

### PART C – Decision under Appeal

The decision under appeal is the Ministry of Social Development (the ministry) reconsideration decision dated February 28, 2013 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:

- the appellant has a severe physical or mental impairment;
- 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; and,
- 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.

### 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 did not attend the hearing and did not provide further submissions or evidence. After confirming that the ministry was notified, the hearing proceeded under Section 86(b) of the Employment and Assistance Regulation.

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

- 1) Letter dated September 21, 2012 from an advocate to 'the doctor' attaching a 3-page self-report which is stated to be the appellant's information from her perspective on her disabilities;
- 2) Person With Disabilities (PWD) Application comprised of the applicant information dated September 15, 2012, and the physician report and assessor report completed by the appellant's general practitioner of one year, both dated October 20, 2012;
- 3) Letter dated January 9, 2013 from the ministry to the appellant denying her request for PWD designation and enclosing a copy of the Decision Summary;
- 4) Letter dated February 6, 2013 from the general practitioner who completed the reports for the PWD application, setting out an assessment of the appellant's restrictions; and,
- 5) Request for Reconsideration- Reasons prepared by an advocate on behalf of the appellant.

### *Diagnoses*

The appellant has been diagnosed by her general practitioner with ischaemic heart disease (IHD) with date of onset 2003, diabetes (chronic), mixed depression/ anxiety (chronic), hypertension, arthritis, and chronic fatigue.

### *Physical Impairment*

- In the physician report under health history, the general practitioner indicated that the appellant has "...chronic fatigue due to cardiac and physical symptoms. She has non-restorative sleep. Weakness/ dizziness/ easily fatigued, severely affected by her medical conditions."
- Functional skills reported in the physician report indicated that the appellant can walk less than 1 block unaided, she can climb 2 to 5 steps unaided, she can lift under 5 lbs., and she can remain seated less than 1 hour ("less than 30 minutes").
- The general practitioner reported that the appellant has been prescribed medications that interfere with her ability to perform her daily living activities (DLA) as "...medications cause fatigue." The appellant does not require any aids for her impairment. In the assessor report, the general practitioner does not indicate that any of the listed assistive devices are routinely used by the appellant.
- In the assessor report, the appellant is reported as taking significantly longer than typical with walking indoors, requiring periodic assistance from another person with walking outdoors ("has to stop after 1 block"), continuous assistance with climbing stairs ("hold onto rails") and continuous assistance with lifting and carrying and holding ("continuous assistance from family and friends"). The appellant is independent with standing. The general practitioner provided comments that the appellant has "chronic fatigue and weakness. Needs ongoing help from friends/family due to poor exercise tolerance."
- In the letter dated February 6, 2013, the general practitioner agreed that the appellant has continuous restrictions with basic mobility, that she can walk for less than 1 block and experiences severe cramps in her legs and lower back and chronic fatigue. She has shortness of breath on least amount of exertion and experiences dizziness. The general practitioner also agreed that the appellant has continuous restrictions with sitting and can sit for less than 1/2 hour and usually has to lie down because of pain in her back and chronic fatigue.
- The general practitioner agreed that the appellant has continuous restrictions with standing and can stand for very short periods of time due to back pain and chronic fatigue. The appellant can climb about 4 steps but must hold the rail and she will use an elevator when available. The general practitioner agreed that the appellant is continuously restricted with lifting and carrying as she is

restricted to lifting under 5 lbs.

