

PART C – Decision under Appeal

The decision under appeal is the Ministry of Social Development (“ministry”) reconsideration decision dated June 27, 2012 which found that the appellant’s application for Persons With Disabilities (“PWD”) designation did not meet three of the five statutory requirements of section 2 of the Employment and Assistance for Persons with Disabilities Act. The ministry found that the appellant was at least 18 years of age and that her impairment was likely to continue for two years or more. However, the ministry was not satisfied that the evidence establishes that the appellant has a severe physical or mental impairment and 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

PART E – Summary of Facts

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

1. Person With Disabilities (PWD) Application: applicant information dated February 21, 2012 including the appellant's self-report of the same date, physician report dated March 6, 2012 and assessor report dated March 6, 2012;
2. A letter dated May 3, 2012 from the ministry to the appellant denying PWD designation and attaching a PWD Designation Decision Summary dated May 1, 2012;
3. A letter dated June 6, 2012 from the appellant's advocate and addressed to the appellant's physician seeking information regarding the appellant's condition which is signed by the physician and dated June 7, 2012;
4. An undated letter from the appellant (stamped "Received" on June 21, 2012 by the ministry) indicating that she is no longer seeing the physician who completed her PWD application and that she is seeing a new physician and attaching a one page summary of submissions in support of her reconsideration application;
5. The appellant's Request for Reconsideration dated June 6, 2012;

At the hearing, the appellant provided a copy of an Imaging Requisition completed by her physician. This undated requisition refers to an ultrasound scheduled to be performed on the appellant's abdomen on September 13, 2012. The ministry did not object to the admissibility of this document. The panel reviewed the document and noted that reference is made in the PWD application to the appellant suffering from abdominal pain and the panel therefore admitted the Imaging Requisition as being a further description of the appellant's diagnosed condition and treatment 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.

In her Notice of Appeal, the appellant states that she is not allowed to work due to doctor's orders.

In her self-report included with the PWD application, the appellant states that she has fibromyalgia and arthritis in her lower back which causes her pain every day in her muscles and nerves. She states that her pain increases with any type of physical activity such as sitting too long, standing or lifting which hurts a great deal. The appellant states that she also has asthma which causes her to experience shortness of breath with too much physical exertion such as climbing stairs. Under the heading "Daily Living Activities", the appellant states that with respect to cognitive and emotional function, she has difficulty concentrating and is distracted easily by her surroundings. She says that she was diagnosed with anxiety and panic attacks as a child and she takes medication to keep her calm and further she writes things down such as appointments so as not to forget them. With respect to communication, the appellant states that she has a hard time putting her thoughts into words, she has poor spelling when writing. The appellant states that her mobility is bad if her medication wears off with the result that walking is limited to less than 2 blocks, sitting is less than an hour, lifting is about 5 lbs and she cannot climb more than a couple of stairs. When she is medicated, the appellant says that she is limited to less than 3 blocks walking, lifting less than 15 lbs and standing less than 15 to 20 minutes. The appellant notes that bending is always restricted due to the pain in her back which medication does not relieve. With respect to personal care, the appellant states that it takes her 5 minutes to get out of bed each morning because she is stiff and sore and she has a very hard time putting on shoes and she occasionally has her children help her. For basic housekeeping, the appellant notes that her husband carries the laundry and helps with the housework including sweeping, washing floors, cleaning the bathtub and washing dishes when there are too many as the appellant says she can only stand for 15 to 20 minutes. The appellant states that she does not shop alone and that her husband accompanies her to pick up items off the lower shelves and to carry the purchases. The appellant states that she can pick up a very light bag but cannot carry it more than 20 feet. Lastly, the appellant states that her husband helps with meals that take longer than 15 minutes and that she can't stand and stir things or lift heavy items out of the oven.

