

### PART C – Decision under Appeal

The decision under appeal is the Ministry of Social Development (the ministry) reconsideration decision dated November 8, 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 establishes 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 the significant help or supervision of another person, the use of an assistive device, or the services of an assistance animal to perform DLA.

### PART D – Relevant Legislation

Employment and Assistance for Persons with Disabilities Act (EAPWDA), Section 2  
Employment and Assistance for Persons with Disabilities Regulation (EAPWDR), Section 2

## PART E – Summary of Facts

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

- 1) Person With Disabilities (PWD) Application: applicant information dated August 2, 2012, physician report dated August 8, 2012, and undated assessor report;
- 2) Letter dated September 12, 2012 from the ministry to the appellant denying person with disabilities designation and enclosing a copy of the decision summary;
- 3) Letter dated October 16, 2012 from the appellant's physician to an advocate to provide additional information for the application and stating that "...they attached a check list for me to complete and I have done this to the extent that I am comfortable; however, the suggestion to fill out the check list in its entirety was not agreeable to me"; the physician states that the appellant has epilepsy and her seizures have not been that well controlled recently and has an appointment scheduled with neurology to adjust her medications; it is entirely likely that good seizure control will be achieved; her seizures seem to be happening almost weekly at the present time and she cannot work; the appellant lost her husband within the last year and has relocated to British Columbia with her dependent son with Down's syndrome which has put a strain on the appellant; the physician agrees that she has an adjustment disorder with predominantly depressed mood at this time and she has anxiety surrounding her seizure disorder and feels that she cannot leave the house without her son in case she has a seizure; the physician reassessed the appellant and ascertained that she has osteoarthritis of both of her knees and x-rays are being conducted; she probably has osteoarthritis to a significant degree and probably cannot work at the present time in any kind of physical capacity; once the knee x-rays are reviewed, there may be a referral to an orthopedic surgeon for consideration of knee replacement; it is the physician's opinion that she has a significant disability at the present time due to the combination of factors mentioned;
- 4) Checklist signed by the physician and dated October 16, 2012 stating in part that it is the physician's medical opinion that the appellant suffers from severe conditions including epilepsy- grand mal seizures, adjustment disorder- grief reaction, chronic knee pain and these conditions will likely continue for at least 2 years and the appellant is directly and significantly restricted in her ability to do her DLA continuously as a result of these conditions. These restrictions include: basic mobility- significantly restricted from walking more than 2 to 3 blocks due to chronic knee pain and swelling, standing- directly restricted from standing longer than 10 minutes due to chronic knee pain and swelling, grooming- directly restricted from grooming 1 to 3 times per week due to depressed mood and seizures, bathing- significant restrictions with getting in and out of tub due to chronic knee pain and swelling, laundry/housekeeping- significant restrictions 1 to 3 times per week due to depressed moods and seizures, paying for purchases- directly restricted from standing longer than 10 minutes in line-ups, carrying purchases home- directly restricted from lifting, carrying or holding more than 5 to 15 lbs. due to balance issues caused by knee pain, getting in/out of vehicle- significantly restricted from getting in and out of vehicle due to chronic knee pain and swelling, takes 2 times longer. As a result of the restrictions noted, the following assistance is required: climbing stairs- continuous assistance from railing on stairs, lifting/carrying/holding- continuous assistance from son with lifting, carrying or holding more than 5 to 15 lbs., bathing- continuous assistance from son with getting in and out of bathtub, going to and from store- continuous assistance from son, paying for purchases- continuous assistance from son with standing in line-ups longer than 10 minutes, carrying purchases home- continuous assistance when carrying more than 5 to 15 lbs. The following assistive device is required: shower grab bar. The appellant experiences the following symptoms daily as a result of her mental health conditions: difficulty planning/executing, depressed moods, difficulty paying attention and concentrating, and crying spells; and,
- 5) Request for Reconsideration- Reasons.

The ministry did not attend the hearing. After confirming that the ministry was notified, the hearing proceeded under Section 86(b) of the Employment and Assistance Regulation.

