

**PART C – DECISION UNDER APPEAL**

The decision under appeal is the Ministry of Social Development and Poverty Reduction (the Ministry) Reconsideration Decision (RD) dated May 6, 2020, which found that the Appellant did not meet three of the five statutory requirements of Section 2 of the *Employment and Assistance for Persons with Disabilities Act* (EAPWDA) for designation as a person with disabilities (PWD). While the Ministry found that the Appellant met the age requirement and had an impairment which was likely to continue for at least two years, it 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 these restrictions, the Appellant requires the significant help or supervision of another person, the use of an assistive device, or the services of an assistance animal to perform DLA.

The Ministry also found that the Appellant is not one of the prescribed classes of persons who may be eligible for PWD designation on the alternative grounds set out in Section 2.1 of the *Employment and Assistance for Persons with Disabilities Regulation* (EAPWDR) and the Appellant did not appeal the decision on this basis.

**PART D – RELEVANT LEGISLATION**

EAPWDA, Section 2

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

*Employment and Assistance Act* (EAA), Section 22(4)

## **PART E – SUMMARY OF FACTS**

The evidence before the Ministry at the time of the RD included the PWD Application comprised of the applicant information and self report (SR) completed by the Appellant on January 8, 2020, a Medical Report (MR) dated February 25, 2020 and completed by the Appellant's General Practitioner (GP) who has known the Appellant for 2 months and who has seen the Appellant 2 - 10 times in the past 2 months, and an Assessor Report (AR) dated February 25, 2020, also completed by the GP.

The evidence also included:

- A Request for Reconsideration form (RFR) signed by the Appellant on April 21, 2020 indicating that they are asking for reconsideration because, in their opinion, their GP completed the MR and AR in a way that does not accurately reflect the severity and the functional limitations of the Appellant's disabilities. Specifically:
  - With reference to the "Functional Skills" section of the MR, the Appellant can only walk 1 to 2 blocks or sit for approximately 30 minutes before experiencing acute back pain;
  - Since the Appellant's injury in 2005 they have experienced depression, which at times has required psychiatric medication, and that, while better able to cope with the symptoms at present, they regularly experience depression, exhibiting symptoms of poor concentration, fatigue, difficulty sleeping and lack of motivation, and that their impairment has a major impact on sleep disturbance (one hour of sleep per night), emotion (anxiety and depression), attention/concentration (due to chronic pain and depression) and motivation (caused by depression). In addition, the Appellant states that they have been taking anti-anxiety medication since 1995 and have accessed psychotherapy in the past;
  - Regarding the information reported in the AR, the Appellant takes significantly longer than normal walking both indoors and outdoors, climbing stairs and standing, having to take frequent rests to relieve the pain, can only lift up to 25 lbs., and cannot carry or hold even medium-weight objects;
  - With respect to mental impairment, the Appellant states that their impairment has a major impact on sleep disturbance (one hour of sleep per night), emotion (anxiety and depression), attention/concentration (due to chronic pain and depression) and motivation (caused by depression), and;
  - Regarding DLA, the Appellant states that dressing, bathing, laundry, going to and from stores and preparing meals all take significantly longer than normal (indicating that they rely on family to prepare and cook meals), and that they require continuous assistance from their son and daughter with basic housekeeping and carrying purchases home.
- A one page letter dated June 13, 2019 signed by a chiropractor practicing in a different province (the Chiropractor) stating that the Appellant had an appointment with the Chiropractor on February 7, 2019 during which the Appellant complained of severe spinal pain, experiencing "*significant fatigue and headaches when activity levels exceed (their) body's adaptability*" and stating that the use of public transit "*will initiate an exacerbation of symptoms and will take several days to recover*";

