

PART C – DECISION UNDER APPEAL

The decision under appeal is the Ministry of Social Development and Poverty Reduction's ("ministry") reconsideration decision dated May 11, 2020, in which the ministry found the appellant was not eligible for designation as a Person with Disabilities ("PWD") under section 2 of the *Employment and Assistance for Persons with Disabilities Act* ("EAPWDA"). The ministry found that the appellant meets the age and duration requirements but was not satisfied that:

- the appellant has a severe mental or physical impairment;
- the appellant's impairment, in the opinion of a prescribed professional, directly and significantly restricts the ability to perform daily living activities ("DLA") either continuously or periodically for extended periods; and
- as a result of restrictions caused by the impairment, 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 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"). As there was no information or argument provided for PWD designation on alternative grounds, the panel considers that matter not to be at issue in this appeal.

PART D – RELEVANT LEGISLATION

Employment and Assistance for Persons with Disabilities Act - EAPWDA - section 2

Employment and Assistance for Persons with Disabilities Regulation - EAPWDR - section 2

PART E – SUMMARY OF FACTS

The evidence and documentation before the minister at the reconsideration consisted of:

1. Information from the ministry's record of decision indicating that the PWD application was received on March 11, 2020 and denied on March 12, 2020. On April 1, 2020, the appellant requested reconsideration and submitted his signed *Request for Reconsideration* ("RFR") on April 27, 2020. On April 28, 2020, the appellant submitted additional information for the reconsideration.

2. An RFR signed by the appellant on April 27, 2020, with an attached *Applicant Information* form ("self-report - SR") dated March 3, 2020 in which the appellant describes his medical conditions and resulting restrictions. The appellant states that he has Post Traumatic Stress Disorder ("PTSD") which prevents him "from being around others because of anxiety and panic attacks." The appellant states that anxiety affects his sleep as well, preventing him from functioning due to a lack of concentration and focus.

The appellant reports that his physical conditions were caused by an accident in 2010 which gave him chronic back pain that eventually led to a pinched nerve. The appellant explains that the pinched nerve in his lower back creates numbness in both legs and limits sitting or standing for "long durations." The appellant takes over-the-counter pain medication (4 pills) to stop the pain.

The appellant states that he also has carpal tunnel (syndrome) in both wrists and is unable to use his hands "for a long period of time." The appellant states that his disability prevents him from doing daily tasks "such as exercising, being able to wipe myself after using the toilet, lifting heavy objects, carrying groceries on my own, to simple tasks such as holding on to a bus pole or holding an umbrella."

The appellant states that the pinched nerve in his back makes it difficult to walk; the appellant needs to rest his legs and feet after walking two blocks. Due to the back pain the appellant also finds it difficult to carry groceries, even with a "home shopping cart" which strains his wrists as well. The appellant states that family members help him with shopping.

The appellant states that showering is also difficult "because reaching for certain areas hurts my back as well." The appellant reports weight gain because of all of his disabilities: "PTSD, pinched nerve, carpal tunnel, and back pain."

3. The PWD application comprised of:

- the SR dated March 3, 2020, in which the appellant checked *I choose not to complete this self-report*. [Panel note: the appellant completed the SR for the reconsideration]
- a *Medical Report* ("MR") dated February 21, 2020, signed by the appellant's general practitioner ("doctor") who has known the appellant for 5 years and has seen the appellant 2 to 10 times in the past 12 months; and an
- *Assessor Report* ("AR") dated February 21, 2020, completed by the doctor who based the assessment on an office interview with the appellant and file/chart information ("medical records since 2017").

Summary of relevant evidence from the application:

Diagnoses

In the MR, the appellant is diagnosed with major depressive disorder, PTSD, and chronic back pain (onset for all, December 2010).

Under Section B, *Health History*, the doctor states that the appellant continues to have “persistent lower back pain” since an accident in 2010 despite physiotherapy treatment. The appellant also developed symptoms of Major depressive disorder and PTSD after the accident.

Functional skills

Medical Report

Under *Health History*, the doctor writes that the appellant “has difficulties with lifting, and carrying objects.” The doctor lists symptoms including depressed mood, insomnia, panic attacks, concentration difficulties, decreased appetite, and low motivation. The doctor notes no significant improvement with anti-depressant medication and counselling. The doctor recommends that physiotherapy and counselling treatment should continue.

