

**PART C – DECISION UNDER APPEAL**

The decision under appeal is the Ministry of Social Development and Poverty Reduction's ("ministry") reconsideration decision dated January 5, 2021, 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 met 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 was 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 - sections 2 and 4.2

**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 November 30, 2020 and denied on December 9, 2020. On December 23, 2020, the appellant submitted the *Request for Reconsideration* ("RFR"). On January 5, 2021, the ministry completed the review of the RFR.

2. An RFR signed by the appellant with a typed submission describing a stroke in March 2019 that resulted in left side paralysis. The appellant reports that his body is still "constantly numb" with unpleasant tingling that "feels like an electric shock."

Regarding his mental functions, the appellant states that his memory has declined and his thought processes have slowed down.

Regarding his physical functions, the appellant states he cannot walk more than a block without suffering pain and exhaustion. The appellant said he cannot stand for more than 20 minutes or sit in the same position for longer than 10 minutes. After being re-admitted to hospital in June 2019 due to his brain injury and high blood pressure, the appellant reports not returning to work because he is "horribly slow and in pain". The appellant said he is unable to walk without a cane.

The appellant said that he needs a family member "to do most things for me" including remembering appointments, filling out forms, and talking to doctors/specialists. The appellant describes financial hardship and reports being homeless, 'couch surfing' with a friend or family member.

3. The PWD application comprised of:

- the *Applicant Information* (self-report - "SR") dated July 7, 2020, in which the appellant describes continuing restrictions from the stroke that paralyzed the right side of his body.
- a *Medical Report* ("MR") dated October 28, 2020, signed by the appellant's general practitioner ("Dr. R.") who has known the appellant for more than 30 years and has seen the appellant 2 to 10 times in the past 12 months; and an
- *Assessor Report* ("AR") dated November 10, 2020, also completed by Dr. R. who based the assessment on an office interview with the appellant.

4. Additional medical documents submitted with the PWD application including:

- Case notes from Dr. R. dated November 2, 2020, summarizing the appellant's diagnoses, medications, social history, and medical history.
- A discharge summary from a hospital doctor ("Dr. A.") dated June 16, 2020, describing the appellant's diagnoses (pre/post-admission and secondary conditions), results from medical tests, medications, treatment in the hospital, and discharge advice.

5. A letter from the ministry dated December 9, 2020, with attached *Denial Decision Summary* advising that the appellant did not meet all the criteria for PWD designation.

*Summary of relevant evidence from the application:*

**Diagnoses**

In the MR, the appellant is diagnosed with several conditions including:

- cardiovascular accident (“stroke”), right hemiparesis, and dysesthesia (onset 2019)
- hypertension (onset 2017)
- Obstructive sleep apnea (onset 2020)
- Hepatitis C, and
- Substance use disorder.

In Part B - *Health History*, Dr. R. explains that the appellant has a “very low mood” due to his disability; sleep apnea causes daytime sleepiness; hypertension is controlled with medication; Hepatitis C is chronic and stable, and substance use is presently controlled.

In Part F - *Additional Comments*, Dr. R. writes that the appellant’s condition is not likely to improve. The appellant has had several recent hospital admissions due to difficulty controlling his high blood pressure.

In the June 2020 hospital discharge summary, Dr. A. reports that the appellant’s poorly controlled hypertension is “due to drug non-compliance” and the right-sided dysesthesia is a lasting impact from the stroke in 2019.

**Functional skills**

Self-Report

The appellant states that after he had the stroke, he could not get out of bed for 4 months. Through exercise and physiotherapy, he was able to walk again with a permanent limp and the use of a cane. The appellant reports continuing numbness and “constant tingling.” The appellant said he cannot walk any distance or stand for a long period.

Medical Report

In Part D - *Functional Skills*, the appellant can walk less than 1 block unaided on a flat surface. Dr. R. checked *unknown* when asked how many stairs the appellant can climb and how much weight he can lift. The appellant has no limitations with *remain seated*.

