

## PART C – Decision under Appeal

The decision under appeal is the Ministry of Social Development's (the "Ministry") Reconsideration Decision dated October 2, 2012 which found that the appellant did not meet three of the five statutory requirements of Section 2 of the Employment and Assistance for Persons with Disabilities Act for designation as a person with disabilities (PWD). The Ministry found that the appellant met the age requirement and that her impairment is likely to continue for at least two years. However, the ministry was not satisfied that the evidence established that she has a severe physical or mental impairment. The Ministry was also not satisfied that the appellant's daily living activities (DLA) are, in the opinion of a prescribed professional, directly and significantly restricted either continuously or periodically for extended periods. As the Ministry found that the appellant is not significantly restricted with DLA, it could not be determined that she requires significant help or supervision of another person, the use of an assistance 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:

1. Person with Disabilities (PWD) Application with completed applicant information, physician report and assessor report, all dated May 15, 2012;
2. Letter from the Ministry to the appellant dated July 4, 2012 advising her of the Ministry's decision denying her application for designation as a PWD and enclosing a copy of the original decision summary; and
3. Request for Reconsideration with written submission from the appellant's advocate (Reconsideration Reasons) and medical opinion from the appellant's physician, 4 pages, dated September 4, 2012 (Exhibit A).

In the self-report included with the PWD application, the appellant stated that she has a disability of osteoarthritis (hands, knees, hips and lower back) and that she is very slow moving, has to time everything out, that she cannot take out the garbage, make dinner and go grocery shopping all on the same day. She states that it takes her three hours to grocery shop and that she makes dinner in stages. She states that she takes medications on days she has to go somewhere, and that getting in and out of the shower is a big event ("takes forever"). She also states that there are many DLA's her grandchildren help her with such as cleaning, shopping, many everyday simple tasks and that without them she doesn't know what she would do.

The physician who completed the physician report indicated that the appellant has been his patient for five months and that he has seen the appellant twice in the past 12 months. The physician confirmed a diagnosis of osteoarthritis, (fingers, knees) and in describing the severity of the medical condition relevant to the appellant's impairment, the physician noted "...*patient describes daily pain and stiffness in her hands, knees, hips, low back. Cannot sit or stand for prolonged periods, has reduced mobility due to pain*". The physician indicated that the appellant has not been prescribed medication or treatments that interfere with her ability to perform DLA and she does not require any prostheses or aids for her impairment. The physician reported that the impairment is likely to continue for two years or more, that weight loss will help with pain and it would be possible to consider knee replacement in the future. The physician reported that he did not know how far the appellant could walk unaided on a flat surface or how many stairs the appellant could climb, and that she can remain seated less than one hour.

The physician report indicates that there are no difficulties with communication, and no significant deficits with cognitive and emotional function. The physician indicated that the appellant is not restricted with respect to personal care, meal preparation, management of medications, use of transportation, management of finances or social functioning, but that she has continuous restrictions with basic housework, mobility inside and outside the home. The physician noted that the appellant has restrictions with daily shopping but did not check off the box to indicate whether the restrictions are continuous or periodic. The physician indicates that the appellant may benefit from a cane or a walker.

The appellant's physician also completed the assessor report. The assessor report indicates that the appellant lives with family, friends or a caregiver and that her physical impairment of poor mobility

due to osteoarthritis impacts her ability to manage DLA's. The physician indicates that the appellant's communication skills are good. Regarding Mobility and Physical Ability, he also indicates that it takes significantly longer than typical to manage walking indoors, walking outdoors, climbing stairs, standing, lifting and carrying and holding but he does not describe how much longer it takes the appellant to perform these tasks. The physician indicates that there is no impact to the appellant's cognitive and emotional functioning. The physician also indicates that the appellant is independent with most tasks of DLA including dressing, grooming, bathing, toileting, feeding self, regulating diet, transfers in and out of bed, transfers on and off of chair, laundry, basic housekeeping, going to and from stores, reading prices and labels, making appropriate choices, paying for purchases, carrying purchases home, meal planning, food preparation, cooking, safe storage of food, banking, budgeting, paying rent and bills, filling/refilling prescriptions, taking medication as directed, safe handling and storage of medication, and using transit schedules and arranging transportation.

