

## PART C – Decision under Appeal

The decision under appeal is the ministry's reconsideration decision dated August 20, 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 has an impairment that 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 comprised:

- a PWD application which included a Physician Report (PR), an Assessor Report (AR) both dated May 30, 2012 by the appellant's physician of 3 years and the appellant's Self Report (SR) dated June 7, 2012 and
- a letter from the appellant's physician dated August 9, 2012.

In the PR, the appellant is diagnosed with fibromyalgia, endometriosis, chronic fatigue and mood disorder. The prescribed professional (PP) reports that the endometriosis is very severe and that the appellant has chronic pain which flares up when bleeding occurs. These flare-ups have been difficult to manage and have a significant impact on the appellant's ability to function with DLA, work or schooling. The PP reports that the fibromyalgia although mild exacerbates the appellant's ability to cope with the main pain problem of endometriosis. Additionally, the PP reports that the mood disorder is a reaction to the disabling pain problem. The appellant has been prescribed narcotic analgesics which are reported to interfere with her ability to perform DLA. No aids or prostheses are required for her impairment. With respect to functional skills, the appellant can walk 2 to 4 blocks unaided on a flat surface, climb 5+ stairs unaided, lift 5 to 15 lbs, and can remain seated for less than 1 hour. The appellant has no difficulties with communication. Significant deficits with cognitive and emotional function are reported for 3 of 11 specified areas, executive, emotional disturbance and motivation. The narrative indicates that with flare-ups, there are significant changes to coping abilities and that medication also impacts cognitive function.

Although not required when the same PP is completing both the PR and AR, the PP has indicated that 6/10 DLA are directly restricted by the appellant's impairment as follows: personal self care (continuous), meal preparation (periodic), basic housework (continuous), daily shopping (continuous), mobility inside the home (periodic) and mobility outside the home (periodic). The PP explains under "periodic" that as the pain problem has flares, there are periodic times when the appellant is worse and these activities are also limited. It is added that the appellant requires assistance with housework, shopping, meal preparation, periodically and would benefit from psychotherapy, visualization, meditation, massage therapy and exercise rehab. The PP states that the unpredictable flares of the appellant's chronic problem make it difficult to predict her abilities.

In the AR, 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 identified as being independent walking indoors and outdoors, climbing stairs, standing and carrying/holding whereas with lifting the appellant takes significantly longer than typical. When asked to indicate whether there is no impact, a minimal impact, a moderate impact, or a major impact on the appellant's daily functioning in 14 listed areas of cognitive and emotional functioning, the PP reported a major impact for 3 listed aspects, emotion, motivation and other mental or emotional problems, a moderate impact for 2 listed aspects, bodily functions and consciousness, a minimal impact for 1 additional aspect, insight and judgement and no impact for the remaining 8 areas of impulse control, attention/concentration, executive, memory, motor activity, language, psychotic symptoms and other neuropsychological problems. Accompanying narrative is that during severe pain flares, the appellant has marked limitations due to the medication and the inability to function normally is secondary to the pain.

With respect to DLA, under Personal Care, the appellant is reported to take a bit longer with dressing due to pain and grooming takes double the normal time and can be exhausting. The remaining aspects of bathing, toileting, feeding self, regulate diet, transfers in/out of bed and transfers on/off chair are independently managed. Under Basic Housekeeping, the aspects of laundry and basic housekeeping are indicated to require continuous assistance from another person or unable. Under Shopping, the aspects of reading prices and labels, making appropriate choices and paying for purchases are independently managed whereas going to

and from stores and carrying purchases home are indicated to require continuous assistance from another person or unable. Under Meals, the aspects of meal planning, food preparation and cooking are noted as requiring periodic assistance from another person whereas safe storage of food is independently managed. Under Pay Rent and Bills, the aspect of banking is noted as requiring periodic assistance from another person whereas budgeting and pay rent and bills is independently managed. All aspects of DLA under Medications and Transportation are independently managed by the appellant. With respect to Social Functioning, the appellant is noted to require periodic support/supervision in the areas of being able, to develop and maintain relationships as the pain impacts the ability to make plans and can affect work and of being able to deal appropriately with unexpected demands as the pain's impact is unpredictable. Marginal functioning is noted with the appellant's immediate social network and good functioning for her extended social network. The PP writes that the appellant requires support from psychotherapy and would benefit from an exercise program. Assistance is provided by family and friends. Under other assistance required, it is noted; home support worker, massage therapy, exercise therapy and counselling. The PP makes an additional note that the appellant is highly motivated to keep herself [.....] reoccurrence of the severe pain flares precludes her being able to proceed in a usual fashion.