Dr. R. checked no difficulties for communication. Dr. R. indicates significant deficits with cognitive and emotional function in 5 of the 12 areas listed on the form: *Executive, Memory, Emotional disturbance, Impulse control, and Attention/sustained concentration*. The section for comments is blank.

Assessor Report

In Part B-2, *Ability to Communicate*, Dr. R. indicates the appellant has *good* ability for the 4 areas listed: *Speaking, Reading, Writing, and Hearing*.

For Part B-3, *Mobility and Physical Ability*, Dr. R. checked *uses assistive device* for the 6 areas listed: *Walking indoors, Walking outdoors, Climbing stairs, Standing, Lifting, and Carrying/holding*. The section for comments is blank.

In Part B-4, *Cognitive and Emotional Functioning*, Dr. R. provides information on impacts to functioning that are due to the appellant's mental impairment or brain injury:

- *No impact* in 8 of the 14 areas listed: *Bodily functions, Consciousness, Insight and judgment, Executive, Motivation, Language, Psychotic symptoms, and Other neuro-psychological problems*
- *Minimal impact* in 2 areas: *Motor activity, and Other emotional or mental problems*
- *Moderate Impact* in 3 areas: *Impulse control, Attention/concentration, and Memory*
- *Major Impact* in 1 area: *Emotion.*

#### Hospital discharge summary

During the June 2020 hospital admission, the appellant was assessed by Physiotherapy as currently "baseline independent with mobility and his numbness is currently at the same level as prior to admission and this has been since March 2019." Dr. A. reports that "patient does not have significant neurological deficit" and is medically stable and wants to go home. The appellant requires further investigation for sleep apnea and rapid access follow up with Neurology.

#### **Daily Living Activities**

##### Medical Report

Dr. R. check marked yes when asked if the appellant is prescribed medications or treatments that interfere with the ability to perform DLA, specifically medications for hypertension and "lipid lowering."

In Part E - *Daily Living Activities*, Dr. R. checked yes, the impairment restricts the appellant's ability to perform DLA. On the list of specific DLA, the doctor indicates that 6 of the 10 DLA are restricted as follows:

5 DLA are continuously restricted:

- **Personal self-care**
- **Management of medications**
- **Mobility inside the home**
- **Mobility outside the home**
- **Management of finances**

**Daily shopping** is also restricted. There is no check mark to indicate if the restriction is continuous or periodic.

For **Basic housework**, and **Use of transportation**, Dr. R. checked *unknown* when asked if the activity is restricted.

In the MR, no check mark or information is provided for **Social functioning**.

##### Assessor Report

In Part C - *Daily Living Activities*, Dr. R. indicates the appellant requires assistance with 3 of the 8 DLA listed on the form:

- **Shopping:**
  - The appellant needs *periodic assistance from another person* when *Going to and from stores*.
  - The appellant needs *continuous assistance from another person* for *Carrying purchases home*.
  - The appellant is independent with the remaining 3 areas of *Shopping: Reading prices and labels, Making appropriate choices, and Paying for purchases*.
- **Transportation:**
  - The appellant needs *periodic assistance from another person* when *Getting in and out of a vehicle*.
  - The appellant *uses assistive device* when *Using public transportation*.
  - The appellant needs *continuous assistance from another person* in *Using transit schedules and arranging transportation*.
- **Social Functioning:**
  - The appellant needs *periodic support/supervision* with *Able to develop and maintain relationships*.
  - The appellant is independent with the 4 other areas of *Social Functioning: Appropriate social decisions, Interacts appropriately with others, Able to deal appropriately with unexpected demands, and Able to secure assistance with others*.
  - The appellant has *good functioning* with his immediate and extended social networks.

For DLA requiring assistance, Dr. R. left the section for *Additional comments* blank (including a description of the assistance required and any safety issues). Part E of the AR (*Additional Information* regarding restrictions to DLA) was also left blank.