In her Notice of Appeal, the appellant stated that the impacts of epilepsy (2 to 4 seizures a week and need for physical assistance during a seizure), restrictions in mobility and emotional functioning- struggle with anxiety and depression (recently prescribed medication) severely impair her every day living. In her Request for

Reconsideration, the appellant stated that she worked all her life and took care of her husband until he passed away and now she is sick. She has to have someone help her go to the store and to the doctor and the doctor took her driver's license away. The appellant stated that she cannot walk by herself anymore or go to the store because she has her seizures more every day. The appellant stated that when she has a seizure her head is like it is going to blow off and if she has a bad one, she may not come out of it. The appellant stated that she has 2 or 4 seizures per week and sometimes bad ones. The appellant stated that she will be glad when she sees the special doctor and he can help her.

In her self-report included in the PWD application, the appellant stated that she knows when she is going to have her seizure, that she will lay down so she does not hurt herself or anyone else. The appellant stated that sometimes she is out for a long time and sometimes it is a short time. She has seizures more often now that her husband passed away. The appellant stated that sometimes when she has a seizure she has to go to the hospital.

At the hearing, the appellant stated that she is not looking for support for the rest of her life, and that she wants to get better. When she has an epileptic attack, she will repeat activities that she has already done. For example, she will vacuum and then start doing it again because she does not remember that she already did it. She is not herself when she comes out of the seizure, she mumbles and no one can make sense of what she says. The appellant stated that she has to sleep for a few hours and then she will be able to think clearer. The appellant stated that she does not like to go out by herself, that she needs a companion, either her sister or her mother, because she does not know what will happen if she has a seizure in public, that if she is carrying anything when she falls she will damage the items and could hurt someone. The appellant stated that she also loses control of her bladder and bowel when she has a seizure and that is very uncomfortable and difficult to deal with in public. The appellant stated that she knows when she is getting an attack, that she hears a buzzing sound and she cannot see. The appellant stated that sometimes she has a bad attack and she does not want to do laundry or housework. The appellant stated that her son helps her when she has a seizure, that he rubs her back and makes sure she is alright and he knows that if she is bleeding from her mouth, to call 9-1-1. The appellant stated that she has been a waitress all her life, since she was 13 years old, and she does not expect anyone to support her, that she wants to go back to work but if she had a seizure at work and she was carrying hot food, she could hurt someone. The appellant stated that some brain cells are killed each time she has a seizure, that she may die from a bad attack and she is scared. The appellant stated that her doctor has increased the medications to the maximum dosage and she has not heard from the specialist yet, but she hopes that he will be able to find the medications to control her seizures.

The appellant stated that she was diagnosed with epilepsy when she was 15 years old, but the seizures were controlled by medication then. The appellant stated that when the seizures are controlled, she feels good. The appellant stated that she takes the medications as prescribed, twice a day, so that compliance with treatment is not an issue. The appellant stated that since her husband passed away one year ago, she is having more seizures. The appellant stated that as she is getting older, when she has a seizure it takes longer for her to come out of it. The appellant stated that she is now having 3 to 4 seizures per week and will sometimes have 2 in one day. When this happens, she cannot do anything for the entire day. The appellant stated that her knees need to be replaced, that it is "bone on bone", that they swell and she puts ice on them but today she has braces on both knees. The appellant stated that her knees started bothering her about a year ago. The appellant stated that she has to wear braces on her knees when it really hurts, to keep the knee in place. The appellant stated that lately her knees have been bad because there is no cushioning left in the knee. She takes Tylenol #3 for the pain and she takes regular Tylenol most of the time "to keep the pain away." The appellant stated that sometimes her son has to help her put on her socks and shoes because she cannot bend. The appellant stated that she uses a railing in the bathroom and when her knees are bad she cannot get out of the tub because it hurts to bend. The appellant stated that she knows that, mentally, she is depressed and she is on anxiety pills now and she has never taken these before. The appellant stated that she has not been referred to a psychiatrist, but she has a friend who she meets with on a regular basis who listens and that it helps her to talk.

