

PART C – Decision under Appeal

The decision under appeal is the ministry's reconsideration decision dated January 17, 2012 which held that the appellant did not meet 3 of the 5 statutory requirements of section 2 of the Employment and Assistance for Persons with Disabilities Act 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 2 years. However, the ministry was not satisfied that the appellant has a severe physical or mental impairment or 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 was also not satisfied that as a result of those restrictions, in the opinion of a prescribed professional, the appellant requires help 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

PART E – Summary of Facts

The evidence before the ministry at reconsideration was a PWD application comprised of a Self-report (SR), a Physician Report (PR), and an Assessor Report (AR), letters from the appellant's general practitioner dated August 3, 2010 and December 28, 2011, and 2 pages of notes from the physiotherapist who completed the AR.

In the PR, completed in July 2011 by the appellant's general practitioner since September 2009, the appellant is diagnosed with chronic low back, hip and bilateral knee pain following a 2006 workplace injury. The pain persists despite extensive physio and rehab and impairs sitting, standing, and lifting. Although the appellant is awaiting an appointment with a physiatrist, the general practitioner considers the appellant's condition stable and unlikely to improve. With respect to functional skills, the appellant can walk 1 to 2 blocks unaided on a flat surface, climb no stairs without the use of a handrail, lift under 5 lbs, and can remain seated for less than 1 hour. The general practitioner reports that the appellant has no difficulties with communication or significant deficits with cognitive and emotional function. With respect to DLA, the physician reports that the appellant's impairment periodically restricts her ability to perform personal self care, basic housework, and daily shopping and explains that the appellant's pain is worse some days than others limiting her ability to lift, walk, and bend forward. Additionally, the physician reports a continuous restriction with mobility outside the home and that mobility within the home is restricted though it is not identified as being either continuous or periodic. The degree of restriction is described as "moderate restriction some day great difficulty walking difficulty getting out of bed & climbing stairs." Assistance needed with DLA is described as "help from another person ie. housework, dressing." The appellant is reported as not being restricted in her ability to manage meal preparation, medications, and finances. No assessment is provided respecting transportation and social functioning.

In the AR, completed by a physiotherapist on September 27, 2011 who has seen the appellant twice since July 7, 2011, chronic moderate to severe back, hip and knee pain is reported as the mental or physical impairment that impacts the appellant's ability to manage DLA. The appellant is described as having had moderate back pain most of her life. The appellant is reported to have a good ability to communicate in the areas of speaking, reading, writing, and hearing. With respect to mobility and physical ability, the appellant is independent walking outdoors ("can't walk uphill") and standing though both activities are also reported to require continuous assistance. The appellant is also reported to require continuous assistance with walking indoors ("at times unable to walk, 50% longer"), climbing stairs (uses assistive device, "requires handrail"), lifting (< 5 lbs), and carrying/holding (< 5 lbs). Additional narrative is that the appellant is in constant pain which is exacerbated by all physical activities. She requires frequent and prolonged rests. Some days the pain is so severe she cannot get around at all; difficult getting out of bed, chairs etc. The section respecting cognitive and emotional functioning is identified as not being applicable. With respect to DLA, the appellant independently manages dressing, grooming, bathing ("difficulty getting in/out of tub") which take significantly longer. Toileting, feeding self, and regulating diet are also managed independently. However, the assessor also reports that dressing requires both periodic and continuous assistance "depending on severity of [pain]" and that both grooming and feeding self require continuous assistance from another person. The remaining aspects of personal care, transfers in/out of bed and on/off a chair, are reported to require continuous assistance from another person, the use of an assistive device ("boosting device") and take significantly longer. Transfers in/out of bed are also reported to require periodic assistance of another person. Both aspects of basic housekeeping require continuous assistance from another person. Respecting shopping, going to and from stores (takes significantly longer), reading prices and labels, making appropriate choices, paying for purchases are all reported as being managed independently; however, going to and from stores is also reported to require the continuous assistance of another person. The final aspect of shopping, carrying purchases home, requires the continuous assistance of another person ("can only carry < 5 lbs"). The assessor writes that the appellant is in constant pain and cannot reasonably be expected to perform housekeeping or shopping. All aspects of meals