For 5 DLA listed in the AR, Dr. R. indicates the appellant is independent with all areas:

- **Personal care:** *Dressing, Grooming, Bathing, Toileting, Feeding self, Regulating diet, Transfers (bed), and Transfers (chair)*.
- **Basic housekeeping:** *Laundry, and Basic housekeeping*.
- **Meals:** *Meal planning, Food preparation, Cooking, and Safe storage of food*.
- **Pay Rent and Bills:** *Banking, Budgeting, and Pay rent and bills*.
- **Medications:** *Filling/refilling prescriptions, Taking as directed, and Safe handling and storage*.

### **Need for help**

#### Medical Report

Under *Health History* (Part B), Dr. R. marked *yes*, the appellant requires prostheses or aids for the impairment (comment, "patient requires a cane for safe ambulation").

In Part E - *Daily Living Activities*, when asked what assistance the patient needs with DLA, Dr. R. writes, "periodic assistance to manage his domestic activities."

#### Assessor Report

In the AR (Part D), Dr. R. indicates that the appellant's family and friends provide assistance with DLA.

For *Assistance provided through the use of assistive devices*, Dr. R. checked *cane*. For *Assistance provided by Assistance animals*, Dr. R. checked *no*.

Other

Both Dr. R. and Dr. A. indicate the appellant requires a CPAP machine for sleep apnea. Dr. R. comments, “not affordable.”

*Additional information*

Subsequent to the reconsideration decision, the appellant filed a *Notice of Appeal* with a handwritten submission which the panel accepts as argument.

The appellant attended the hearing with an advocate (family member). Due to computer/technical issues the panel granted two adjournments from the original hearing date of February 8, 2021.

At the hearing, the appellant described another recent hospital visit (“yesterday”) with referrals to Neurology and the stroke clinic. The appellant said he had a CT scan at the hospital but only an MRI can show the hemorrhage in his brain. The advocate explained that the appellant’s doctors told him to go to the Emergency department (“ER”) right away if he feels dizzy, more tired, or has greater difficulty with movement.

The appellant said he went to the ER because he was feeling dizzy for the past week, he was sleeping all weekend, his elbow was “dropping down,” he was tripping on everything including the stairs, he stumbled while walking, and “had trouble hanging onto utensils.”

The appellant reports that his condition is getting worse; he can “hardly walk” (“no further than a block, in pain even with a cane, maximum 2 blocks”). The appellant said that the only place he can walk without a cane is around the living room and although he can shop “with a buggy” he still needs his cane as well and shopping is very difficult.

The advocate reports that the appellant needs help everyday. Family members manage his finances, help him with time management, and do the shopping. The advocate said the appellant can now manage his medications, and he can drive (“because he’s sitting”) but he cannot walk further than 1 block and sitting is very uncomfortable (“he has to move his body a lot”).

In response to questions, the appellant explained that Dr. R. has stopped working. The appellant found a new doctor (“2 days ago”) but has not seen that doctor yet. The appellant reported moving between communities, “couch surfing” with different relatives who help with DLA in whatever place he is staying.

The ministry did not raise any objections to the appellant’s testimony. The panel admits the testimony as evidence under 22(4) of the *Employment and Assistance Act*. The panel finds the appellant’s additional information is admissible because it gives an update and further details about the medical condition and restrictions to function. The new information is therefore reasonably required for a full and fair disclosure of all matters related to the decision under appeal.

The ministry relied on the reconsideration record and did not submit new evidence at the hearing. In response to questions the ministry discussed its process for adjudicating PWD applications. The panel accepts the submissions as part of the analysis of the evidence. The panel considers both parties’ arguments 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 was reasonably supported by the evidence or was 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...



The panel finds that Part 2 of the EAPWDR is also relevant to the analysis of the evidence.

## **Part 2 — Eligibility for Disability Assistance**

### **Division 1 — Applications and Applicant Requirements**

#### **Application for disability assistance — stage 2**

**4.2 (3)** On completion of the first stage process provided for in section 4.1, the applicants for disability assistance in the family unit must complete and submit to the minister an application for disability assistance (part 2) form and must include as part of the application...

