APPEAL #

PART C – Decision under Appeal

The decision under appeal is the reconsideration decision of the Ministry of Social Development (the ministry) dated 10 October 2012 denying the appellant designation as a person with disabilities (PWD). The ministry determined that the appellant did not meet all of the required criteria for PWD designation set out in the Employment and Assistance for Persons with Disabilities Act, section 2. Specifically the ministry determined that the information provided did not establish that the appellant has a severe mental or physical impairment that in the opinion of a prescribed professional

(i) directly and significantly restricts the person's ability to perform daily living activities (DLA) either continuously or periodically for extended periods; and,

(ii) as a result of those restrictions, the person requires help to perform those activities.

The ministry did determine that the appellant satisfied the other 2 criteria: she has reached 18 years of age; and her impairment in the opinion of a medical practitioner is likely to continue for at least 2 years.

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 ministry failed to appear at the hearing at the scheduled time and date. After verifying that the ministry had received notification of the hearing at least 2 business days before the hearing date by examining the Notice of Hearing fax transmit confirmation report, the hearing proceeded under section 86(b) of the Employment and Assistance Regulation.

The evidence before the ministry at reconsideration consisted of the following:

1. The appellant's PWD Designation Application, dated 17 May 2012. The Application contained:
    - The appellant's Self Report (SR), prepared with the assistance of her advocate.
    - A Physician Report dated 21 June 2012, completed by the appellant's general practitioner (Dr. A), who has known the appellant 2 years and seen her 2–10 times in the past 12 months, and
    - An Assessor Report dated 29 June 2012, completed by family practitioner in the same practice (Dr. B), who has known the appellant for 24 years and seen her 11 or more times in the past year.

2. The appellant's Request for Reconsideration dated 19 September 2012, to which was attached a submission prepared by the appellant's advocate dated 01 October 2012, referencing a letter of support dated 18 September 2012 from Dr. B.

In the SR, the appellant's advocate writes that the appellant has a severe physical impairment in that she is completely missing her left hand below the wrist, a condition that has been present since birth. She experiences severe phantom pain in this area, and uses pain relief medication to cope with this pain. The appellant also experiences severe depression and anxiety, both diagnosed approximately 12 years ago. She has been prescribed an antidepressant to help manage these conditions. She has a tendency to socially isolate herself because of her arm. Her depressive mood is severe to the point that she reports suicidal ideation. Her anxiety adversely affects her ability to sleep, and she periodically relies on a sleeping aid. This has had an ongoing negative impact on her sleeping patterns, and she experiences intense chronic fatigue and lethargy, and the loss of interest in daily activities.

In describing how the appellant's disability affects her life and her ability to take care of herself, the advocate writes that the appellant's life is considerably affected by her physical disability. As she has only one usable hand, she's clearly significantly restricted in her ability to lift and carry items, requiring assistance for anything that would require two hands. The lifting she is able to manage on her own takes approximately 2 times longer than it would the average person, as she must lift in small amounts; carrying takes her four times as long. Due to her disability the appellant is unable to drive and therefore continuously depends on family and friends for mobility outside the home, specifically for daily shopping, banking and attending appointments. In terms of personal care, both dressing and grooming take the appellant 2 – 3 times as long as the average person because she is only able to use her right hand; this presents obvious challenges with tasks such as buttoning/zippering her clothing and washing her hair. Her friends assist her when possible; however, this need for assistance is ongoing as her disability is permanent. She is also restricted in her ability to cook and prepare meals, and requires continuous and ongoing assistance in this area. For example she is unable to cut or peel fruits, vegetables or other food items, drain hot pots, and open cans or jars. Her physical disability also leaves her with significant restrictions in her ability to do housekeeping tasks and she is limited to tasks can be done with one hand - she is unable to do such things as holding a

broom or mop, or wash the dishes. She cannot carry a laundry basket, and it takes two times longer than the average person to fold her laundry. She requires continuous assistance with these tasks.