- In her self-report provided to the general practitioner, the appellant wrote that she has a 90% blockage in the artery in her heart, that she is unable to walk more than 1 block due to shortness of breath, dizziness and light-headedness. She is only able to climb 2 to 3 stairs due to shortness of breath and must climb slowly. She is unable to lift over 4 lbs. due to chest pain and shortness of breath requiring continuous assistance from family and friends, and she is unable to sit longer than 30 minutes due to fatigue.
- In her self-report included with the PWD application, the appellant wrote that her heart problems were diagnosed in June 2004 and had stent placement following the diagnosis. She experiences shortness of breath and painful episodes quite often. The appellant wrote that she has arthritis in her back/spine, neck, shoulders and arms. She is diabetic with associated high blood pressure, and high cholesterol which is affecting her vision, memory and sleep.
- The appellant wrote that on July 25, 2011 her family doctor certified her disability to work. The appellant stated that because of her ongoing heart disease and associated diseases she has been unable to physically carry out most of her life activities. With the shortness of breath, she cannot walk long distances, only a few blocks, and cannot lift more than 5 lbs. She has problems with bending, climbing, lifting, stretching and hurrying. She has to do things slowly and take her time.

### *Mental Impairment*

- In the physician report, the general practitioner reported that the appellant has difficulties with communication with a sensory cause, and the comments are: "speaking/ vision/ writing; by response describes expressive dysphasia." In the assessor report, the appellant is assessed as having a good/satisfactory ability to communicate in all areas, with the exception of writing which is poor.
- In the physician report, significant deficits are reported in 7 of 11 listed aspects of cognitive and emotional function in the areas of consciousness, language, memory, perceptual psychomotor, emotional disturbance, motivation, and attention or sustained concentration with the comment "...needs glasses."
- In the assessor report, the areas of emotion, motivation and motor activity are identified by the general practitioner as having a major impact on the appellant's cognitive and emotional functioning, with moderate impacts in the areas of bodily functions, consciousness, attention/concentration, memory and language. Minimal impacts are identified in impulse control, insight and judgement, executive, and other neuropsychological problems and no impact in the remaining 2 areas of functioning. Comments added by the general practitioner are: "...chronic fatigue, major depression/ anxiety disorder. Low exercise tolerance due to IHD."
- The general practitioner assessed the appellant as being independent with 3 listed aspects of social functioning, including making appropriate social decisions, developing and maintaining relationships, and interacting appropriately with others, while requiring periodic support/supervision dealing appropriately with unexpected demands ("physical limitations limit her"), and securing assistance from others. She has marginal functioning with both her immediate and extended social networks, and requires support/ supervision from her family and friends.
- In the letter dated February 6, 2013, the general practitioner agreed that the appellant is restricted with emotional control, that she is depressed most of the time with low mood, low energy. She has restrictions with motivation with a "loss of interest in doing anything." She also has continuous restrictions with memory ("poor memory") and attention/concentration. The general practitioner agreed that the appellant is restricted with communication, that she is restricted by poor concentration and low motivation. She has continuous restrictions with written comprehension as she is unable to concentrate on words, with depression and stress making her "unable to focus on this task." The general practitioner agreed that the appellant is restricted with appropriate social interaction, that she is limited by her energy, and restricted with developing and maintaining relationships.
- In her self-report provided to the general practitioner, the appellant wrote that she has restrictions with speaking, writing and seeing. She has difficulty reading and writing due to "eye issues" and mixes up

words when trying to speak. She wrote that she needs an assistive device of glasses.

- In her self-report included with the PWD application, the appellant wrote that she experiences a lot of stress and depression.