- A diagnostic imaging report (MRI) dated March 27, 2019 prepared by a medical practitioner in a different province summarizing the results of an examination of the Appellant conducted on March 21, 2019, finding that the Appellant's cervical alignment is normal, there is a mild disc space narrowing at C6-7, the cervical cord signal is normal, there is no significant disc herniation, spinal canal stress or neural foraminal narrowing at C2-3, C3-4 and C4-5, and concluding that neither the left-sided degenerative changes at C6-7 or the degenerative changes to the lumbar spine had changed significantly since 2015;
- A one page letter dated August 19, 2019 signed by the Chiropractor providing an update to the June 13, 2019 letter and stating that the MRI "*supports the biomechanical and neurological compromise attributing to (their) condition*", that the MRI was performed in a non-weight bearing and static position and that the spine and spinal cord will "*change dramatically with weight bearing and movement*", and that the Appellant will immediately feel the effect of biometric stress with the symptoms are "*so severe that (their) quality of life is compromised*"; and,
- An unsigned injury assessment treatment record dated June 2, 2014, prepared by an unidentified person at an athletic therapy facility in a different province providing technical information about the cause and effect of an injury sustained by the Appellant on July 14, 2005.

### **Diagnoses**

In the MR, the GP diagnosed the Appellant with cervical, thoracic and lumbar back pain with a date of onset of July 2005.

### **Physical Impairment**

In the MR, the GP states that the Appellant experiences significant back pain since the time of the accident in 2005 which is aggravated by excessive movement or lifting, and that the pain limits the Appellant's ability to work, use transit "*and transportation*". With respect to functional skills, the GP reports that the Appellant can walk 2 - 4 blocks unaided on a flat surface, climb 5 or more steps unaided, lift 15 – 35 lbs., and can remain seated for less than an hour. In the section of the MR where the prescribed professional is asked to provide any additional information that might be considered relevant in understanding the significance of the Appellant's medical condition and the nature of their impairment, the GP has written "*Prior trauma with fall from [REDACTED] at work. This has (led) to persistent, severe back pain with lower extremity weakness and numbness since that time*".

In the section of the AR that asks what impairments impact the applicant's ability to manage DLA the GP states that the Appellant's back pain limits their mobility and abilities with DLA. In the section of the AR where the assessor is asked to indicate the assistance required related to impairments that directly restrict the applicant's management of mobility and physical abilities, the GP indicates that the Appellant is independent with respect to all activities (walking indoors and outdoors, climbing stairs, standing, lifting, and carrying and holding). Where asked for further comment, the GP has written "*limited duration, only minimal loads*". In the section of the AR where the prescribed professional is asked to provide any additional information that may be relevant to understanding the nature and extent of the applicant's impairment and its effect on DLA, the GP has written "*Remote back injury in 2005 with persistent, severe daily back pain. This has (led) to significant functional impairment + disability*".

In the SR, the Appellant states that when they stand or sit for too long their lower back flares up, their middle back starts to burn and their legs start to go numb and tingle to the point where they start shaking

and that “*when all this is going on the headaches always kick in*”. The Appellant also states that they haven’t had a full night’s sleep in 14 years and that their stomach is “*all messed up from all the meds*”.

In the RFR, the Appellant writes that they can only walk 1 to 2 blocks or sit for approximately 30 minutes before experiencing acute back pain and that they take significantly longer than normal walking both indoors and outdoors, climbing stairs and standing, having to take frequent rests to relieve the pain, can only lift up to 25 lbs., and cannot carry or hold even medium-weight objects.

### ***Mental Impairment***

In the section of the MR where the prescribed professional is asked if there are any difficulties with communication or any significant deficits with cognitive and emotional function, the GP has ticked “no”.