The assessor report indicates that in two aspects of the DLA transportation, getting in and out of a vehicle and using public transit, the appellant takes significantly longer than typical, but he does not describe how much longer. The physician indicates that the appellant has good functioning in her relationships, that her functioning with extended social networks is unknown. The physician indicates that the appellant receives assistance from family and friends and states that weight loss, exercise, and mobility aide like a cane or a walker would be necessary. The physician states that the appellant was not using any equipment or assistive devices and does not have or require the use of an assistance animal. The physician also indicates that the type of services he is providing are to manage her diabetes and encourage weight loss.

In the Reconsideration Reasons, the appellant states that the medical information contained in her original PWD application and Exhibit A should be sufficient for the Ministry to find that she meets the criteria for PWD designation.

In Exhibit A, the appellant's physician states that the appellant has a diagnosis of osteoarthritis and that her condition is likely to last for at least 2 years, that she is directly and significantly restricted in her ability to do her DLA continuously, as a result of her osteoarthritis. Under 'additional comments' the physician notes that the appellant has severe osteoarthritis leading to immobility and pain. In Exhibit A, the physician agrees with statements indicating that the appellant experiences direct and significant restrictions with her DLA in that she is restricted from walking more than a block, climbing stairs, standing longer than 5 minutes, sitting longer than 10-15 minutes, bending to dress herself, grooming, bathing, transferring on and off a bed or chair, going to and from the store, carrying purchases of more than 5 lbs home, getting in and out of a vehicle and using public transit. The physician does not agree with the statements that the appellant has restrictions with lifting/carrying/holding more than 5 pounds, transferring on and off the toilet, feeding self, laundry and basic housekeeping, reading labels, making appropriate choices, paying for purchases (standing longer than 5 minutes in lineups), food preparation/cooking or banking.

On Exhibit A, the physician indicates that the appellant would benefit from using a cane and grab bars in the shower.

Prior to the hearing, the appellant submitted a written submission completed from her advocate (Submission) with further medical information. Attached was a letter from the appellant's physician dated November 13, 2012 in which he states that the appellant suffers from osteoarthritis, diabetes,

glaucoma and high blood pressure, that the conditions will likely continue for at least 2 years and that the appellant is directly and significantly restricted in her ability to do her daily living activities continuously, as a result of her medical conditions (Exhibit B). In Exhibit B, the physician indicates that the appellant would benefit from a cane, shower bars and a walker and that she is significantly disabled due to her osteoarthritis at multiple sites. Also included was a Medical Imaging Report dated November 2, 2012 which indicates that the appellant has degenerative changes present at the thoracolumbar junction and at the lumbosacral junction (Imaging Report). The Imaging Report indicates that the appellant has minor joint space narrowing in both hips, joint space narrowing on her knees, more severe on the left, and that there is no abnormality in her sacrum. The appellant also submitted a handwritten note indicating that she is taking medications including Coversyl for high blood pressure, Tylenol #3 for pain, Naproxen for osteoarthritis, that she has a walker and that a community service is going to help her with physiotherapy (Note). Pursuant to Section 22(4) of the Employment and Assistance Act (EAA), the panel accepted Exhibit B, the Imaging Report and the Note as evidence as they were documents that were in support of the information before the Ministry at the time the Reconsideration Decision was made.

The Ministry relied on its Reconsideration Decision.

The panel makes the following findings of fact:

1. The appellant has been diagnosed with osteoarthritis, diabetes, glaucoma and high blood pressure; and
2. The appellant's conditions are likely to last at least two or more years.

## PART F – Reasons for Panel Decision

The issue on the appeal is whether the Ministry reasonably concluded that the appellant is not eligible for designation as a person with disabilities (PWD) as she has not met all the criteria in Section 2(2) of the EAPWDA. In particular, whether the Ministry reasonably concluded that the appellant does not have a severe mental or physical impairment and that her daily living activities (DLA) are not, in the opinion of a prescribed professional, directly and significantly restricted either continuously or periodically for extended periods and that, as a result of those restrictions, it could not be determined that the appellant requires the significant help or supervision of another person, the use of an assistive device, or the services of an assistance animal to perform DLA.

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

(A) 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;

**"health professional"** repealed

**"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:

***Daily living activities***

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.