#### *Daily Living Activities (DLA)*

- In the assessor report, the general practitioner indicated that the appellant takes significantly longer than typical with walking indoors and requires periodic assistance from another person with walking outdoors ("has to stop after 1 block").
- The general practitioner reported that the appellant takes significantly longer than typical with most listed tasks of the DLA personal care, namely dressing, grooming, bathing ("dyspnea") and transfers in/out of bed and on/off a chair ("fatigue/weakness, dyspnea"), and she is independent with toileting, feeding self and regulating her diet.
- The appellant is assessed as requiring continuous assistance from another person with doing her basic housekeeping ("can manage once per week") and as independent with doing her laundry.
- For shopping, the appellant requires continuous assistance from another person with carrying her purchases home, takes significantly longer than typical with going to and from stores, and is independent with reading prices and labels, making appropriate choices and paying for purchases, with the comment added "...limited by weakness/fatigue, recurring chest pain and dyspnea."
- For managing meals, the general practitioner assessed the appellant as being independent with meal planning and safe storage of food and taking significantly longer than typical with food preparation and cooking ("takes frequent breaks").
- The appellant is also assessed as using an assistive device for banking ("uses ATM to avoid line-ups in bank") and being independent with budgeting and paying rent and bills.
- All listed tasks for the DLA medication are performed independently.
- For transportation, the general practitioner indicated that the appellant takes significantly longer than typical with getting in and out of a vehicle ("has to use car door to pull herself up") and the other tasks are not applicable, namely using public transit and using transit schedules and arranging transportation.
- For social functioning, the appellant is independent with 3 areas of functioning and requires periodic support/supervision with 2 areas, defined as "physical limitations limit her."
- In the letter dated February 6, 2013, the general practitioner agreed that the appellant is restricted from using public transportation, that she is "unable to use public transit, does not have the energy required to do so." She requires transportation to access the community and attend appointments, she is "now unable to drive own vehicle." The general practitioner agreed that the appellant's personal care takes 4 times as long. He also agreed that she requires someone to take her to the bank. She requires assistance with meal preparation and cooking and "buys pre-peeled vegetables and will buy prepared foods" and also with basic housework ("due to medical fatigue").
- The general practitioner agreed that the appellant requires continuous assistance with laundry, for lifting, carrying and folding. The appellant requires continuous assistance with daily shopping and her friends or her landlord will assist her.
- The general practitioner agreed that the appellant requires support for coping with her mental health conditions, to build a social network, and for completing tasks such as completing forms, writing a letter, or for "appropriate communications."
- In her self-report, the appellant wrote that her arthritis disables her to do a lot of the daily activities such as household chores. She wrote that due to her physical disabilities she encounters "...a lot of setbacks with employment and daily activities of living."

#### *Need for Help*

- The help required for DLA is reported by the general practitioner to be provided by family and friends.
- In the letter dated February 6, 2013, the general practitioner agreed that the appellant uses a bath chair

as an assistive device.

In the Notice of Appeal, the appellant expressed her disagreement with the ministry's reconsideration decision.

At the hearing, the appellant provided a letter dated March 27, 2013 from her general practitioner which included the following :

- The general practitioner wrote that the appellant is severely disabled by the medical conditions of ischaemic heart disease (stent in place since 2004), diabetes, mixed depression/anxiety, hypertension, arthritis and chronic fatigue secondary to her physical conditions. "Her mental state is very much attached to her physical conditions and is severe and restricting."
- The general practitioner wrote that ischaemic heart disease alone is a severely disabling condition as the appellant's blood flow to the heart muscle is significantly reduced, decreasing oxygen to the body. This results in significant restrictions with her energy level. This condition is further compromised by her diabetes and hypertension.
- The general practitioner wrote that, as a result of her medical conditions, the appellant has significant restrictions with all activities requiring lifting. She has been advised by the general practitioner and her heart specialist not to lift any weight. Activities requiring lifting include shopping, housework and laundry. She also has significant restrictions with all activities requiring her to bend, resulting in chest pains and dizziness. Activities involving mobility, personal self care and most of her other DLA take her an inordinate amount of time to accomplish because of her diminished energy levels. "Her diminished energy levels are the result of her medical conditions, NOT her age."
- The general practitioner wrote that the appellant "...has severe medical impairments with significant restrictions to do her DLA and requires assistance to do them."

The appellant also provided a letter from her friend dated March 23, 2013 which included the following:

- The friend has known the appellant for the past 20 years and the appellant had always been a very independent person.
- Due to the appellant's decline in health and physical abilities for the past few years, the friend has been assisting her with her groceries, carrying it for her to and from the car to her place whenever the friend goes to do her shopping and to help her clean her place occasionally.