are managed independently, though food preparation and cooking are reported to require periodic assistance from another person and take significantly longer. "Some days she is able to prepare and cook meals but requires frequent & prolonged rests. Other days, she is in too much pain to do anything about food." All aspects of paying rent and bills are managed independently ("has trouble getting around to do these tasks") as are all aspects of medications. Respecting transportation, the appellant independently uses transit schedules but requires continuous assistance from another person getting in and out of a vehicle or the use of a boosting device and is unable to use public transit which aggravates her pain too much. The section respecting social functioning is struck out and identified as N/A. Additional narrative is that housekeeping and laundry only get done when someone comes by to do it for the appellant and that regular assistance with housekeeping, laundry, and shopping would be very helpful. Rails and boosting devices are described as assistive devices required. The appellant struggles daily to maintain herself and her surroundings but cannot reasonably be expected to do most physical tasks on a regular basis. The assessor concludes with a description of the two treatment appointments she had with the appellant in July and September of 2011.

In the SR, the appellant writes that due to chronic back, hip, and knee pain leave she is unable to do a number of activities that she use to do including: camp, canoe, hike, trek, carry a back pack, go to the theatre to watch a movie, dance, play guitar, garden, sweep or mop floors, do the dishes, cook food, sit and read a book, lift anything or grocery shop. She reports having difficulty driving and performing head checks and that she can sit and stand for less than 30 minutes. It is hard to move around the house, get in and out of bed, in and out of a chair, and walk up and down stairs.

In her December 28, 2011 letter written in support of the appellant's Request for Reconsideration, the appellant's general practitioner writes that she understands from the appellant that she experiences constant pain from her back, hip, and knees which she finds is aggravated by all physical activities requiring frequent and prolonged rest periods to accomplish her required daily tasks. The appellant finds it particularly difficult to get out of bed, out of chairs and bath tubs and is not able to do housework most days due to her pain. On the days she attempts to complete tasks she is exhausted and her pain is increased. "She is able to walk independently in our clinic, but I understand she is unable to walk over a city block due to her pain." Her pain significantly affects her sleep. Currently, she is not able to meet her basic needs without assistance or significant increase in her pain.

In a letter dated August 3, 2010 from the appellant's general practitioner in support of the appellant's request for Persons with Persistent Multiple Barriers (PPMB) status, the physician writes that the appellant's back, hip and knee pain are secondary to a 2006 workplace injury and that she continues to have misalignment of her pelvis and myofascial dysfunction in these areas. Due to constant pain, the appellant can sit or stand for less than 30 minutes before the pain becomes unbearable. She cannot lift more than 5 lbs and carrying 5 lbs for more than 5 or 10 minutes makes her pain unbearable. She has trouble sleeping due to pain. She also suffers from moderate to severe depression and Seasonal Affective Disorder which are very debilitating in themselves and exacerbate her pain symptoms.

The 2 pages of notes from the physiotherapist detail the history provided by the appellant including childhood pain, the 2006 accident which was followed by 8 months in a rehab program with limited success, travelling out of the country, and treatment from multiple chiropractors, physios, massage therapists with no improvement. Currently the appellant has shiatsu treatment every 3 weeks. Details of the treatment provided by the physiotherapist during her two sessions with the appellant are also provided.

On appeal, the appellant submitted the following information:

- Approximately 40 pages of information comprised of the notes of treating physiotherapists, chiropractors during 2006 and 2007 [the majority of the information was provided in French and professionally translated for the Tribunal panel];

- An 8-page handwritten description of her typical day dated February 29, 2012;
- A 1-page thermal imaging report ordered by a chiropractor; and
- An April 5, 2012 letter from the same chiropractor who ordered the thermal scan stating that chiropractor has diagnosed the appellant with fibromyalgia.

