APPEAL #

PART C – Decision under Appeal

The decision under appeal is the Ministry of Social Development (the ministry) reconsideration decision dated March 28, 2012 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 for designation as a person with disabilities (PWD). The ministry found that the appellant met the age requirement and that her impairment is likely to continue for at least two years. However, the ministry was not satisfied that the evidence establishes that she has a severe physical or mental impairment. The ministry was also not satisfied that 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. As the ministry found that the appellant is not significantly restricted with DLA, it could not be determined that she 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.

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

APPEAL #

PART E – Summary of Facts

The evidence before the ministry at the time of the reconsideration decision consisted of:

1) Person With Disabilities (PWD) Application: applicant information dated February 1, 2012, physician report dated February 5, 2012, and assessor report dated February 6, 2012;
2) Letter dated February 15, 2012 from the ministry to the appellant denying person with disabilities designation and enclosing a copy of the decision summary;
3) Questionnaire dated March 8, 2012 completed by the appellant's physician and stating in part that the physician agrees that the appellant states she has constant pain in her shoulder, knees, ankles and lower back which is continuous and unrelenting, that she would be unable to walk 2 blocks on a bad day (4-5 days per week) and on a good day it would take significantly longer than typical ("when cold and damp"), and that she is unable to climb stairs without the use of a handrail and it takes her significantly longer than typical. The physician disagrees that the appellant states that she might be able to lift 6-7 lbs. but anything more than that, she would need assistance. The physician agrees that the appellant states she has used a cane quite frequently this past year and uses a cart for support when she goes to the grocery store ("have seen her with a cane when comes into the office"), that she recently separated from an abusive spouse who beat her with her cane so she is now unable to use her cane (which she needs) because of the trauma, that she uses a motorized scooter provided by stores because she is unable to walk up and down all the aisles to do her shopping, that she needs assistance with lifting and carrying groceries, that she has to shower instead of bathing and she needs a shower bar to get in and out of the shower and she needs a shower bench or chair so she can sit while showering. The physician agrees the appellant states she needs a raised toilet because low toilets are too difficult to use, that it takes her significantly longer than typical to get out of bed because her knees are frequently weak and she is unsteady ("takes longer than it used to"), she is unable to carry a laundry basket of wet clothes without assistance, she has continuous difficulties with vacuuming and 4/5 days a week she is unable to vacuum or it takes significantly longer than typical, she is unable to crouch or kneel and needs to use a special extended tool to clean her bathroom, she has to sit down to prepare her food and needs continuous assistance to lift heavy items out of the oven or off the stove, it takes her significantly longer than typical to get out of low cars. The physician agrees that the appellant states she has days when she totally falls apart and cries for no apparent reason, that she is waiting 4 surgeries, for shoulder, ankle and both knees ("has seen surgeon for definitive procedure, is still being evaluated, likely will need surgery"), that the injury to her shoulder causes severe headaches 4-5 times per week and, at their worst, she has to spend 4-5 hours in a darkened room where she is unable to function at all and the most severe headaches occur continuously at least one to two times a week, and that she uses a Tens machine on her shoulder and knees at home; and,
4) Request for Reconsideration.

At the hearing, the appellant's advocate provided a number of additional documents as follows:

1) Medical visit history report for the appellant for the period August 21, 1993 through to March 8, 2012;
2) Letter dated March 23, 2011 from an orthopedic surgeon to the appellant's physician which states in part that the appellant has a long history of knee pain for about 15 years, she does not recall any trauma. The knee pain is mainly on the medial side and has been affecting her sleep. The appellant has had multiple cortisone injections, the last one lasting only about 2 weeks. She is currently on daily Tylenol Arthritis for the pain. Past medical history includes hypertension and obesity. The impression is that the appellant has advanced osteoarthritis of both of her knees, at present the left is worse than the right. In time, she will require total knee replacements for both of them. For now, she is managing somewhat with medications and would like to attempt to lose some weight before proceeding to a joint replacement;
3) Follow-up note from orthopedic surgeon to the appellant's physician for August 4, 2011 stating in part that the appellant has had x-rays of her feet and she has suggestion of tarsal coalition; in her circumstances a CT scan is needed to rule this in or out; she has pes planus and symptoms fit because she has subtalar pain; and for September 1, 2011 that the CT scan does not show any evidence of tarsal coalition, problem is that her ankle locks and it appears to be in the subtalar joint and not sure how much more can be offered to her; there is slight narrowing of the talonavicular joint but nothing as far as the CT scan of the talocalcaneal joint; will refer for opinion as to whether an arthroscopy of the subtalar joint might be

considered;