With respect to her mental disabilities, the appellant reports significant restrictions in the areas of cognitive and emotional function. Specifically she experiences restrictions in the areas of executive functioning, emotion, motivation, impulse control, motor activity, attention/concentration, and insight/judgment. In terms of specific daily living activities, her mental disabilities leave her restricted in the ability to manage her finances. This is in part related to the severe impact her depression and anxiety have on her motivation and confidence. For example her mother must continuously assist her with her banking and bill payments. She also has a continuous need for assistance in refilling her medications. Her depression and anxiety disorders have largely resulted from her feelings about her physical disability. She has a major tendency to withdraw and socially isolate herself, and has difficulty developing and maintaining relationships. She describes being unable to deal with unexpected demands, and has difficulty asking for assistance when she requires it.

In the PR, Dr. A diagnoses the appellant with congenital loss of left hand at wrist, anxiety disorder and major depressive disorder. No dates of onset are given for the latter. Under health history, Dr. A writes: "Absence of left hand resulted in childhood bullying and low self-esteem. Generalized anxiety and depression add to this, but are mitigated with the use of antidepressant medication." In answer to the question as to whether the appellant has been prescribed any medication and/or treatment that interfere with her ability to perform DLA, GP A answers "no." In answer to the question as to whether the appellant requires any prostheses or aids for her impairment, Dr. A answers "yes," explaining that she has a lower left arm and hand prosthesis. In terms of degree and course of impairment, Dr. A indicates that the impairment is likely to continue for two years or more from today, explaining that the left hand prosthesis is a permanent requirement and generalized anxiety and depression are chronic.

As to functional skills, Dr. A reports that the appellant can walk unaided 4+ blocks, climb 5+ stairs, lift 5 to 15 pounds, has no limitation remaining seated and has no difficulties with communication. Dr. a reports significant deficits with cognitive and emotional function with respect to executive, memory, emotional disturbance, motivation, and impulse control. In terms of DLA, Dr. A indicates that the appellant is actively restricted on a continuous basis with respect to personal self care, meal preparation and social functioning. No restrictions are identified with respect to management of medications, basic housework, daily shopping, mobility inside the home, mobility outside the home, use of transportation and management of finances. Commenting on social functioning, the Dr. A notes: "feels self-conscious about her disability and this inhibits her social interactions." In terms of assistance needed for DLA, Dr. A comments; "Help from other people and use of arm/hand prosthesis."

In the AR, Dr. B indicates that the appellant lives alone. Dr. B does not answer the question as to what mental or physical impairments impact the appellant's ability to manage DLA. In terms of ability to communicate, Dr. B assesses the appellant's ability in speaking, reading and hearing as good, and writing as satisfactory. With respect to mobility and physical ability, Dr. B assesses the appellant as independent with respect to walking indoors, walking outdoors, climbing stairs and standing, and requiring periodic assistance from another person with respect to lifting and carrying and holding. In terms of cognitive and emotional functioning, Dr. B assesses a moderate impact for emotion, impulse control, motivation and other emotional or mental problems. No impacts are indicated for bodily

functions, consciousness, insight and judgment, attention/concentration, executive, memory, motor activity, language, and psychotic symptoms. Dr. B comments: "↓↓self-esteem, depression."

As to DLA, for personal care Dr. B assesses the appellant requiring periodic assistance from another person for dressing and grooming and bathing and independent for toileting, feeding self, regulating diet, transfers in/out of bed and transfers on/off chair. For basic housekeeping, periodic assistance is required for laundry and basic housekeeping. For shopping, the appellant is assessed as independent for going to and from stores, reading prices and labels, making appropriate choices, and paying for purchases, and requiring periodic assistance for carrying purchases home. For meals the appellant is assessed as independent for meal planning and safe storage of food and requiring periodic assistance for food preparation and cooking. Dr. B assesses the appellant independent in all aspects of paying rent and bills, medications and transportation. In terms of social functioning Dr. B assesses periodic support/supervision required in the five listed areas: appropriate social decisions, able to develop and maintain relationships, interacting appropriately with others, able to deal appropriately with unexpected demands, and able to secure assistance from others. Dr. B describes how the appellant's mental impairment impacts her relationship with her immediate social network and her extended social networks as marginal functioning for both. The panel notes that no narrative is provided, including any description of the type and amount of assistance required or identification of any safety concerns.

With respect to assistance provided by other people, Dr. B indicates that the appellant receives help for DLA from family and friends. Dr. B notes that assistance is also provided through the use of an assistive device in the form of a hand prosthesis. No assistance is provided by assistance animals.