At the hearing, the appellant stated that both of her doctors agree that she cannot work labour jobs like at a restaurant or anything that involves standing for long periods of time or walking long distances although the appellant noted that she can work out of her home. The appellant stated that her pain makes walking, sitting for long periods, carrying heavy things, sleeping and getting comfortable in a chair difficult and that she uses pain medication. The appellant stated that she leaves most of the housework to her husband because her entire body and particularly her lower back is in pain. The appellant stated that she has to wait 5-6 hours between pain medication doses and that she takes up to 10-12 pills at bed time to allow her to sleep. The appellant also commented that she has to take Tylenol 3 or acetaminophen with codeine in between her doses of pain medication. The appellant noted that her doctor has prescribed her a specific medication for her fibromyalgia but she can't afford it. The appellant noted that there is not much more that her doctor can do but prescribe pain medication and that he has increased her dosage as much as possible. The appellant went on to state that the ministry has not considered her reduced ability to get around and the pain she experiences when she does so. The appellant said that she has to take the bus as her car is in need of repair and that this requires a lot of standing and walking and that walking 2 or 3 blocks is agonizing. In addition to this, the appellant stated that she has exercise induced asthma and that if she runs or walks too fast or if she does anything too strenuous she starts breathing hard. Lastly the appellant notes that she had scarlet fever when she was 3 and as a result her immune system is run down which causes her to become sick very easily.

In response to a question, the appellant commented that her whole body from her neck down is in excruciating pain and that if she didn't take pain medication, it would be over a "10" on a scale of 1 to 10. While she is taking pain medication, the appellant said that her pain is about an 8 or 9 out of 10. In response to a question, the appellant answered that she can clean counters and do dishes for about 10 minutes after which either her husband takes over or she takes a break until her pain comes down. In response to a question, the appellant answered that she has had three previous surgeries but she is unsure whether her abdominal pain is related to any of them. She continued that she has lost a lot of weight in the last couple of months due to a change of diet. In response to a question, the appellant answered that her current physician referred her to a pain management professional but as his or her office is not in the appellant's hometown and she does not have a vehicle, she is unable to make an appointment although she would like to. In response to a question, the appellant stated that she can do dishes for about 15 minutes but then must take a break because of her back pain which includes arthritis in her tailbone. The appellant noted that her husband does 90-95% of the housework, that she can clean counters, wash dishes for 15 minutes or clean bathroom mirrors but the majority of housework she cannot do.

The appellant's husband gave evidence at the hearing on her behalf. He stated that in the past couple of years the appellant's condition has become worse and that after her surgeries she experienced frequent soreness which was later diagnosed as fibromyalgia. After that diagnosis he stated that the appellant could not do a lot of things as she could before. The appellant's husband stated that around the home, he does most everything as the appellant can only stand for about 15 minutes after which she needs to relax due to her pain. The appellant's husband stated that he hoped medication would help the appellant but that they cannot afford a medication specifically identified to treat fibromyalgia.

The physician who completed the physician report confirms that the appellant has been her patient for 2 years and that she has seen the appellant more than 11 times in the past 12 months. In the physician report, the physician notes diagnoses of fibromyalgia, osteoporosis – chronic low back pain, obesity and anxiety disorder. The date of onset of these diagnoses is not indicated. The physician notes under Health History that the appellant has chronic back pain, chronic arthralgia/myalgia, chronic abdominal and pelvic pain and obesity. The physician indicates that the appellant has been prescribed medication that may interfere with her ability to perform DLA including Tylenol 3, Gabapentin, Nitrazepam and Ativan and that the anticipated duration of use is chronic and likely indefinite. In response to the question whether the impairment is likely to continue for two years or more, the physician indicates "yes" and notes "...Fibromyalgia, permanent, progressive controlled by

medication." The physician indicates that the appellant can walk 2 to 4 blocks unaided on a flat surface, that she can climb 5 or more stairs unaided or 2 to 5 steps without medication, that she can lift 2 to 7 kgs and she can remain seated less than 1 hour. The physician notes that the appellant has no difficulties with communication but that she has significant deficits with cognitive and emotional function including language (written comprehension is underlined), memory, emotional disturbance and attention or sustained concentration and the physician further comments "...anxiety, panic attacks, difficulty with concentration." The physician concludes the physician report by noting "...Chronic disease. Also severe family stressors with husband and apprehension of children by social services."

