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 March 5, 2019, 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* (EAPWDA) for designation as a person with disabilities (PWD). The ministry found that the appellant met the requirements of having reached 18 years of age and of a medical practitioner confirming that the appellant's impairment is likely to continue for at least 2 years.

However, the ministry was not satisfied 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, in the opinion of a prescribed professional, the appellant requires an assistive device, the significant help or supervision of another person, or the services of an assistance animal to perform DLA.

The ministry also determined that the appellant is not in any of the classes of persons set out in section 2.1 of the Employment and Assistance for Persons with Disabilities Regulation who may be eligible for PWD designation on alternative grounds.

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

Information before the ministry at reconsideration

The appellant's PWD application comprised of:

- A Medical Report (MR) and an Assessor Report (AR), both dated November 2, 2018, and completed by a general practitioner (GP) who has known the appellant for 2 years, and has seen the appellant 21 times in the past 12 months; and,
- The self-report (SR) section of the PWD application, dated October 22, 2018, to which the appellant attached:
  - i) Addendum 1 (3 pages);
  - ii) Summary of Documented Disabilities (3 Pages);
  - iii) Medical Imaging Report respecting a June 29, 2015 cervical spine CT scan;
  - iv) Page 1 of 2 of March 16, 2015 medical imaging results respecting the cervical spine;
  - v) August 17, 1998 Virology report; and,
  - vi) Page 1 of Patient Medical History Report from a pharmacy listing medications prescribed April - October 2018.

The appellant's Request for Reconsideration dated February 15, 2019, comprised of a 22-page typewritten submission to which the appellant attached previously provided medical documentation as well as additional medical documentation including:

- February 5, 2019, 3-page Medical History Summary;
- Documentation respecting medications prescribed for him in 2019;
- Medical documentation from 2014 and 2015 respecting hospitalization due to alcohol withdrawal and delirium tremens, atrial fibrillation, pancreatitis, and past surgeries as well as test results including an Echo Report, and a MRI;
- 2017 Audiogram results;
- 2018 Cardiac Rehabilitation and Prevention Exercise Program referral;
- Letters dated December 20, 2018 (notes changes to medication, including that the GP no longer has the appellant on Warfarin) and January 15, 2019 (appropriate pacemaker function, option of ablation) to the GP from a cardiologist; and,
- May 14, 2018 letter from GP stating appellant is unfit for work from May 13, 2018 due to severe coronary artery disease and is awaiting bypass surgery.

Information provided on appeal and admissibility

On appeal, the appellant provided in excess of 200 pages of material, including previously provided documentation and the following:

- Notice of Appeal (NOA) dated March 15, 2019;
- 20-page handwritten submission dated March 14, 2019;
- 3-page handwritten submission dated March 27, 2019, and 1-page handwritten submission dated March 28, 2019 to which the appellant attached a 12-page handwritten submission entitled Critical Medical Notations, in which the appellant describes 33 Key Messages for which he cites the related medical documentation. The appellant also describes side-effects of his current prescription medications and their effect on his ability to perform DLA.
- 18-page handwritten submission dated March 28, 2019, in which the appellant outlines 55 Key Messages for which he cites the related medical documentation.

- March 29, 2019 13- page handwritten submission.
- Numerous medical documents, some of which go back as far as 2008, and which include two 2013 Psychiatry Consultation reports, as well as 2018 and 2019 medical documents respecting the appellant's heart function.

By email, the ministry indicated that its appeal submission would be the reconsideration summary. The ministry did not take a position as to the admissibility of the appellant's appeal submissions.

In accordance with section 22(4) of the *Employment and Assistance Act* (EAA), the panel may admit oral and written testimony that is in support of the information and records available at the time of reconsideration.

The panel determined that the additional evidence in the appellant's appeal submissions related to medical conditions previously referenced by the appellant and were in support of the appellant's position at reconsideration. Accordingly, the panel admitted the additional information.