The appellant also provided a list from a pharmacy with the date range January 1, 2012 through March 27, 2013 which included medications for the appellant's diabetes, hypertension, cholesterol levels, and blood thinners for her heart condition.

The appellant provided a 1-page print out from the Health Link BC website regarding Depression, Anxiety and Physical health problems, which included the following:

- It is not unusual for mental health problems, especially depression and anxiety, to occur with long-term (chronic) diseases.
- People who have chronic diseases such as arthritis, diabetes, heart disease, often also have depression. Depression also often occurs with chronic pain.

At the hearing, the appellant and her advocate provided the following oral evidence:

- The February 6, 2013 letter from the general practitioner was prepared by the advocate after interviewing the appellant regarding her perception of her disabilities. The general practitioner reviewed the statements and checked to indicate his agreement and signed the letter.
- The letter dated March 27, 2013 was drafted by the advocate based on information the doctor had already provided and it was explained that he could change anything written in the letter or not sign the

letter if he was not in agreement with it.

- The appellant has had IHD for 9 years and it is a progressive condition. She has dyspnea, or shortness of breath, from this condition. The conditions are intertwined and it can be hard to determine what causes a symptom but the cramps in the appellant's legs are likely a result of neuropathy from her diabetes. The appellant gets back pain from sitting or standing too long likely as a result of her arthritis.
- The appellant stated that she feels dizzy during the day and has headaches which come and go.
- The combination of the appellant's IHD and her high blood pressure leaves her with weakness and she does not have the energy to walk.
- For personal care tasks, it takes the appellant 4 times longer than it used to take her, not 4 times longer than it might take a 20-year-old.
- The appellant lives alone and the "cooking" she does is largely putting together prepared foods, such as adding boiling water to a package of soup mix. The appellant stated that she will often use the microwave and has to rest after doing each task so that it is a very "broken" process.
- The general practitioner indicated that the appellant is independent with doing her laundry but, on further questioning, it was determined that the appellant's landlord does her laundry for her 1 to 2 times per week and it is only if her landlord is away that the appellant will wash 1 or 2 items of clothing that she needs.
- The general practitioner indicated in the assessor report that use of public transportation was not applicable and, in the February 6, 2013 letter, clarified that she is not able to use public transit because she does not have the energy to do so.
- The appellant is not medically prohibited from driving but she does not have the energy to drive. The appellant explained that the last time she drove her blood sugar level became low and she began to feel drowsy and her hands began to shake and she needed to rest to feel better. She stated that she does not feel sufficiently well to drive.
- The appellant stated that she stays home mostly because she cannot walk very far. She cannot go shopping and her friend picks her up and takes her to get some items.
- The appellant uses items for assistance, even if they might not meet the definition of an assistive device, such as a car door to pull herself up or the railing on the stairs to stop from falling. The appellant acknowledges that an ATM is not an assistive device, but there are different ways that a person adapts to accommodate a disability.
- The appellant cannot afford some of the assistive devices suggested by the ministry, such as a basket to carry her groceries or a walker. As well, use of a walker would require energy that the appellant does not have. The appellant stated that she has to meet with her heart specialist once a year.
- The appellant stated that she currently takes 10 tablets each day for her various medications and that, although it is recommended, she is not taking anti-depressants because she is already taking so many medications.

The ministry did not attend the hearing. The panel admitted the documents and the appellant's oral evidence, pursuant to Section 22(4) of the Employment and Assistance Act, as providing further detail relating to the appellant's diagnosed conditions and being in support of information that was before the ministry on reconsideration. The appellant's advocate provided a written argument.

The ministry relied on its reconsideration decision.

## PART F – Reasons for Panel Decision

The issue on the appeal is whether the ministry's decision, 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, was reasonably supported by the evidence or was a reasonable application of the applicable enactment in the circumstances of the appellant. The ministry found 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:

### Persons with disabilities

2 (1) In this section:

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

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

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

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

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

(b) in the opinion of a prescribed professional

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

(A) continuously, or

(B) periodically for extended periods, and

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

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

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

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

(i) an assistive device,

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

(iii) the services of an assistance animal.