Under Section D - *Functional Skills*, the appellant can walk 2 to 4 blocks unaided on a flat surface; climb 5 or more steps unaided, and lift 5 to 15 lbs. (up to 7 kg.). The appellant can remain seated for 2 to 3 hours and has no difficulties with communication.

Under section D-6, when asked if there are any significant deficits with cognitive and emotional function, the doctor indicates *yes* and checks 3 of the 12 listed functions: *Memory*, *Emotional disturbance*, and *Motivation*. The doctor left the spaces for comments blank.

Assessor Report

Under Section B-2, *Ability to Communicate*, the doctor indicates the appellant’s ability to communicate is *good* in all areas: *Speaking*, *Reading*, *Writing*, and *Hearing*.

Under section B-3, *Mobility and Physical Ability*, the doctor marked the appellant as independent with *Walking indoors*, and *Standing*. The appellant takes significantly longer than typical with the remaining functions: *Walking outdoors*, *Climbing stairs*, *Lifting*, and *Carrying and holding* (comment, “due to lower back pain”).

For section B-4, *Cognitive and Emotional Functioning*, the doctor provides information on impacts to functioning that are due to the appellant’s mental impairment:

- *No impact* in 9 of the 14 areas listed: *Bodily functions*, *Consciousness*, *Impulse control*, *Insight and judgment*, *Motor activity*, *Language*, *Psychotic symptoms*, *Other neuro-psychological problems*, and *Other emotional or mental problems*;
- *Minimal impact* in 1 area: *Executive*;
- *Moderate impact* in 2 areas: *Attention/concentration*, and *Memory*;
- *Major Impact* in 2 areas: *Emotion*, and *Motivation*.

Daily Living Activities

Medical Report

The doctor check marked *No* when asked if the appellant is prescribed medications or treatments that interfere with the ability to perform DLA.

Assessor Report

In Section B-1, *Mental or Physical Impairment*, the doctor writes that chronic back pain is the impairment that impacts the appellant's ability to manage DLA (comment, "limiting ability to walk, cook").

In Section C, *Daily Living Activities*, the doctor marks the appellant as independent with all areas for 4 (out of 8) DLA listed on the form:

- *Personal Care*: the appellant is independent with *Dressing, Grooming, Bathing, Toileting, Feeding self, Regulating diet, Transfers (in/out of bed), and Transfers (on/off chair)*;
- *Pay Rent and Bills*: the appellant is independent with *Banking, Budgeting, and Pay rent and bills*;
- *Medications*: the appellant is independent with *Filling/refilling prescriptions, Taking as directed, and Safe handling and storage*;
- *Transportation*: the appellant is independent with *Getting in and out of a vehicle, Using public transit, and Using transit schedules and arranging transportation*;

Restricted DLA

For 4 DLA: *Basic Housekeeping, Shopping, Meals, and Social Functioning*, the doctor indicates the following restrictions:

- ***Basic Housekeeping***: the appellant requires *periodic assistance from another person* in all areas: *Laundry, and Basic Housekeeping*;
- ***Shopping***: the appellant requires periodic assistance in 2 areas: *Going to and from stores, and Carrying purchases home* (comment, "requires assistance from family members for carrying heavy items, cooking and cleaning 50% of the time"). The appellant is independent with the 3 remaining areas of *Shopping*: *Reading prices and labels, Making appropriate choices, and Paying for purchases*;
- ***Meals***: the appellant requires periodic assistance in 2 areas: *Food preparation, and Cooking*. The appellant is independent with the 2 remaining areas: *Meal planning, and Safe storage of food*;
- ***Social Functioning***: the appellant requires *periodic support/supervision* in 1 out of the 5 areas listed: *Able to develop and maintain relationships* (comment, "anxiety prevents patient from maintaining close relationships").

The appellant is independent with 3 areas of *Social Functioning*: *Appropriate social decisions; Able to deal appropriately with unexpected demands; and Able to secure assistance from others*. The doctor does not make any check marks or comments for the remaining area of *Social Functioning*, *Interacts appropriately with others*.

The doctor checked that the appellant has both *good functioning* and *marginal functioning* with his immediate social network (comment, “good functioning with family members, marginal functioning with friends”). The doctor checked that the appellant has *good functioning* with his extended social network.