The panel notes that the appellant's appeal submissions also included a substantial amount of argument. The arguments of both parties are set out in Part F of this decision.

Summary of relevant evidence

Diagnoses and Health History

In the PWD application, where asked to specify diagnoses related to the applicant's impairment and indicate the severity of the medical conditions relevant to the impairment, the GP reports:

- Coronary artery bypass surgery (July 2018)
    - Elective CABG [coronary artery bypass graft] in July 2018 – 100% occlusion of CAD [coronary artery disease]. Also had pacemaker inserted. Has atrial fibrillation. Recovery from surgery ongoing. Significant post op chest pain.

- Chronic neck pain and arthritis of elbows, wrists and right shoulder
    - Due to degenerative changes in C-spine and arthritis of above mentioned joints. Restricted ROM [range of motion] of neck so does not drive. Reduced ability to lift, carry, manual dexterity. [Medical imaging test results confirm multilevel degenerative changes of the spine].

- Hearing impairment
    - Markedly reduced hearing despite bilateral hearing aids. Has significant trouble following conversations.

- Atrial fibrillation – on warfarin and pacemaker
    - Takes Warfarin – potent blood thinner. Increased risks of serious bleed if injured. Medications for A.Fib [atrial fibrillation] and CAD contribute to fatigue.

Additionally, the GP writes "Please give due consideration to the combined effect of patient's medical problems which affect his abilities." The GP states that he provides ongoing care for acute and chronic medical, psychological and social needs, including referral to other clinicians/agencies when needed.

Physical Impairment

The GP assesses the appellant's functional skills as:

- able to walk 2 to 4 blocks unaided on a flat surface;
- able to climb 2 to 5 steps unaided;
- limited to lifting 5 to 15 lbs.;
- can remain seated for 2 to 3 hours; and,
- sensory difficulties with communication – hearing impairment.

The GP also reports that no prostheses or aids are required for the appellant's impairment and that all listed aspects of mobility and physical ability are managed independently - walking indoors and outdoors, climbing stairs, standing, lifting, and carrying and holding.

The virology report indicates "reactive" for Hepatitis C virus.

The 2017 Audiology report concludes "A mild sloping to moderate sensorineural hearing loss bilaterally. Word discrimination is 100% at 65dB in the right ear and 100% at 70dB in the left."

In the SR attachments, the appellant describes the consequences of his "recent open heart/bypass surgery plus pacemaker insertion due to severe coronary heart disease" as pain, discomfort, chest pressure and tightness, dizziness, weakness and fatigue, and indigestion and heartburn. The appellant also reports having "moderate to severe spinal cord damage," resulting in limited lifting and carrying, and references some of the findings in the medical imaging reports. The appellant also describes other medical issues that he states are supported and corroborated with medical records including, familial tremors, tinnitus accompanied by severe hearing loss, recurring pancreatitis, multiples bone fractures (unable to stand on feet too long or walk any great distances), chronic obstructive pulmonary disease causing difficulty walking up stairs and requiring the use of inhalers, depression and anxiety and other mental health issues, including alcohol and narcotic addictions, long term hepatitis, internal health issues ("sacks/bumps within the bowel," and acid reflux disease). The appellant also reports needing dentures.

In his reconsideration submission, the appellant also reports that he has chronic osteomyelitis (which he explains is not documented as the onset was in a foreign country) and irritable bowel syndrome which is getting worse every year, that he must take a prolonged rest period every few hundred feet and that his cardiac surgeon instructed that lifting is to a maximum of 10 lbs. The appellant reports needing hand splints and a back brace.

The appellant's subsequent submissions reiterate and expand on these self-reported limitations on physical functioning, including the appellant's assertion that he is "deaf" and has restrictions to mobility indoors and outdoors due to dizziness and fainting and his fear of instability.