In describing a typical day, the appellant writes that getting dressed and undressed is very difficult, requires rest breaks and takes 20 minutes. Going to bed requires the use of boosting devices, lots of pillows. It is very difficult to lie down due to a crooked, misaligned pelvis and she tosses and turns all night. She either boosts herself up with pillows and her arms to sit or rolls out of bed onto her knees to stand. The appellant eats her meals out, eats easy food, eats at the food bank, or gets food delivered as she cannot lift pots and pans. She uses ergo techniques to reduce her pain while standing at the stove, counter, and sink. Often she makes a big meal and reheats it in the microwave for the rest of the week. She cannot twist, push or pull and gets someone to do her housekeeping. If she does clean, she pushes through the pain. She uses disposable dishes and utensils so there are no dishes to wash. She has an outhouse not a bathroom and goes to friends' homes for baths, showers, uses the shower at the local pool, or has a sponge bath. She uses a long handled brush to wash herself and can get assistance from a friend if at their home. She can walk less than one block, no more, uses a walking stick, and will have only walked a quarter of a block in the time someone else takes to walk a block. She gets severe pain in her hips and cannot carry anything on her back. Other people deliver her groceries or food from the food bank. Driving is also difficult and costs money. She cannot sit or stand longer than half an hour and needs to shift position or lie down after 5 minutes of standing in line. Lifting is limited to 5 lbs. She describes her pain as severe and constant from her shoulders to lower back and has pinched nerves down her legs. She can see the mis-alignment in her hips and spine. She has pain ranging between 8 and 10, on a scale of 10 being severe pain, 20 days out of 30 with the other days being 6 on the pain scale. Without the use of a walking stick, boosting devices, and handrails she would not be able to perform any kind of daily activities including walking, standing, getting in and out of bed or a seat. Additionally, she requires someone to do her groceries and housekeeping. She has taken various pain medications in the past which either had no effect or had side-effects so she does not take them anymore. She takes natural herbs prescribed with shiatsu to help with pain. She has a learning disability, severe depression, and seasonal disorder and takes St. John's Wort and vitamin D, sees a mental health counsellor at times, and is awaiting an appointment with a psychiatrist. She is still waiting to be seen by an orthopaedic surgeon and physical medicine specialist.

At the hearing, the ministry stated that the appellant's request for PWD designation was denied because there is no medical verification of how often the appellant has bad days in order to establish a severe impairment and significant restrictions with DLA. The ministry also clarified that PWD designation criteria are not about an applicant's ability to work.

At the hearing, the appellant read from the above described written description of a typical day. In response to questions, the appellant explained that the boosting devices she uses include pillows, including those designed to assist mobility and uses ergo techniques including holding on to the handles in vehicles to get in and out. The appellant stated that she uses a walking stick quite often outside and that she drives herself because she cannot walk. She has been unable to figure out what triggers her pain which is all over from hour to hour, that it is unpredictable and sometimes it hurts and sometimes it does not. She takes an herbal remedy (1 tsp 4x daily) which helps boost circulation, reduced inflammation and helps her pain sometimes but it not currently taking it because she cannot afford it. The other day she tried pain medication prescribed by her doctor but it made the appellant throw up all day. She is currently attending a chiropractor once a week for treatment of fibromyalgia. The appellant stated that she has a scheduled appointment with a psychiatrist in September and is still awaiting an appointment with a physical medicine specialist.

The oral and written testimony of the appellant provided on appeal was determined to be further description of

APPEAL #

the appellant's evidence before the ministry at reconsideration and was therefore admitted pursuant to s. 22(4) of the Employment and Assistance Act as being in support of the information and records before the ministry at reconsideration.

PART F – Reasons for Panel Decision

The issue under appeal is whether the ministry reasonably concluded that the appellant has not met the all of the eligibility criteria for designation as a PWD because it was not satisfied that the appellant had a severe physical or mental impairment that, in the opinion of a prescribed professional, directly and significantly restricts her ability to perform DLA either continuously or periodically for extended periods resulting in the need for help to perform DLA. The ministry determined that the age requirement had been met and that the appellant has an impairment that will last for 2 years.

The criteria for being designated as a person with disabilities (PWD) are set out in s. 2 of the EAPWDA and s. 2 of the EAPWDR which are set out below.

2 (1) In this section:

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

"daily living activity" has the prescribed meaning;

"prescribed professional" has the prescribed meaning.

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

- (a) in the opinion of a medical practitioner 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).