(c) the information, authorizations, declarations and verifications specified by the minister as required in the application for disability assistance (part 2) form.

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#### ***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. To assess both a physical and mental impairment the ministry said it considers the appellant's information in conjunction with the assessments provided by the doctor and any other medical professionals.

In response to questions about what weight the ministry gives the SR versus the MR and AR, the ministry said she didn't know for sure but the ministry adjudicator has to look at the information as a whole to determine if the legislative requirements are met. The panel notes that section 4.2(3) of the EAPWDR requires the PWD application to be in the form prescribed by the minister ("part 2" form).

This form consists of 3 reports: the SR, MR, and AR. The SR is optional as the applicant can check that they choose not to complete it. Where a completed SR is submitted with the application the legislation does not indicate what weight to give The SR or the medical reports. The panel considers the information in each report to carry weight when it is material to PWD eligibility.

The ministry found the appellant was not eligible for PWD because not all 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 shown 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 ("mental DLA") and whether significant help is required to manage those DLA. The panel finds that an assessment of severity based on cognitive and social functioning and restrictions to mental DLA is a reasonable interpretation of the legislation.

## Arguments

### Appellant

The appellant's evidence mostly relates to his physical limitations, but he states that the stroke also caused his memory to decline and his thought processes to slow down ("it takes longer for things to register in my mind"). The advocate argues the appellant needs "significant daily help" with time management, appointment reminders, finances, and communicating with the doctors. The appellant feels he has "zero options" due to his inability to work and the stress of being homeless; he reports always having his own home, and a career in the past.

### Ministry

The ministry argues there was not enough evidence to confirm a severe impairment of mental functioning because despite reported deficits with mental functions, the appellant is assessed as independent "in almost all activities related to making decisions regarding personal care, and finances, as well as social functioning." The ministry acknowledges the appellant's life is impacted by the stroke but argues there was not enough information to reconcile the higher degree of support the appellant said he needs, with the degree of help indicated by Dr. R.

### Panel's decision - mental impairment

The panel finds it was not reasonable for the ministry to conclude that a severe mental impairment was not established on the evidence.

When looking at the reported deficits and impacts in the appellant's cognitive and emotional functioning, in conjunction with Dr. R.'s information on mental DLA, the record indicates that:

- Dr. R.'s assessments are consistent between the MR and AR, supporting a severe impairment in several areas as the result of the stroke. These assessments are also consistent with the appellant's self reports:
  - **Emotion:** mood "very low"; *significant deficit* (MR) and *major impact* (AR)
  - **Memory:** *significant deficit* (MR) and *moderate impact* (AR)
  - **Attention/concentration:** *significant deficit* (MR) and *moderate impact* (AR)
- The appellant reports deficits in 2 other areas as well:
  - **Bodily functions:** the appellant recently "slept all weekend" as his condition worsened, and
  - **Executive:** planning, organizing

For these functions, there is some inconsistent information between the MR and AR:

- **Bodily functions:** "daytime hypersomnolence" due to sleep apnea (MR) versus *no impact* (AR)
- **Executive:** significant deficit (MR) versus no impact (AR)

The panel gives more weight to the information in the MR because it is consistent with the appellant's reports of extreme sleepiness (especially right before the most recent hospitalization) and slow thought processes.

Regarding the ability to communicate, the appellant indicates he needs "constant help" talking to doctors and understanding the medical information but in the MR and AR, Dr. R. reports no difficulties with communication, *good* ability in all areas, and *no impact* for *Language*. However, with slower thought processes and difficulties with memory it follows that the appellant would need help communicating and understanding medical information, especially the many technical words relating to the stroke.