The doctor drew a line through the questions that ask what support/supervision is required to help maintain the appellant in the community, and whether there are any safety issues/additional comments.

Need for help

Medical Report

In the MR, the doctor check marked *No*, the appellant does not require prostheses or aids for the impairment.

Assessor Report

In the AR, the doctor indicates the appellant lives with family. In section D - *Assistance Provided by other people*, the doctor check marked *Family*. The doctor writes that the appellant requires assistance with carrying heavy items, cooking, and cleaning “50% of the time.”

The doctor left the section on *Assistance provided through the use of Assistive Devices* blank. For *Assistance provided by Assistance Animals*, the doctor checked *No*.

4. The ministry's *Decision Summary* with attached letter dated March 12, 2020, stating that the appellant does not meet all of the criteria for PWD designation.

Additional information

Subsequent to the reconsideration decision, the appellant filed a *Notice of Appeal* with a handwritten submission which the panel accepts as argument. Neither party provided additional documents but the appellant gave oral testimony that requires an admissibility determination under section 22(4) of the *Employment and Assistance Act* (“EAA”).

The appellant stated that he struggles to walk 2 blocks due to back pain and his hands go numb from Carpal tunnel (syndrome) making it hard to go to the washroom and pick up grocery items. The appellant added that he only gets 1 to 2 hours of sleep per night making it difficult to concentrate.

When asked if the doctor has diagnosed carpal tunnel syndrome, the appellant stated that he saw the doctor about it and the doctor said “it gets better and worse.” The appellant said that he told the doctor about the numbness in his hands and his restrictions with toileting and explained that he needs extra help as a result. The appellant added that he had tests for Carpal tunnel (syndrome) at the hospital but has not heard the results.

The appellant said that he has thoughts of self-harm due to high anxiety. The appellant said he is currently on medication for anxiety but he cannot afford the cost of anti-depressants that are not covered by the government. The appellant said that he wants more medication or a higher dosage but he can't go out due to anxiety and hasn't gone back to the doctor.

In response to questions, the appellant explained that he had physiotherapy and counselling when the cost was covered by the insurance company (accident settlement) but he has been unable to attend physiotherapy since October 2019 due to the cost. The appellant said he has not worked since then and cannot afford the cost of rehabilitation. The appellant stated that he is struggling financially because he only received assistance from the

ministry for 3 months even though he was told they would provide assistance for 6 months to give him time to put his settlement into a trust fund.

Admissibility of oral evidence

The ministry did not raise any objections to the appellant's testimony. The panel admits the submissions on medical conditions, symptoms and restrictions under section 22(4) of the EAA as evidence that is reasonably required for a full and fair disclosure of all matters related to the decision under appeal. The appellant gave information about an additional medical condition (carpal tunnel syndrome), testimony on the severity of his mental health conditions (thoughts of self-harm), and additional details about treatment for his medical conditions. The panel finds that the information about medical conditions and restrictions to functions and DLA are relevant to the legislative criteria for PWD designation. The panel acknowledges the appellant's financial situation but does not admit that information as evidence because the PWD legislation does not consider the person's financial need for disability assistance.

The ministry relied on the reconsideration record and did not submit any new evidence at the hearing. Both parties provided argument at the hearing which the panel summarizes in Part F - *Reasons for panel decision*.

PART F – REASONS FOR PANEL DECISION

The issue on appeal is whether the ministry's decision that found the appellant ineligible for PWD designation is reasonably supported by the evidence or is a reasonable application of the legislation in the circumstances of the appellant. The panel's role is to determine whether the ministry was reasonable in finding that the following eligibility criteria in section 2 of the EAPWDA were not met:

- the appellant has a severe mental or physical impairment;
- the appellant's impairment, in the opinion of a prescribed professional, directly and significantly restricts the ability to perform DLA either continuously or periodically for extended periods; and
- as a result of restrictions caused by the impairment, 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 based the reconsideration decision on the following legislation:

EAPWDA

2 (1) In this section:

"assistive device" means a device designed to enable a person to perform a daily living activity that, because of a severe mental or physical impairment, the person is unable to perform;

"daily living activity" has the prescribed meaning;

"prescribed professional" has the prescribed meaning.