The appellant's physician also completed the assessor report and indicates that the appellant lives with her husband but marital problems exist. The physician further notes that the appellant has a good ability to communicate in reading and satisfactory ability in speaking and writing and notes further that the appellant has difficulty expressing herself and with putting thoughts into words. The physician does not comment on the appellant's hearing. The physician indicates that the appellant is independent in all areas of mobility and physical ability but that all take significantly longer than typical. Specifically, the physician notes that the appellant takes twice as long walking indoors, walking outdoors and climbing stairs and that she can stand for less than 20 minutes and needs help lifting, carrying and holding more than 15 lbs. The physician further comments "...chronic pain, decreased mobility, obesity all affect ADL!" The physician does not indicate that the appellant's cognitive or emotional functioning is impaired. The physician indicates that the appellant is independent with all tasks of personal care including dressing, grooming, bathing, toileting, feeding self, regulating diet and transfers on/off chair but that she is slower than normal with transfers in/out of bed. The physician reports that the appellant takes significantly longer than typical with doing laundry and basic housekeeping and that she receives help from her husband which is essential. The physician indicates that the appellant is independent with most of the tasks of shopping including reading prices and labels, making appropriate choices and paying for purchases while requiring continuous assistance from another person with going to and from stores which takes significantly longer than typical specifically in respect of problems shopping for items on lower or higher shelves. The physician also notes that the appellant requires continuous assistance carrying purchase home, specifically heavy items and he comments further that the appellant experiences difficulty dressing and bending over, requires help with keeping her home in order and relies heavily on her husband. The physician reports that the appellant is independent with two of the tasks of managing meals, including meal planning, and safe storage of food, but requires continuous assistance with food preparation and cooking which takes significantly longer than typical as the appellant can't stand for long periods and her husband helps. The physician indicates that the appellant is independent with all tasks of paying rent and bills (including banking and budgeting) and with managing medications (filling/refilling prescriptions, taking as directed and safe handling and storage). With respect to transportation, the physician notes that the appellant takes significantly longer getting in and out of a vehicle taking two times as long and needing to hold a handle. The appellant's use of public transit and associated schedules is noted as not applicable. The physician has not reported any limitations in the appellant's social functioning or impacts on her immediate and extended social networks. The physician notes again that the appellant relies heavily on her husband for help with DLA but does not use any equipment, devices or an assistance animal to compensate for her impairment.

The June 6, 2012 letter prepared by the appellant's advocate posed numerous questions for the appellant's subsequent physician to answer which he did on June 7, 2012. The physician agreed with the statement of the appellant that along with the arthritis in her spine and her fibromyalgia, she considers her condition to be severe, especially during cold, damp weather. The physician comments further that "The pain medication can help her for time being." The physician also agreed with the statement of the appellant that she is only able to walk 2 blocks maximum and the physician comments further that "Without pain medication she can't walk 2 block maximum." The physician also agreed with the statement that the appellant is unable to climb any stairs without holding a handrail, that she is unable to lift more than 15 pounds and that she is in considerable pain

most of the time and is only able to sit for less than one hour and the physician comments that the appellant can sit more with pain medication. The physician agrees that the appellant needs continuous assistance with housekeeping, laundry, shopping and meal preparation and the physician agrees that the appellant's condition is severe and significantly restricts her DLA to the extent that she needs considerable assistance, commenting that "with continuous treatment, she can live a better life."

PART F – Reasons for Panel Decision

The issue on the appeal is whether the ministry reasonably concluded that the appellant did not meet three of the five statutory requirements of Section 2 of the EAPWDA for designation as a person with disabilities (PWD). The Ministry found that the appellant was at least 18 years of age and that her impairment was likely to continue for two years or more. However, the ministry was not satisfied that the evidence establishes that the appellant has a severe physical or mental impairment and 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.