In the section of the AR where the assessor is asked to indicate the level of ability to communicate, the GP indicates that the Appellant’s abilities are satisfactory in all areas (writing, speaking, reading ability and hearing). In the section of the AR where the assessor is asked to indicate to what degree the applicant’s mental impairment restricts or impacts functioning, the GP has indicated no major impacts, a moderate impact on emotion, a minimal impact on bodily functions (including sleep disturbance), consciousness, memory, motivation, motor activity and other emotional or mental problems (without further explanation), and no impact on impulse control, insight and judgment, attention/concentration, executive functioning, language, psychotic symptoms, other neuropsychological problems. With respect to social functioning, the GP indicates that the Appellant is independent in all areas (making appropriate social decisions, ability to develop and maintain relationships, appropriate interaction with others, dealing appropriately with unexpected demands and ability to secure assistance from others). The GP also indicates that the Appellant has marginal functioning with their immediate social network, adding the comment “*physical restrictions limit access and has deteriorated relationships*”. The GP notes that the Appellant has good functioning with their extended social networks. The GP does not describe the degree of support or supervision required with the Appellant’s immediate social network in the space provided and makes no other comments or explanations.

While the Appellant does not address any mental impairments in the SR, in the RFR they say that they regularly experience depression, exhibiting symptoms of poor concentration, fatigue, difficulty sleeping and lack of motivation, and that their impairment has a major impact on sleep disturbance (one hour of sleep per night), emotion (anxiety and depression), attention/concentration (due to chronic pain and depression) and motivation (caused by depression).

### ***Restrictions in the Ability to Perform DLA***

In the MR, the GP indicates that the Appellant has not been prescribed any medications or treatments that interfere with their ability to perform DLA.

In the AR, the GP states (with comments as indicated in *italics*) that the Appellant is independent with respect to all listed DLA in all areas except transfers in and out of bed and on or off a chair (*back pain*), basic housekeeping, reading prices and labels while shopping (*reading glasses*) and carrying purchases home (*back pain*). With respect to all activities for which the Appellant is not independent, the GP states that they take significantly longer than typical but does not indicate that the Appellant needs either periodic or continuous assistance with any DLA. The GP writes “*hurts a lot on the spine*” as an explanation relating to the going to and from stores DLA, and adds the general additional comment “No

*safety (issues), but functions limited by pain*". No explanation or description of the type of assistance required is noted in the space provided.

In the RFR the Appellant states that dressing, bathing, laundry, going to and from stores and preparing meals all take significantly longer than normal.

### ***Need for Help***

In the MR the GP indicates that the Appellant does not require any prostheses or aids for their impairment.

In the section of the AR dealing with the applicant's living environment, the GP has indicated that the Appellant currently lives with their son. In the section of the AR that asks who provides the help required for DLA the GP has ticked "Family". Where asked what assistance is provided through the use of assistive devices, the GP has ticked "Braces" and added the comment "*Back brace... needed for certain activities*". The GP also states that the Appellant does not have an assistance animal.

In the RFR the Appellant states that they rely on family to prepare and cook meals and that they require continuous assistance from their son and daughter with basic housekeeping and carrying purchases home.

### ***Additional Information Submitted after Reconsideration***

Section 22(4) of the EAA says that a panel may consider evidence that is not part of the record that the panel considers to be reasonably required for a full and fair disclosure of all matters related to the decision under appeal. Once a panel has determined which additional evidence, if any, is admitted under EAA Section 22(4), instead of asking whether the decision under appeal was reasonable at the time it was made, a panel must determine whether the decision under appeal was reasonable based on all admissible evidence.

In the Notice of Appeal (NOA), the Appellant states that the GP who completed the MR and AR "*was inaccurate*" and that the Appellant now has a new doctor. The Panel considered the written information in the NOA to be argument.

At the hearing the Appellant explained that the GP had spent very little time with the Appellant and had completed the MR and the AR based on a few questions asked of the Appellant at two appointments that lasted no more than 5 minutes each. As a result, the Appellant stated that the GP did not provide an accurate assessment of the Appellant's disabilities even though the GP had been provided with the June 13, 2019 and August 19, 2019 Chiropractor's letters, the March 27, 2019 MRI and the June 2, 2014 injury assessment treatment record.