When looking at Dr. R.'s information on mental DLA the record indicates that:

- **Personal self-care, Management of Finances, and Management of Medications** are significantly restricted. (MR)
- The appellant needs periodic support with **developing and maintaining relationships**. (AR)

At the same time, the appellant is assessed as *independent* with **Personal Care, Pay Rent and Bills, Medications**, and most areas of **Social Functioning** (AR). For these DLA, Dr. R. does not explain the difference in assessments between the MR and AR.

However, in both the MR and AR, Dr. R. indicates the appellant needs help from family and friends to manage DLA. Further, despite good functioning with his social networks, the appellant's low mood and dependence on family for help and shelter would reasonably impact his relationships.

The ministry concluded that mental DLA were not impacted enough to support a finding of a severe impairment, but the panel gives significant weight to the DLA assessments in the MR. The evidence for deficits and impacts to *Emotion, Memory, Attention/concentration, and Executive function*, confirmed by both Dr. R. and the appellant, supports restrictions to mental DLA. In addition, the information from the doctor and the appellant indicates the appellant needs help with mental DLA. A family member reminds him of appointments, manages his finances, etc. The appellant's very low mood and daytime sleepiness further impact his daily life.

Based on the information in its entirety the panel finds it was not reasonable for the ministry to conclude that the appellant does not have a severe mental impairment. The evidence indicates the appellant has significant deficits and impacts in several areas of cognitive and emotional functioning due to the stroke and sleep apnea as well. Because of these deficits, the appellant needs a lot of support from his family to organize and manage his life. The appellant is feeling very defeated and stressed because of his disability. The panel finds it was not reasonable for the ministry to conclude that a *severe* mental impairment under section 2(2) of the EAPWDA was not established on the evidence.

### **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 that the assessment of severity based on daily physical functioning is a reasonable interpretation of the legislation.

#### *Arguments - physical impairment*

##### *Appellant*

The appellant argues he has a severe physical impairment because his physical functions are significantly impacted even a year and a half after he had a stroke. The appellant argues his condition has recently gotten worse, he has significant limitations with walking, and he cannot sit or stand for very long. The appellant said he feels uncomfortable all the time, with constant tingling "like an electric shock through my body."

*Ministry*

The ministry acknowledges the appellant's life and functioning have "changed drastically" as a result of the stroke in 2019 but argues there wasn't enough information in the application and RFR submission to confirm a severe impairment of physical functioning. The ministry argues that some of the information provided indicates the appellant can manage physical tasks.

***Panel's decision - physical impairment***

The panel finds it was not reasonable for the ministry to conclude that a severe physical impairment was not established on the evidence.

When looking at reported restrictions in physical functioning, in conjunction with Dr. R.'s information on DLA, the record indicates a significant degree of impairment in the following areas:

*Walking*

- The appellant's "mobility is compromised with restricted walking." (MR)
- The appellant requires a cane "for safe ambulation." (MR)
- The appellant can walk less than 1 block unaided. (low end of rating scale in the MR)
- The appellant confirms he cannot walk at all without his cane ("except around the living room") and walking 1 block, even with his cane, is very difficult and lately he stumbles when he walks.
- Mobility inside and outside the home are continuously restricted. (MR)
- The appellant needs an assistive device (cane) for both indoor and outdoor walking. (AR - Part B-3)

The ministry said it was unable to determine how far the appellant can walk without a cane but the evidence in the MR and AR is that the appellant needs a cane to walk any distance, for both basic mobility and safety. The ministry said that in the AR, the appellant is not reported to need assistance from another person to complete mobility tasks, but the appellant clearly requires a cane for mobility as stated in all the reports.

In the June 2020 hospital discharge summary, Dr. A. states that an assessment by Physiotherapy indicated the appellant is "baseline independent with mobility" but experiences continuing numbness. The panel gives little weight to "independent mobility" because all the other reports indicate the appellant walks with a cane. Based on all the information the panel finds it was not reasonable for the ministry to conclude that a severe degree of impairment in the appellant's ability to walk was not established on the evidence.