4) Letter dated April 21, 2012 from a chiropractic doctor to the ministry which states in part that the appellant has been treated by his office from 1993 to 2006 for neck and low back pain, with an average attendance of about 10 visits per year. The appellant was examined on April 12, 2011 and the impression is the appellant suffers form posterior sacroiliac (SI) joint subluxation and gluteal/posterior thigh pain, myofascial pain syndrome, and vertebral subluxation complexes of cervical, thoracic and lumbosacral spine, described as a misalignment of spinal vertebrae and discs resulting in adverse effects on nerves and other tissues. Along with treatments, the appellant has been prescribed a core exercise program and personal stretching program. The appellant was last seen on November 24, 2011 for treatment and presented with the following symptoms: 1) neck pain that seems to be over the distribution of the trapezius and levator scapulae muscles stemming from the base of the skull down across towards the shoulders on both sides; she finds this makes it difficult for her to do any prolonged lifting and repetitive motions and prolonged sitting. Her neck is stiff particularly for lateral flexion and rotation, making it difficult for her to shoulder check while driving. There is no real weakness; she describes it as constant pain and discomfort but has been able to cope and continue to work through things as long as she gets her periodic chiropractic. 2) Headaches that seem to be in the suboccipital region; she claims that as her neck and shoulder tension rises, it seems to cause a worsening or onset of her headaches; there is no photophobia or phonophobia. 3) Localized low back pain at L3-S1 and bilateral SI joint and associated musculature. The prognosis is that the appellant may be left with symptoms that will continue to become more chronic and in later years functionally limiting. For disability, the chiropractor states that the appellant is currently experiencing a moderate restriction in her capacity to perform repetitive lifting and reaching because of her myofascial pain in the neck and shoulder regions, examples of such activities involve but are not limited to vacuuming, washing windows, putting things away in cupboards, general house cleaning. In addition, sitting, standing, walking for long periods of time tends to also aggravate her lower back, hips, feet and ankles. The appellant has no claims to any restrictions to being able to perform the normal daily activities of life to care for herself such as washing her hair or getting dressed. Recommendations are for an independent exercise program, some weight loss, and continued chiropractic maintenance check-ups;
5) Tribunal Submission including Introduction, Physician's Contradictions, Appellant's Life Summary for musculoskeletal disease and for depression; and,
6) Outreach Worker- Summary Report.

The ministry did not object to the admissibility of these documents. The panel reviewed the documents and admitted the letters and follow up note as being a further description of the appellant's diagnosed impairments and being in support of the information and records before the ministry on its reconsideration, pursuant to Section 22(4) of the Employment and Assistance Act. Although the medical visit history report for the appellant also touches upon the appellant's diagnosed conditions, due to its volume in covering a period of 19 years and the inclusion of other personal medical details not relevant to this appeal, the panel did not admit the document but the appellant's advocate agreed to verbally highlight information from this medical history that is considered important to the appeal and is in support of the information and records that were before the ministry on reconsideration, and the panel admitted the advocate's oral testimony pursuant to Section 22(4) of the EAA. The panel accepted the Tribunal Submission and Outreach Worker-Summary Report as argument on behalf of the appellant.

At the hearing, the appellant's advocate stated that she is an outreach worker with a program that provides support to women who have experienced abuse and violence and that is how she first met the appellant. The advocate stated that the physician who prepared the reports for the PWD application did not fully explain her diagnosed conditions and disregarded his own notes made in her medical file as well as letters and notes from specialists. The advocate stated that the physician did not include specific information regarding the appellant's mental health impairment, including the diagnosis of post traumatic stress disorder (PTSD) as set out in the entry dated June 13, 2001 in her medical file. The advocate stated that the file shows that the appellant has been depressed most of her life as a result of childhood abuse and physical abuse in her marriage. The advocate stated that the medical file notes indicate that since August 21, 1993 the appellant