(2) The minister may designate a person who has reached 18 years of age as a person with disabilities for the purposes of this Act if the minister is satisfied that the person is in a prescribed class of persons or that the person has a severe mental or physical impairment that

(a) in the opinion of a medical practitioner or nurse practitioner is likely to continue for at least 2 years, and

(b) in the opinion of a prescribed professional

(i) directly and significantly restricts the person's ability to perform daily living activities either

(A) continuously, or

(B) periodically for extended periods, and

(ii) as a result of those restrictions, the person requires help to perform those activities.

(3) For the purposes of subsection (2),

(a) a person who has a severe mental impairment includes a person with a mental disorder, and

(b) a person requires help in relation to a daily living activity if, in order to perform it, the person requires

(i) an assistive device,

(ii) the significant help or supervision of another person, or

(iii) the services of an assistance animal.

(4) The minister may rescind a designation under subsection (2).

EAPWDR

Definitions for Act

2 (1) For the purposes of the Act and this regulation, "daily living activities",

(a) in relation to a person who has a severe physical impairment or a severe mental impairment, means the following activities:

- (i) prepare own meals;
- (ii) manage personal finances;
- (iii) shop for personal needs;
- (iv) use public or personal transportation facilities;
- (v) perform housework to maintain the person's place of residence in acceptable sanitary condition;
- (vi) move about indoors and outdoors;
- (vii) perform personal hygiene and self-care;
- (viii) manage personal medication, and

(b) in relation to a person who has a severe mental impairment, includes the following activities:

- (i) make decisions about personal activities, care or finances;
- (ii) relate to, communicate or interact with others effectively.

(2) For the purposes of the Act, "prescribed professional" means a person who is

(a) authorized under an enactment to 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,

Analysis

Severe mental or physical impairment

To be eligible for PWD designation, the legislation requires several criteria to be met including the minister being satisfied that the applicant has a severe mental or physical impairment. The ministry found the appellant was not eligible for PWD because not all of the criteria were met. “Severe” is not defined in the legislation but in the ministry’s view, the diagnosis of a serious medical condition does not in itself establish a severe impairment of mental or physical functioning.

Mental impairment

To assess the severity of a mental impairment, the ministry considers the extent of any impact on daily functioning as evidenced by limitations/restrictions with mental functions and emotion. The ministry does not only look at the diagnosis or a medical practitioner’s comment that the condition is “severe” but considers the bigger picture including whether there are restrictions to DLA requiring mental/social functioning and whether significant help is required to manage DLA. The panel finds that an assessment based on mental and social functioning is a reasonable interpretation of the legislation.

Arguments - mental impairment

Appellant

In his RFR and oral submissions, the appellant argues that his mental health conditions are severe because anxiety and panic attacks prevent him from being around other people and affect his sleep. At the hearing, the appellant indicated he has thoughts of self-harm due to high anxiety. The appellant argued it is difficult to concentrate when he can only sleep for 1 to 2 hours per night. The appellant submits that he disputed the information on the medical forms but the doctor “rushed it and did not listen” when the appellant disagreed with the check marks.

Ministry

The ministry acknowledges that the appellant’s mental impairment significantly affects emotion, motivation, and attention/concentration but argues that the information in the medical reports and RFR does not demonstrate a severe impairment because it is unclear how often the appellant experiences panic attacks and insomnia. The ministry notes as well, that many areas of cognitive/emotional functioning are not significantly impacted according

to the information from the doctor. At the hearing, the ministry explained that it looks for detailed information from the doctor to confirm that the appellant is unable to function independently and effectively.

Panel's decision - mental impairment

The panel has considered the information in the PWD application as well as the submissions for the reconsideration and appeal. The panel finds that the ministry's decision on mental impairment (no severe impairment) is reasonably supported by the evidence. In the MR, the appellant is diagnosed with Major depressive Disorder, PTSD, and chronic back pain. The doctor indicates significant deficits with *Memory, Emotional disturbance, and Motivation* and comments that the appellant's symptoms include concentration difficulties, insomnia, and low motivation.