In the SR, the appellant states that she was diagnosed with endometriosis when she was 18 and has found it extremely difficult to learn the realities of the disease. She has had 5 surgeries to remove scar tissue due to endometriosis and has tried many drug therapies. She was prescribed pain medication and has tried several times to get off them but relapses every few months. The appellant states that she has severe attacks that happen out of the blue which have caused her to seek medical attention due to the extreme pain and loss of blood. These attacks are extremely uncomfortable and the appellant notes that she can barely function spending days after "bed ridden". She states that this disease affects her social life and she has had to take breaks from her education due to pain and hospitalization. The appellant states that she was diagnosed with fibromyalgia a few years ago and this affects her mood and emotions as well as causing her extreme pain throughout her body. She adds that she has tried massage therapy, therapy, Chinese medicine, acupuncture, chiro, visualization and meditation to find that most treatments have been unsuccessful. The appellant also states that she has tried to work however has found that her disease has become worse over the years and she has had to miss work or quit due to flare-ups or break through bleeding. She finds that it is hard to care for herself in her own apartment and often relies on support from her parents or friends to help with i.e. laundry. The appellant states that she tries to remain positive with these diseases but finds it a daily challenge.

The August 9, 2012 letter signed by the appellant's physician indicates that the appellant has a severe physical and mental impairment due to her endometriosis and fibromyalgia. The PP indicates that the appellant suffers from chronic pain, with acute flare-ups, joint pain and swelling, chronic fatigue, lack of energy, frequent periods of nausea and vomiting and excessive, debilitating vaginal bleeding. Additionally, the PP indicates that appellant is subject to depression, anxiety and poor concentration. All which are indicated to have a significant impact on her ability to perform DLA. The physician states that the appellant has been prescribed anti-depressant and anti-anxiety drugs however; the medication does not alleviate the appellant's daily problems. The appellant is also said to present frequently at the emergency room for additional pain control. The PP further states that the appellant is significantly restricted in performing DLA most of the time on an ongoing basis, periodically and for extended periods. Examples provided include personal care routines which take much longer than normal, housework, meal preparation, mobility, shopping, using public transport, banking and other outdoor activities. The appellant's depression and anxiety restrict her decision-making and social functions. The appellant therefore relies on family members and friends for ongoing help and support for DLA.

On appeal, the appellant submitted the following:

- a verification of permanent disability form dated February 3, 2009,

- a hospital verification document dated September 4, 2012,
- a letter from the appellant's physician September 11, 2012.

The verification of permanent disability form for the appellant indicates a diagnosis of endometriosis by a qualified medical assessor and lists the daily functional impacts of the disability to the student in an educational setting. (This form is not readable in its entirety.)

In the hospital verification document, the appellant is noted as having 20 emergency visits to the same hospital starting on May 27, 2003 and ending on July 19, 2012. There were 3 inpatient admissions dated April 23, 2003, March 8, 2010 and August 18, 2011 and 4 ambulatory care dates starting on November 17, 2003 and ending on August 17, 2011.