***Severity of physical impairment***

The ministry relied on its Reconsideration Decision. The ministry argues that the evidence does not show that the appellant has a severe physical impairment. The ministry notes that the appellant's physician opines that the appellant has a diagnosis of "osteoarthritis, fingers, knees" with onset in November 2011, with daily pain and stiffness in hands, knees, hips and lower back, that the appellant cannot sit or stand for prolonged periods and has reduced mobility. However, the ministry also notes that the physician has only seen the appellant twice in five months and that her contact with the physician has been very limited, with little opportunity for the physician to develop an opinion based on a history of contact, experience, observations and knowledge of the appellant.

The ministry states that due to inconsistencies between the information provided in the original PWD application and the Request for Reconsideration, as well as inconsistencies within the documents themselves, it is difficult to develop a clear and coherent picture of the degree of the appellant's impairment, the impact to her ability to perform DLA, and the assistance she requires as a result.

In the Reconsideration Decision, the ministry also points out that no medical reports, radiology results, or consults were included with the original PWD application or Request for Reconsideration to provide clinical data about the appellant's condition, treatment/remedial approaches (i.e. therapies, medications, etc) suggested or attempted, and to what degree these approaches may improve the appellant's condition.

The appellant argues that she has met the requirements to demonstrate that she has a severe physical impairment as a result of osteoarthritis. The appellant states that in *Hudson v Employment and Assistance Appeal Tribunal*, 2009 BCSC 1461, the Supreme Court of BC held that an application for PWD is sufficient if: either the medical practitioner or the assessor confirms that a person's severe impairment directly and significantly restricts their ability to perform daily living activities or the when read together, the reports confirm that a person has a severe impairment that directly and significantly restricts their ability to perform DLA; that the evidence of the physician and assessor must be read in their entirety and in a broad way, and that significant weight must be placed on the applicant's evidence, unless there is a legitimate reason not to do so; that any ambiguity in the EAPWDA must be resolved in favor of the applicant; and that the EAPWD legislation must be interpreted with a benevolent purpose in mind. The appellant states that applying Hudson, the Ministry should apply a broad definition of the word 'severe' and find that the appellant meets the criteria for a PWD.

In the Reconsideration Reasons, the appellant submits that Exhibit A confirms that she has daily pain and stiffness in her hands, knees, hips and lower back which does constitute a severe physical impairment and that the appellant's physician has confirmed that the appellant is continuously restricted from most of her DLA and requires assistance to complete them. The appellant states that in Exhibit A, her physician clarifies that she experiences direct and significant restrictions with her DLA in that she is restricted from walking more than a block, climbing stairs, standing longer than 5 minutes, sitting longer than 10-15 minutes, bending to dress herself, grooming, bathing, transferring on and off a bed or chair, going to and from the store, carrying purchases of more than 5 lbs home, getting in and out of a vehicle and using public transit. The appellant submits that Exhibit A confirms that she does have direct and significant restrictions. The appellant submits that in Exhibit A, her physician also confirms that she requires continuous assistance with her DLA with help climbing stairs, transferring in and out of bed or a chair, going to and from the store, and getting in and out of a vehicle. The appellant also states that her physician has confirmed that she would benefit from using a cane and grab bars in the shower and requires continuous assistance, all of which demonstrate that her condition is severe.

In her Notice of Appeal, the appellant states that the Ministry has narrowly interpreted the legislation.

In the Submission, the appellant's advocate argues that from the time the original PWD application was submitted, the appellant's medical condition has continued to deteriorate and she is presently using a walker for all basic mobility, as confirmed by the physician in Exhibit B. The appellant argues that the Imaging Report further confirm her diagnosis and that her condition is severe, and that she has provided the Note which confirms her medication use of: Coversyl, Tylenol #, Hydrochlorothiazide, and Naproxen. The appellant states that when considered together, her evidence and the physician's evidence confirms that she has a severe medical condition.

The panel finds that the evidence of a medical practitioner confirms a diagnosis of osteoarthritis, diabetes, glaucoma and high blood pressure. In the physician report, the physician confirmed a diagnosis of osteoarthritis, (fingers, knees) and in describing the severity of the medical condition relevant to the appellant's impairment, the physician noted "...*patient describes daily pain and stiffness in her hands, knees, hips, low back. Cannot sit or stand for prolonged periods, has reduced mobility due to pain*". The physician reported that he did not know how far the appellant could walk unaided on a flat surface or how many stairs the appellant could climb, and that she can remain

seated less than one hour. The physician indicated that the appellant is not restricted with respect to personal care, meal preparation, management of medications, use of transportation, management of finances or social functioning, but that she has continuous restrictions with basic housework, mobility inside and outside the home. The physician noted that the appellant has restrictions with daily shopping but did not check off the box to indicate whether the restrictions are continuous or periodic. The physician indicates that the appellant may benefit from a cane or a walker.