has been in chronic pain and that the appellant's physician has ordered testing, x-rays, injections, and referrals to various surgeons and specialists. The advocate highlighted the entry in the appellant's medical file on March 8, 2012 that the appellant brought in some disability forms to go over, "...she has a long list of things she can no longer do because of disability" and January 23, 2012 that the appellant came in to get a note for welfare, she needs a note to say she suffered some bruising in early October after being assaulted by her husband, gave her note to indicate she was seen on that date and that "...she does suffer from pain in her right hip, ankles, low back secondary to degenerative joint disease." The advocate stated that she accompanied the appellant to the appointment with her physician on March 21, 2012 to address the Questionnaire and when the physician was confronted with the contradictions in the notes made in the appellant's file he reluctantly changed his responses from disagree to agree and in some of the spaces for which he put "don't know", he crossed those out and indicated "agree." The advocate stated that the Letter dated April 21, 2012 from a chiropractic doctor details some of her history of treatments and her current symptoms and restrictions to daily activities. The advocate highlighted the letter dated March 23, 2011 from an orthopedic surgeon as indicating that the appellant has a history of chronic knee pain, that she has advanced osteoarthritis and will have to have both knees replaced through surgery. The appellant added that she joined a gym to try to lose weight prior to considering knee replacement surgery but she had to quit after 1 1/2 months because of the pain, and she currently does a few exercises at home that her body will allow and she has lost 24 lbs. The advocate referred to the follow up notes by the orthopedic surgeon as showing that the appellant's feet and ankles have also been investigated and that her ankle locks and it appears to be in the subtalar joint. The appellant added that she has seen another specialist who took several X-Rays of her ankle and wanted to try injections in her ankle, which she finds do not work so she might have to have the bones in her ankle fused together.

The advocate stated that the appellant questions how her physician could have completed the functional skills section of the physician report the way that he did. The advocate stated that he must not have understood that these activities are performed "unaided" as her medical file indicates that the appellant has used a walker, a scooter and a cane. The appellant added that when they went back to see her physician she explained that with her back and shoulder pain for her to lift 15 to 35 lbs. "...would be a miracle", and the physician changed his response. As well, the appellant explained that she cannot sit for very long and the physician changed his assessment for sitting to less than 1 hour. The advocate stated that it does not make sense for the physician to have assessed the appellant with no significant deficits with cognitive and emotional function when notes made by him in the appellant's medical file show that she has suffered with depression, anxiety and lack of motivation and that she has been on and off various anti-depressant medications. Likewise, the advocate stated that the section of the assessor report detailing impacts to daily cognitive and emotional functioning was not completed by the physician even if to indicate "no impact" and the appellant believes this section was missed or overlooked. The advocate stated that the physician has acknowledged that the appellant has bad days when it is more difficult for her to function but in the assessor report has reported that the appellant is mainly independent and there is no mention that the appellant has used a cane and a scooter and that she has a disability parking pass. The advocate stated that the physician does not detail in the PWD application any of the difficulties and limitations that the appellant has as a result of her chronic pain and it was only when they both went in to confront him with his contradictions and insist that he change his answers that he did so.

The appellant added that for grocery shopping she can only do a bit at a time since she will often have to quit and go home because she is in too much pain and then go back another time. The appellant stated that it is the same with housework, that she must stop due to the pain. The appellant stated that she cannot lift any heavy pots and she often has to drag them across the counter to and from the stove and that she has dropped pots and spilled them on herself because of her difficulties. The appellant's advocate stated that the physician had referred the appellant to a psychiatric facility for those who are suicidal and the May 26, 2005 entry in the appellant's medical file was highlighted which stated that the appellant "...has been depressed and has had some suicidal ideation." The appellant added that she has been so depressed and that the tension and anxiety cause headaches so she locks herself in a room and isolates form the rest of the world. The appellant stated that she has attended individual and group counseling in the past since she has had depression since she was in high school, that she is currently meeting with a group every week and that she is on a waiting list to receive

one-on-one counseling.