In the September 11, 2012 letter, the appellant's physician writes that she intends to clarify the appellant's condition and provide further information to support her application for disability benefits. The PP indicates that she has seen the appellant 21 times in the last 12 months and in the year prior had seen the appellant 20 times. The PP states that the appellant is on suppressive hormone therapy to prevent ovulation and menstruation and the appellant does not menstruate monthly. The PP adds that when the appellant bleeds, it is not supposed to be occurring and during these periods the pain is excruciating often requiring 2 or 3 narcotic analgesics. The PP states that the appellant's activities come to a halt and she is usually house or bed bound. "At these times she would not be able to walk or climb stairs, perform activities of daily living, or in any way be able to function socially. Her family and partner are required to help her with activities of daily living, including food preparation, shopping, cleaning, personal hygiene and other tasks. These episodes are not predictable and can last for several days to several weeks; often she has gone to the hospital because the pain is so severe." The PP reports that in addition to the chronic pelvic pain, the appellant has fibromyalgia and chronic fatigue and that narcotic analgesia is taken on a daily basis and with flares an increased amount is required. "This pain is daily and it too impacts" the appellant's functional ability in the same way as the pelvic pain. The PP also reports that the appellant requires antidepressant medication to treat both anxiety and depression and during pain flares the symptoms of these disorders are also exacerbated, further limiting her ability to function, not only physically but also cognitively. The PP indicates that the appellant has seen many specialists to help alleviate or manage her condition but to date there have not been any improvements and that she requires counselling for her problems. The PP states that the appellant's endometriosis pain problem is by far the most challenging and difficult that she as a PP has had to manage and that the appellant has a significant chronic disability present most of the time which limits all aspects of her life when exacerbated.

At the hearing the appellant's advocate presented a letter dated September 13, 2012 from the appellant's gynaecologist who was also the author of the verification of permanent disability form. The appellant has been her patient since 2004 and is confirmed to have Stage 2 endometriosis. The gynaecologist reports that the appellant's main issue is severe unpredictable bleeding accompanied by excessive pain and that she has failed most conventional medical and surgical treatments for her problem. The gynaecologist states that the appellant has an unusual problem with a uterine abnormality; she gets build-up of blood and debris in her uterus that gushes out at unpredictable times. The gynaecologist indicates that when the appellant bleeds, it is extremely heavy causing excessive pain which is difficult to control. Thus, the appellant has had numerous visits to the Emergency Room for pain management. The gynaecologist states that the appellant has developed secondarily, a chronic pain syndrome with associated fibromyalgia and mood disorder. The gynaecologist reports that the appellant has received help from a multidisciplinary clinic to help manage her pain yet she still has intermittent flare-ups that would render her ability to hold a job very difficult, if not impossible. The gynaecologist states that the appellant may be helped in the future by having a hysterectomy but her desire for children precludes that as an option for the moment.

At the hearing the appellant's mother who is a non-practising registered nurse stated that she calls her daughter 3 times each day to determine if she is in need of help or if she requires anything. The mother testified that she takes her daughter to the doctor, cleans her house, brings her food, does her laundry and buys her groceries, 3-4 times per week. The mother who works indicates that she is on call 24/7 for her daughter. The mother also stated that when the appellant is unable to cope, she returns home or the mother goes to stay with her. After the appellant's most recent, longest, hospitalization period from March 8-15, 2010, the appellant stayed with her mother for 2 or 3 days.

At the hearing the appellant testified that her pain never ends, she can't be alone when on pain medication, she has been on morphine for the last 2 months, she takes morphine 4 times a week for pain, her flare-ups are more than once a week, she has been embarrassed because of the unpredictable bleeding, she doesn't have a period, she is continuously on birth control and nothing stops the haemorrhaging. The appellant testified that she has disability status at school which provides accommodations such as being a part time student, late assignments and more time for exams. When referring to her mental health, the appellant states that she is depressed, doesn't have energy to attend or sit through class and finds it extremely challenging. When referring to her physical status, the appellant states that she has pain every day, has no energy, finds it impossible to do housework, can't cook, can't carry bags, her parents bring over meals and groceries, her parents do her laundry, she finds it hard to dress which takes longer, she is exhausted in the morning before leaving the house and takes cabs as she can't take the bus.

The appellant's advocate requested to make a point of clarification concerning the physician's letter dated August 9, 2012 and the approach used of questions and answers. The advocate explained that he had put together some questions for the appellant to ask her doctor which the appellant, with the help of her parents typed up and then also included answers. The appellant then gave the question and answer document to the doctor who made some changes and returned it to the appellant. The appellant stated that she was under time pressure as the doctor was leaving for holidays. In response to a question by the panel, the appellant also admitted that she had printed in the diagnoses in Part A of the PR as well as made some other additions in printing in Part B and Part C.