Ability to Communicate

- Sensory difficulty with communication – hearing impairment.
- Speaking and reading abilities are good
- Writing ability is satisfactory
- Hearing ability is satisfactory ("With bilateral hearing aids").

The appellant reports that he is deaf without hearing aids and that he was unable to obtain hearing aids due to cost. His hearing impairment results in significant bouts of anger, frustration and psychosocial disruptions.

Mental Impairment

In the MR, the GP reports:

- Significant deficits with 3 of the 11 listed areas of cognitive and emotional function – emotional disturbance, motivation, and attention or sustained concentration. "Low mood + anxiety – Related to significant medical problems."
- No assessment of restrictions to social functioning.

In the AR, the GP reports:

- The section respecting the impact on daily functioning for 14 listed aspects of cognitive and emotional functioning was not completed.
- The section respecting social functioning was not completed.

In his submissions, the appellant states that his medical issues result in significant deficits to cognitive and emotional functioning, having a distinct and direct impact on daily survival. Major social isolation results from hearing impairment and eyesight challenges. He has been dealing with depression for years for which he has been prescribed six different anti-depressants, all of which failed to work. Depression and anxiety cause major mood swings, withdrawal from daily living and uncontrollable weeping. He sits alone in the dark for days and has highly irregular eating and bathing. The appellant assessed himself as requiring continuous support/supervision with several aspects of social functioning and as having very disrupted functioning with both his immediate and extended social networks. He has also been diagnosed as bi-polar and as having ADHD.

DLA

The GP reports the following:

- The appellant has been prescribed medication and/or treatments that interfere with the ability to perform DLA – "Combination of beta-blocker and BP [bypass or blood pressure] meds causing fatigue. Bleeding risk as on Warfarin."
- Heat disease (CABG, A-Fib + Pacemaker), chronic arthritis, impaired hearing and bleeding risk due to Warfarin are the impairments that impact the appellant's ability to manage DLA.
- Information respecting the DLA "move about indoors and outdoors" is as described above under the heading *Physical Impairment*.
- Respecting the DLA "personal care" dressing, grooming, bathing, toileting, feeding self, and regulating diet are managed independently, with transfers in/out of bed assessed as taking 5 minutes (Feels dizzy on getting out of bed) and transfers on/off chair taking 2 minutes (Dizzy on standing up). Dizziness due to medications. Increased risk of falling
- Respecting the DLA "basic housekeeping," both basic housekeeping and laundry are managed without assistance or taking significantly longer than typical.
- For the DLA "shopping," going to and from stores, making appropriate choices, paying for purchases, and carrying purchases home are managed without assistance or taking significantly longer than typical. Reading prices and labels requires eye glasses, identified as an assistive device.

- For the DLA "meals," meal planning, food preparation, and cooking are managed independently and do not take significantly longer than typical. Safe storage of food "varies" – "does not always put food away due to fatigue."
- All listed tasks of the DLA "pay rent and bills" are managed independently.
- For the DLA "medications," filling/refilling prescriptions and safe handling and storage are managed independently. Taking as directed "varies" – sometimes forgets.
- For the DLA "transportation," using public transit and using transit schedules and arranging transportation is managed independently. Getting in and out of a vehicle takes 2 minutes (takes longer due to arthritis pain).

In his submissions, the appellant reports that DLA require significantly longer time frames or become neglected. Housekeeping and laundry are done by his roommate, he forgets to take medications half the time and requires supervision, and many days doesn't bother to get dressed due to fatigue and lack of motivation. He survives with continuous daily assistance from friends, neighbours and others, without whom he would be institutionalized. He does not go shopping because he is unable to carry more than 10 lbs and chronic fatigue and arthritis limit and prohibit grabbing and carrying groceries; this is also done by his roommate. He cannot shower by himself due to the risk of a fall, and he cannot cook for himself due to tiredness, arthritis, tremors and confusion. The combination of medical conditions significantly restricts his ability to complete DLA when help is not available.