The Appellant stated that they had found a new general practitioner (the new GP) who had agreed to take the Appellant on as a new patient, and that the Appellant was confident that the new GP would provide a complete and accurate assessment of the Appellant's disabilities once the Appellant had had an opportunity to visit for a full and complete examination. The Appellant also stated that the new GP had told them that the new GP would also consult with a pain specialist in providing any information about the Appellant's impairment. The Appellant explained that they had not had an opportunity to attend an extended consultation with the new GP due to restrictions that had been imposed because of

the covid-19 crisis, and that they hoped to be able to have an opportunity to be examined by the new GP in the near future.

With regard to the Appellant's impairments, they emphasized at the hearing that they were experiencing constant daily pain in the lumbar region and that their lower back and legs were often numb. The Appellant stated that they struggle with several DLA, providing a personal care example of the great difficulty they experience in reaching up to wash their hair. The Appellant explained that they could only lift their grandson for a minute or two and that they relied on their son to carry things from the store and prepare meals. The Appellant also stated that, while they have a strong desire to complete tasks or chores once they have started them, the constant pain only allows them to perform tasks such as yard work for about an hour before they have to stop.

In response to a question from a panel member who, after noting that the Appellant had recently moved to British Columbia from another province, asked whether the Appellant had been designated as a PWD in their previous province of residence, the Appellant stated that they were "*on disability*" for the pain but that there was a lot of "*back and forth with the doctor*" as an annual doctor's report was required to confirm that the Appellant still had a disability.

In response to another question from the panel regarding whether the Appellant had any idea why the GP had indicated in the AR that the Appellant was minimally impacted by sleep disturbance while in the SR the Appellant stated that they hadn't had a full night's sleep in 14 years, the Appellant said that he did not know but stated that the GP had prescribed medication for sleep disturbance that had had no effect.

At the hearing the Ministry relied on its RD, referring in particular to the Ministry's comment in the severity of impairment section of the RD which states that the Appellant has "*not included any new information from your physician to support that your physician agrees with your self-report*". In response to a question from the Panel regarding whether the Appellant would have an opportunity to re-apply for the PWD designation once they had been able to obtain new evidence from the new GP, the Ministry stated that there is no limit in the number of times someone can apply for the PWD designation but there was no process which would allow for a fast tracking of re-applications and that the current processing time for a PWD application was about one month.

## **PART F – REASONS FOR PANEL DECISION**

The issue under appeal is whether the Ministry's RD, which found that the Appellant is not eligible for 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. Was it reasonable for the Ministry to determine that the evidence does not establish that the Appellant has a severe mental or physical impairment and that the Appellant's DLA are not, in the opinion of a prescribed professional, directly and significantly restricted either continuously or periodically for extended periods? Was it reasonable for the Ministry to determine that as a result of any direct and significant restrictions it could not be determined that the Appellant requires the help or supervision of another person, the use of an assistive device, or the services of an assistance animal to perform DLA?

The criteria for being designated as a PWD are set out in Section 2 of the EAPWDA as follows:

### **Persons with disabilities**

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).

The EAPWDR provides as follows:

**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 ...

**Part 1.1 — Persons with Disabilities**

**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).

The EAA provides as follows:

**Panels of the tribunal to conduct appeals**

22 (4) In a hearing referred to in subsection (3), a panel may admit as evidence only

- (a) the information and records that were before the minister when the decision being appealed was made, and
- (b) oral or written testimony in support of the information and records referred to in paragraph (a).