In response to a question by the panel about the results of the appellant's last treatment, daily suppressive hormone therapy and how often the bleedings are now occurring; the appellant replied that the bleedings occur sometimes every 15 days when she has to stay in bed for a couple of days and sometimes every 45 days. In the last week the appellant indicated that she had 3 bleeds, 2 days were the worst and after that it was slower and before that for 1 and ½ months she was free, and before that every 2 weeks until she haemorrhaged out. The appellant further explained that her haemorrhaging changes maybe because of stress or when she over does it.

The panel finds that the verification of permanent disability form dated February 3, 2009, the hospital verification document dated September 4, 2012, the September 11, 2012 letter from the appellant's physician, the September 13, 2012 letter from the appellant's gynaecologist along with the testimony from the appellant and her mother provide further description of the impact of the appellant's previously diagnosed medical conditions and are thus admissible under s. 22(4) of the Employment and Assistance Act as being in support of the information and records before the minister at reconsideration. Noted is that the ministry representative had no objections to any of the above stated new evidence.

No additional evidence was provided by the ministry on appeal.

The advocate's submission is accepted as argument.

## PART F – Reasons for Panel Decision

The issue under appeal is whether the ministry reasonably concluded that the appellant has not met 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 has chronic pain due to endometriosis and fibromyalgia which impair her ability to manage daily activities. Both the appellant's physician and gynecologist report that the appellant's chronic pain flares up when bleeding occurs. When the appellant bleeds which is not supposed to occur, the pain is excruciating often requiring 2 or 3 narcotic analgesics and halting all the appellant's activities, with the appellant usually becoming house or bed bound. These episodes are not predictable and can last from several days to several weeks. Additionally, the appellant has failed most conventional medical and surgical treatments for her problem.

The ministry's position is that the information in the PWD application respecting the appellant's physical functional skills indicates that she is able to walk 4+ blocks unaided on a flat surface, climb 5+ stairs unaided, lift 5 to 15 lbs, and can remain seated for less than 1 hour. The ministry finds that the appellant is independently able to do most aspects of mobility and physical abilities although lifting takes longer to perform. Also, no assistive devices are routinely used to help compensate for the impairment and the functional skill limitations are not significantly restricted therefore, the minister is not satisfied that the information provided establishes a severe physical impairment.

With respect to the appellant's physical impairment, the panel finds that 2 medical practitioners have diagnosed the appellant with endometriosis and fibromyalgia. In terms of the impact that these medical conditions have on the appellant's ability to function, the panel finds that the evidence establishes that despite

ongoing pelvic pain, the appellant is able to maintain a reasonable level of physical function. In particular, the appellant manages walking indoors and outdoors, climbing stairs, standing and carrying/holding independently without the use of any assistance device or the assistance of another person. Lifting however takes significantly longer than typical without further explanation in the AR. Additionally, the panel finds that the reported functioning in terms of the distance the appellant can walk, steps she can climb, weight she can carry, and time she can remain seated was reasonably viewed by the ministry as not establishing a severe physical impairment. Although, the most recent medical evidence by the appellant's PP letter dated September 11, 2012 indicates that with periods of bleeding, the pain is excruciating and at these times the appellant would not be able to walk or climb stairs or perform activities of daily living, the panel finds that this supports the comment in the PR which specifies that with flare-ups, there are significant changes to coping abilities. In view of the above noted evidence respecting the appellant's level of independent physical functioning, the panel finds that the ministry reasonably determined that a severe physical impairment was not established under section 2(2) of the EAPWDA.

#### *Mental Impairment*

With respect to a severe mental impairment, the appellant's position is that she is depressed, doesn't have energy to attend or sit through class and finds it extremely challenging while learning the realities of her diseases. The appellant also experiences side effects to her medication that further limit her functioning. The appellant's physician indicates that the appellant is subject to depression, anxiety and poor concentration; all which are indicated to have a significant impact on her ability to perform DLA. The physician also states that the appellant has been prescribed anti-depressant and anti-anxiety drugs however; the medication does not alleviate the appellant's daily problems. The appellant's physician further reports that the mood disorder is a reaction to the disabling pain problem and indicates that the appellant has seen many specialists to help alleviate or manage her condition but to date there have not been any improvements and that she requires counselling for her problems.