In the letter attached to the request for reconsideration, Dr. B states that the appellant has been her patient for 24 years and she is able to confirm that her disabilities are severe, will continue for more than two years, and have direct and significant impact on her daily living activities. Dr. B then confirms the diagnoses set out in the PR and goes on to write:

> "These impairments require ongoing treatment, medication and assistive devices, but even then will remain significant issue for [the appellant]. [The appellant's] physical impairment is severe and significantly impairs her daily living activities as it makes almost all lifting impossible. Thus, [the appellant] is significantly impaired in her ability to perform basic housework, prepare meals, do dishes, carrying groceries and laundry, and personal self care; as all these activities require lifting which may be beyond [the appellant's] capability. [The appellant] continuously depends on the use of a prosthesis and support of family and friends to complete these activities.
>
> Furthermore, due to the absence of her hand, [the appellant] faced childhood bullying, which has resulted in generalized Anxiety Disorder and Major Depression. This Anxiety and Major Depression have a significant effect on [the appellant's] cognitive and emotional functioning. As a result, [the appellant] continuously experiences challenges with executive function, memory, motivation, and impulse control, as well as, emotional disturbance and depends on the support of family and friends."

In her Notice of Appeal 19 October, 2012, the appellant give as Reasons for Appeal: "Because it is patently unreasonable."

At the hearing, the appellant's advocate presented a written submission, which went to argument. In answer to questions, the appellant stated that:

- She lives on her own for six years, and her mother comes over to help in one way or another almost every day. Because of her missing hand, she needs help in tasks ranging from grooming on her right side to cutting vegetables to handling banking paperwork.
- She has tried to get her learner's license for driving, but has experienced so much aggravation from ICBC that she has given up in frustration.
- In the recent past, she has received treatment from a health authority urgent care outpatient psychiatric clinic for her anxiety and depression.
- Since childhood, she has benefited from assistance from the War Amps, including annual get-togethers with other amputees.
- She has worked in the past, with her last job as a server in a restaurant; she felt she did a good job there but was let go after three weeks because management thought that she could not do the job because of her loss of hand. Since then, her physician has ordered her not to seek employment because of concern over how rejection or failure might affect her depression.
- Her hand/arm prosthesis is a passive one, which can only be used for support; she prefers this type because it looks more natural.
- The assessments provided in the documentation were based on her wearing her prosthesis. She would be much more restricted than indicated if she did not wear the prosthesis.

In answer to a question from the panel, the appellant's advocate confirmed she had drafted the letter of support dated 18 September for Dr. B's signature.

The panel finds that the new information provided by the appellant at the hearing is in support of the information and records that were before the ministry at the time of reconsideration. The panel therefore admits the new information as evidence pursuant to section 22(4) of the Employment and Assistance Act.

APPEAL #

PART F – Reasons for Panel Decision

The issue in this appeal is whether the ministry reasonably determined that the appellant is ineligible for PWD designation because she did not meet all the requirements in section 2 of the EAPWDA. Specifically the Ministry determined that the information provided did not establish that the appellant has a severe mental or physical impairment that in the opinion of a prescribed professional

(i) directly and significantly restricts her ability to perform daily living activities either continuously or periodically for extended periods; and,

(ii) as a result of those restrictions she requires help to perform those activities.

The Ministry did determine that she met the 2 other criteria in EAPWDA section 2(2) set out below.

The following section of the EAPWDA applies to this appeal:

2 (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.

The following section of the EAPWDR applies to this appeal:

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 panel will consider each party's position regarding the reasonableness of the ministry's decision under the applicable PWD criteria at issue in this appeal. As the ministry did not attend the hearing, the panel considers the ministry's position to be that set out in the reconsideration decision.