*Climbing stairs*

- The appellant said he cannot climb any stairs safely, and with the recent worsening of his symptoms he found himself tripping on the stairs. The appellant confirmed that he needs a cane for all mobility tasks.
- The appellant's overall mobility is compromised. (MR)
- The appellant uses an assistive device for climbing stairs. (AR)

The ministry said the appellant can climb an "unknown number of stairs" according to the information in the MR. The ministry argues it is "unable to determine a severe impairment on the basis of unknown functional skills." In the MR (Part D), when asked to indicate the number of stairs the appellant can climb unaided, Dr. R. checked *unknown*.

The information, viewed as a whole, indicates the appellant finds it very difficult to climb any number of steps safely. The appellant is unable to navigate stairs without his cane. The doctor did not indicate a specific number of steps but confirmed the use of an assistive device. The panel therefore finds it was not reasonable for the ministry to conclude that the degree of impairment with stairs was “unknown.”

### *Lifting*

- The appellant reports that his body feels very numb, he uses a cane to manage DLA that require movement and he cannot shop without help.
- All mobility is compromised. (MR)
- *Daily shopping* is significantly restricted. (MR)
- The appellant needs continuous help with carrying purchases (involves varying degrees of lifting). (AR)
- The appellant needs an assistive device for *Lifting* as well as *Carrying/holding*. (AR - Part B-3)

As with stairs, the ministry said the appellant can lift an “unknown amount of weight.” Dr. R. does not specify a unit of weight the appellant can lift (Dr. R. checked *unknown*). The ministry argues the appellant can independently complete almost all DLA without assistance from another person, and the appellant is not reported to take longer to complete tasks. However, the appellant reports being “very slow” with his movements, and the “constant” numbness, restrictions with general mobility, and his need for continuous help to carry shopping purchases, reasonably suggest he is restricted with lifting as well.

Based on all the information the panel finds it was not reasonable for the ministry to conclude that the appellant does not have significant restrictions with lifting or that restrictions with lifting are “unknown.”

### *Remain seated*

- The appellant said he cannot sit in the same position for longer than 10 minutes (lowest end of rating scale in the MR). At the hearing, the appellant explained that he cannot sit for any length of time without feeling uncomfortable, he needs to move around a lot.

The ministry said the appellant has no limitations with sitting according to Dr. R.'s information in the MR (*no limitation* is checked). The ministry argues the information in the MR contradicts the appellant's report.

The panel gives more weight to the appellant's submissions which the panel found sincere and straightforward. The appellant's narrative and oral submissions provide more detail than the check marks on the forms. The appellant's reports, that sitting is very uncomfortable, indicate a severe restriction especially considering the evidence, throughout all his submissions, of constant tingling in his body. The panel therefore finds it was not reasonable for the ministry to conclude that “more information is required to determine the degree to which you are impaired in your ability to remain seated.”

### *Standing*

- The appellant requires an assistive device for *Standing*. (AR)
- The appellant said he cannot stand for more than 20 minutes (which the panel considers a longer duration) but even though he can stand for that length of time he reports still feeling uncomfortable and in pain.

The ministry argues there was not enough information to confirm restrictions for standing but given the appellant's overall discomfort due to the tingling throughout his body, plus the need for an assistive device, there is evidence of significant limitations in that physical function as well.

### *Summary*

The evidence, viewed a whole, clearly indicates the appellant has significant restrictions with his physical functions. The panel finds that the strongest evidence for restrictions is for *Walking*, but the evidence throughout the submissions (MR and AR with additional detail in the self reports) indicates the appellant also has limitations with stairs, lifting/carrying, and remaining seated due to his compromised mobility and the discomfort throughout his body.

The ministry argues the need for more elaboration from the doctor when much of the narrative comes from the appellant. However, Dr. R. reports several instances in the MR, narrative and check marks, where the appellant is significantly restricted in his mobility and requires the help of an assistive device and assistance from family and friends for “safe ambulation” and all other mobility tasks.

