

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 13, 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 age requirement and that the appellant had a severe physical impairment, but was not satisfied that:

- The appellant's impairment is likely to continue for two years or more;
- 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

EAPWDA, section 2

Employment and Assistance for Persons with Disabilities Regulation (EAPWDR), section 2

PART E – SUMMARY OF FACTS

On August 8, 2019 the ministry received the appellant's PWD application comprised of a Medical Report (MR) and an Assessor Report (AR) completed by the appellant's nurse practitioner (the "Nurse Practitioner") on July 25, 2019, and the appellant's self-report (SR) dated June 17, 2019.

The appellant's request for PWD designation was denied on September 10, 2019. On October 15, 2019 the ministry received the appellant's request for reconsideration form (RFR) along with a letter from the Nurse Practitioner dated November 12, 2019 (the "November Letter").

On November 13, 2019 the ministry completed its review.

On November 22, 2019 the tribunal received the appellant's Notice of Appeal dated the same day.

Summary of relevant evidence

Diagnoses

In the MR, the Nurse Practitioner indicates that the appellant was diagnosed with left hip osteoarthritis in January 2014 and right subtalar (foot/ankle) osteoarthritis in October 2017. The Nurse Practitioner indicates that the appellant has been a patient since May 2013 and the Nurse Practitioner has seen the appellant two to 10 times in the past 12 months.

In the health history portion of the MR, the Nurse Practitioner indicates that the appellant has marked disability related to left hip and right ankle/foot osteoarthritis. The Nurse Practitioner indicates that the appellant is using a cane and has pain 7-8/10 all the time, and is very much home bound at present. The Nurse Practitioner indicates that the appellant is unable to stand for prolonged periods and that the intra-articular steroid injections are not effective. The Nurse Practitioner indicates that the appellant is awaiting total hip replacement and is unable to hold any job.

The CT abdomen contrast report dated May 24, 2019 indicates a moderate hiatus hernia and severe hepatic steatosis in the liver.

The left hip x-ray July 17, 2019 indicates severe narrowing of the left hip joint with features suggestive of avascular necrosis with severe secondary degeneration. Moderate degenerative changes are seen in the right hip too.

The hospital outpatient clinic note of an orthopaedic surgeon dated July 17, 2019 (the "Clinic Note") indicates that the appellant was seen after a period of 10 months with worsening left hip pain, noting that the appellant was limping badly and unable to walk without a cane. The Clinic Note indicates that the appellant is essentially housebound because of a painful and arthritic left hip, and has to use a cane at all times. The Clinic Note also indicates that the appellant has significant problems related to right foot subtalar arthritis.

The Clinic Note indicates that the appellant's partner passed away earlier in the year, which was devastating to the appellant. The Clinic Note indicates that the appellant has some degree of obesity, hypertension, and likely has type 2 diabetes. The Clinic Note indicates that the appellant has to lose weight but that the appellant is not morbidly obese, with a BMI of 34 kg/m². The Clinic Note indicates that the appellant can continue with intra-articular cortisone injections or have a hip replacement but concerns that the replacement would not last beyond 15 to 20 years given the appellant's age and weight. The Clinic Note indicates that risks of hip replacement surgery were discussed and that the appellant would be booked for a total left hip replacement.

In the November Letter, the Nurse Practitioner indicates that the appellant has severe osteoarthritis left hip, is walking with a cane, and requires left hip surgery.

Degree and Course of Impairment

In the MR, the Nurse Practitioner indicates that the duration of the appellant's impairment is unknown and that the date for surgery is "...not given yet". The Nurse Practitioner indicates that hopefully the appellant's left hip will improve post surgery. The Nurse Practitioner also indicates that the appellant is waiting to see another specialist in regards to the appellant's right foot.

Physical Impairment

In the MR for Functional Skills, the Nurse Practitioner indicates that the appellant is not able to walk at all unaided on a flat surface, can climb two to five steps unaided (avoids them, uses cane), can lift 5 to 15 pounds, and can remain seated one to two hours.

In the AR, the Nurse Practitioner indicates that the appellant requires continuous assistance with lifting and carrying, uses assistive devices for all aspects of mobility and physical ability, and takes significantly longer than typical with climbing stairs. The Nurse Practitioner notes that the appellant uses a cane at all times, limps, and needs to use handrails for stairs.