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 authorized under an enactment to practice the profession of

- (a) medical practitioner,
- (b) registered psychologist,
- (c) registered nurse or registered psychiatric nurse,
- (d) occupational therapist,
- (e) physical therapist,
- (f) social worker,
- (g) chiropractor, or
- (h) nurse practitioner.

Severity of Impairment

Physical Impairment

With respect to the existence of a severe physical impairment, the appellant's position is that she is severely impaired by her chronic back, neck and hip pain which leaves her able to walk less than 1 block, unable to sit or stand for more than 30 minutes, and unable to lift more than 5 lbs. The appellant further argues that the severity of her physical impairment is established by the fact that she experiences severe pain 20 out of 30 days, is reliant on boosting devices for transfers, and uses a walking cane outdoors.

The ministry's position is that the evidence of the physician and physiotherapist establishes that the appellant's functionality waxes and wanes with no information to suggest continuous restrictions with mobility or physical abilities and that no assistive devices, such as a cane or walker, are required to ambulate, though handrails and a boosting device are used. In reaching this conclusion, the ministry points to the functional skills reported by the physician and the accompanying narrative that pain is worse on some days more than others which limits the ability to lift, walk, and bend forward. The ministry also argues that the need for continuous assistance from another person with all aspects of mobility/physical ability reported by the physiotherapist is not supported by the physiotherapist's accompanying narrative including "at times unable to walk", takes 50% longer, "cannot walk uphill", and stairs require use of handrail. Based on this narrative, the ministry concludes that functional skill limitations have been reported on the appellant's worst days not those less restricted. Additionally, the ministry argues that the physiotherapist does not indicate the frequency or duration of severe symptoms. The ministry also argues that remedial measures in the form of analgesics are available and as the

limitations are due to pain, it is probable that pain medication would ameliorate the pain and allow better functionality. In considering the December 28, 2011 physician's letter, the ministry argues that while the information speaks to significant pain that restricts the appellant's ability to function and perform DLA, remedial measures in the form of analgesics are available to ameliorate pain and allow better physical functionality. With respect to the August 3, 2010 physician's letter, the ministry points to the information that the appellant was to be seen by both an orthopaedic surgeon and a physical medicine specialist and notes that no follow-up information was provided.

With respect to the appellant's physical impairment, the panel finds that a medical practitioner has diagnosed the appellant with chronic low back, hip, and knee pain. The information from a chiropractor provided on appeal is that the appellant has fibromyalgia; however, this diagnosis is not confirmed by a medical practitioner. The panel finds that the ministry reasonably viewed the information provided by both the physician and assessor as identifying variable levels of functioning dependent upon the level of pain the appellant is experiencing. In particular, the physician has consistently indicated that, despite chronic pain, the appellant can independently walk 1 block unaided, can climb stairs with the use of handrails, can lift 5lbs, and can remain standing or seated for ½ an hour. Additional description of the appellant's physical functioning provided by the physician is that pain is worse some days than others, limiting the ability to lift, walk and bend forward, and that the degree of restriction resulting from the appellant's impairment is "moderate" with the physician again noting that "some days" the appellant has great difficulty walking, getting out of bed, and climbing stairs. In the December 28, 2011 letter the physician states that the appellant requires frequent and prolonged rests to accomplish her required daily tasks, noting particular difficulty with transfers out of bed, a chair, and the bath tub. The physician also reports her own observation that while she understands the appellant is unable to walk over a city block, the appellant independently walks while attending the physician's clinic.