In the assessor report, the appellant's physician indicates that it takes the appellant significantly longer than typical to manage walking indoors, walking outdoors, climbing stairs, standing, lifting and carrying and holding but he does not describe how much longer it takes the appellant to perform these tasks. The physician also indicates that the appellant is independent with most tasks of DLA including dressing, grooming, bathing, toileting, feeding self, regulating diet, transfers in and out of bed, transfers on and off of chair, laundry, basic housekeeping, going to and from stores, reading prices and labels, making appropriate choices, paying for purchases, carrying purchases home, meal planning, food preparation, cooking, safe storage of food, banking, budgeting, paying rent and bills, filling/refilling prescriptions, taking medication as directed, safe handling and storage of medication, and using transit schedules and arranging transportation. The physician indicates that two tasks of the DLA transportation, getting in and out of a vehicle and using public transit, the appellant takes significantly longer than typical, but he does not describe how much longer. The physician indicates that the appellant receives assistance from family and friends and states that weight loss, exercise, and a mobility cane or a walker would be necessary. The physician states that the appellant was not using any equipment or assistive devices and does not have or require the use of an assistance animal. The physician also indicates that the services he is providing are to manage her diabetes and encourage weight loss.

The panel finds that although the appellant's physician states that the appellant has severe osteoarthritis leading to immobility and pain, there are significant inconsistencies between the physician report and the assessor report with respect to the appellant's DLA's which make it unclear whether he turned his mind carefully to the issues and the forms he was completing. In particular, in the physician report, the physician notes continuous restrictions with respect to basic housework and mobility in and out of the home but in the assessor report the same physician indicates that the appellant is independent with all DLA's except getting in and out of a vehicle and using public transit.

In Exhibit A, completed four months after the original PWD application, the physician states that the appellant has a diagnosis of osteoarthritis and that her condition is likely to last for at least 2 years, that she is directly and she is significantly restricted in her ability to do her DLA continuously, as a result of her osteoarthritis. Under 'additional comments' the physician notes that the appellant has severe osteoarthritis leading to immobility and pain. The physician indicates that the appellant experiences direct and significant restrictions with her DLA in that she is restricted from walking more than a block, climbing stairs, standing longer than 5 minutes, sitting longer than 10-15 minutes, bending to dress herself, grooming, bathing, transferring on and off a bed or chair, going to and from the store, carrying purchases of more than 5 lbs home, getting in and out of a vehicle and using public transit. The physician also indicates that the appellant requires continuous assistance with her DLA with help climbing stairs, transferring in and out of bed or a chair, going to and from the store, and getting in and out of a vehicle.

In Exhibit A the appellant's physician appears to indicate that the appellant's condition has



deteriorated and in her appeal submissions, she indicates that she is now using a walker. In Exhibit B, the physician indicates that the appellant would benefit from a cane, shower bars and a walker and that she is significantly disabled due to her osteoarthritis at multiple sites. However, there is no evidence to indicate when her condition deteriorated or the extent of deterioration from the time of the onset of her osteoarthritis (November 2011) and the time that Exhibit A and Exhibit B were completed (May and September 2012 respectively).

The Imaging Report indicates that the appellant has degenerative changes but there is no medical evidence to indicate that the degeneration is extensive or severe. The Imaging Report states that there is minor joint space narrowing in both hips, and that the lumbar vertebrae are normal in height and alignment.

In addition, in May 2012 the physician indicates that the appellant may benefit from a cane or a walker but in September 2012 the physician indicates that the appellant may benefit from a cane and/or shower bars and there is no mention from the physician that a walker is required. Although the appellant states that she is using a walker and taking medication, there is no evidence to indicate whether the walker or medications have alleviated any of the appellant's noted restrictions.

The panel also notes that in both the physician report and the assessor report the appellant's physician indicated that the appellant would benefit from weight loss in that it would help with pain, and there is no evidence to indicate whether the appellant has made any efforts to lose weight and/or whether any weight loss has alleviated her pain.