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***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. Therefore, 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***

**Severity of Impairment**

Neither the terms "*impairment*" nor "*severe*" are defined in the EAPWDA. The Cambridge Dictionary defines "*impairment*" in the medical context to be "*a medical condition which results in restrictions to a person's ability to function independently or effectively*" and defines "*severe*" as "*causing very great pain, difficulty, worry, damage, etc.; very serious*". "*Impairment*" is defined in the MR and the AR sections of the PWD application form to be "*a loss or abnormality of psychological, anatomical, or physiological structure or function causing a restriction in the ability to function independently, appropriately or for a reasonable duration*". While the term is not defined in the legislation, the Panel finds that the Ministry's definition of "*impairment*" as set out in the MR and the AR is a reasonable definition of the term for the purpose of partially assessing an applicant's eligibility for the PWD designation.

A diagnosis of a severe impairment does not in itself determine PWD eligibility. Section 2(2) of the EAPWDA requires that in determining whether a person may be designated as a PWD, the Ministry must be satisfied that the individual has a severe physical or mental impairment with two additional characteristics: in the opinion of a prescribed professional, it must both be likely to continue for at least two years [EAPWDA 2(2)(a)] and it must significantly restrict a person's ability to perform DLA continuously or periodically for extended periods, resulting in the need for the person to require assistance in performing those activities [EAPWDA 2(2)(b)]. Therefore, in determining PWD eligibility, after assessing the severity of an impairment the Ministry must consider how long the severe impairment

is likely to last and the degree to which the ability to perform DLA is restricted and help in performing DLA is required.

### **Physical Functioning**

The Ministry's position is that it relies heavily on the information provided by prescribed professionals to make an informed decision and that, due to significant discrepancies between the SR and the GP's reporting in the MR and AR, the Ministry is not satisfied that the information provided establishes a severe physical impairment.

The Appellant's position is that their constant pain is clear evidence of a severe physical impairment, that the GP did not take sufficient time to investigate or examine the Appellant's impairments and, as a result, did not provide an accurate assessment of the Appellant's disabilities.

#### *Panel Decision*

The Panel notes that in making its determination regarding whether an applicant has a severe impairment the Ministry must consider all the relevant evidence, including that of the Appellant. However, the legislation is clear that the fundamental basis for the analysis is the evidence from a prescribed professional – in this case the Appellant's GP.

The Panel notes that there are discrepancies in the evidence provided by the GP in the MR and the AR. For example, in the MR the GP indicates that the Appellant does not require any prostheses or aids for their impairment, while in the AR the GP writes that the Appellant requires a back brace for certain activities. In addition, in the AR the GP writes that the Appellant's severe back pain leads to *significant functional impairment and disability*, whereas in another section of the AR the GP reports that, while acknowledging that walking, standing and climbing are of somewhat limited duration and lifting and carrying can only be managed with limited loads, the Appellant is *independent with all aspects of mobility and physical ability*. Also, as pointed out by the Ministry in the RD, the Appellant has not provided any new information to support their evidence provided in the RFR suggesting that their ability to walk on a flat surface is more limited than the evidence provided by the GP in the MR.

Having considered all of the evidence, the Panel finds that the information provided by the GP was reasonably viewed by the Ministry as not sufficient to establish a severe impairment.

### **Mental Functioning**

The Ministry's position is that, as the GP reports no mental diagnosis and reports no significant deficits with cognitive and emotion function, the information provided does not establish a severe mental impairment, and that, while the ministry acknowledges that the Appellant reports that they suffer from anxiety and depression, the GP did not report that the Appellant has been diagnosed with either of those conditions.

The Appellant's position is that their impairment has a major impact on sleep disturbance, anxiety and depression, which significantly affects their attention, concentration and motivation.

*Panel Decision*

Although there are no formalized criteria to define what constitutes mild, moderate or severe cognitive deficits, generally professionals determine the severity of a mental impairment by assessing the number of skill areas affected by the deficit, the severity of the deficits in psychological processes, and the degree of impairment in skill areas.

The Panel notes that the GP has not diagnosed the Appellant with a mental impairment and has indicated that there are no major impacts on the Appellant's mental functioning, displaying a moderate impact in only one area (emotion). In addition, the GP has indicated that the Appellant is independent in all aspects of social functioning.