Need for Help

The GP describes help provided by other people as "None." Assistance provided through the use of assistive devices is described as grab bars in shower, bilateral hearing aids, and reading glasses.

In his submissions, the appellant reports that he also needs hand splints, physio tape and a back brace, and he would benefit from orthotics.

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. That is, was the ministry reasonable when determining that the requirements of section 2(2) of the EAPWDA were not met because:

- a severe physical or mental impairment was not established;
- the appellant's DLA are not, 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 does not require an assistive device, the significant help or supervision of another person, or the services of an assistance animal 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 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 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.

(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

Eligibility under section 2.1 of the EAPWDR

In the absence of any evidence or argument respecting eligibility for PWD designation under section 2.1 of the EAPWDR, the panel finds that the ministry reasonably determined that it has not been established that the appellant falls within the prescribed classes of persons under that section. The panel's discussion below is limited to eligibility for PWD designation under section 2 of the EAPWDA and section 2 of the EAPWDR.

Eligibility under section 2 of the EAPWDA

Physical Impairment

As expressed in his numerous submissions, the appellant's position is that he has a number of severe physical conditions which have a direct impact on his functioning, including many that were not addressed by the ministry, such as hepatitis C, IBS, and diverticulitis. While noting that he may have erred when providing the GP the input for the original application, due to it being an exceptionally good day, and that the GP did not have access to medical records not digitized and is constrained by time, the appellant argues that he has provided documentation confirming his many medical conditions. However, the appellant argues, the ministry has intentionally ignored many of these conditions, instead "picking and choosing" some of them, thereby minimizing the effects and impacts of his maladies.

The appellant also argues that the ministry has failed to recognize the impact of the diagnoses that it did consider, including the impact of atrial fibrillation, noting that chronic heart disease does not improve over time and is impacted by the inability to afford to participate in programs that would benefit his health, including the coronary rehabilitation program, and that additional heart surgery has been recommended. The appellant argues that he is "deaf" without hearing aids that he cannot afford, which causes psychosocial disruptions. Additionally, the ministry has not given due consideration to the GP's request for "due consideration to the combined effect of patient's medical problems which affect his abilities" or the GP's statement that he provides ongoing care for the appellant's acute and chronic medical, psychological and social needs.

Additionally, the fact that he has been prescribed an opioid and a "smorgasbord" of other daily medications is evidence that he is disabled, as is the fact that he is not employable. Furthermore, he requires assistive devices, including hand splints, a back brace and glasses (which he says he cannot afford).

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, rather, the nature of the impairment and the extend of its impact on daily functioning as evidenced by limitations/restrictions in mobility, physical ability and functional skills must be assessed. The ministry notes that the appellant has provided medical reports that show the many different medical conditions that the appellant has experienced in the past but finds that the GP did not include them either because they have been resolved or they do not relate to the appellant's current 'impairment' as the information does not indicate how these medical conditions currently affect physical functioning or DLA. Additionally, no further medical information has been provided following the heart surgery which occurred after the PWD application was completed by the GP. The ministry notes that access to health care can be made more difficult due to financial constraints, but that the ministry does not consider this or employability when assessing PWD eligibility. The ministry finds that the appellant's self-reported level of impairment is more severe than that indicated by the GP and because a physician or prescribed professional has not confirmed the appellant's information, the ministry relies more heavily on the GP's assessments.

The ministry finds that the physical functional skills reported by the GP are more reflective of a moderate level of impairment. The ministry also notes a discrepancy between the appellant's information that he needs to rest 5 times when walking 4.5 blocks and the GP's assessment that walking is managed independently with no indication that it takes significantly longer; the ministry finds that the discrepancy makes it difficult to determine overall functioning in this area.

The ministry notes that while the GP indicates that no assistive devices are used, the GP also identifies that the appellant routinely uses grab bars in the shower, bilateral hearing aids and reading glasses. The ministry does not consider the use of these simple assistive devices to be indicative of a severe physical impairment and notes that the appellant's reported need for a back brace and hand splints is not confirmed by the GP.

