MR, provide a mental health diagnosis giving rise to the appellant's impairment. The ministry's position is that in the MR, the Physician indicates only one significant deficit to the appellant's cognitive and emotional function related to emotional disturbance and in the AR, the Physician indicates major impact to DLA in the areas of emotion (depression) and motivation and one moderate impact in the area of bodily functions (sleep disturbance) due to pain. The ministry's position is that all other areas of cognitive and emotional functioning are reported to not be impacted by his impairment including, but not limited to, impulse control, insight and judgment, attention/concentration, executive, and memory. The ministry also indicates that despite the deficit and impacts noted in the AR, the Physician also indicates that the appellant remains independent in his DLA including making decisions about personal activities, care or finances, and the ability to communicate or interact with others effectively.

The appellant's position is that he has chronic depression and severe pain that impacts his emotions and motivation. The appellant's position is that he is limited and does not socialize or go out much because of his high levels of pain. The appellant says that he feels like his house is a prison.

Although the MR did not provide a diagnosis of a mental impairment, the Letter confirms the diagnosis of chronic depression. Although the Physician in the MR did not check off the box indicating that the appellant has significant deficits with cognitive and emotional function, the Physician did indicate that the appellant has deficits with emotional disturbance related to injury and chronic pain. Further, in the AR, the Physician indicates major impact in the areas of emotion and motivation and moderate impact to bodily functions. While there are several areas where there is no impact including consciousness, impulse control, insight and judgment, attention/concentration, executive, memory, motor activity, language, psychotic symptoms, other neuropsychological problems and other emotional or mental problems, the panel finds that the ministry was not reasonable in determining that the information provided does not establish a severe mental impairment.

Although there are only two areas of major impact and one area of moderate impact noted in the AR, the EAPWD legislation does not require that a certain number of areas of major impact must exist before a severe impairment is found. When the information from the appellant and the Physician is read together as a whole the panel finds that the ministry did not reasonably consider all the information.

In particular, the reconsideration decision indicates that the appellant is independent in his ability to communicate and interact with others effectively and while that is accurate it fails to consider the impact of the appellant's mental impairment as the Physician confirms that he has marginal functioning with respect to his immediate and extended social networks.

Based on the above, the panel finds that the ministry was not reasonable in determining 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.

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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 indicates that although the AR indicates that the appellant takes longer than typical to complete aspects of personal care, carrying purchases home from shopping, food preparation, the ministry's position is that 2-3 times longer than typical to complete these activities does not establish a significant restriction in these areas.

The ministry's position is that although the Physician indicates that the appellant requires continuous assistance with basic housekeeping, laundry, food preparation and cooking, when this information is considered within the context of the entire application, it is not clear that the appellant requires continuous assistance with all elements of these activities, as the appellant indicates that he is able to complete activities which do not require the use of both arms. The reconsideration decision notes that the appellant says that he is able to make simple meals in the kitchen without assistance or complete the laundry one item at a time, and although that may take 2-3 times longer, the ministry does not consider that to confirm a significant degree of restriction. The ministry's position is that while it is acknowledged that the appellant does require assistance with tasks requiring the use of both hands, it has not been established that the appellant is significantly restricted in his overall ability to complete DLA without assistance.

The reconsideration decision says that although the Physician indicates that the appellant has marginal social functioning with his immediate and extended social networks, he is independent in all areas of social functioning, so the ministry's position is that based on the evidence, it cannot be established that the appellant is significantly restricted in his social functioning activities.

The appellant's position is that relying on the *Hudson* decision, he must demonstrate that his impairments directly and significantly restrict his ability to perform at least two DLA. The appellant's position is that the evidence demonstrates that he experiences continuous, significant restrictions in the areas of mobility (lifting/carrying), personal care, meal preparation, housework, shopping and making decisions about personal activities, care or finances.