The physician who completed the physician report confirmed that the appellant has been his patient for less than 1 year and that he has seen the appellant 2 to 10 times in that period. In the physician report, the physician confirms a diagnosis of epilepsy- grand mal seizures ("prior") and adjustment disorder/ grief reaction with a date of onset of March 2012. The physician added comments regarding the severity of the medical conditions relevant to the appellant's impairment, for epilepsy that "...seizures not well-controlled at present; consequently, she cannot drive and she cannot work in a public position such as food service" and regarding the adjustment disorder that "...her husband's recent death has left her with the added responsibility of being sole caregiver for their son who is a dependent adult; this has led to added anxiety/stress which may be contributing to the poor control of her epilepsy." The physician report indicated that the appellant has not been prescribed medication that may interfere with her ability to perform DLA and that she does not require an aid for her impairment. The physician reported that the appellant can walk 4 or more blocks unaided on a flat surface, she can climb 5 or more stairs unaided, she has no limitations with lifting or with remaining seated. The physician reported that the appellant has no difficulties with communication. The physician indicated that there are significant deficits with cognitive and emotional function in the areas of emotional disturbance and attention or sustained concentration. The physician reported, in Part E, that the appellant is restricted periodically in the area of social functioning, with additional comments regarding the periodic nature that "post ictal episodes related to seizures" and "significant anxiety/emotional lability- has become somewhat withdrawn." The physician added a note regarding the degree of restriction that "...it is significant enough that she is unable to work as a server/ her usual occupation." The physician does not provide an assessment regarding restrictions in the other daily living activities (DLA), namely: personal self care, meal preparation, management of medications, basic housework, daily shopping, mobility inside and outside the home, use of transportation, and management of finances. For additional comments to the physician report, the physician indicated that the appellant will be seeing a neurologist, that he fully expects that once her epilepsy is controlled that she will be able to work on a regular basis but that she cannot hold gainful employment at present.

The assessor report was also completed by the appellant's physician who indicated that the appellant's speaking and hearing ability is satisfactory/ good and her reading and writing is poor, with no further comments provided. The physician reported that the appellant is independent in all areas of mobility and physical ability with the added comment that she "...needs assistance when she has a seizure (1 to 3 times per week currently)." The physician indicated that the appellant is independent with all tasks of personal care, including dressing, grooming, bathing, toileting, feeding self, regulating diet, transfers in/out of bed and transfers on/off of chair, with no further comments provided. The physician reported that the appellant is independent with doing laundry and with basic housekeeping as well as with all tasks of shopping, including going to and from stores, reading prices and labels, making appropriate choices, paying for purchases, and carrying purchases home. The physician indicated that the appellant is also independent with all tasks of managing meals, including meal planning, food preparation, cooking, and safe storage of food, with no explanation or description provided. The physician indicated that the appellant is independent and does not require assistance from another person with banking, budgeting and paying rent and bills. The physician reported that the appellant is independent with all tasks of managing medications (filling-refilling prescriptions, taking as directed, safe handling and storage) and with all tasks of managing transportation, including getting in and out of a vehicle, using public transit, and using transit schedules and arranging transportation, with no other explanation provided.

The physician reported that the appellant's mental impairment has a moderate impact on her cognitive and emotional functioning in the areas of emotion and other emotional or mental problems and minimal or no impact in the remaining 12 areas of functioning. The physician commented that due to her mixed mood (anxious, depressed), the appellant "...has restricted herself to her most immediate relationships and as such has yet to integrate well into her new community" and her mental impairment related to her epilepsy "...is only at (or after) the time of a seizure." The physician indicated that the appellant is independent with all aspects of social functioning, with good functioning in her immediate social network but marginal functioning in her extended social network. The physician commented that the appellant "...cannot drive or work in any safety sensitive environment due to her epilepsy."

## 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 does not meet all the criteria in Section 2 of the EAPWDA. The ministry found that she 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:

### Persons with disabilities

2 (1) In this section:

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

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

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

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

(a) in the opinion of a medical practitioner is likely to continue for at least 2 years, and

(b) in the opinion of a prescribed professional

(i) directly and significantly restricts the person's ability to perform daily living activities either

(A) continuously, or

(B) periodically for extended periods, and

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

(3) For the purposes of subsection (2),

(a) a person who has a severe mental impairment includes a person with a mental disorder, and

(b) a person requires help in relation to a daily living activity if, in order to perform it, the person requires

(i) an assistive device,

(ii) the significant help or supervision of another person, or

(iii) the services of an assistance animal.

(4) The minister may rescind a designation under subsection (2).

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

### Definitions for Act

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

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

(i) prepare own meals;

(ii) manage personal finances;

(iii) shop for personal needs;

(iv) use public or personal transportation facilities;

ATTACH EXTRA PAGES IF NECESSARY

- (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.