When the SR is looked at with the information from the doctor, it does not contradict what Dr. R. has stated but provides more fulsome information where Dr. R. has provided limited detail or has indicated that something is unknown. Taken together, the panel is of the view that Dr. R. finds the appellant to have significant restrictions with physical functions. The panel therefore finds it was not reasonable for the ministry to conclude that a severe impairment under section 2(2) of the EAPWDA was not established on 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 a psychologist or occupational therapist.

The term “directly” means that the severe impairment must cause or result in restrictions to activities. The direct restriction must also be significant. A significant restriction will have a large impact on the person’s life because they are not able to do DLA without an assistive device or a lot of help and support from others.

Finally, there is a time or duration factor: under the legislation the restriction may be either *continuous* or *periodic for extended periods*. Continuous means that the activity must generally be restricted all the time. The ministry views a periodic restriction as significant when it occurs frequently or for longer periods of time; for example, the activity is restricted most days of the week, or for the whole day on the days that the person cannot do the activity without help or support.

The panel views the ministry’s interpretation of the legislation 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. With that information, the ministry can assess whether 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.

Regarding how many DLA need to be impacted for the legislative requirements to be met, the BC Supreme Court decision, *Hudson v. British Columbia Employment and Assistance Appeal Tribunal* [2009 BCSC 1461] states that there must be evidence from a prescribed professional indicating a direct and significant restriction on at least two DLA. Not all DLA need to be affected by the severe impairment.

#### *Arguments - DLA*

##### *Appellant*

The appellant argues he cannot do DLA independently due to his limited mobility and constant numbness and discomfort as well as his mental slowness and problems with memory. The advocate argues the appellant needs “significant daily help” with DLA because he cannot walk any distance and has trouble with mental tasks and time management. The appellant also focused on his inability to work which impacts him greatly in terms of mood and financial hardship.

##### *Ministry*

The ministry acknowledges the appellant depends on family to help him with DLA but argues that Dr. R. has not provided enough information in the MR and AR to establish that the reported restrictions are significant. The ministry notes that many DLA are continuously restricted in the MR but argues that Dr. R. “did not report the degree of your restriction” in that report or provide enough narrative about the help that is required.

The ministry notes that the appellant is independent with most DLA in the AR but where restrictions are reported (*Shopping* and *Transportation*) the ministry argues there was not enough information about the assistance provided by family to confirm that restrictions are significant.

#### ***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 was not reasonable to conclude that DLA are not significantly restricted as set out in the legislation.

While Dr. R. provides different assessments for several DLA in the MR and AR (*continuously restricted* versus *independent*) the information in these reports, with additional details from the appellant, confirms significant restrictions with DLA. While many DLA are checked as independent in the AR, the panel gives more weight to the assessments in the MR which are supported by the doctor’s information about the appellant’s very limited mobility and use of an assistive device for all mobility tasks.

The evidence for significant restrictions to DLA includes the following information:

- The impairment directly restricts the appellant’s ability to perform DLA. (MR, check mark Yes)
- *Personal self-care, Management of medications, Mobility* (inside and outside the home), and *Management of Finances* are continuously restricted. (MR)
- Daily shopping is restricted. (MR, check mark Yes)
- The appellant’s medications, which he has to take for the rest of his life, interfere with the ability to perform DLA. (MR)
- The appellant needs *periodic assistance from another person* for *Going to and from stores*. He needs *continuous assistance from another person* for *Carrying purchases home*. (AR)

- The appellant requires an assistive device (cane) for all mobility (MR and AR) and has a permanent limp. (SR)
- The appellant needs help from family and friends to manage DLA. (AR)
- The appellant said he can shop “with a buggy” but he also needs his cane. Shopping is so difficult that a family member does it for him.
- The appellant needs *periodic assistance from another person* in *Getting in and out of a vehicle*; he uses *assistive device* on public transit; and he requires *continuous assistance from another person* in order to use transit schedules and arrange transportation. (AR)

The ministry said that Dr. R. did not report the frequency or degree of the restriction with *Shopping* (neither *continuous* nor *periodic* were checked - MR). The ministry notes that Dr. R. provided no comments or further information about the periodic assistance the appellant requires with *Going to and from stores* and *Getting in and out of a vehicle*. The ministry argues that Dr. R.’s comment regarding assistance (“patient requires assistance to manage his domestic activities” - MR) is not sufficient to establish significant restrictions with any activities.