Acknowledging that the appellant has limitations to his physical functioning, and that he may not have been completely forthcoming with his GP, the ministry argues that the legislation clearly provides that determination of severity of impairment is at the discretion of the minister, taking into account all evidence including that of an applicant, but that 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. The ministry finds that the information provided in the GP's assessments of basic physical functioning and ability to manage activities requiring mobility and physical ability does not establish a severe physical impairment.

Panel Analysis

The legislation, section 2 of the EAPWDA, requires that the minister "is satisfied" that a person has a severe physical or mental impairment which, as the ministry notes, gives the ministry discretion when making the determination. In duly exercising this discretion, the ministry must consider and assess all of the information before it and where there are discrepancies on the evidence, make determinations as to the weight given to the conflicting information. In this case, the ministry has placed the most reliance, or weight, on the assessments provided by the GP where there is a conflict with the appellant's self-reported information. The panel considers this to be reasonable given that the legislation does, as the ministry notes, make it clear that the fundamental basis for assessing PWD eligibility is information from a prescribed professional. That the appellant may have not been entirely forthcoming when discussing his health and functioning with the GP cannot be considered, and the panel notes that the GP had seen the appellant numerous times and indicates he also relied on medical records. While the appellant has provided additional medical documentation from other prescribed professionals addressing multiple medical diagnoses, with the exception of the 2017 Audiology report, the documentation does not address how these various medical conditions impact the appellant's current physical functioning which is the key issue. The panel also notes that the legislation does not identify employability or financial constraints as considerations when determining PWD eligibility.

The panel finds that the GP's assessment of the appellant's physical functional skills was reasonably viewed by the ministry as reflecting a moderate level of impairment. The GP indicates that no assistive devices are required for mobility and all aspects of mobility and physical ability are managed independently without taking significantly longer. Limitations to physical functioning resulting from the appellant's heart and spinal conditions are noted; however, no limitations on the ability to walk indoors are reported, and the limitations for walking outdoors, lifting (the appellant's self-reported lifting limit of 10 lbs. is in keeping with the GP's assessment of 5 to 15 lbs.), climbing stairs, and remaining seated were reasonably viewed by the ministry as reflecting a moderate impairment. That the appellant requires grab bars for bathing and the use reading glasses does not establish severe impairment, and as the ministry notes, the need for additional assistive devices is not confirmed by the GP.

Respecting the appellant's hearing impairment, the GP reports that the appellant has markedly reduced hearing despite bilateral hearing aids, with significant trouble following conversations, but that the appellant's ability to hear is satisfactory with hearing aids. The appellant wrote that he is "deaf" without hearing aids that he cannot afford; however, the Audiology report results are described by the audiologist as identifying mild hearing loss at lower frequencies and moderate hearing loss at higher frequencies. While the panel would not describe hearing aids as simple assistive devices, the panel does find that the medical information respecting the appellant's hearing loss is in keeping with the ministry's conclusion of moderate impairment.

While the appellant argues that the ministry has not given sufficient weight to the GP's comments respecting the combined effect of the appellant's medical problems affecting his abilities and the scope and nature of care provided by the GP, the panel finds that the information provided by the GP related to the impact on the appellant's abilities, as discussed above, is that the appellant remains independent, albeit within moderate limitations, and that the appellant's medical conditions have minimal impact on his ability to manage physical DLA tasks. There was no further information from the GP provided on the appeal in terms of amendments or elaboration to the previous assessments, and the appellant wrote that the GP was not prepared to spend more time on these reports.

Again noting that the legislative test requires an assessment of impairment to current functioning resulting from medical conditions, and that the existence of serious medical conditions or illnesses alone does not establish

resulting impairment, based on the above analysis, the panel concludes that the ministry was reasonable in determining that the information does not establish a severe impairment of physical functioning.