Severity of physical impairment

In the reconsideration decision, the ministry reviewed the evidence set out in the PR and AR and in Dr. B's letter. The ministry noted the physical assessment (able to walk 5+ blocks, etc) in the PR, specifically that the appellant is able to lift 5 to 15 pounds. The ministry noted that Dr. A indicates that the appellant requires periodic assistance with lifting, and carrying and holding; however how often she requires assistance has not been documented. The ministry further noted that in Dr. B's letter he states that the appellant's impairments are severe and significantly impairs her DLA as it makes almost all lifting impossible. The ministry comments that Dr. B, in her letter, has not included details as to why the appellant is now unable to lift. The ministry notes that there has not been any functional assessment submitted to the ministry that documents the appellant's ability to manage with her right hand or how she manages with her left hand prosthesis. Although the ministry acknowledges that the appellant's impairment affects her physical functioning, evidence of a severe physical impairment has not been provided by either two physician. The ministry therefore found that there is not enough evidence to establish a severe physical impairment.

With respect to this criterion and others at issue, the appellant's advocate highlights Section 8 of the Interpretation Act [RSBC 1996 c. 238] as requiring that every enactment be construed as being remedial and given such fair, large and liberal construction and interpretation that best ensures the attainment of its object. The advocate also points to case law as authority for the position that if there is any ambiguity in the interpretation of the criteria, it is to be resolved in favour of the appellant [Abrahams v. Canada 1983 142 D.L.R. (3d) 1] and that the evidence of the physician and the assessor must be read in its entirety and in a broad way and the legislation interpreted with a benevolent purpose in mind [Hudson v. EAAT 2009 BCSC 1461].

The position of the appellant with regard to the severity of her physical impairment is that the ministry's decision is unreasonable. In her submission, the appellant's advocate states that the basis of the decision is the fact that her physician does not report limitations to her right arm or include a functional assessment, that the appellant is able to do certain activities such as walk4+ blocks and climb stairs. Given that one of her conditions is congenital loss of hand to the left side of her body and she uses a passive prosthesis, it is unreasonable to claim that her condition is not severe because the right side is unaffected. More problematic is the fact that the ministry does not give sufficient weight to the part of Dr. B's support letter, where she states that in her medical opinion, the appellant's "disabilities are severe." The advocate wrote that the reconsideration decision implies that it is unclear why the impairment is noted as severe in the support letter with the high level of interdependence as indicated in the initial application, and as a result is dismissive of the information in the letter. This fails to appreciate the purpose of submitting additional information at the reconsideration stage, namely clarifying misconceptions based on the initial application. The ministry failed to consider that the physician portion of the initial application was completed by Dr. A, who is a partner in practice with Dr. B, and does not have a long-standing relationship with the appellant, while the support letter is from Dr. B who has been the appellant's physician for 25 years. The advocate referred to the legislation and case law cited above to argue the unreasonableness of the ministry's decision.[See also below regarding mental impairment]

In the discussion below concerning the information provided regarding the severity of the appellant's impairments, the panel has drawn upon the ministry's definition of "impairment," as set out on the top of page 8 of the PR. This definition consists of "cause" and "impact" components: "impairment is a loss or abnormality of psychological, anatomical or physiological structure or function [the cause] causing a restriction in the ability to function independently, effectively, appropriately or for a reasonable duration [impact]." The cause is usually set out as a disease, condition, syndrome or even by a symptom (e.g. pain). In the present appeal, the cause is the congenital loss of the left hand. A severe impairment requires the identified cause to have a severe impact. The assessment of severity is therefore based on of the impact on daily functioning, in such areas as functional skill limitations, cognitive and emotional deficits, restrictions on the ability to manage DLA and assistance required.

The legislation provides that the determination of the severity of impairment is at the discretion of the minister. The reasonable application of this discretion involves taking into account all the evidence, including that of the appellant. However, the starting point must be medical evidence, with the legislation requiring that a medical practitioner identify the impairment and confirm that the impairment will continue for at least two years. However, contrary to the submission of the appellant's advocate, the opinion by a medical practitioner that the impairment is "severe" is not in itself determinative: it is reasonable for the ministry to expect that such an opinion be substantiated by the evidence. In the present appeal, the panel finds the evidence inconclusive and contradictory.