In the November Letter, the Nurse Practitioner indicates that the appellant's pain is causing significant disability.

The SR indicates that the appellant suffers from bone on bone pain in the left hip and is currently awaiting a hip replacement. The appellant also reports a prior dislocation in the right foot that is in need of surgery. The appellant reports suffering from chronic pain.

Mental Impairment

In the MR, the Nurse Practitioner indicates that the appellant has significant deficits with cognitive and emotional function in the area of emotional disturbance (on medication) and motivation.

In the AR, the Nurse Practitioner indicates that the appellant's ability to communicate with speaking, reading, and writing is good and hearing is poor (has hearing aids). The Nurse

Practitioner indicates that the appellant has moderate to major impact with bodily functions and motivation, minimal impact to attention/concentration and no impact to consciousness, impulse control, insight and judgment, executive, memory, motor activity, language, psychotic symptoms, other neuropsychological problems, or other emotional or mental problems.

In the SR the appellant reports suffering from depression and anxiety.

DLA

In the AR, the Nurse Practitioner indicates that for personal care, the appellant is independent with feeding self, requires periodic assistance from another person with regulating diet, uses an assistive device for toileting, transfers (in/out of bed) and transfers (on/off chair) and takes significantly longer than typical with dressing, grooming, and bathing. The Nurse Practitioner explains that the appellant uses a cane, is unable to stand for any length of time and has lack of motivation and anxiety, which leads to increased or decreased eating.

For basic housekeeping, the Nurse Practitioner indicates that the appellant needs continuous assistance from another person with laundry and basic housekeeping, and explains that the appellant has to get help from family on occasion.

For shopping, the Nurse Practitioner indicates that the appellant is independent with reading prices and labels, making appropriate choices and paying for purchases but uses an assistive device and takes significantly longer than typical with going to and from stores and carrying purchases home.

For meals, the Nurse Practitioner indicates that the appellant is independent with meal planning and safe storage of food, but requires continuous assistance from another person or is unable with food preparation and cooking, explaining that the appellant is unable to stand.

The Nurse Practitioner indicates that the appellant is independent with all aspects of paying rent and bills and medications. For transportation the Nurse Practitioner indicates that the appellant uses an assistive device for getting in and out of a vehicle. The Nurse Practitioner did not provide any information regarding the appellant's abilities to use public transit or to use transit schedules and arranging transportation.

The Nurse Practitioner indicates that the appellant is independent with all aspects of social functioning. The Nurse Practitioner indicates that the appellant has marginal functioning with immediate social network and very disrupted functioning (major social isolation) with extended social networks, noting that the appellant is homebound mostly due to mobility issues and resultant depression.

In the November Letter, the Nurse Practitioner indicates that the appellant is able to manage DLA but takes significantly longer to finish tasks. The Nurse Practitioner indicates that the appellant reports avoiding stairs at all cost, and takes 2-3 times longer in finishing tasks on hand and sometimes more depending on the task. The Nurse Practitioner indicates that for grocery shopping, the appellant reports only being able to pick up one gallon of milk at a time, makes several trips back and forth taking items that cannot be left in the trunk and then coming back

later in the day or the next day to get the remaining items. The Nurse Practitioner indicates that the appellant reports putting laundry in a small bag and dragging it across the floor due to inability to carry bags. The Nurse Practitioner also indicates that the appellant has great trouble bending over so cleaning a bathroom of an apartment less than 1000 square feet can take half an hour to an hour.

The SR indicates that the appellant:

- has bilateral hearing loss requiring bilateral hearing aids;
- uses a cane at all times when mobilizing and that it takes three times longer than typical when walking;
- can only stand for up to 15 minutes at a time and then the appellant's right foot will go numb; and
- can lift up to 15 pounds, as long as no bending is required.

The SR indicates that the appellant suffers from eating problems due to depression (only eating very small portions at a time). The appellant reports poor hygiene (will go up to a week without bathing or showering) and sleep disturbance (only 2 hours sleep at a time) due to depression, anxiety, and a lack of motivation.