Mental Impairment

The appellant's position is that he has major social isolation, as he has no local support network and is not developing new relationships, and that his depression and social isolation are associated with his deafness. He also argues that he has been diagnosed with ADHD and that the medical documentation provided respecting his risky lifestyle and behaviour is evidence of problems making appropriate social decisions. Furthermore, while the GP did not complete the section in the AR respecting social functioning, his own assessment indicates that he requires continuous assistance interacting with others and dealing with unexpected demands.

The ministry's position is that although the GP diagnoses low mood and anxiety, with significant cognitive and emotional deficits in the areas of emotional disturbance, motivation and attention or sustained concentration, the GP did not assess impacts on daily functioning or the appellant's social functioning. As such, the GP has not confirmed the appellant's description of difficulty communicating due to cognitive difficulties, social isolation, and inappropriate decision-making. The ministry acknowledges communication difficulties related to hearing loss but concludes that they do not establish a severe impairment of mental functioning. Nor has the GP confirmed a diagnosis of ADHD. The ministry finds that while the appellant may experience deficits to his cognitive and emotional functioning due to depression and anxiety, the information does not establish a severe impairment of mental functioning.

Panel Analysis

Noting that hearing loss is not a mental impairment and that any resulting difficulties with communication are not evidence of mental impairment, the GP does not identify cognitive communication difficulties. The GP does identify significant deficits with emotional disturbance, motivation and attention or sustained concentration, described as low mood and anxiety related to the appellant's significant medical problems (no other mental health diagnoses are made by the GP). However, the GP does not identify any resulting impacts on cognitive and emotional daily functioning or impacts on social functioning due to mental impairment and only one impact on DLA is attributed to mental functioning - "sometimes forgets" to take medications as directed. The appellant's self-reported information significantly differs from the GP's information and for the reasons discussed under the heading *Physical Impairment*, the panel considers the ministry's greater reliance on the GP's information to be in keeping with the legislative language. There was no current information available on the appeal from the psychiatrist with whom the appellant consulted in 2013, or other mental health specialists with whom the appellant wrote he is currently consulting, to indicate current impacts from diagnosed mental disorders.

Based on the GP's assessment of minimal to no impact on daily emotional, cognitive and social functioning arising from the appellant's depression and anxiety, the panel concludes that the ministry was reasonable in concluding that a severe mental impairment is not established.

Restrictions in the ability to perform DLA

The appellant's position is that he is directly and continuously restricted in his ability to perform DLA due to the pain, restricted range of motion, fatigue, dizziness, lack of mental focus, depression, diarrhea, breathing difficulties, shaking and other symptoms of his many medical issues. He is reliant on others for help with aspects

of his personal care, meals, shopping, housekeeping, ensuring medications are taken, and transportation and is socially isolated due to his deafness. While arguing that he is "independent" in the sense that he is able to get assistance from others with his DLA, he strongly disagrees with the GP's assessment of his ability to manage DLA.

The ministry notes that the GP reports that the appellant independently manages most of his DLA without assistance. While restrictions are noted for transfers to/from bed and on/off chairs and for getting in and out of a vehicle, the ministry concludes that the additional time required does not reflect a significant restriction. The ministry also finds that the need for reading glasses is not indicative of a significant restriction and that the level of assistance required for putting food away ("varies – does not always put food away due to fatigue") and taking medications ("varies sometimes forgets") is difficult to determine in the absence of an explanation as to how often these occur. The ministry finds that the degree of restrictions self-reported by the appellant are not supported by the GP's information and that the ministry relies on the medical opinion and expertise of the GP when assessing restrictions with DLA.

Panel Analysis

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, is dependent upon the evidence from prescribed professionals.