The panel acknowledges that in seeking information on functional limitations, the ministry's application form focuses more on mobility than on manual functionality. The appellant's physical mobility is not at issue. Rather it is the impact of her missing her left hand on her ability to function independently and effectively. The evidence in the PR is that she can lift 5 to 15 pounds and in the AR that she requires periodic assistance from another person for lifting and carrying and holding. As for DLA, the PR indicates that the appellant is actively restricted for personal self care and meals preparation and in the AR requiring periodic assistance from another person for some tasks under those two DLA plus requiring periodic assistance for basic housekeeping and for carrying purchases home. In Dr. B's letter (drafted by the advocate) she states that the appellant's physical impairment is severe and significantly impairs her daily living activities as it makes almost all lifting impossible. Similar evidence of a general nature is contained in the SR, with the added information that it takes the appellant 2-3 time longer than the average person for dressing and grooming and folding laundry, and that she is unable to cut or peel fruits, vegetables and other food items, drain hot pots or open cans or jars or carry a laundry basket. The panel notes that in the PR and AR there is no narrative that gives an explanation for the tick marks. There is no description of any safety concerns. There is no explanation in Dr. B's letter about how "almost all lifting is impossible," given that the appellant's right side is unaffected and that Dr. A reports an ability to lift 5-15 pounds. There is no analysis as to the extent to which the help she receives is essential rather than convenient. And as the ministry notes, there is no functional assessment that documents the appellant's ability to manage with her right hand or how she manages with her left hand prosthesis - that is, no comprehensive analysis of the kinds of tasks that she can manage one-handed, those that she can do one-handed with the support of her passive left hand prosthesis, and those that she cannot do at all and how important those tasks are to daily living. Further, it is difficult for the panel to reconcile the appellant's testimony that she was able to work for 3 weeks as a server in a restaurant with Dr. B's assessment that "almost all lifting is impossible." Based on these considerations, the panel finds that the ministry reasonably determined that a severe physical impairment had not been established.

Severity of mental impairment

In the reconsideration decision, the ministry reviewed the information submitted by the two physicians. In the PR, Dr. A indicates that the appellant has significant deficits with cognitive and emotional functions in the areas of executive, memory, emotional disturbance, motivation and impulse control. In the AR Dr. B indicates that her impairments have no impact on the majority of the appellant's cognitive and emotional functioning, with moderate impacts in the areas of emotion, impulse control, motivation, self-esteem and depression. The ministry also noted that in Dr. B's letter she reports that the appellant experiences challenges with executive function, memory, motivation, impulse control and emotional disturbance. The ministry noted that in the AR, Dr. B indicates that the appellant requires periodic assistance with her social functioning; however no description of the degree and duration of support/supervision required has been included in the application. Dr. B has indicated that the appellant has marginal functioning with her immediate and extended social networks; however no narrative is included to explain this level of functioning. The ministry concluded that overall, there is not enough evidence provided by the physicians to indicate that she has a severe mental impairment.

In her submission, the appellant's advocate combined her arguments with respect to the severity of the appellant's mental impairment with those regarding physical impairment. The advocate argues that as the appellant suffers from anxiety and major depressive disorder resulting in continuous restrictions to her social functioning, the combination of her mental and physical disabilities is demonstratively severe. The advocate refers to Dr. B's statement that the appellant's "disabilities are severe." She argued that the ministry's decision in regard to severity is thus unreasonable as it does not consider all the evidence in its entirety and in a broad way as required by *Hudson.* Instead, the ministry ignores relevant critical evidence from the medical practitioner, without justification or explanation. She also argued that the decision is unreasonable because the ministry failed to apply a fair, large and liberal interpretation of the term "severe" as required by *The Interpretation Act.*

The panel finds that the ministry fairly summarized the evidence respecting the severity of the appellant's mental impairment as set out in the PR and AR and Dr. B's letter. Some further information is also set out in the SR, namely that her mother must continuously assist her with her banking and bill payments; she also has a continuous need for assistance in refilling her medications. Her depression and anxiety disorders have largely resulted from her feelings about her physical disability. She has a major tendency to withdraw and socially isolate herself, and has difficulty developing and maintaining relationships. She describes being unable to deal with unexpected demands, and has difficulty asking for assistance when she requires it.