The ministry's position is that a severe mental impairment has not been established by the information provided. The ministry relies on the evidence in the PR where significant deficits with cognitive and emotional function are reported for 3 of 11 specified areas, executive, emotional disturbance and motivation and other described that with flare-ups, there are significant changes to coping abilities and that medication also impacts cognitive function. The appellant has no difficulties with communication and no restriction to social functioning. Noted also in the AR under impact on the appellant's daily functioning, the PP reported a moderate impact for 2 listed aspects, bodily functions and consciousness and a major impact for 3 listed aspects, emotion, motivation and other mental or emotional problems described as "during severe plain flares, she has marked limitations due to the meds and the inability to function normally secondary to the pain". The ministry found that the narrative was not supportive of a severe mental health condition that significantly limits the appellant's ability to function either continuously or periodically for extended periods.

The panel finds that the appellant's physician has diagnosed the appellant with chronic fatigue and mood disorder and treats her for depression and anxiety symptoms which are exacerbated during her pain flares. Detailed information from the PR respecting the appellant's mental functioning is that she has significant deficits with cognitive and emotional function in 3 of 11 specified areas, executive, emotional disturbance and motivation and other described that with flare-ups, there are significant changes to coping abilities and that medication also impacts cognitive function. The appellant has no reported difficulties with communication and no restriction to social functioning. In the AR, under the degree of impact on the appellant's daily functioning in 14 listed areas of cognitive and emotional functioning; the PP indicates major impacts for 3 aspects; emotion, motivation and other mental or emotional problems described as "during severe plain flares, she has marked limitations due to the meds and the inability to function normally secondary to the pain"; a moderate impact for 2 listed aspects; bodily functions and consciousness; a minimal impact for 1 additional aspect, insight and



judgement and no impact for the remaining 8 areas.

With respect to Social Functioning, the appellant is noted to require periodic support/supervision in the areas of being able, to develop and maintain relationships as the pain impacts the ability to make plans and can affect work and of being able to deal appropriately with unexpected demands as the pain's impact is unpredictable. Marginal functioning is noted with the appellant's immediate social network and good functioning for her extended social network.

The panel finds that the evidence does not indicate a diagnosis of an identified mental impairment or brain injury but rather that according to the appellant's physician the appellant has marked limitations due to pain medication and is treated for depression and anxiety symptoms and has the inability to function normally secondary to the pain. For these reasons, the panel finds that the ministry has 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 her mental and physical impairments significantly restrict her ability to perform DLA and that due to chronic, daily, pain, she is dependent upon her family and friends for help with housework, meal preparation, mobility, using public transportation, banking and other outdoor activities. The appellant's physician has indicated that the appellant is restricted in performing activities of daily living, periodically for extended periods. Additionally, the appellant has restrictions with decision making and social functions.

The appellant's advocate argues that the appellant is on daily suppressive hormone therapy to prevent ovulation and menstruation and therefore she does not menstruate monthly as most women do. He submits that when the appellant bleeds, it is not suppose to be occurring and during these periods all her activities come to a halt and she is usually house or bed bound.

The ministry's position is that the evidence of the prescribed professionals does not demonstrate that a severe mental or physical impairment significantly restricts the appellant's ability to perform DLA either continuously or periodically for extended periods. The ministry relies on the evidence of the appellant's physician who reports periodic restriction to meal preparation, mobility outside the home and use of transportation "as the pain problem has flares, there are periodic times when she is worse and then these activities are also limited". Continuous restriction is reported to personal self care, basic housework and daily shopping with the degree of description described as "significant restrictions with acute flares of pain". In terms of activities that require assistance from another person, the appellant's physician indicates that laundry, basis housekeeping, going to/from stores, carrying purchases home, meals, banking and 2 of 5 aspects of social functioning require periodic or continuous help. Added is it that the appellant would benefit from assistance with laundry, shopping and meal prep when she has a significant flare. For the purposes of this adjudication, the ministry has given a one week period for the possibility of symptoms of the appellant's severe pain. Given that analgesics are available to ameliorate the symptoms of pain and with significant restriction in ability to perform the noted DLA being up to one week per month, the ministry finds that the information from the PP does not establish that impairment significantly restricts DLA either continuously or periodically for extended periods.