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

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

### Definitions for Act

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

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

(i) prepare own meals;

(ii) manage personal finances;

(iii) shop for personal needs;

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

The panel considered each party's position regarding the reasonableness of the ministry's decision under the applicable PWD criteria at issue in this appeal.

### **Severe Physical Impairment**

The appellant's position is that it is unreasonable for the ministry to decide in the reconsideration decision that severity had not been met when the original decision stated that the requirement to establish a severe physical or mental impairment had been met. The advocate argued that the decision under consideration stated that two criteria had not been satisfied, namely that the severe impairment does not significantly restrict the appellant's ability to perform DLA and she does not require the significant help or supervision of another person to perform DLA restricted by her impairment. The advocate argued that the ministry erred and failed to apply the first rule of administrative fairness, as recorded in the ministry policy, that the appellant has a right to know the case against him or her and must be given an opportunity to respond. The advocate argued that the appellant has responded to the two criteria that the ministry stated were not met in the original decision and, therefore, did not respond to the issue of severity in the appellant's submissions for the request for reconsideration. The advocate requested that the panel disregard all information and conclusions in the reconsideration decision regarding severity because it is not part of the request for reconsideration or the decision being reconsidered.

The ministry's position is that the information provided by the general practitioner in the PWD application does not describe the severity of the appellant's various health conditions. For the heart disease, he does not provide medical reports, imaging results, the medications that she is currently taking, consults or other clinical data related to her condition. The ministry argued that no further information is provided about surgical interventions undertaken or their outcomes. The ministry argued that the definition of assistive device as set out in the legislation 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" and that stair rails, ATM's and car doors do not fall under this definition. While the general practitioner indicated in the additional information that the appellant uses a bath chair, he does not provide any specific information about what impairments require the appellant to now use a bath chair. The ministry argued that the general practitioner did not describe the type or severity of the appellant's arthritis nor the areas of the body affected and the ministry considers the age appropriate norms for stamina, agility, strength, sensory perception, and mental alertness when assessing abilities. The ministry argued that developing some form of arthritis with various ranges of severity is not uncommon for an individual in their 60's and is considered when determining the severity of this impairment. The ministry argued that the appellant is not using an assistive device such as a cane or walker either inside or outside her home and if she were experiencing shortness of breath and dizziness on a severe level after walking one block, it would be expected that the appellant would require an assistive device such as a cane or walker to prevent a fall or to help with balance.

### *Panel Decision*

Pursuant to Section 16(1)(a) of the EAPWDA, a person may request the ministry to reconsider a decision that



results in a refusal to provide disability assistance. The panel finds that the ministry is thereby given discretion to reconsider the ministry's findings on all of the criteria that are required to establish a PWD designation, under Section 2 of the EAPWDA, as these are all necessary components of the 'decision'. The panel will, therefore, consider the reasonableness of the reconsideration decision with respect to the ministry's finding that a severe physical impairment had not been established on the evidence provided.

The diagnosis of a medical condition is not itself determinative of a severe impairment. To assess the severity of an impairment one must consider the nature of the impairment and its impact on the appellant's daily functioning as evidenced by functional skill limitations and the restrictions to DLA. The ministry describes this approach well when it defines the word "impairment" in the physician report as being "a loss or abnormality of psychological, anatomical or physiological structure or function causing a restriction in the ability to function independently, effectively, appropriately or for a reasonable duration." This definition is not set out in legislation and is not binding on the panel, but in the panel's view it quite appropriately describes the legislative intent.

The legislation clearly provides that the determination of severity of impairment is at the discretion of the minister, taking into account all of the evidence including that of the appellant. However, the legislation is also clear that the fundamental basis for the analysis is the evidence from a medical practitioner or prescribed professional respecting the nature of the impairment and its impact on daily functioning.