The SR indicates that the appellant has to sit to get dressed, is unable to get dressed, groom or bathe 3-4 days per week due to depression and lack of motivation. The appellant reports being unable to carry a laundry basket and will avoid laundry until the appellant has nothing clean and has no choice but to do laundry. The appellant reports doing small shopping trips and relying on easy, prepared foods. The appellant reports that transportation takes at least two times longer than typical.

Need for Help

In the AR, the Nurse Practitioner indicates that the appellant receives help with DLA from family. The Nurse Practitioner indicates that the appellant routinely uses a cane. The appellant does not have an Assistance Animal.

Additional information provided

In the Notice of Appeal the appellant states: "My doctors and I feel that I qualify for PWD benefits".

Prior to the hearing the appellant provided a letter from the Nurse Practitioner dated December 4, 2019 (the "December Letter") indicating that the appellant suffers from osteoarthritis of the left hip and right foot secondary to post traumatic post subtalar dislocation that was treated surgically in 2009. The Nurse Practitioner indicates that both conditions have "...*worsened significant (sic) as mentioned previously*". The Nurse Practitioner indicates that for duration, the appellant's impairment is likely going to last longer than two years especially for the appellant's foot.

The Nurse Practitioner indicates that the appellant had prior surgical intervention for the right

foot and is waiting to see an orthopaedic surgeon for further foot assessment. The Nurse Practitioner indicates that the impairments and financial crunch are taking a toll on the appellant's already compromised mental health/depression. The Nurse Practitioner indicates that the appellant is being treated for depression and is waiting to see a psychiatrist.

Admissibility of New Information

The ministry did not object to the information in the appellant's Notice of Appeal or the Letter. The panel has admitted the information in the Letter, 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 information regarding the appellant's impairment and provides further information regarding the likely duration of the physical impairment.

The panel has admitted the information in the Notice of Appeal 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

- the appellant's impairment is unlikely to continue for two or more years;
- 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 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

Duration

The ministry's position is that the evidence provided does not demonstrate that the appellant's impairment is likely to continue for two years or more as required by section 2(2)(a) of the EAPWDA. In particular, the reconsideration decision notes that the information provided by the Nurse Practitioner in the MR indicates that the duration of impairment is unknown and the date of surgery is not given yet. The ministry also notes that the Nurse Practitioner indicates that hopefully the appellant will see improvement in the left hip post surgery and that the appellant is waiting to see another specialist for right foot.

The appellant's position is that the left hip and right foot impairments have worsened, there is no indication as to when the appellant will have a total left hip replacement and that after surgery there will be a significant recovery period of at least three months. The appellant confirms that the appellant has to lose some weight before surgery and is waiting for further follow up with an internal medicine specialist in regards to liver issues. The appellant reports that the appellant is still waiting to see a specialist for the right foot. The appellant's position is that the information provided in the December Letter confirms that the impairment is likely to last longer than two years.

The appellant also reports "*pretty severe depression*", particularly since the appellant's spouse passed away unexpectedly several months ago and reports being "*...unsure of how that will be over the next few years*".

The panel notes that in the MR the Nurse Practitioner indicates that the duration of impairment is unknown and the date of surgery is "not given yet". The panel also notes that the Nurse

Practitioner does not provide any information about duration of the appellant's depression or anxiety. In the November Letter, the Nurse Practitioner does not provide any further information regarding duration.

In the December Letter, the Nurse Practitioner indicates that the appellant is suffering from osteoarthritis of left hip and right foot secondary to post traumatic post subtalar dislocation that was treated surgically in 2009. The Nurse Practitioner indicates that the osteoarthritis in the appellant's left hip and right foot has worsened significantly and as far as duration of the impairment is concerned, it is likely going to last longer than two years especially for the appellant's foot.

It has been over four months since the MR was completed and the appellant's condition has worsened and there is no indication of a surgery date anytime in the near future. In particular, the appellant is still waiting to be placed on the surgical wait list, as there are other investigations needed regarding the appellant's liver and the orthopaedic surgeon's recommendation that the appellant lose some weight before surgery. While the ministry indicates that the orthopaedic surgeon's estimation of time of surgery and recovery is not likely to continue for 2 years, that is not accurate. In the Clinic Note, the orthopaedic surgeon indicates that he saw the appellant after a period of 10 months and the appellant's condition has worsened. The orthopaedic surgeon indicates that the appellant is limping badly and that even with surgery there is a risk of injury to the nerves around the hip, risk of a permanent Trendelenburg gait, Trendelenburg lurch and risk of suffering recurrent dislocations requiring revision surgery.