The legislation requires that the minister be satisfied that, in the opinion of a prescribed professional, 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.

The panel notes that in the PR, Part E- DLA, while not required when the same PP is completing both the PR

and AR, the PP has indicated that 6/10 DLA are directly restricted by the appellant's impairment as follows: personal self care (continuous), meal preparation (periodic), basic housework (continuous), daily shopping (continuous), mobility inside the home (periodic) and mobility outside the home (periodic). The PP explains under "periodic" that as the pain problem has flares, there are periodic times when the appellant is worse and these activities are also limited. It is added that the appellant requires assistance with housework, shopping, meal preparation, periodically. The PP states that the unpredictable flares of the appellant's chronic problem make it difficult to predict her abilities.

The panel also notes that in the AR under mobility and physical ability, the appellant is identified as being independent walking indoors and outdoors, climbing stairs, standing and carrying/holding whereas with lifting the appellant takes significantly longer than typical.

Additionally, the panel notes that in the AR, Part C- DLA, under Personal Care, the appellant is reported to take a bit longer with dressing due to pain and grooming takes double the normal time and can be exhausting. The remaining aspects of bathing, toileting, feeding self, regulate diet, transfers in/out of bed and transfers on/off chair are independently managed. Under Basic Housekeeping, the aspects of laundry and basic housekeeping are indicated to require continuous assistance from another person or unable. Under Shopping, the aspects of reading prices and labels, making appropriate choices and paying for purchases are independently managed whereas going to and from stores and carrying purchases home are indicated to require continuous assistance from another person or unable. Under Meals, the aspects of meal planning, food preparation and cooking are noted as requiring periodic assistance from another person whereas safe storage of food is independently managed. Under Pay Rent and Bills, the aspect of banking is noted as requiring periodic assistance from another person whereas budgeting and pay rent and bills is independently managed. All aspects of DLA under Medications and Transportation are independently managed by the appellant.

With consideration to the above PR and AR, the panel finds that there are inconsistencies in several areas of the PWD application specifically; under mobility and physical ability where the appellant is noted to be independent walking indoors and outdoors, climbing stairs, standing and carrying/holding while in the PR restrictions are noted with DLA aspects of daily shopping (continuous), mobility inside the home (periodic) and mobility outside the home (periodic). Further, in the AR under shopping, the aspect of going to and from stores and carrying purchases home are indicated to require continuous assistance from another person or unable. And under transportation all aspects which include, getting in and out of a vehicle, using public transit and using transit schedules and arranging transportation are independently managed by the appellant.

The panel acknowledges that while stated in the PR that the unpredictable flares of the appellant's chronic problem make it difficult to predict her abilities, in the letter dated September 11, 2012 from the same PP, it indicates that during periods of bleeding, the pain is excruciating often requiring 2 or 3 narcotic analgesics and all the appellant's activities come to halt and she is housebound. At these times she would not be able to walk or climb stairs or perform DLA or function socially. The panel also notes that the evidence from the gynaecologist reports that the appellant's main issue is severe unpredictable bleeding and the appellant's evidence that she is on daily suppressive hormone therapy to prevent ovulation and menstruation and therefore she does not menstruate monthly. Additionally, the panel notes that the PR reports that the unpredictable flares of the chronic problem make it difficult to predict her abilities and that analgesics are available to ameliorate the symptoms of pain. In view of the above, the panel finds that there is insufficient information from a PP to establish that the intermittent periods of incapacitation are for extended periods. Therefore, the panel finds that 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 section 2(2)(b)(i) of the EAPWDA.

*Help to perform DLA*

Regarding the need for help with DLA, the appellant argues that she requires not only the assistance of her family and friends but also from other health professionals such as massage and exercise therapists and psychologists for counseling.

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, section 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 section 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.

While the panel finds that the evidence of the prescribed professionals establishes that the appellant requires some assistance from family members with her 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 section 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.