The appellant argues he cannot be around other people due to anxiety and panic attacks and cannot focus and concentrate due to insomnia. However, the medical reports do not provide a detailed and consistent account of these impacts. The doctor indicates the appellant is independent with most areas of *Social Functioning*, and in the AR the appellant's mental impairment has only a moderate impact on his concentration. No impact was reported for most cognitive and emotional functions including *Bodily functions (sleep disturbance)*.

When assessing the impact on daily functioning in the AR, only two major impacts were reported (*Emotion and Motivation*). As well, the appellant was assessed as independent with daily activities that require motivation and attention such as personal care, and managing finances and medications.

The panel finds that the ministry was reasonable in finding that a severe impairment of mental functioning was not established on the evidence because it is unclear how often the appellant has anxiety and panic attacks. As well, the information for attention/concentration and insomnia is inconsistent between the MR and AR. Moreover, those reports do not support the appellant's account of impaired concentration and focus due to sleeping only 1 to 2 hours per night. The panel finds that the ministry's determination that a severe mental impairment under section 2(2) of the EAPWDA was not established on the evidence is a reasonable application of the legislation.

Physical impairment

To assess whether the applicant has a severe physical impairment, the ministry considers information on the degree of restrictions to physical functioning, restrictions to DLA involving movement, and whether the applicant requires significant help or any assistive devices to manage DLA. The panel finds the assessment of severity based on daily functioning to be a reasonable interpretation of the legislation.

Arguments - physical impairment

Appellant

The appellant argues he cannot sit or stand very long due to chronic back pain. A pinched nerve also causes numbness in his legs and he needs to rest his legs and feet after walking 2 blocks. The appellant argues that carpal tunnel (syndrome) limits the use of his hands and he cannot manage simple carrying/holding such as hanging on to a bus pole or holding an umbrella. The appellant stated that he disagreed with the check marks on the medical reports but the doctor was rushed and did not accurately capture the appellant's information about restrictions.

Ministry

The ministry acknowledges the appellant's persistent lower back pain but argues that the restrictions reported in the MR and AR for *Walking, Lifting, Carrying/holding* and other physical functions do not demonstrate a *severe* impairment of physical functioning because the doctor does not indicate how much longer it takes the appellant to walk, climb stairs, etc. The ministry notes that the doctor did not indicate the appellant needs any help or assistive devices to manage these physical functions.

The ministry acknowledges that the appellant reports additional restrictions due to carpal tunnel syndrome but argues it cannot consider medical conditions that were not also reported by the doctor. At the hearing, the ministry explained that the purpose of the self-report is for the applicant to describe the background to their impairment and how daily living is impacted "but clients cannot self-diagnose conditions; the medical condition must be confirmed by the doctor."

Panel's decision - physical impairment

The panel finds that the ministry's decision on physical impairment (no *severe* impairment) is reasonably supported by the evidence. The panel has considered the ratings provided by the doctor in the MR for physical functional skills and notes that the appellant is assessed as having a moderate degree of restriction with *Walking* (2 to 4 blocks unaided) and *Remain seated* (2 to 3 hours). The doctor indicates a lower degree of restriction for *Climbing stairs* (5 or more steps unaided), and *Lifting* (5 to 15 lbs.). The doctor provided that information despite the appellant's position that he cannot walk more than 2 blocks or sit for very long due to back pain.

In the AR, the doctor assesses the appellant as independent with *Standing* even though the appellant maintains that he cannot stand for long periods due to back pain. The doctor indicates restrictions for *Walking outdoors, Climbing stairs, Lifting, and Carrying/holding* in that the appellant takes significantly longer than typical to do these activities "due to lower back pain." There is no information on how much more time the appellant needs for these functions to confirm that the restrictions are severe.

The appellant indicates that the restrictions for *Lifting and Carrying/holding* are due to carpal tunnel syndrome as well as back pain, but the doctor does not mention a diagnosis or investigation for carpal tunnel syndrome. In addition, in the AR, the appellant does not need any assistance (either periodic or continuous) with any of the physical abilities listed in Section A-3.

The panel concludes that the ministry reasonably determined there is insufficient information about functional restrictions to support a finding of *severe* physical impairment. The evidence indicates that despite the appellant's back pain, most physical functions are restricted to a moderate or low degree on the rating scales in the MR. The appellant is independent with all of the physical functions listed in the AR despite taking significantly longer than typical. The panel finds that the ministry's determination that the appellant does not have a *severe* physical impairment under section 2(2) of the EAPWDA is reasonably supported by the evidence.