While the orthopaedic surgeon indicates that the appellant is looking at a recovery of 3 months the panel finds that the ministry was not reasonable in determining that the orthopaedic surgeon's statement in that regard means that the appellant's impairment is not likely to last 2 years. The appellant is waiting for surgery, the surgery date remains unknown, other investigations and steps need to happen before any surgery takes place and the recovery time is 3 months presuming no other complicating factors.

However, the panel finds that even if the initial recovery time from the left hip is 3 months after surgery, the evidence provided by the Nurse Practitioner indicates that the appellant's right foot impairment is also likely to last longer than 2 years. This information is also supported by the Clinic Note as the orthopaedic surgeon indicates that the appellant is likely to require surgery to the right foot at some point in the future and this is an ongoing issue that needs to be addressed.

As the Nurse Practitioner confirms that the appellant's left hip and right foot osteoarthritis is likely to last longer than two years, the panel finds that, based on all of the evidence admitted on this appeal, the ministry's determination that the information provided did not meet the legislative criteria of EAPWDA section 2(2)(a) is no longer reasonable.

Restrictions in the ability to perform DLA

Section 2(2)(b)(i) of the EAPWDA requires that the minister be satisfied that in the opinion of a prescribed professional, a severe mental or physical impairment directly and significantly restricts the appellant's ability to perform DLA either continuously or periodically for extended

periods. While other evidence may be considered for clarification or support, the ministry's determination as to whether or not it is satisfied that the legislative criteria are met, is dependent upon the evidence from prescribed professionals. The term "directly" means that there must be a causal link between the severe impairment and the restriction. The direct restriction must also be significant. Finally, there is a component related to time or duration – the direct and significant restriction may be either continuous or periodic. If periodic, it must be for extended periods. Inherently, any analysis of periodicity must also include consideration of how frequently the activity is restricted.

All other things being equal, a restriction that only arises once a year is less likely to be significant than one that occurs several times a week. Accordingly, in circumstances where the evidence indicates that a restriction arises periodically, it is appropriate for the ministry to require evidence of the duration and frequency of the restriction in order to be "satisfied" that this legislative criterion is met.

DLA are defined in section 2(1) of the EAPWDR and are listed in both the MR and the AR sections of the PWD application with the opportunity for the prescribed professional to check marked boxes and provide additional narrative. DLA, as defined in the legislation, do not include the ability to work.

The ministry's position is that while the information confirms that the appellant has a severe physical impairment, the information provided by the Nurse Practitioner is not sufficient to confirm that the severe impairment significantly restricts the appellant's ability to perform DLA continuously or periodically for extended periods.

The appellant's position is that as a result of a severe impairment, the appellant is in constant pain, is unable to stand, requires an assistive device at all times and has significant restrictions with DLA of dressing, grooming, toileting, cooking, shopping, laundry, housekeeping, and transportation. The appellant also reports significant disruption to cognitive and emotional function due to depression, anxiety and low motivation impacting the appellant's motivation to eat and to shower/bathe regularly.

The panel finds that the ministry was not reasonable in determining that the assessments provided by the Nurse Practitioner were not sufficient to meet the legislative criteria of EAPWDA section 2(2)(b)(i).

The reconsideration decision indicates that while it is reasonable to expect that the appellant would encounter some restrictions to the appellant's ability to perform DLA and requires assistance as a result, the ministry finds that there is not enough evidence to confirm that the appellant's impairment significantly restrict the appellant's ability to perform DLA continuously or periodically for extended periods.

The ministry notes that the Nurse Practitioner indicates that the appellant takes significantly longer than typical and uses a cane to manage going to and from stores, carrying purchases home, and getting in and out of a vehicle. The Nurse Practitioner indicates that the appellant uses a cane to manage toileting, transfers (in/out of bed) and transfers (on/off a chair). The Nurse Practitioner indicates that the appellant takes significantly longer than typical to manage

dressing, grooming, and bathing (uses cane, unable to stand any length of time).