The panel finds that the ministry was not reasonable in determining 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 reconsideration decision, the ministry notes that the Physician did not complete the DLA page of the MR. The ministry notes that while this information is not required, it can be useful in determining restrictions to the appellant's DLA. The panel notes, however, that the instructions in Section 2 – Medical Report, Part E – DLA state the following: “Note: If you are complete the Assessor Report – Section 3, in addition to this Medical Report, do not complete this page (Part E)”. The panel finds that it is not reasonable for the ministry to indicate that it would have been useful for the Physician to complete that page, when the application instructions clearly tell him not to do so.

While the reconsideration decision indicates that the information does not establish that the appellant requires continuous assistance with all elements of basic housekeeping, laundry, food preparation, and cooking, the EAPWD legislation does not require that continuous assistance is required with all aspects of each DLA. EAPWDA section 2(2)(b)(i) requires that the appellant must provide information from a prescribed professional demonstrating

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direct and significant restrictions to his ability to perform DLA either continuously or periodically for extended periods. The information provided indicates that the appellant requires continuous assistance with laundry, basic housekeeping, food preparation and cooking and that he takes significantly longer than typical (2-3 times longer) with dressing, grooming, bathing, feeding self, regulating diet, carrying purchases home, meal planning, and cooking. The information provided by the appellant and the Physician is consistent and the Physician indicates his support for the appellant's reported restrictions and limitations.

Although the appellant says that he can make some simple meals and fold some laundry one item at a time, the panel finds that the ministry was unreasonable in determining that this statement means that the legislative criteria of EAPWDA section 2(2)(b)(i) were not met. Although the appellant says that he can make simple meals, he also explains that it takes him 45 minutes to prepare a simple breakfast or a simple lunch. The appellant says that putting on jeans is like "hard labour", and that he cannot mop, sweep, or lift any heavy items. The panel finds that when the evidence is read together as a whole and any ambiguity resolved in favour of the appellant, that the ministry was not reasonable in determining that the legislative criteria of EAPWDA section 2(2)(b) was not met.

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 reconsideration decision notes that the Physician indicates that the appellant receives assistance from his roommate for chores and firewood. However, 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 his roommate and friends because it takes him much longer than typical to perform some DLA and that he is unable to lift and carry items more than 2 or 3 pounds and cannot carry any items that require two hands. In the Appeal Statement the appellant says that his roommate is now unwell and is unable to help so he is not able to rely on his roommate for help. The appellant says that he has tried using a brace for his left shoulder/arm but it did not provide much assistance or pain relief. The appellant says that he requires help with sweeping, mopping, heavy lifting, bringing in firewood, lifting pots or pans with two handles, cleaning the bathtub, and carrying purchases home.

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 help from his roommate and friends. The Physician also indicates that the appellant requires continuous assistance with DLA of laundry, basic housekeeping, food preparation and cooking and periodic assistance with carrying purchases home. The Physician's evidence included the fact that there were no surgical remedies available to the appellant.

As the panel finds that the ministry was unreasonable in determining that the appellant does not have a severe impairment that directly and significantly restricts his ability to manage his DLA either continuously or periodically for an extended period of time, the necessary precondition is satisfied.

As the panel finds that the evidence of the Physician confirms that the appellant requires significant help to perform DLA, the panel finds that the ministry's decision that the appellant did not satisfy the legislative criteria of EAPWDA section 2(3)(b) was not reasonable.

Conclusion

Having reviewed and considered all of the evidence and the relevant legislation, the panel finds that the ministry's decision finding the appellant ineligible for PWD designation is not reasonable based on the evidence and is not a reasonable application of the legislation in the circumstances of the appellant. The panel therefore rescinds the ministry's decision and the appellant is successful in his 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) 2018/12/18

PRINT NAME Wendy Marten	
SIGNATURE OF MEMBER	DATE (YEAR/MONTH/DAY) 2018/12/18

PRINT NAME William Reid	
SIGNATURE OF MEMBER	DATE (YEAR/MONTH/DAY) 2018/12/18