The appellant stated that her physician knows she requires help from her family and that she no longer has the additional support from her husband as they have separated, but he has only written that she needs help "with divorce issues" and has not acknowledged that she has used a cane, a walker, an electric scooter, a Tens machine and a disability parking tag. The appellant explained that she is currently using a cane and that she tries to do her shopping at stores that offer scooters so that she can use them, and that she bought a Tens machine to help with pain as she found this was effective during her physiotherapy treatments. The appellant stated that the physician has not referred to the medications that she takes for pain, a blood pressure pill, and two types for anxiety and one for acid reflux. The appellant stated that when she has an anxiety attack her chest tightens and she has difficulty breathing and she can be on the verge of passing out. The appellant stated that she feels that her physician did not take the time to properly review the application and to take the time needed to thoroughly answer the questions.

The appellant stated that when she met with the physician about the Questionnaire dated March 8, 2012, he asked her what makes the pain worse and she had answered that the pain is bad at all times but that the cold and damp weather can make it even worse and the physician has taken part of what she said so it seems that her bad days for walking are only "...when cold and damp." The advocate points out that the physician has initialed any changes that he made to the Questionnaire in response to their discussions. In response to a question about her need for help from other people, the appellant stated that any repetitive motions are difficult for her, like cleaning, as she finds it straining and stressful. The appellant stated that she can wash one small window and she will be done or she can vacuum one room at a time and it is very frustrating because by the time she is finishing cleaning her place it is time to start over again because it has taken her so long. The appellant stated that cooking is not bad except with lifting heavy pots and pans or getting dishes that are located up high where she will need to get up on a stool but she will be shaky and unsteady and there is no one around to help her. The appellant stated that when her shoulder is acting up she cannot even close her hand, she has no grip, and her hand gives out on her so she has dropped dishes, cups and even pots with boiling water. The appellant stated that stairs and walking are a real strain, that it causes severe pain and she has taken pain killers for her left knee, her lower back, and her hip and her ankle joint seizes up. The appellant stated that she gets severe headaches 1-2 times each week but in November and December 2011 she was under additional stress and she would get them on a daily basis. The appellant stated that she also gets headaches from her shoulder pain.

In her self-report included in the PWD application, the appellant adds that she has moderate to severe arthritis throughout her body, that it is moderate in both ankles, her right wrist and hand and 6 ribs and is severe in both knees, her lower back, right hip and right shoulder and toes. The appellant states that she is on medication for chronic pain as she has degenerative joint disease and also has a parking permit for people with disabilities. The appellant states that this has limited her ability to participate in any physical activity including any form of moderate exercise. The appellant states that general housekeeping is difficult when she must extend her arms outwards (vacuuming) and upright (putting things away)as it aggravates her shoulder and results in loss of grip and headaches. The appellant states that prolonged walking, sitting and standing affects her lower body resulting in tingling, stiffness, and numbing of her hips through to her feet. The appellant states that while she is capable of accomplishing such tasks, it is not without limitations, pain and constant breaks to relax and ease the amount of pain.

The physician who completed the physician report has confirmed that the appellant has been his patient for 7 years and that he has seen the appellant 11 or more times in the last year. In the physician report, the physician confirms a diagnosis of arthritis, degenerative joints and depression (mood disorder). The physician adds comments that the "....depression recently aggravated by marriage breakdown, multiple joints complaints, in pain most days" and "...joint disease will be ongoing and require medication, mood should stabilize." The physician report indicates that the appellant has not been prescribed medication that may interfere with her ability to perform DLA and that she does not require an aid for her impairment. The physician reports that the

appellant can walk 2 to 4 blocks unaided on a flat surface, she can climb 5 or more stairs unaided, she can lift 5 to 15 lbs., and can remain seated less than 1 hour. The physician reports that the appellant has no difficulties with communication. The physician also indicates that there are no significant deficits with cognitive and emotional function. In the additional comments relevant to the understanding of the significance of the medical condition and impairment, the physician has noted that the appellant "...has bad days when it is more difficult to function, would need help from family on those days."