The medical practitioner, the appellant's general practitioner, has diagnosed the appellant with ischaemic heart disease (IHD), diabetes, hypertension, arthritis, and chronic fatigue secondary to her physical conditions. In the physician report under health history, the general practitioner indicated that the appellant has "...chronic fatigue due to cardiac and physical symptoms" and she is "...severely affected by her medical conditions." The general practitioner assessed the appellant as able to walk less than 1 block unaided, she can climb 2 to 5 steps unaided, she can lift under 5 lbs., and she can remain seated less than 1 hour ("less than 30 minutes"). In the assessor report, the appellant is reported as taking significantly longer than typical with walking indoors, requiring periodic assistance from another person with walking outdoors ("has to stop after 1 block"), continuous assistance with climbing stairs ("hold onto rails") and continuous assistance with lifting and carrying and holding ("continuous assistance from family and friends"). In the March 27, 2013 letter, the general practitioner added that ischaemic heart disease alone is a severely disabling condition as the appellant's blood flow to the heart muscle is significantly reduced, decreasing oxygen to the body and this results in significant restrictions with her energy level. The general practitioner wrote that the appellant has been advised by both the general practitioner and her heart specialist not to lift any weight.

In the letter dated February 6, 2013, the general practitioner agreed that the appellant can climb about 4 steps but must hold the rail and she will use an elevator when available. The appellant stated she must climb stairs slowly because of shortness of breath. While the general practitioner indicated that the appellant does not require any aids for her impairment and none of the listed assistive devices are routinely used by the appellant, the panel finds that the appellant minimizes the amount of her mobility outside her home and requires supports when she is in the community as a result of her reduced energy levels, being stair railings, a car door, or a surface to lean on. The general practitioner stated in his March 27, 2013 letter that activities involving mobility and most of her other DLA take her an inordinate amount of time to accomplish because of her diminished energy levels and that "...her diminished energy levels are the result of her medical conditions, not her age." The panel finds that the evidence demonstrates that the appellant is significantly restricted in her ability to function independently, effectively or for a reasonable duration. The panel concludes that the ministry's determination that the evidence does not establish that the appellant has a severe physical impairment under Section 2(2) of the EAPWDA was not reasonable.

### **Severe Mental Impairment**

The appellant's position is that it is unreasonable for the ministry to decide in the reconsideration decision that

severity had not been met when the original decision stated that the requirement to establish a severe physical or mental impairment had been met. The advocate argued that the decision under consideration stated that two criteria had not been satisfied, namely that the severe impairment does not significantly restrict her ability to perform DLA and she does not require the significant help or supervision of another person to perform DLA restricted by her impairment. The advocate argued that the ministry erred and failed to apply the first rule of administrative fairness, as recorded in the ministry policy, that the appellant has a right to know the case against him or her and must be given an opportunity to respond. The advocate argued that the appellant has responded to the two criteria that the ministry stated were not met in the original decision and, therefore, did not respond to the issue of severity in the appellant's submissions for the request for reconsideration. The advocate requested that the panel disregard all information and conclusions in the reconsideration decision regarding severity because it is not part of the request for reconsideration or the decision being reconsidered.

The ministry's position on reconsideration is that a severe mental impairment has not been established. The ministry argued that although the general practitioner referred to expressive dysphasia, this was not indicated as part of his diagnosis and the appellant does not have a severe impairment with her communication. The ministry argued that the comments by the general practitioner in the section of the assessor report detailing the impacts to the appellant's cognitive and emotional functioning related to the appellant's physical deficits and are not to be considered. The ministry argued that the assessment of the appellant's social functioning also referred to her physical limitations. The ministry argued that a large majority of the appellant's application and additional information provided related to her physical limitations.