The criteria for being designated as a person with disabilities (PWD) are set out in Section 2 of the EAPWDA as follows:

Persons with disabilities

2 (1) In this section:

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

"**daily living activity**" has the prescribed meaning;

"**prescribed professional**" has the prescribed meaning.

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

Section 2(1)(a) of the EAPWDR defines DLA for a person who has a severe physical or mental impairment as follows:

Definitions for Act

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

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

- (i) prepare own meals;
 - (ii) manage personal finances;
 - (iii) shop for personal needs;

 - (iv) use public or personal transportation facilities;
 - (v) perform housework to maintain the person's place of residence in acceptable sanitary condition;
 - (vi) move about indoors and outdoors;
 - (vii) perform personal hygiene and self care;
 - (viii) manage personal medication, and
- (b) in relation to a person who has a severe mental impairment, includes the following activities:
- (i) make decisions about personal activities, care or finances;
 - (ii) relate to, communicate or interact with others effectively.

The ministry referred to the Reconsideration Decision and submitted that to be eligible for PWD designation, the appellant must satisfy all five criteria as set out in section 2 of the EAPWDA and that in the present case, the appellant has failed to do so. The ministry argues that the evidence does not demonstrate that the appellant has a severe physical or mental impairment. The ministry argues that the appellant's cognitive and emotional function are only minimally or moderately impacted and that the appellant's communication skills are only minimally impacted. The ministry argues that with respect to mobility and physical ability, the appellant's functional skills are acceptable with medication and decrease without but that her functional skills are somewhat acceptable even when medication has worn off. The ministry argues that the appellant has the ability to be mobile although it takes longer to do so. The ministry notes that with respect to personal care, the five minutes it takes for the appellant to get out of bed is not a significant restriction and that while her husband does the majority of the basic housekeeping, the appellant is able to complete sedentary activities as she can stand for 15-20 minutes. While the ministry acknowledges that the appellant requires assistance from her husband with shopping, it argues that the appellant is able to pick up light bags and carry them 20 feet and stand for 15-20 minutes and carry items up to 15 lbs on most days with medication. Further, the ministry argues that the appellant's limitations in preparing meals are limited while acknowledging her husband helps with meals that take longer than 15 minutes to cook. The ministry concluded by arguing that while the appellant's physical conditions cause limitations to her daily functioning, the limitations do not demonstrate a severe physical or mental impairment.

The appellant argues that the decision of *Hudson v. Employment and Assistance Appeal Tribunal*, 2009 BCSC 1461, stands for the proposition that, inter alia, an application for PWD designation is sufficient if the evidence of the medical practitioner and the assessor when read together confirms that a person has a severe impairment that directly and significantly restricts their ability to perform DLA, that this evidence must be read in its entirety and broadly and that significant weight must be placed on the evidence of the applicant unless there is a legitimate reason not to do so. In the present case, the appellant argues that the evidence establishes that she suffers from a severe physical impairment. The appellant argues that she has fibromyalgia and arthritis in her lower back, which causes her pain every day in her muscles and nerves. She states that her pain increases with any type of physical activity such as sitting too long, standing or lifting which hurts a great deal. The appellant states that she also has asthma, which causes her to experience shortness of breath with too much physical exertion. The appellant submits that her whole body from her neck down is in excruciating pain and that if she didn't take pain medication, it would be over a "10" on a scale of 1 to 10. While she is taking pain medication, the appellant said that her pain is about an 8 or 9 out of 10.