In her submission, the appellant's advocate stated that the purpose of submitting Dr. B's letter that the reconsideration stage was to clarify misconceptions based on the initial application. The panel therefore considers the following passage from the letter as the basis for her submission regarding the severity of her mental impairment:

> "...due to the absence of her hand, [the appellant] faced childhood bullying, which has resulted in generalized Anxiety Disorder and Major Depression. This Anxiety and Major Depression have a significant effect on [the appellant's] cognitive and emotional functioning. As a result, [the appellant] continuously experiences challenges with executive function, memory, motivation, and impulse control, as well as, emotional disturbance and depends on the support of family and friends."

Again, the panel finds it reasonable for the ministry to expect that such an assessment/opinion be substantiated by evidence with some level of detail. The panel notes that there is no explanation as to how this assessment is to be weighed, considering Dr. A's comment that the appellant's anxiety and major depression are mitigated by antidepressant medication. The panel also notes that no explanation has been provided as to how, how often, to what extent or under what circumstances the appellant experiences these "challenges," and the extent these challenges are mitigated by her medication. For example, there is no description with respect to the challenges with executive function regarding impacts related to planning, organizing, sequencing, abstract thinking, problem-solving or calculating. The panel notes that the appellant in her testimony at the hearing mentioned that she had recently received treatment at the outpatient psychiatric clinic. A psychiatric assessment would have been helpful. Without a clear picture as to how these mental challenges manifest in the appellant's daily living, the panel finds that the ministry reasonably determined that a severe mental impairment had not been established.

Whether DLA are significantly restricted

In the reconsideration decision, the ministry noted that in the PR Dr. A indicates that the appellant is not restricted in her ability to manage the majority of her DLA, reporting that she requires continuous assistance with personal self care and meal preparation and social functioning, the latter as she feels self-conscious about her disability and this inhibits her social interaction. The ministry noted that in the AR Dr. B indicates that the appellant can independently manage the majority of her DLA, indicating that she requires periodic assistance with some aspects of personal care, basic housekeeping, carrying purchases home, and preparing and cooking meals. However Dr. B has not included any comments that would describe the type and amount of assistance required and has not identified any safety issues. The ministry concluded that, overall, there is not enough evidence from the two physicians to establish that the appellant's impairments significantly restrict her ability to manage her DLA either continuously or periodically for extended periods.

The position of the appellant, as set out in her advocate's submission, is that the ministry's decisions with respect to this criterion and the need for assistance are not only unreasonable but go beyond statutory authority. The ministry claims that although the physician indicates that many activities take significantly longer, the appellant does not portray any limitations or restrictions that establish a severe impairment. The ministry did not even consider the support letter provided by Dr. B, instead focusing on the need for a functional assessment. The decision is unreasonable and unfair, as it was not based on all the information put before the adjudicator. A letter from the physician who has provided medical services to the appellant for 25 years is clearly a relevant and important document to be given due weight.

The advocate submits that the information provided in the support letter clearly establishes that the appellant's impairments significantly restrict her DLA. Specifically Dr. B states that "[The appellant's] impairment is severe and significantly impairs her daily living activities." Dr. B further notes that the appellant "is significantly impaired in her ability to perform basic housework, prepare meals, do dishes, carrying groceries and laundry, and personal self care." Due to a passive prosthesis on her left hand the appellant's impairment "makes almost all lifting impossible." The clarification provided in the support letter makes it clear that the appellant depends on the support of her family and friends to complete these activities and her passive prosthesis is insufficient in allowing her to complete these activities in a reasonable timeframe or at all.

The advocate goes on to argue that Dr. B states that "[The appellant] continuously experiences challenges with executive function, memory, motivation, and impulse control, as well as, emotional disturbance" as a result of major depression and anxiety. This further supports the SR which states: "[The appellant's] mental disabilities leave her restricted in her ability to manage her finances... Her mother must continuously assist her with her banking and bill payments. She also has a continuous need for assistance and refilling her medications." Moreover, "she has a major tendency to withdraw and socially isolate herself, and has difficulty developing and maintaining relationships." The advocate submits that this clearly demonstrates the appellant's combined impairments significantly restrict more than two daily living activities and she depends on the support of her mother and friends to complete these activities and participate in her community. It is also clear that taking significantly longer on all activities involving the left arm or hand or cognitive and emotional functioning constitutes a significant restriction of at least two daily living activities, as required by *Hudson.*