#### *Panel Decision*

As set out above, Section 16(1)(a) of the EAPWDA provides for a person to request the ministry to reconsider a decision that results in a refusal to provide disability assistance. The ministry is thereby given discretion to reconsider the ministry's findings on all of the criteria under Section 2 of the EAPWDA that are required to establish a PWD designation, as these are all necessary components of the 'decision'. The panel will, therefore, consider the reasonableness of the reconsideration decision with respect to the ministry's finding that a severe mental impairment had not been established on the evidence provided.

The medical practitioner diagnosed mixed depression/ anxiety and wrote in the physician report that the appellant has difficulties with communication with a sensory cause, and the comments are: "speaking/ vision/ writing; by response describes expressive dysphasia." However, the general practitioner also assessed the appellant as having a good or satisfactory ability to communicate in all areas, with the exception of writing which is poor. The panel finds that the ministry reasonably concluded that the general practitioner wrote that the appellant describes expressive dysphasia but this has not been confirmed as a diagnosis in the physician report as likely to continue for 2 years. In the physician report, significant deficits are reported in 7 of 11 listed aspects of cognitive and emotional function in the areas of consciousness, language, memory, perceptual psychomotor, emotional disturbance, motivation, and attention or sustained concentration with the comment "...needs glasses." In the assessor report, the general practitioner indicated there are major impacts to the appellant's cognitive and emotional functioning in the areas of emotion, motivation and motor activity, with moderate impacts in the areas of bodily functions, consciousness, attention/concentration, memory and language and minimal or no impacts in the remaining 6 areas of functioning. Comments added by the general practitioner are: "...chronic fatigue, major depression/ anxiety disorder. Low exercise tolerance due to IHD." The panel finds that ministry reasonably concluded that the general practitioner's descriptions relate to the appellants physical condition of IHD and resulting fatigue as well as to a need for eye glasses, rather than to symptoms of a mental disorder.

The general practitioner assessed the appellant as being independent with 3 listed aspects of social functioning, including making appropriate social decisions, developing and maintaining relationships, and interacting appropriately with others, while requiring periodic support/supervision dealing appropriately with unexpected demands and securing assistance from others. The general practitioner commented in this

section of the report that "physical limitations limit her", and the panel finds that the general practitioner's description does not specify the duration or frequency of the support or supervision required in the two areas of social functioning. In the letter dated February 6, 2013, the general practitioner agreed that the appellant is restricted with appropriate social interaction, that she is limited by her energy, and restricted with developing and maintaining relationships and the panel finds that the general practitioner's descriptions consistently relate to the appellant's physical condition rather than to symptoms of a mental disorder. While it may be the case that mental health problems, especially depression and anxiety, tend to occur with long-term chronic diseases such as arthritis, diabetes and heart disease, as the advocate argued, the panel finds that it is still necessary to clearly define the nature of the mental impairment and the resulting impact on the appellant's daily functioning in order to establish a severe mental impairment. Although the general practitioner wrote in his March 27, 2013 letter that the appellant's mental state "...is very much attached to her physical conditions and is severe and restricting," the panel finds that there is not sufficient evidence provided to demonstrate a significant impact to the appellant's functioning as a result of a mental impairment. The panel finds that the ministry reasonably determined that a severe mental impairment was not established under Section 2(2) of the EAPWDA.

### **Restrictions in the ability to perform DLA**

The appellant's position is that her physical and mental impairments directly and significantly restrict her ability to perform DLA and she requires the assistance of another person to perform many DLA.

The ministry's position is that the evidence of the prescribed professionals establishes that half of the aspects of DLA are marked as independent by the appellant's general practitioner. The ministry argued that of the remaining aspects of DLA, 8 are marked as taking the appellant significantly longer and that personal care takes her 4 times as long, and that the ministry takes in account the age-appropriate range for completing activities as the amount of time taken for an activity often increases with age. The ministry argued that while it recognized that it takes the appellant longer to perform DLA given her physical symptoms, when factoring in her age she is not considered to be significantly restricted. The ministry argued that aspects of the DLA transportation are marked not applicable and the general practitioner did not provide information about the reasons that she is not able to drive. The ministry argued that although the general practitioner indicated that the appellant requires continuous assistance with basic housekeeping and carrying purchases home, this does not indicate that the appellant's DLA are directly and significantly restricted as a whole. The ministry argued that it would be expected that if the appellant was unable to carry purchases that she would use an assistive device such as a walker or a basket.