Restrictions in the ability to perform daily living activities

Subsection 2(2)(b)(i) of the EAPWDA requires the ministry to be satisfied that, in the opinion of a prescribed professional, a severe impairment directly and significantly restricts a person's ability to perform DLA either continuously, or periodically for extended periods. This means that restrictions to DLA must be confirmed by the appellant's doctor or one of the practitioners named in the legislation such as an occupational therapist or a registered psychologist.

The term “directly” means that the severe impairment must cause or result in restrictions to activities. The direct restriction must also be significant. This means that not being able to do DLA without a lot of help or support will have a large impact on the person’s life.

Finally, there is a time or duration factor: the restriction may be either *continuous* or *periodic* under the legislation. Continuous means that the activity must generally be restricted all the time. The ministry views a periodic restriction (e.g., the activity is restricted a few times a week but not every day) as one that occurs for longer periods of time (e.g., the whole day on the days that the person cannot do the activity without help or support). The panel views this interpretation as reasonable. Accordingly, where the evidence indicates that a restriction arises periodically, it is appropriate for the ministry to require information on the duration and frequency of the restriction as well as details about the help or support that is needed, in order to be satisfied that the legislative requirement is met.

DLA are defined in section 2(1) of the EAPWDR and are also listed in the MR, with additional details in the AR. Therefore, the doctor or other practitioner completing these forms has the opportunity to indicate which, if any, DLA are significantly restricted by the applicant’s impairments either continuously or periodically for extended periods and to provide additional details. DLA, as defined in the legislation, does not include the ability to work.

Arguments - DLA

Appellant

In his submission for the reconsideration and appeal, the appellant argues that anxiety prevents him from being around other people and carpal tunnel syndrome in his wrists prevents him from using his hands for long periods of time. The appellant argues that the numbness in his hands causes restrictions with *Personal care* (toileting and showering), *Shopping* (carrying heavier groceries on his own and pushing a shopping cart), and *Transportation* (“holding onto a bus pole”). The appellant reports that shopping also hurts his back and he needs his family members to help with shopping.

Ministry

The ministry argues that the appellant’s DLA are not restricted either continuously or periodically for extended periods of time based on the doctor’s opinion in the PWD application. The ministry notes that the doctor indicates the appellant needs help with specific DLA (carrying heavy items, cooking, and cleaning) “50% of the time” but argues that it is “unclear why you require that much help given that it was demonstrated you have a mild physical impairment from the lower back pain and do not have a severe mental impairment.”

Panel’s decision - restrictions to Daily Living Activities

The panel has considered the evidence from the doctor in its entirety and finds that the ministry’s decision that DLA are not significantly restricted is reasonably supported by the evidence. In the MR, the doctor reports that the appellant is not prescribed any medications that interfere with DLA. The appellant indicates that he takes medication for pain and anxiety but he does not report any side effects that would limit his activities.

In the AR, the appellant is assessed as independent with all areas of *Personal Care* and the doctor does not provide any information on the appellant’s self-reported difficulties with toileting and showering, or using public transit. Where restrictions to DLA are indicated (*Basic housekeeping*, two areas of *Shopping* and *Meals*, and one area of *Social Functioning*), the doctor indicates a need for periodic assistance but does not describe the nature or duration of the assistance that is required.

While the panel views “50% of the time” to be an extended period of time to need help with carrying heavier groceries, cooking, and cleaning (due to back pain), the evidence on physical functioning does not confirm that the appellant has severe restrictions with movement because the doctor indicates the appellant can lift up to 15 pounds. The doctor also does not detail how much longer than typical the appellant takes to lift, carry, and hold objects.

Despite diagnosing a mental impairment characterized by “low motivation”, the doctor assessed the appellant as independent with *Personal Care, Pay rent and bills*, and *Medications*, all of which require motivation. The doctor indicated that the appellant’s mental impairment has only a minimal impact on the appellant’s executive skills.

The appellant argues that PTSD and anxiety prevent him from being around other people but the doctor assessed the appellant as independent with most areas of *Social Functioning* and did not provide any information for *Interacts appropriately with others*. The doctor indicates the appellant has good functioning with family and the community.