The physician has also completed the assessor report and indicates that the appellant is independent with walking indoors and walking outdoors as well as with climbing stairs and standing. The physician reports the appellant requires periodic assistance from another person with lifting and carrying and holding ("limited in amount she can do most of the time"). The physician indicates that the appellant is independent with all tasks of personal care, including dressing, grooming, bathing, toileting, feeding self, regulating diet, transfers in/out of bed and transfers on/off of chair. The physician reports that the appellant is both independent and requires periodic assistance from another person with doing laundry and with basic housekeeping, with no further explanation or description added. The physician indicates that the appellant is independent with all tasks of shopping, while also requiring periodic assistance from another person with carrying purchases home, with no further comments. Further, the assessor reports that the appellant is independent with all of the tasks of managing meals, including meal planning, food preparation, cooking and safe storage of food, with no further notes provided. The physician indicates that the appellant is independent with all tasks of paying rent and bills, including banking and budgeting. The physician reports that the appellant is independent with all tasks of managing medications (filling-refilling prescriptions, taking as directed, safe handling and storage) and transportation (getting in and out of a vehicle, using public transit, and using transit schedules and arranging transportation), with no further information provided.

In the assessor report, the physician has not completed the section relating to impacts on daily cognitive and emotional functioning, which is stated to be for those with an identified mental impairment or brain injury. The physician indicates that the appellant is independent in all aspects of social functioning, including making appropriate social decisions, developing and maintaining relationships, interacting appropriately with others, dealing appropriately with unexpected demands, and securing assistance from others. The physician indicates that the appellant has good functioning in both immediate and extended social networks with no other notes or comments provided. The physician indicates that the appellant receives help from family and friends with the comment that she "...needs help with divorce issues."

APPEAL #

PART F – Reasons for Panel Decision

The issue on the appeal is whether the ministry reasonably concluded that the appellant is not eligible for designation as a person with disabilities (PWD) as she does not have a severe mental or physical impairment and that her daily living activities (DLA) are not, in the opinion of a prescribed professional, directly and significantly restricted either continuously or periodically for extended periods and that, as a result of those restrictions, it could not be determined that 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 criteria for being designated as a person with disabilities (PWD) are set out in Section 2 of the EAPWDA. The minister may designate a person as a PWD when the following requirements are met. Pursuant to Section 2(2), the person must have reached the age of 18 and the minister must be satisfied that the person has a severe mental or physical impairment. Under Section 2(2)(a) the impairment must be likely, in the opinion of a medical practitioner, to continue for at least 2 years. The impairment must also, in the opinion of a prescribed professional, directly and significantly restrict the person's ability to perform DLA either continuously or periodically for extended periods, as set out in Section 2(2)(b)(i). As a result of those restrictions, the person must require help to perform DLA, pursuant to Section 2(2)(b)(ii). Section 2(3)(b) sets out that a person requires help in relation to DLA if, in order to perform it, the person requires an assistive device, the significant help or supervision of another person, or the services of an assistance animal.

Section 2(1)(a) of the EAPWDR defines DLA for a person who has a severe physical or mental impairment as: prepare own meals, manage personal finances, shop for personal needs, use public or personal transportation facilities, perform housework to maintain the person's place of residence in acceptable sanitary condition, move about indoors and outdoors, perform personal hygiene and self care, and manage personal medication. In relation to a person who has a severe mental impairment, there are two additional activities, namely: making decisions about personal activities, care or finances, and relating to, communicating or interacting with others effectively.

The ministry argues that the evidence does not establish that the appellant has a severe physical impairment. The ministry points to the physician report where it is indicated that the appellant is able to walk 2 to 4 blocks unaided, to climb 5 or more steps unaided, to lift 15 to 35 lbs., and to remain seated for less than an hour. the ministry points out that the appellant is independently able to do most aspects of mobility and physical abilities with periodic help to lift/carry/hold. The ministry argues that the functional skill limitations are more in keeping with a moderate degree of physical impairment. The ministry also argues that remedial measures in the form of analgesics should ameliorate her joint pain and allow for more physical functionality. The ministry also argues that the Questionnaire dated March 8, 2012 provides a further explanation of the appellant's restrictions but is not significantly different from that in the PWD application, that modifications are necessary with some tasks but the appellant is able to perform them.