*Severe Physical Impairment:*

The ministry argues that the evidence does not establish that the appellant has a severe physical impairment. The ministry points out that the physician provides new information in his letter and checklist dated October 16, 2012 that the appellant is restricted from walking more than 2 to 3 blocks, standing for more than 10 minutes, and lifting/carrying/holding more than 5 to 15 lbs, and a railing is required for climbing stairs but the physician also reports in the PWD application that the appellant needs assistance with physical activities when she has a seizure. The ministry argues that the duration of the restriction is not described. The ministry points out that in the PWD application, the physician reports the frequency of seizures as 1 to 3 times weekly, in the new information he reported that the seizures occur almost weekly and the appellant described the frequency as 2 to 4 times per week and sometimes they are "bad ones."

The appellant's position is that she has a severe physical impairment as a result of epilepsy as well as her chronic knee pain. The appellant points out that there are significant impacts from epilepsy, with 2 to 4 seizures a week, and the need for physical assistance during a seizure. The appellant argues that she sometimes experiences two seizures in one day and when this happens she cannot do anything all day. The appellant argues that when she has an epileptic attack, she will repeat activities that she has already done because she does not remember that she already did it and that she mumbles and no one can make sense of what she says. The appellant argues that she does not like to go out by herself, that she needs a companion, because she does not know what will happen if she has a seizure in public, that if she is carrying anything when she falls she will damage the items and could hurt herself or someone else. The appellant argues that she has restrictions in mobility that severely impair her every day living. The appellant argues that she has to have someone help her go to the store and to the doctor. The appellant argues that her knees need to be replaced, that it is "bone on bone", that they swell and she puts ice on them and she has to wear braces on her knees when it really hurts.

The panel finds that the evidence of a medical practitioner confirms a diagnosis of epilepsy- grand mal seizures, as set out in the physician report, as well as from chronic knee pain as set out in the October 16, 2012 checklist. The physician report indicated that the appellant has not been prescribed medication that may interfere with her ability to perform DLA and that she does not require an aid for her impairment, however the physician indicated in the checklist that the appellant requires a shower grab bar. The physician indicated in the assessor report that the appellant is independent in mobility and physical ability, with the comment that the appellant needs assistance when she has a seizure, 1 to 3 times per week. In the physician report, the physician indicated that the appellant can walk 4 or more blocks unaided on a flat surface, she can climb 5 or more stairs unaided, and she has no limitations with lifting or with remaining seated. In the October 16, 2012 checklist, the physician reported that, in consideration of the appellant's chronic knee pain, the appellant is significantly restricted from walking more than 2 to 3 blocks due to chronic pain and swelling, and she is directly restricted from lifting, carrying or holding more than 5 to 15 lbs. due to balance issues caused by knee pain and she requires continuous assistance from the railing on stairs. The panel finds that the handrail is not an assistive device, as defined in the legislation, as "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." The appellant stated that she has been using braces for her knees when they get really bad, which has been often lately, but this has not been confirmed by her physician in his updated letter and checklist. The appellant

stated that her knees started bothering her about a year ago. In the letter, the physician indicated that he reassessed the appellant with osteoarthritis of both of her knees and x-rays are being conducted but have not yet been completed to determine the appropriate treatment.

In the physician report, the physician added comments regarding the severity of the medical condition, with respect to the appellant's epilepsy, that "...seizures not well-controlled at present; consequently, she cannot drive and she cannot work in a public position such as food service" and that he expects that once her epilepsy is controlled she will once again be able to work on a regular basis. While the appellant stated that she cannot go out of her home without a companion, the physician indicated in his letter date October 16, 2012 that the appellant has anxiety surrounding her seizure disorder and feels that she cannot leave the house without her son in case she has a seizure. The appellant stated that she is now experiencing 3 to 4 seizures a week, sometimes 2 in one day, as a result of her epilepsy and that she has a need for physical assistance during a seizure.

The panel finds that the impact from the appellant's epilepsy as described by her physician relates mostly to her inability to work until the seizures are brought under control, which is relevant to an assessment to qualify for the Person with Persistent Multiple Barriers to employment (PPMB) designation, but not for the PWD, and does not relate to her functioning on a daily basis. The appellant stated that she can tell when a seizure will happen and she lays down to minimize any harm to herself or others, and she is unable to function for a period of an hour or two after experiencing a seizure. The panel finds that the evidence demonstrates that the appellant experiences restrictions to her functional skills due to her knee pain that currently indicate a moderate degree of impairment as well as periodic impacts from her epilepsy. Therefore, the panel finds that the ministry's determination that the evidence does not establish a severe physical impairment, was reasonable.