However, the evidence is that the appellant has continuous restrictions with mobility because he has a permanent limp that makes it necessary to use the cane all the time. The appellant relies on family to shop for him and provide “significant daily help” with DLA. The appellant also takes medications that interfere with his ability to perform DLA.

While there are spaces on the forms for the doctor to provide additional details and further explanation about restrictions, the panel finds that the information in the forms as a whole, with additional details from the appellant, shows that DLA are directly impacted by the appellant’s stroke, and significantly restricted *continuously*. The panel therefore finds the ministry was not reasonable to conclude that DLA are not significantly restricted under subsection 2(2)(b)(i) of the EAPWDA.

Regarding the appellant’s information about his inability to work and resulting financial hardship, the panel empathizes with the distress the appellant feels in that regard. The panel also notes that the ability to work and financial need are not among the criteria for PWD eligibility under the legislation and the ministry is not authorized to base the decision on those factors.

#### *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*

The appellant stressed that he continuously uses a cane and relies on help from family to do his DLA. The ministry acknowledges the appellant uses a cane for mobility and has help from his family to manage DLA. However, the ministry argues that because DLA are not significantly restricted, it cannot be determined that significant help is required.

#### ***Panel’s decision - help with Daily Living Activities***

The legislation requires evidence of help in the form of an assistive device, significant help or support from another person, or an assistance animal to perform DLA. The legislation does not say that help from an assistive device needs to be significant.



Under the legislation, help from an assistive device or another person is required as a result of direct and significant restrictions with DLA. Therefore, significant restrictions to DLA are a pre-condition for needing help. The ministry said that DLA are not significantly restricted, but the panel found that decision was unreasonable because there is sufficient evidence that DLA are significantly restricted, largely because of the appellant's limited mobility.

With restrictions to DLA established, the evidence indicates the appellant uses an assistive device (cane) for DLA involving mobility. The appellant's family provides significant help with shopping, managing, finances and other daily tasks. On review of the evidence in the record, the panel finds the ministry's decision that the help requirement under subsection 2(2)(b)(ii) of the EAPWDA were not met, was not a reasonable application of the legislation.

### ***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 was not reasonably supported by the evidence. The legislation requires all the criteria to be met. The ministry found that two criteria (age, and duration of impairment) were met but in the panel's analysis, the evidence in the record satisfies all the requirements under section 2(2) of the EAPWDA.

The appellant has permanent limitations with mobility from the stroke as well as significant cognitive deficits and a very low mood. The appellant requires a cane and significant help from his family to manage DLA. The panel finds that the ministry did not reasonably apply the legislation in the circumstances of the appellant. The panel rescinds the reconsideration decision and refers the matter back to the ministry for a decision on the amount of assistance. The appellant is successful on appeal.

**PART G – ORDER**

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

THE PANEL       CONFIRMS THE MINISTRY DECISION       RESCINDS THE MINISTRY DECISION

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

**LEGISLATIVE AUTHORITY FOR THE DECISION:**

*Employment and Assistance Act*

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

and

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

**PART H – SIGNATURES**

PRINT NAME

Margaret Koren

SIGNATURE OF CHAIR

DATE (YEAR/MONTH/DAY)

2021-03-19

PRINT NAME

Julie Iuvancigh

SIGNATURE OF MEMBER

DATE (YEAR/MONTH/DAY)

2021-03-19

PRINT NAME

Emily Drown

SIGNATURE OF MEMBER

DATE (YEAR/MONTH/DAY)

2021-03-19