The appellant's advocate argues that the evidence establishes that the appellant suffers from a severe physical impairment as a result of arthritis and degenerative joints which impacts many areas of the appellant's body, including both ankles, her right wrist and hand and 6 ribs and both knees, her lower back, right hip and right shoulder and toes, and causes chronic pain. The advocate argues that the appellant's medical file demonstrates that she has had chronic pain documented back to approximately 1993, and also that she has had testing, x-rays, injections, and referrals to various surgeons and specialists to investigate further and to attempt to control her pain. The advocate points to the letters and notes from the chiropractor to show that the appellant has been treated for many years, since about 1993, for neck and low back pain, and from the orthopedic surgeon to confirm her referral for chronic knee, ankle and foot pain. The advocate argues that the physician did not properly complete the reports submitted with the PWD application and that more weight should be placed on the Questionnaire dated March 8, 2012 because he was given an opportunity to reconsider his responses in view of his notes made in the appellant's medical file.

ATTACH EXTRA PAGES IF NECESSARY

The panel finds that the evidence of a medical practitioner confirms a diagnosis of arthritis, degenerative joints. The physician report indicates that the appellant has not been prescribed medication that may interfere with her ability to perform DLA and she does not require an aid for her impairment. The physician reports that the appellant can walk 2 to 4 blocks unaided on a flat surface, she can climb 5 or more stairs unaided, she can lift 5 to 15 lbs., and can remain seated less than 1 hour. In the assessor report, the physician indicates that the appellant is independent with walking indoors and walking outdoors as well as with climbing stairs while requiring periodic assistance from another person with lifting and carrying and holding ("limited in amount she can do most of the time"). However, in the Questionnaire dated March 8, 2012, the physician agrees with the statements that the appellant has constant pain in her shoulder, knees, ankles and lower back which is continuous and unrelenting. The physician also agrees that the appellant could not walk 2 blocks on a bad day (4-5 days per week) and that on a good day it would take significantly longer. The appellant clarified that the cold and damp weather makes her pain worse but that she still has bad days most days of the week. The physician also agrees that the appellant is unable to climb stairs without the use of a handrail and it takes her significantly longer than typical and that the appellant uses a cane quite frequently ("have seen her with a cane when comes to the office") and a cart for support and a motorized scooter provided by the store when she goes shopping. As well, the physician agrees with the statement that the appellant gets severe headaches as a result of her shoulder injury 4 to 5 times per week and that, at their worst she has to spend 4 or 5 hours in a darkened room where she is unable to function at all (1-2 times a week).

In the letter dated March 23, 2011 an orthopedic surgeon reports that the appellant has advanced osteoarthritis of both of her knees and, in time, she will require total knee replacements for both of them, that she has had multiple cortisone injections, and she currently takes daily Tylenol Arthritis for the pain. The appellant stated that she purchased a Tens machine to help with her pain, especially in her shoulder and knees, as she found it effective during physiotherapy treatments. The letter dated April 21, 2012 from a chiropractor confirms that the appellant has received treatments for neck and low back pain for many years, since 1993. The notes from an orthopedic surgeon also confirm consultations for ankle and foot pain and the appellant reports that she has received advice from the specialist that her ankle joint may need to be fused. Overall, the panel finds that the evidence demonstrates that the appellant's arthritis causes chronic pain throughout her body, that she has sought treatment for many years, that it is a degenerative condition and that the physician's assessment in the March 8, 2012 Questionnaire is more consistent with the information from the specialists as well as with the excerpts provided from the appellant's medical file. Therefore, the panel finds that the ministry's determination that the evidence does not establish a severe physical impairment, was not reasonable.

The ministry argues that the evidence does not show that the appellant has a severe mental impairment. The ministry argues that the physician reports no deficits to cognitive and emotional functioning, no difficulty with communication, and no impacts on daily functioning. The ministry points out that the appellant's physician expects her mood to stabilize and that social functioning is performed independently.

The advocate argues that the evidence establishes that the appellant suffers from a severe mental impairment as a result of depression and PTSD. The advocate points out that the appellant has a long history of depression and that the entry dated June 13, 2001 in the appellant's medical file also indicates a diagnosis of PTSD. The advocate argues that the appellant's physician was aware of the appellant's hospitalization for suicidal ideation in May 2005 as well as the past physical abuse by the appellant's husband and the appellant's history of childhood abuse, so that the physician's responses in the PWD application that there are no deficits to cognitive and emotional functioning do not make sense. The advocate argues that more weight should be placed on the Questionnaire dated March 8, 2012, where the physician agrees with the statement that the appellant has recently come out of an abusive relationship and that she has days where she totally falls apart and cries for no apparent reason. The advocate argues that the appellant requires group counseling and that she is on a waiting list for one-on-one mental health counseling.