The information provided by the assessor is somewhat confusing. For instance, the appellant is reported to be independent walking outdoors but also requires continuous assistance or is unable. The ministry has viewed the assessor's "check marks" indicating that the appellant is both "independent" and requires "continuous assistance from another person or unable" in light of the accompanying narrative. The panel finds the ministry's approach to be reasonable and finds that the need for continuous assistance identified for all aspects of mobility and physical ability is qualified by the accompanying narrative that: "at times" the appellant is unable to walk; she is unable to walk uphill; she is limited to lifting and carrying loads less than 5 lbs; she experiences constant pain, and requires frequent and prolonged rests; and, "some days the pain is so severe, she cannot get around at all." The conclusion that the assessor is also describing quite widely varying abilities in terms of physical functioning, dependent upon pain level, is further supported by the assessor's information respecting DLA which indicates that the appellant independently manages most aspects of DLA but also requires varying levels of assistance "depending on severity of [pain]." The appellant's evidence is that her pain is 8-10, with 10 being severe, 20 out of 30 days and that she requires the use of a walking stick quite often when outside as well as boosting devices and handrails. However, the appellant also reports that on a typical day she can stand and sit for ½ an hour, lift up to 5 lbs, walk one block, and climb stairs with the use of a handrail, and that she is currently taking no pain relievers because they are either ineffective, have side effects, or, with the herbal remedies which she does find effective, because she cannot afford them. Based on the evidence, the panel finds the ministry reasonable in concluding that although the appellant's physical functioning varies depending on the level of pain she is experiencing, the appellant's typical physical functional skills do not establish a severe physical impairment under section 2(2) of the EAPWDA.

Mental Impairment

With respect to a severe mental impairment, the appellant's position taken on appeal is that she has a learning disability, severe depression, and seasonal disorder for which she takes a herbal remedy, sees a counselor at times and is awaiting consultation with a psychiatrist.

The ministry's position is that a severe mental impairment has not been established as the appellant's physician does not report a mental health condition and reports that there are no significant deficits with cognitive and emotional functioning. Additionally, the assessor reported that communication is good and that the sections of the AR relating to cognitive, emotional, and social functioning are not applicable. The ministry further takes the position that while the August 3, 2010 physician's letter describes moderate to severe depression and seasonal affective disorder, there is no information on remedial measures or their outcome to determine if these conditions have an effect on the appellant's current functioning.

The panel finds that the most recent information provided by a medical practitioner, the PR and December 28, 2011 letter, does not include a diagnosis of either a mental impairment or brain injury. Although the physician's letter of August 3, 2010 letter diagnoses moderate to severe depression and seasonal affective disorder which are reported to be very debilitating and exacerbate pain symptoms, in the absence of a current diagnosis of a mental impairment and as both the physician and assessor report no problems with cognitive and emotional functioning or social functioning, the panel finds the ministry reasonably determined that a severe mental impairment was not established under section 2(2) of the EAPWDA.

Restrictions in the ability to perform DLA

Regarding the degree of restriction with DLA, the appellant's position is that pain directly and significantly restricts her ability to dress, transfer into or out of a bed, chair, and vehicle, prepare meals, drive, and that she is unable to do housekeeping.

The ministry's position is that the evidence of the prescribed professionals, the physician and assessor, establishes that many DLA are performed independently or require little help from others and therefore does not establish that the appellant's impairment significantly restricts DLA either continuously or periodically for extended periods. In reaching this conclusion, the ministry relies on the narrative from the physician describing the degree of restriction as "moderate restriction some days greater difficulty walking, difficult to get out of bed and climb stairs." The ministry also argues that the evidence of the assessor indicates varying abilities to manage DLA depending on the severity of the pain and that there is no information on the frequency and duration of the severe symptoms to allow the Minister to determine whether the appellant is significantly restricted either continuously or periodically for extended periods.

The legislation requires that the minister be satisfied that, as a result of a severe physical or mental impairment, a person be directly restricted in the ability to perform DLA and that the restriction must be "significant" and either continuous or periodic for extended periods. Additionally, the legislation requires that the minister be satisfied that the requisite degree of restriction be in the opinion of a prescribed professional.

The evidence provided by the appellant's physician in the PR is that the appellant is periodically restricted in her ability to perform personal self care, basic housework, and daily shopping with the explanation that the periodic restrictions are due to appellant's pain being worse some days than others limiting her ability to lift, walk, and bend forward. The physician also reports a restriction in the appellant's ability to mobilize inside the home but does not indicate whether this restriction is periodic or continuous. A continuous restriction is reported for mobility outside the home. The physician describes the degree of restriction experienced by the appellant as a "moderate restriction" adding that on some days the appellant has great difficulty walking, getting out of bed and climbing stairs. In the December 28, 2011 letter, the physician states that the appellant requires frequent and prolonged rests to accomplish required daily tasks noting that transfers are particularly difficult and that the appellant is unable to do housework most days due to her pain.