The panel notes that the evidence of a medical practitioner in the physician report confirms a diagnosis of

fibromyalgia, osteoporosis – chronic low back pain, obesity and anxiety disorder. The physician adds comments that the appellant has chronic back pain, chronic arthralgia/myalgia, chronic abdominal and pelvic pain and obesity. The physician report indicates that the appellant has been prescribed medication (Tylenol 3, Gabapentin, Nitrazepam and Ativan) that may interfere with her ability to perform DLA, and she does not require an aid for her impairment. The physician indicates that the appellant can walk 2-4 blocks unaided on a flat surface, that she can climb 5 or more stairs unaided or 2-5 stairs without medication, that she can lift 2-7kg and remain seated less than 1 hour. The physician assesses the appellant as independent with walking indoors, walking outdoors and climbing stairs but that each of these tasks takes twice as long. The appellant is also assessed as being independent standing for less than 20 minutes and independent lifting, carrying and holding although she requires help with items greater than 15lbs. The assessor comments that the appellant has chronic pain, decreased mobility and obesity all of which affect DLA. In the June 6, 2012 letter prepared by the appellant's advocate, the second physician agrees with the appellant's contention that along with her arthritis in her spine and her fibromyalgia, the appellant "considers her condition to be severe, especially during cold, damp weather." The physician adds the comment that "The pain medication can help her for the time being." The physician further agrees with the appellant's contention that she is only able to walk 2 blocks maximum and the physician adds that without pain medication "she can't walk 2 block maximum." The physician further agrees with the appellant's contention that she is unable to climb any stairs without holding a guardrail, the she is unable to lift more than 15 lbs and that she is in considerable pain most of the time and is only able to sit for less than one hour but he comments that the appellant "can sit more with pain medication." The physician concludes by commenting that "with continuous treatment, [the appellant] can live a better life."

Overall, the panel notes that the appellant experiences chronic pain secondary to arthritis and fibromyalgia, which is managed with medication. The panel further notes that the appellant requires frequent rest and is limited somewhat in her physical mobility. The evidence demonstrates that the appellant is independently able to carry out all activities of mobility and physical ability with the exception of lifting and carrying albeit with some limitation. The appellant is able to lift and carry and hold up to 15 lbs., walk more than 5 stairs with medication and walk 2-4 blocks. There is no indication of the use of an assistive device to help compensate for a physical impairment. The panel notes that both of the appellant's physicians offer the opinion that her condition can be treated with pain medication and pain management treatment. The panel notes further that while the second physician agrees with the appellant's contention that her condition is severe, the legislation requires that a person applying for PWD designation demonstrate that they suffer from a severe mental or physical impairment. Based on all of the circumstances as set out above, the panel finds that the ministry reasonably determined that the evidence does not establish that the appellant suffers from a severe physical impairment.

With respect to mental functioning, the ministry argues that the evidence does not show that the appellant has a severe mental impairment. The ministry argues that the appellant's difficulty concentrating, becoming easily distracted, having to write things down and taking medication to remain calm has only a minimal to moderate impact on her emotional functioning. The ministry further points out that the appellant's difficulty putting thoughts into words and difficulty spelling are minimal impacts to communication skills. Lastly, the ministry refers to the appellant's self-report and submits that overall any impacts of mental deficits are minimal to moderate in degree. The physician report notes a diagnosis of anxiety disorder but the physician notes "...also severe family stressors with husband and apprehension of children by social services." The assessor report demonstrates a good ability to read and satisfactory ability to speak and write with some difficulty. The assessor did not indicate any impact of mental impairment on the appellant's cognitive, emotional or social functioning. The appellant in her self-report notes that she has difficulty concentrating, that she becomes distracted easily and that she takes medication to remain calm as she was diagnosed with anxiety and panic attacks as a child. The appellant reports that she has a hard time putting thoughts into words and that she has poor spelling.