The panel finds that the evidence of a medical practitioner confirms a diagnosis of depression. Although the

advocate argues that there is also a diagnosis of PTSD, the panel finds that the legislation requires that the opinion of a medical practitioner confirm that the diagnosed medical condition is likely to continue for at least 2 years, which is not the case. In the PWD application, the appellant's physician indicates that there are no significant deficits with cognitive and emotional function and he has not completed the section relating to daily impacts to cognitive and emotional functioning. Although the advocate argues that the physician must have missed this section given the appellant's long medical history of depression, the panel finds that there were opportunities provided to the physician, in subsequent visits by the appellant and her advocate, to change his responses regarding these impacts and that he has not done so. The physician also indicates in the assessor report that the appellant is independent with all aspects of social functioning and that she has good functioning in both her immediate and extended social networks, with no further comments added. The advocate argues that the physician has agreed with the statement in the Questionnaire that the appellant has days where she totally falls apart and cries for no apparent reason, and the panel finds that the physician has commented in the PWD application that the appellant's depression has been "recently aggravated by marriage breakdown" and that her mood "should stabilize." The panel finds that the ministry's decision, which concluded that the evidence does not establish a severe mental impairment, was reasonable.

The ministry argues that the evidence does not establish that 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. The ministry points out that the physician reports that the appellant performs all but 2 DLA independently, including social functioning. The ministry argues that basic housekeeping and laundry vary between independent function and requiring periodic help, presumably with lifting over 7 lbs. The ministry points out that there is no indication of the frequency of the duration of the periodic assistance.

The advocate argues that the physician did not properly complete the reports in the PWD application and that more weight should be placed on the assessments of DLA made in the Questionnaire dated March 8, 2012. The advocate also points to the assessment made by the chiropractor in his letter dated April 21, 2012 to various restrictions to the appellant's DLA. The advocate argues that when all of this evidence is considered together it shows that the appellant's DLA are directly and significantly restricted either continuously or periodically for extended periods.

The panel finds that the legislation requires that the ministry is satisfied that the opinion of a prescribed professional confirms that the appellant's ability to perform DLA is directly and significantly restricted either continuously or periodically for extended periods. In the assessor report, the physician reports that, for preparing her own meals, the appellant is independent with all tasks, including meal planning, food preparation, cooking and safe storage of food, with no other notes or comments provided. In the March 8, 2012 Questionnaire, the physician agrees with the statement that the appellant has to sit down to prepare her food and she needs continuous assistance to lift heavy items out of the oven or off the stove. The appellant stated that cooking is not bad except with lifting heavy pots and pans or getting dishes that are located up high. The appellant stated that when her shoulder is acting up she cannot even close her hand, she has no grip, and her hand gives out on her so she has dropped dishes, cups and even pots with boiling water. For managing personal finances, the physician indicates in the assessor report that the appellant is independent with all tasks and there are no further notes provided. This assessment has not been modified by the physician in the Questionnaire. In terms of shopping for her personal needs, the physician indicates in the assessor report that the appellant is independent with all tasks, while also requiring periodic assistance from another person with carrying purchases home. In the Questionnaire, the physician agrees with the statement that the appellant uses a motorized scooter provided by stores because she is unable to walk up and down all the aisles to do her shopping and that she needs assistance with lifting and carrying groceries.

For use of public or personal transportation facilities, the physician indicates in the assessor report that the appellant is independent with all tasks with no further comments. In the Questionnaire, the physician agrees with the statement that it takes the appellant significantly longer than typical to get out of low cars. With respect to performing housework to maintain the appellant's place of residence in an acceptable sanitary