The advocate submits that the ministry's decision also usurps the statutory role of the prescribed professional. The Act provides that it is the prescribed professional, not the minister, who must form the opinion on whether or not the applicant's impairment directly and significantly restricts the applicant's ability to perform DLA. Further, the Act provides that it is a matter for the prescribed professional and not the minister as to whether the applicant requires help to perform these activities. Dr. B directly confirms in the letter she has provided that the appellant's disabilities significantly restrict her ability to perform a range of daily living activities and ongoing basis and that "[the appellant] continuously depends on the use of a {passive} prosthesis and support of family and friends." Thus, in this case, the appellant's physician has clearly formed the opinion that the appellant meets the requirements in section 2(b) of the Act. The opinion is reasonable and supported by the evidence of the application and the additional information provided by Dr. B. Therefore the minister is bound by the opinion of the physician and must conclude that the appellant's impairments directly and significantly affect her ability to perform DLA and that she requires help to perform those activities.

The panel notes that, according to the legislation, the direct and significant restriction in the ability to perform DLA must be a result of a severe impairment, not established in this appeal. This DLA criterion must also be considered in the broader context of the legislation, which provides that the minister may designate a person as a person with disabilities "if the minister is satisfied that" the criteria are met, including this one. In exercising the discretion conferred by the legislation, it is reasonable that the minister would expect that the opinion of a prescribed professional be substantiated by information that would satisfy the minister that the direct and significant restrictions in the ability to perform DLA, either continuously or periodically for an extended period, are validated. While the reasonableness of the application of the minister's discretion in validating the information provided may be challenged, the panel does not accept the proposition advanced by the advocate that the minister does not have this discretionary authority and is instead bound by the opinion of a prescribed professional.

The panel has reviewed all the evidence. In this connection, the panel is of the view that a 1 page advocate-prepared letter signed by a physician cannot be considered an adequate substitute for a PR and AR personally prepared with due diligence by a medical practitioner/prescribed professional. The issue is whether the reported restrictions to DLA meet the criterion of being "significant." For the DLA requiring physical ability, some degree of restriction is reported for prepare own meals, shop for

personal needs, perform housework, and perform personal hygiene and self care. However, except for indicating that "these activities require lifting which may be beyond the [appellant's] capability" Dr. B provides no detail that would substantiate how significant the restrictions are in terms of the appellant's ability to manage specific tasks, and how often and for how long she receives help and what this help entails to make up for these restrictions. The advocate also mentions restrictions relating to banking and paying bills as well as refilling prescriptions. These restrictions have not been confirmed by the appellant's prescribed professional. With respect to the additional DLA relating to a person with a mental impairment i.e. make decisions about personal activities, care or finances; and relate to, communicate or interact with others effectively, the panel notes that there are no descriptions or examples from a prescribe professional of how her diagnosed major depression and anxiety impacts her ability to make decisions about her personal or family care, and with respect to the second, only that she has marginal functioning with both immediate and extended social networks, but without any explanation for these assessments. In the panel's view, considering that a severe mental or physical impairment has not been established and assessing the appellant's overall ability to function as reported in the PR and AR and in Dr. B's letter, it is difficult to assess the medical practitioners' opinion as confirming that the restrictions to her ability to manage her DLA are "significant." The panel therefore finds that the ministry reasonably determined that this legislative criterion had not been met.

Whether help to perform DLA is required

In the reconsideration decision, the ministry noted that the appellant requires the use of the left hand prosthesis. However as it had been established that DLA are not significantly restricted, it can be determined that significant help is not required from other persons. The appellant does not require the services of an assistance animal.

The position of the appellant is that her need for significant help from other persons results from the significant restrictions in her ability to perform DLA, as argued in the advocate's submission and summarized above.

The panel notes that the legislation requires that in the opinion of a prescribed professional the need for help must arise from direct and significant restrictions in the ability to perform DLA that are either continuous or periodic for extended periods. The panel finds that the ministry reasonably determined that since it has not been established that DLA are directly and significantly restricted, it cannot be determined that help is required as provided under section 2(2)(b)(ii) of the EAPWDA.

Conclusion

Having reviewed and considered all of the evidence and the relevant legislation, the panel finds that the ministry's decision that the appellant was not eligible for PWD designation was reasonably supported by the evidence and therefore confirms the ministry's decision.