The panel notes that while the appellant's physician identifies in the physician report that she has significant deficits with language (written comprehension), memory, emotional disturbance and attention or sustained concentration, the assessor report demonstrates that the appellant's ability to read is good and her ability to speak and write are satisfactory although the physician notes the appellant has difficulty expressing herself and putting thoughts into words. The panel further notes that the physician does not indicate any impact on the appellant's cognitive, emotional or social functioning. While the evidence suggests that the appellant suffers from anxiety disorder and panic attacks, the overall impact on the appellant's cognitive, emotional and social functioning is minimal in nature and therefore the panel finds that the ministry's decision 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 argues that the appellant can perform the majority of her personal care, reading prices and labels, making appropriate choices, paying for purchases, all aspects of paying rent and bills and medications independently. The ministry also notes that the appellant's subsequent physician in the June 6, 2012 letter comments that with treatment the appellant can live a better life. The ministry acknowledges the appellant requires continuous assistance with going to and from stores, carrying purchases home, food preparation and cooking as well as basic housekeeping and laundry. However, the ministry argues that comments by the assessor that tasks take twice as long is not considered significantly longer. The appellant again references the *Hudson* decision (*supra*) and argues that in the context of DLA, it stands for the proposition that there must be evidence from a prescribed professional indicating a direct and significant restriction on at least two DLA and that there is no statutory requirement that more than two DLA be restricted. The appellant argues that her husband is responsible for 90-95% of the housework and that she relies heavily on him for assistance with meal preparation, housekeeping and shopping despite her use of pain medication. The appellant argues that the PWD application shows that her ability to perform DLA is directly and significantly restricted continuously in a number of areas.

The panel finds that the legislation requires that the ministry be satisfied that the appellant has a severe mental or physical impairment that in the opinion of a prescribed professional directly and significantly restricts the appellant's ability to perform DLA either continuously or periodically for extended periods. In the assessor report, the physician indicates that the appellant is independent in all aspects of personal care other than transfers in and out of bed ("slower than normal") but that she takes significantly longer with laundry and basic housekeeping ("help from husband essential"). For shopping, the physician notes that the appellant is independent reading prices and labels, making appropriate choices and paying for purchases that that she requires continuous assistance going to and from stores and shopping for items on lower or higher shelves. The physician also notes that the appellant requires continuous assistance carrying purchases home ("help with heavy items"). The physician adds the comment that "...difficulty dressing, bending over etc. Help with keeping home in order. Relies heavily on husband." The physician notes that the appellant is independent with meal planning and safe storage of food but that she requires continuous assistance and takes significantly longer with food preparation and cooking as she can't stand for long periods and her husband helps her. The physician finds in the assessor report that the appellant is independent in all aspects of paying rent and bills and medications but for transportation, the appellant takes twice as long and needs to hold a handle getting in and out of a vehicle. The physician makes no comment regarding the appellant's social functioning. The appellant commented that as her vehicle is in need of repairs currently, she is required to take the bus and the associated standing and walking is very painful for her. In the June 6, 2012 letter from her subsequent physician, the physician agrees that the appellant requires continuous assistance with housekeeping, laundry, shopping and meal preparation but that with continuous treatment, the appellant can live a better life. In her self-report included in the PWD application, the appellant confirms that her husband provides assistance with laundry and housework, daily shopping and meal preparation.

Considering the evidence as a whole, the panel finds that the appellant's subsequent physician, as a prescribed professional, indicates in the June 6, 2012 letter that she requires continuous assistance with housekeeping, laundry, shopping and meal preparation but that with continuous treatment, the appellant can live a better life. The physician who prepared the assessor report finds that the appellant takes significantly longer and requires assistance from her husband with basic housekeeping, that she requires continuous assistance with 2 out of 5 tasks of shopping and 2 out of 4 tasks of managing meals and comments that the appellant "relies heavily on husband." However, the physician notes that the appellant can perform the majority of her personal care, and shopping and all aspects of paying rent and bills and medication independently. Given the circumstances, including the legislative requirement that the restriction of the appellant's ability to perform DLA arise out of a severe physical or mental impairment which as set out above has not been established, 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 with her husband and that she relies on him heavily to assist her with meal preparation, shopping and basic housekeeping. As it has not been established that the appellant's DLA are directly and significantly restricted as set out above, 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.