Based on all of the available evidence, the Panel finds that the Ministry reasonably determined that the Appellant does not have a severe mental impairment.

**Restrictions in the Ability to Perform DLA**

Section 2(2)(b) of the EAPWDA requires that the Ministry be satisfied that a prescribed professional has provided an opinion that an applicant's severe impairment *directly* and *significantly* restricts their DLA, continuously or periodically for extended periods. In this case, the GP is the prescribed professional. DLA are defined in Section 2(1) of the EAPWDR and are also listed in the MR and, with additional details, in the AR. DLA do not include the ability to work. 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. There is also a component related to time or duration - the direct and significant restriction must be either continuous or periodic. If periodic, it must be for extended periods. In the MR and the AR, prescribed professionals are instructed to check marked boxes and to provide additional explanations; for example, a description of the type and amount of assistance required and the frequency and duration of periodic restrictions.

The Ministry's position is that the GP reports that the Appellant is able to manage all DLA independently and that the GP's reporting did not include any details that would support a direct and significant restriction in the Appellant's ability to perform DLA's continuously or periodically for extended periods. Therefore, the Ministry concludes, a severe restriction in the performance of DLA has not been established.

The Appellant's position is that dressing, bathing, laundry, going to and from stores and preparing meals all take significantly longer than normal, and that they experience significant problems with activities such as reaching up to wash their hair.

*Panel Decision*

The Panel notes that the GP reports in the AR that, while some activities take significantly longer to perform, all listed DLA tasks are managed independently and without assistance. Where restrictions are identified, the GP does not provide sufficient information to establish that the restrictions are significant. In particular, while the GP reports that certain specific DLA take longer to perform (transfers in and out of bed, carrying purchases home and reading labels in stores), the GP has written "*back pain*" and "*reading glasses*" in the space provided to explain the frequency or nature of the assistance required.

Based on the lack of evidence from a prescribed professional to support a finding that the Appellant's impairment directly and significantly restricts DLA continuously or periodically for extended periods, the Panel finds that the Ministry reasonably determined that the Appellant does not have a severe impairment that restricts their ability to perform DLA.

### **Help with DLA**

The Appellant's position is that they rely on family to prepare and cook meals and that they require continuous assistance from their son and daughter with basic housekeeping and carrying purchases home.

The Ministry's position is that, because it has not been established that DLA are significantly restricted either continuously or periodically for extended periods, it cannot be determined that significant help is required from another person.

#### *Panel Decision*

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. That is, the establishment of direct and significant restrictions under section 2(2)(b)(i) is a precondition of meeting the need for help criterion. Help is defined in subsection (3) as the requirement for an assistive device, the significant help or supervision of another person, or the services of an assistance animal in order to perform one or more DLA.

Having found that the Ministry was reasonable in concluding that there is insufficient evidence to confirm that the Appellant is significantly restricted in their ability to perform DLA, the Panel also finds that the Ministry reasonably concluded that it cannot be determined that the Appellant requires help to perform DLA.

### **Conclusion**

Having reviewed and considered all of the evidence and relevant legislation, the Panel finds that the Ministry's RD, which determined that the Appellant was not eligible for the PWD designation under Section 2 of the EAPWDA, was reasonably supported by the evidence and was a reasonable application of the EAPWDA in the circumstances of the Appellant, and therefore confirms the decision. The Appellant's appeal, therefore, is not successful.

APPEAL NUMBER  
2020-00137

**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

Simon Clews

SIGNATURE OF CHAIR

DATE (YEAR/MONTH/DAY)

2020/06/10

PRINT NAME

Tina Ahnert

SIGNATURE OF MEMBER

DATE (YEAR/MONTH/DAY)

2020/06/10

PRINT NAME

Bill Reid

SIGNATURE OF MEMBER

DATE (YEAR/MONTH/DAY)

2020/06/10