The assessor reports that on some days the appellant's pain is so severe she cannot function at all but also reports that the appellant independently manages 21 of 28 applicable aspects of DLA with the exception of both aspects of basic housekeeping, 2 aspects of personal care (transfers to and from chairs and bed), 1 aspect of shopping (carrying purchases home), and 2 aspects of transportation (getting in and out of a vehicle, using public transportation). The panel finds that although the evidence of the physician (December 28, 2011 letter) and the assessor identifies an ongoing inability to manage basic housekeeping and the need for assistance with lifting and carrying over 5 lbs, the ministry has reasonably viewed the evidence of the prescribed professional's as establishing that the appellant independently manages the majority of aspects of the other DLA except on days when the pain is severe. The panel also finds the ministry reasonably concluded that the information from the prescribed professionals does not establish the frequency or duration of the severe symptoms. Rather, the assessor has indicated that "at times" the appellant is unable to walk, and that "some days" the pain is so severe she cannot function at all and the physician has characterized the restrictions with DLA as "moderate." The panel further finds that the appellant's description of a typical day is consistent with the prescribed professionals as it identifies the regular inability to manage housekeeping and the need for boosting devices (pillows and existing rails and handles) for transfers but that the majority of aspects of DLA are managed independently within her ability to walk 1 block, remain standing or sitting for ½ an hour, and lift up to 5 lbs including the ability to often make a large meal for re-heating throughout the week, access bathing facilities at the homes of friends or the local pool, and drive. For these reasons, the panel finds the ministry was reasonable in not being satisfied that in the opinion of a prescribed professional the appellant is directly and significantly restricted in her ability to perform DLA either continuously or periodically for extended periods under 2(2)(b)(i) of the EAPWDA.

Help to perform DLA

Regarding the need for help with DLA, the appellant argues that she requires the use of a walking stick quite often when outdoors, handrails when climbing stairs, and boosting devices for transfers.

The ministry argues that it has not been established that DLA are significantly restricted and therefore, it cannot be determined that significant help is required from other persons.

Regarding the need for help with DLA, s. 2(2) of the EAPWDA requires that the minister be satisfied that, in the opinion of a prescribed professional, a person needs help with DLA as a result of direct and significant restrictions in the ability to perform DLA that are either continuous or periodic for extended periods. Pursuant to s. 2 of the EAPWDR, help is defined as a person requiring an assistive device, the significant help or supervision of another person, or the services of an assistance animal in order to perform a DLA. In this case, the appellant reports that she requires the use of a walking stick quite often when walking outdoors. However, the panel finds that the use of a walking stick has not been confirmed by a prescribed professional and as such, it cannot be determined that a prescribed professional is of the opinion that a walking stick is required to perform a DLA. Both the physician and the assessor, who are prescribed professionals, report that the appellant requires the use of handrails to climb stairs. However, stair railings do not fall within the definition of "assistive device" set out in s. 2 of the EAPWDA as they are not reasonably characterized as devices designed to enable a person to perform a DLA that, because of a severe mental or physical impairment, the person is unable to perform. The need for "boosting devices" is reported by a prescribed professional and although the evidence as to what is meant by "boosting devices" is not entirely clear, it appears that the appellant relies on a combination of devices, some of which are reasonably viewed as regular household items and others which appear to be special pillows designed to facilitate transfers and as such fall within the definition of "assistive device." The evidence of a prescribed professional also establishes that the appellant requires the continuous assistance of another person with the DLA basic housekeeping and carrying shopping weighing over 5 lbs.

While the panel finds that the evidence of the prescribed professionals establishes that the appellant requires the assistance of another person and the use of boosting devices with some aspects of DLA, the panel also finds that the ministry reasonably determined that, as direct and significant restrictions in the appellant's ability to perform DLA have not been established, it cannot be determined that help is required to perform DLA as a result of direct and significant restrictions as is required by s. 2(2)(b)(ii) of the EAPWDA.

The panel finds that the ministry's decision was reasonably supported by the evidence and confirms the decision.