*Severe Mental Impairment:*

The ministry argues that the evidence does not show that the appellant has a severe mental impairment. The ministry points out that the physician reported that the appellant's mental health conditions result in moderate and minimal impacts to her cognitive and emotional functioning and daily living restrictions in the areas of social functioning, grooming, housework and anxiety over leaving the house alone. The ministry argues that the degree of impact and daily living restriction does not establish a severe impairment of the appellant's functioning.

The appellant's position is that she has a severe mental impairment as a result of her adjustment disorder. The appellant argues that she knows that, mentally, she is depressed and she is on anxiety pills now and she has never taken these before. The appellant argues that although she has not been referred to a psychiatrist, she has a friend who she meets with on a regular basis who listens and that it helps her to talk.

The panel finds that the evidence of a medical practitioner confirms a diagnosis of adjustment disorder/ grief reaction with a date of onset of March 2012. The physician added comments regarding the severity of the medical conditions relevant to the appellant's adjustment disorder that "...her husband's recent death has left her with the added responsibility of being sole caregiver for their son who is a dependent adult; this has led to added anxiety/stress which may be contributing to the poor control of her epilepsy." The physician reported that overall the appellant has no difficulties with communication but that her reading and writing are poor, although there is no indication that this is due to a mental impairment. In the physician report, the physician indicated that there are significant deficits with cognitive and emotional function in the areas of emotional disturbance and attention or sustained concentration. In the assessor report, the physician indicated the appellant's mental impairment has a moderate impact on her cognitive and emotional functioning in the areas of emotion and other emotional or mental problems and minimal or no impact in the remaining 12 areas of functioning. In the checklist dated October 16, 2012, the physician agreed that the appellant experiences symptoms daily as a result of her mental health condition, namely difficulty planning/executing, depressed moods, difficulty paying attention and concentrating, and crying spells, and the panel finds that these have

been assessed by the physician as being in the minimal to no impact range for cognitive and emotional functioning. The physician commented that due to her mixed mood (anxious, depressed), the appellant "...has restricted herself to her most immediate relationships" and her mental impairment related to her epilepsy "...is only at (or after) the time of a seizure." In Part E of the physician report, the physician indicated that the appellant is restricted periodically in the area of social functioning, with additional comments regarding the periodic nature that "...post ictal episodes related to seizures" and "significant anxiety/emotional lability- has become somewhat withdrawn." The physician added a note regarding the degree of restriction that "...it is significant enough that she is unable to work as a server/ her usual occupation." The appellant stated that she is taking anxiety pills and that she talks with a friend on a regular basis, which helps. In the assessor report, the physician indicated that the appellant is independent with all aspects of social functioning, with good functioning in her immediate social network but marginal functioning in her extended social network. The panel finds that the physician's assessment of the impacts to the appellant's functioning focuses more on her inability to work and not to her functioning on a daily basis. The panel finds that the ministry's decision, which concluded that the evidence does not establish a severe mental impairment, was reasonable.

*Direct and Significant Restriction:*

The ministry argues that the evidence does not establish that the appellant's DLA are, in the opinion of a prescribed professional, directly and significantly restricted either continuously or periodically for extended periods. The ministry argues that the information provided does not establish significant DLA restrictions. The ministry points out that there are restrictions to DLA related to lifting/carrying/holding and standing, anxiety in leaving the house without her son and in the areas of grooming, laundry/basic housework and getting in and out of the bathtub and vehicles and social functioning in extended networks but argues that the degree of restriction does not satisfy this criteria. The appellant argues that the physician's evidence together with her own evidence shows that her DLA are directly and significantly restricted either continuously or periodically for extended periods.

The panel finds that the legislation requires that the ministry is 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 physician's assessment changed from the time of the PWD application in August 2012 to the date of the checklist on October 16, 2012, and the physician explained in his accompanying letter that when he re-assessed the appellant and gathered further history from her, he ascertained that she has osteoarthritis of both of her knees, and the impact from this newly revealed condition is included in the later assessment. For preparing her own meals, in the assessor report, the physician indicated that the appellant is independent with all tasks, with no further explanation or description provided. For managing personal finances, the physician indicated that the appellant is independent with all tasks, with no additional narrative provided. In terms of shopping for her personal needs, the physician indicated in the assessor report, that the appellant is independent with all tasks of going to and from stores, reading prices and labels, making appropriate choices, paying for purchases, and carrying purchases home. In the checklist dated October 16, 2012, the physician agreed that the appellant is restricted with paying for purchases as she is directly restricted from standing longer than 10 minutes in line-ups, with carrying purchases home since she is directly restricted from lifting, carrying or holding more than 5 to 15 lbs. due to balance issues caused by knee pain. The physician indicated agreement that, as a result of these restrictions, the appellant requires continuous assistance from her son for paying for purchases with standing in line-ups longer than 10 minutes, and continuous assistance for carrying purchases home when carrying more than 5 to 15 lbs.