Despite the assessment of marginal functioning with friends and the doctor’s comment that anxiety interferes with close relationships, the doctor indicates the appellant requires only periodic support/supervision with *Able to develop and maintain relationships*. The doctor added no details about the frequency and duration of the support required for relationships. The ministry, therefore, did not have enough information to confirm that social relationships are restricted for extended periods under the legislation.

The panel has considered the evidence in both the MR and AR and finds that the doctor’s assessments of DLA indicate the appellant is largely independent with most activities. Where restrictions are reported (for *Basic housekeeping* and a few areas of *Meals, Shopping and Social Functioning*) the doctor’s information lacks sufficient detail to confirm that the appellant is significantly restricted in his ability to perform the activities, either continuously or periodically for extended periods as required by the legislation. Despite the appellant’s low motivation and anxiety symptoms, he is independent with *Personal care* and has good social functioning for the most part according to the medical reports. The panel therefore finds that the ministry’s determination that the criteria in subsection 2(2)(b)(i) of the EAPWDA were not met, is reasonable based on the evidence from a prescribed professional.

Help to perform daily living activities

Subsection 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.

Arguments

In the *Notice of Appeal*, the appellant argues that “I do need help and assistance.” When asked to explain, the appellant affirmed that he needs help from his family with everyday tasks due to his disability and he focused on his financial need for assistance [which is not a criterion for determining PWD eligibility]. The ministry’s position in the reconsideration decision is that because it has not been established that DLA are significantly restricted, it cannot be determined that significant help is required.

Panel's decision - help with Daily Living Activities

Under the legislation, confirmation of direct and significant restrictions to DLA is a precondition for needing help to perform DLA. The panel found that the ministry's determination that significant restrictions to DLA were not established by the information provided is reasonable.

The doctor assessed the appellant as independent with most areas of DLA and where periodic assistance is indicated, insufficient detail was provided because the doctor did not explain the frequency or the type of assistance required. In both the MR and AR, the doctor does not indicate a need for assistive devices. On review of the evidence from the doctor, the panel finds that the ministry's conclusion that the criteria for help under subsection 2(2)(b)(ii) of the EAPWDA were not met is reasonable based on the evidence.

Conclusion

The panel considered the information in its entirety and finds that the ministry's reconsideration decision that found the appellant ineligible for PWD designation is reasonably supported by the evidence. The legislation requires all of the criteria to be met. The ministry found that two criteria (age, and duration of impairment) were met. The ministry was not satisfied that the appellant has a severe impairment that significantly restricts DLA to the extent that he requires significant help to perform DLA.

The functional skills and DLA assessments by the appellant's doctor do not support the appellant's submissions on significant limitations and restrictions; in particular, the doctor has not indicated the diagnosis of carpal tunnel syndrome, and the appellant was assessed as independent with most DLA including *Social Functioning* despite experiencing anxiety and panic attacks. The panel finds that the ministry reasonably concluded that the information provided does not demonstrate that the appellant has a severe impairment that significantly restricts DLA, and that the appellant needs significant help or support to manage DLA. The panel confirms the reconsideration decision. The appellant is not successful on appeal.

PART G – ORDER	
THE PANEL DECISION IS: (Check one) <input checked="" type="checkbox"/> UNANIMOUS <input type="checkbox"/> BY MAJORITY	
THE PANEL <input checked="" type="checkbox"/> CONFIRMS THE MINISTRY DECISION <input type="checkbox"/> 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? <input type="checkbox"/> Yes <input type="checkbox"/> No	
LEGISLATIVE AUTHORITY FOR THE DECISION:	
<i>Employment and Assistance Act</i>	
Section 24(1)(a) <input checked="" type="checkbox"/> or Section 24(1)(b) <input type="checkbox"/>	
and	
Section 24(2)(a) <input checked="" type="checkbox"/> or Section 24(2)(b) <input type="checkbox"/>	

PART H – SIGNATURES	
PRINT NAME Margaret Koren	
	DATE (YEAR/MONTH/DAY) 2020-06-13

PRINT NAME Robert McDowell	
SIGNATURE OF MEMBER	DATE (YEAR/MONTH/DAY) 2020-06-13
PRINT NAME Dawn Martin	
SIGNATURE OF MEMBER	DATE (YEAR/MONTH/DAY) 2020-06-13