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, do not include the ability to work. While there is likely some crossover between restrictions impacting the ability to work and those impacting the ability to perform DLA, the demands of employment are routinely more demanding in terms of frequency and duration than managing DLA tasks, and more importantly, only restrictions on the ability to perform the DLA set out in the legislation are considered under section 2(b)(i) of the EAPWDA.

In this case, although a significant amount of medical information has been provided, the only information from a prescribed professional assessing the appellant's current ability to manage the prescribed DLA is that from the GP in the PWD application. In the May 14, 2018 letter, the GP wrote that the appellant was unfit for work due to severe coronary artery disease and he was awaiting bypass surgery; however, there is no further information provided by the GP on the appeal identifying restrictions specifically to the appellant's ability to perform DLA, rather than to his employability. The GP has assessed the appellant as independently managing the vast majority of DLA tasks independently without the need for any assistance and without taking significantly longer to perform the tasks. The GP does identify limitations with most aspects of mobility and physical ability (relates to the DLA move about indoors and outdoors); however, as previously discussed, they are reasonably viewed as reflecting a moderate level of impairment. Furthermore, limitations with walking and lifting are not identified as impacting the ability to perform other DLA that involve those abilities, such as housekeeping, shopping and food preparation/cooking.

The appellant takes longer with transfers due to dizziness and getting in and out of a vehicle due to arthritic pan, and requires grab bars when bathing, but these limitations alone are not reflective of a significant restriction in the ability to manage personal care or transportation and the appellant is assessed as independently managing all other listed tasks within those DLA without any noted limitation. Similarly, the need for reading glasses when shopping does not establish a significant restriction in the ability to manage shopping. The GP also reports that

there are times when the appellant does not put his food away due to fatigue and that he sometimes forgets to take his medication but there is no description of how often this occurs, in order to assess the significance and duration of this restriction, and no restrictions in the ability to manage the remaining tasks of the associated DLA, meals and medications, are identified.

Respecting the two DLA related exclusively to mental impairment - make decisions about personal activities, care or finances and relate to, communicate or interact with others effectively – the only restriction attributable to mental functioning is sometimes forgetting to take medication. While the GP notes significant trouble following conversations due to the appellant's hearing impairment and assesses the ability to hear as satisfactory, no limitations with communication are attributed to mental impairment.

Noting again that the legislation requires that the ministry is satisfied that an applicant's DLA are directly and significantly restricted "in the opinion of a prescribed professional," based on the GP's assessment of the appellant's ability to perform DLA, the panel concludes that the ministry was reasonable to determine that there is not enough evidence to establish that in the opinion of a prescribed professional the appellant's impairment significantly restricts the ability to perform DLA either continuously or periodically for extended periods.

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 establishment of direct and significant restrictions with daily living "activities" is a precondition of requiring "help to perform those activities." In this case, the panel found the ministry was reasonable in concluding that direct and significant restrictions with DLA were not was established. Accordingly, the panel also finds that the ministry reasonably concluded that it cannot be determined that the appellant requires help to perform "those activities" as a result of direct and significant restrictions with daily living "activities" 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 therefore confirms the decision. The appellant is not successful on appeal.

PART G – ORDER

THE PANEL DECISION IS: (Check one) ☒ **UNANIMOUS** ☐ **BY MAJORITY**

THE PANEL ☒ **CONFIRMS THE MINISTRY DECISION** ☐ **RESCINDS THE MINISTRY DECISION**

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

LEGISLATIVE AUTHORITY FOR THE DECISION:

Employment and Assistance Act

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

and

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

PART H – SIGNATURES

PRINT NAME
Jane Nielsen

SIGNATURE OF CHAIR

DATE (YEAR/MONTH/DAY)
2019/04/24

PRINT NAME
Sandra Walters

SIGNATURE OF MEMBER

DATE (YEAR/MONTH/DAY)
2019/04/24

PRINT NAME
Donald (Dan) McLeod

SIGNATURE OF MEMBER

DATE (YEAR/MONTH/DAY)
2019/04/24