For use of public or personal transportation facilities, the physician indicated in the assessor report that the appellant is independent with all tasks of managing transportation, including getting in and out of a vehicle, using public transit, and using transit schedules and arranging transportation, with no other explanation provided. In the checklist, the physician indicated that the appellant is significantly restricted from getting in and out of vehicle due to chronic knee pain and swelling and it takes her 2 times longer. With respect to performing housework to maintain the appellant's place of residence in an acceptable sanitary condition, the physician reported that the appellant is independent with doing laundry and basic housekeeping. In the



checklist, the physician agreed that the appellant has significant restrictions 1 to 3 times per week doing laundry/housekeeping due to depressed moods and seizures. For moving about indoors and outdoors, the physician indicated in the assessor report, that the appellant is independent with walking indoors and with walking outdoors and, in the checklist, that the appellant is significantly restricted from walking more than 2 to 3 blocks unaided due to chronic knee pain and swelling. In his October 16, 2012 letter, the physician wrote that the appellant has anxiety surrounding her seizure disorder and feels that she cannot leave the house without her son in case she has a seizure.

Regarding performing personal hygiene and self care, the physician indicated in the assessor report, that the appellant does not require assistance with any tasks of personal care, including dressing, grooming, bathing, toileting, feeding self, regulating diet, transfers in/out of bed and transfers on/off a chair. In the checklist, the physician agreed that the appellant is directly restricted from grooming 1 to 3 times per week due to depressed mood and seizures and she has significant restrictions with getting in and out of tub due to chronic knee pain and swelling. The appellant stated that she uses a railing in the bathroom and when her knees are bad she cannot get out of the tub because it hurts to bend. With respect to managing her personal medications, the appellant's physician indicated in the assessor report, that the appellant does not require assistance with the tasks of filling/refilling prescriptions, taking medications as directed and safe handling and storage.

With respect to the two DLA applicable to a person with a severe mental impairment, the panel notes that for making decisions about his personal activities, care, or finances, the physician indicated in the assessor report that the appellant is independent with all aspects of social functioning, including with making appropriate social decisions and does not require assistance with managing her finances or with most tasks of personal care. For relating to, communicating or interacting with others effectively, the physician reported no difficulties with communication and, in the assessor report, that she is independent with interacting appropriately with others, with a comment added that the appellant "...cannot drive or work in any safety sensitive environment due to her epilepsy."

Looking at the evidence as a whole, the panel finds that the appellant's physician, as a prescribed professional, has reported that the appellant is independent with a majority of her DLA, while being continuously restricted in 2 out of 5 tasks of shopping and with mobility outside the home due mostly to anxiety. Although the physician indicated that the appellant is periodically restricted in 2 of 8 tasks of personal care and with basic housekeeping, the panel finds that there is not sufficient information to establish that periodic assistance is required for extended periods of time, as required by the legislation. 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.

*Help in Relation to DLA:*

The ministry's position is that since it has not been established that DLA are significantly restricted, it cannot be determined that significant help is required from other persons. The appellant's position is that she requires the significant help or supervision of another person and assistive devices in order to perform her directly and significantly restricted DLA.

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 for DLA primarily from her son. While the physician confirmed in the checklist that the appellant requires a shower grab bar, the physician does not confirm the use of knee braces or any other assistive device. As it has not been established that the ability to perform DLA is significantly restricted, the panel finds that the ministry's conclusion that the requirement for significant help or supervision of another person, an assistive device, or the services of an assistance animal to perform DLA, under Section 2(2)(b)(ii) of the EAPWDA, has not been met was reasonable.

APPEAL #

*Conclusion:*

Overall, the panel finds that the ministry's reconsideration decision was reasonably supported by the evidence and confirms the decision pursuant to Section 24(2)(a) of the Employment and Assistance Act.