condition, the physician reports that the appellant is both independent and requires periodic assistance from another person with basic housekeeping and to do her laundry, but does not provide further notes regarding the duration of the assistance needed. In the Questionnaire, the physician agrees with the statement that the appellant is unable to carry a laundry basket of wet clothes without assistance, she has continuous difficulties with vacuuming and 4/5 days a week she is unable to vacuum or it takes significantly longer than typical, and she is unable to crouch or kneel and needs to use a special extended tool to clean her bathroom. In the chiropractor's letter dated April 21, 2012, he indicates that the appellant is currently experiencing a moderate restriction in her capacity to perform repetitive lifting and reaching because of her myofascial pain in the neck and shoulder regions, examples of such activities involve but are not limited to vacuuming, washing windows, putting things away in cupboards, and general house cleaning. For moving about indoors and outdoors, the physician indicates in the assessor report that the appellant is independent with walking indoors and with walking outdoors and that she does not use an assistive device for mobility. However, in the Questionnaire the physician agrees with the statement that the appellant would be unable to walk 2 blocks on a bad day and on a good day it would take significantly longer than typical. The physician also agrees that the appellant has used a cane quite frequently this past year and uses a cart for support when she goes to the grocery store ("have seen her with a cane when comes into the office"), that she recently separated from an abusive spouse who beat her with her cane so she is now unable to use her cane (which she needs) because of the trauma.

Regarding performing personal hygiene and self care, the physician indicates in the assessor report that the appellant is independent with all tasks of personal care, including dressing, grooming, bathing, toileting, feeding self, regulating diet, transfers in/out of bed and transfers on/off a chair. In the Questionnaire, the physician agrees that the appellant states she has to shower instead of bathing and she needs a shower bar to get in and out of the shower and she needs a shower bench or chair so she can sit while showering. The physician agrees the appellant states she needs a raised toilet because low toilets are too difficult to use, that it takes her significantly longer than typical to get out of bed because her knees are frequently weak and she is unsteady ("takes longer than it used to"). In the letter from the chiropractor dated April 21, 2012, he indicates that the appellant has no claims to any restrictions to being able to perform the normal daily activities of life to care for herself such as washing her hair or getting dressed. With respect to managing her personal medications, the appellant's physician again indicates in the assessor report that the appellant is independent with all tasks including filling/refilling prescriptions, taking as directed and safe handling and storage, and this assessment has not been modified in the Questionnaire. For making decisions about personal activities, care or finances, the physician reports that the appellant is independent in making appropriate social decisions. For relating to, communicating or interacting with others effectively, the physician assesses the appellant as having no difficulties with communication and with being independent with interacting appropriately with others and having good functioning in both her immediate and extended social networks.

Looking at the evidence as a whole, the panel finds that the appellant's physician, as a prescribed professional, has reported that the appellant is continuously restricted with 1 of 4 tasks of managing meals relating to lifting heavier items, as well as with 1 of 5 tasks of shopping for carrying heavier purchases home (in excess of 5 to15 lbs). Although the appellant is also assessed as being periodically restricted with some tasks of other DLA, the panel finds that the ministry reasonably concluded that there is not sufficient narrative to establish a periodic restriction for an extended period of time, as required by the legislation. As well, the panel finds that the evidence of the prescribed professionals demonstrates that the appellant is able to perform the majority of the tasks of her DLA independently and without restriction. The chiropractor, who is also a prescribed professional, indicated that the appellant has some moderate restrictions with repetitive lifting and reaching with no restrictions performing the normal daily activities of life to care for herself, although his prognosis is that she may be left with symptoms that will continue to become more chronic and, in later years, functionally limiting. Therefore, the panel finds that the ministry's determination that the evidence of a prescribed professional does not establish a direct and significant restriction on the appellant's ability to perform DLA either continuously or periodically for extended periods, as required by Section 2(2)(b)(i) of the EAPWDA, was reasonable.

In determining whether the ministry reasonably concluded that the appellant does not require the significant help or supervision of another person or the use of an assistive device, the panel relies on the information from the physician and the appellant that she lives alone, receives help from family and friends, and uses a cane as an assistive device. As it has not been established that DLA are significantly restricted, the panel finds that the ministry's conclusion that the requirement for significant help or supervision of another person, an assistive device, or the services of an assistance animal to perform DLA, under Section 2(2)(b)(ii) of the EAPWDA, has not been met was reasonable.

Overall, the panel finds that the ministry's reconsideration decision was reasonably supported by the evidence and confirms the decision pursuant to Section 24(2)(a) of the Employment and Assistance Act.