In considering all the evidence, the panel finds that the appellant's functional skills are more in keeping with a moderate degree of impairment. Therefore, the panel finds the Ministry's determination that the evidence does not establish a severe physical impairment was reasonable.

### ***Severity of mental impairment***

The Ministry argues that the appellant has not been diagnosed with a mental health condition and no significant deficits with cognitive and emotional function have been identified. The Ministry also points out that the appellant's physician has not identified that the appellant requires support or supervision with any aspects of social functioning.

The appellant does not argue that she has a severe mental impairment.

The panel finds that the evidence of a medical practitioner does not confirm a diagnosis of mental disorder. In the physician report, the physician indicated that there are no difficulties with communication. The physician reported that there are no significant deficits with cognitive and emotional function. In the assessor report, the physician indicates that the appellant's communication skills are good. The physician indicates that there is no impact to the appellant's cognitive and emotional functioning. The physician indicates that the appellant has good functioning in her relationships, that her functioning with extended social networks is unknown.

Therefore, the panel finds that the Ministry's decision, which concluded that the evidence does not establish a severe mental impairment, was reasonable.

***Whether ability to perform DLA is directly and significantly restricted:***

The Ministry argues that on the physician report the physician indicates that the appellant is continuously restricted with basic housework, daily shopping, mobility inside and outside the home but that he does not provide any indication of the degree of restriction. In the assessor's report, the physician indicates that the appellant takes significantly longer with getting in and out of a vehicle and using public transportation, but is otherwise independent with all aspects of personal care, basic housekeeping, shopping, meals, paying rent and bills, medications and social functioning. The Ministry points out on Exhibit A, the appellant's physician agrees with the following restrictions:

- significant restrictions with shopping, transfers, lifting more than five lbs, carrying purchases home, and bending to put on shoes, socks and pants due to chronic pain in back, knees and hips;
- brushing teeth takes twice as long due to significant restrictions due to issues grasping objects with hands and
- significant restrictions with standing in shower longer than 5 minutes due to chronic pain in knees, hips and balance issues.

The Ministry points out that in Exhibit A, the physician does not agree that the appellant is restricted from transfers on and off the toilet, from grasping utensils, or from bending or lifting more than 5 pounds to complete laundry or housekeeping due to chronic pain. The Ministry also points out that in Exhibit A the physician does not note restrictions standing more than five minutes in a line up due to chronic pain in knees, hips and balance issues.

The Ministry argues that the information provided does not establish that the appellant has a severe impairment that directly and significantly restricts her DLA's continuously or periodically for extended periods.

The Ministry argues that although it takes the appellant twice as long to brush her teeth or get in and out of vehicles, the extra time required is not indicative of a significant restriction. The Ministry also argues that while some assistive devices such as a cane or shower bars may be beneficial the suggestion in and of itself does not establish that there is a significant restriction in the ability to perform DLA's. The Ministry also notes that the physician indicates that the appellant is independent with respect to meal preparation, managing personal finances, performing housework and managing personal medication. The Ministry argues that although the appellant experiences limitations with her ability to perform certain aspects of DLA's, her overall ability to perform these activities is not significantly restricted.

The appellant argues that the legislative requirement for PWD requires a physician to confirm in their medical opinion that the appellant has direct and significant restrictions. In the Reconsideration Reasons, the appellant argues that as her physician confirms that she is directly and significantly restricted from walking more than a block, climbing stairs, standing longer than 5 minutes, sitting longer than 10-15 minutes, bending to dress herself, grooming, bathing transferring on and off a bed or chair, going to and from the store, carrying purchases more than 5 pounds home, and getting in and out of a vehicle and using public transit, there is no reason for the Ministry to deny her PWD application.

The appellant states that she has to time everything out and that she cannot take out the garbage,

make dinner and go grocery shopping all on the same day. The appellant states that it takes her three hours to make dinner and that she cannot stand long enough so she makes it in stages. The appellant argues that since submitting her PWD application her condition has deteriorated and she is using a walker for all basic mobility.

The panel finds that the legislation requires that the Ministry must be satisfied that the opinion of a prescribed professional confirms that the appellant's ability to perform DLA is directly and significantly restricted either continuously or periodically for extended periods.