The ministry also notes that in the November Letter the Nurse Practitioner indicates that the appellant is able to manage DLA but takes significantly longer to finish some tasks (2-3 times longer and sometimes more depending on the task, carrying one gallon of milk at a time, taking several trips to bring groceries in from the car, and using a small bag to drag laundry rather than carrying it).

The panel notes that the Nurse Practitioner confirms that the appellant uses a cane at all times, limps, and avoids stairs at all costs. The Nurse Practitioner confirms that the appellant is unable to stand for any length of time and requires continuous assistance from another person with laundry, basic housekeeping, food preparation, and cooking, noting that the appellant is unable to stand. The ministry does not provide any further explanation to indicate why the continuous assistance required is only indicative of a moderate level of impairment when the evidence indicates that the appellant requires continuous assistance with these aspects of DLA.

As the prescribed professional confirms that the appellant requires continuous assistance with four aspects of DLA, the ministry's position that the assessments do not establish that a severe impairment significantly restricts DLA continuously or periodically for extended periods as required by EAPWDA section 2(2)(b)(i) is not reasonable.

In addition, in the AR the Nurse Practitioner indicates that it takes the appellant significantly longer than typical with dressing, grooming, bathing, going to and from stores, carrying purchases home and getting in and out of a vehicle. In the November Letter the Nurse Practitioner indicates that it takes the appellant two to three times longer in finishing some tasks on hand "...and sometimes more depending on the task". Given the appellant's continuous assistance needed with four aspects of DLA and numerous tasks taking at least two to three times longer than typical if not more, the panel finds that the reconsideration decision was not reasonable as the information provided reflects a significant rather than moderate level of restriction.

In addition, the panel finds that the ministry did not adequately consider the information provided by the Orthopedic Surgeon in conjunction with the information provided by the Nurse Practitioner. While the orthopaedic surgeon does not provide specific assessments of DLA, the Clinic Note indicates that the appellant is limping badly, is unable to walk without a cane, and is essentially housebound because of the pain. This information further supports the Nurse Practitioner's information that the appellant is homebound due to mobility issues resulting in major social isolation and very disrupted functioning to extended social networks.

Furthermore, while the reconsideration decision notes that the Nurse Practitioner indicates that the appellant has not been prescribed medication/treatment that interferes with the appellant's ability to perform DLA, the Nurse Practitioner confirms that the appellant suffers from resultant depression and low motivation and anxiety which also impact the appellant's ability to perform DLA.

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 appellant's position is that the information provided should be sufficient to find that the appellant meets the criteria for designation as PWD.

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.

As the panel finds that the ministry was not reasonable in determining that confirmation of direct and significant restrictions with DLA was not met, the panel finds that the ministry was not reasonable in determining that the precondition of the need for the help criterion was not met.

The information provided confirms that the appellant uses an Assistive Device of a cane at all times. In the AR, the Nurse Practitioner indicates that the appellant has to get help from family with DLA of basic housekeeping and in section D – Assistance Provided for Applicant, the Nurse Practitioner indicates that the help required for DLA is provided by friends. At the hearing, the appellant indicated that help is needed but that there is little to no help available. The appellant confirmed that DLA of laundry does not get done until there is nothing left to wear and the appellant does not really cook due to inability to stand. The appellant further indicated that help is needed with basic housekeeping and that household tasks do not get done as the appellant is not able to complete some tasks due to pain and mobility issues.

The information provided from the Nurse Practitioner and the appellant confirms that the appellant requires help to perform tasks of DLA particularly laundry, basic housekeeping, food preparation, and cooking and would benefit from help with other DLA including regulating diet and transportation.

The panel finds that the ministry was not reasonable in determining that the appellant did not meet the legislative criteria of EAPWDA section 2(2)(b)(ii).

Conclusion

The panel finds that, based on all of the evidence admitted on the appeal, the ministry's reconsideration decision which determined that the appellant was not eligible for PWD designation, is not reasonably supported by the evidence and is not a reasonable application of the applicable enactment, and therefore rescinds the decision. The appellant is successful on appeal.

APPEAL NUMBER

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)

2019/12/18

PRINT NAME

Wendy Marten

SIGNATURE OF MEMBER

DATE (YEAR/MONTH/DAY)

2019/12/18

PRINT NAME

Melvin Donhauser

SIGNATURE OF MEMBER

DATE (YEAR/MONTH/DAY)

2019/12/18