The panel finds that there is a significant difference between the assessor report, on which the physician indicates that the appellant is independent with all DLA except getting in and out of a vehicle and using public transportation, as compared with Exhibit A, which notes direct and significant restrictions with respect to basic mobility, climbing stairs, some standing, sitting, dressing, grooming, bathing, transfers on/off bed or chair, going to and from the store, carrying purchases home, getting in and out of vehicles and using public transportation.

There are also inconsistencies between the various restrictions noted in Exhibit A and with the appellant's evidence. On the PWD application, the appellant states that getting in and out of the shower is a big event - "takes forever" but in Exhibit A, the physician indicates that he does not agree that continuous assistance from grandchildren is required with getting in and out of the shower. The physician also states that the appellant cannot stand longer than five minutes due to pain in her knees, hips and balance issues which is inconsistent with other statements on Exhibit A, where he notes that the appellant is not restricted from paying for purchases and standing in lineups for longer than five minutes.

On the physician report the physician indicates that a limitation with respect to lifting is unknown. However, on Exhibit A, the physician agrees with the statement that the appellant is directly restricted from carrying purchases home as she cannot lift more than five lbs, but does not agree with the statement that the appellant is restricted from laundry and basic housekeeping or that she has significant restrictions with bending or lifting more than five pounds. On Exhibit A the physician indicates that the appellant is restricted from brushing teeth due to difficulties grasping objects but on the same report, the physician does not agree that the appellant is restricted from grasping utensils.

In Exhibit B, the physician makes a further diagnosis of glaucoma but he does not indicate that the appellant is directly restricted from reading labels and prices due to poor vision caused by glaucoma.

While the panel finds that the opinion of the physician confirms that she has some restrictions with DLA the inconsistencies between the physician's various statements do not confirm that her overall ability to perform these activities is significantly restricted. Therefore, the panel finds that the Ministry's determination that the evidence of a prescribed professional does not establish a direct and significant restriction on the appellant's ability to perform DLA either continuously or periodically for extended periods, as required by Section 2(2)(b)(i) of the EAPWDA, was reasonable.

***Whether help to perform DLA is required:***

The Ministry argues that in the original PWD application the physician indicates that the appellant was not using assistive devices but may benefit from a cane or a walker and that in Exhibit A, the

physician indicates that the appellant may benefit from a cane or shower bars. The Ministry argues that the suggestion of a simple assistive device would be of benefit does not in and of itself establish that the appellant requires help to perform DLA's that are directly and significantly restricted by a severe impairment.

The Ministry notes that the appellant's physician agrees that the appellant has assistance from leaning onto a shopping cart, help from her grandchildren twice a week, continuous assistance getting in and out of a vehicle but pushing self by using a car door, and assistance from grandchildren with transferring out of bed and by pushing self into a standing position using the side of the chair for support.

However, the Ministry argues that the physician does not agree that the appellant requires continuous assistance while walking more than one block, with lifting, carrying or holding more than 5 lbs, with getting in and out of the shower, with assistance from a grab bar when transferring on and off the toilet, with laundry or housekeeping, with reading labels or prices, with standing in line ups longer than 5 minutes, with food preparation, cooking, or banking.

The Ministry argues that a shopping cart, car door and the side of a chair are not "assistive devices" as defined by the EAPWDA, section 2(1), which sets out that an assistive device means a device designed to enable a person to perform a DLA that, because of a severe mental or physical impairment, the person is unable to perform. The Ministry argues that the information provided does not establish that the appellant requires the significant assistance of another person to perform DLA's that are directly and significantly restricted due to a severe impairment.

The appellant argues that the medical practitioner has confirmed that she requires continuous assistance with her activities, in that she needs help with climbing stairs, transferring in and out of bed or a chair, going to and from the store and getting in and out of a vehicle, and that she would benefit from using a cane, grab bars and a walker.

The appellant states that she is using a walker for all basic mobility and that her grandchildren help her with cleaning, shopping, and every day simple tasks and that without them she does not know what she would do.

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 notes the information from the physician and the appellant that she lives with family and receives assistance from her grandchildren. As it has not been established that the appellant's ability to perform DLA is significantly restricted, the panel finds that the Ministry's conclusion that the requirement for significant help or supervision from 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.

### **Conclusion**

The panel finds that the Ministry's Reconsideration Decision was reasonably supported by the evidence and was a reasonable application of the legislation in the circumstances of the appellant. Therefore, the panel confirms the decision.