### ***Panel Decision***

The evidence of a prescribed professional, the appellant's general practitioner, in the March 27, 2013 letter, is that the appellant has severe medical impairments with significant restrictions to her DLA. In the letter dated February 6, 2013, the general practitioner agreed that the appellant has continuous restrictions with basic mobility, that she can walk for less than 1 block and experiences severe cramps in her legs and lower back and chronic fatigue. At the hearing, the appellant stated that she stays home most of the time because she cannot walk very far. The general practitioner assessed the appellant as taking significantly longer than typical with walking indoors. The general practitioner reported that the appellant also takes significantly longer than typical with most listed tasks of the DLA personal care, with fatigue, weakness and dyspnea, and that it takes her 4 times longer than typical. The panel finds that the general practitioner would have factored the appellant's age into his assessment of the time it takes her to perform these tasks and that she takes 4 times longer than a person of her age would typically take. The general practitioner agreed in the February 6, 2013 letter that the appellant also uses a bath chair as an assistive device for bathing. In the assessor report, the appellant is assessed as requiring continuous assistance from another person with doing her basic housekeeping ("can manage once per week") and as independent with doing her laundry. However, in the February 6, 2013 letter, the general practitioner agreed that the appellant requires continuous assistance with

laundry, and the advocate explained that further questioning of the appellant revealed that her landlord does her laundry for her 1 to 2 times per week.

The general practitioner confirmed in his March 27, 2013 letter that the appellant has significant restrictions with shopping and, in his February 6, 2013 letter, agreed that the appellant requires continuous assistance with daily shopping and she is assisted by her friends or her landlord. In the letter from the appellant's friend, she stated that she has been assisting the appellant with her groceries, carrying it for her to and from the car to her place whenever the friend goes to do her shopping and the friend also helps the appellant to clean her place occasionally. In the assessor report, the general practitioner assessed the appellant as being independent with meal planning and safe storage of food and taking significantly longer than typical with food preparation and cooking ("takes frequent breaks"). In the February 6, 2013 letter, the general practitioner agreed that the appellant requires assistance with meal preparation and cooking and that she "buys pre-peeled vegetables and will buy prepared foods." The appellant also clarified that "cooking" consists of heating prepared foods and that she must rest after each small task.

While the appellant was assessed as using an assistive device for banking ("uses ATM to avoid line-ups in bank") and being independent with budgeting and paying rent and bills, the panel finds that an ATM is not an assistive device, according to the definition in the legislation, as being a device designed to enable a person to perform a DLA. All listed tasks for the DLA medication are performed independently. For transportation, the general practitioner indicated that the appellant takes significantly longer than typical with getting in and out of a vehicle ("has to use car door to pull herself up") and the appellant does not have sufficient energy to use public transit and use transit schedules and arrange transportation. In the February 6, 2013 letter, the general practitioner wrote that the appellant requires transportation to access the community and attend appointments, since she is "now unable to drive own vehicle." The appellant explained that the last time she tried to drive her blood sugar level dropped and she felt drowsy and her hands began to shake and she does not feel well enough to drive.

For those DLA relating to a person with a severe mental impairment, the general practitioner reported in the PWD application that the appellant is independent with making appropriate social decisions and with interacting appropriately with others but she has marginal functioning with both her immediate and extended social networks. In the February 6, 2013 letter, the general practitioner agreed that the appellant requires support for coping with her mental health conditions, to build a social network, and for completing tasks such as completing forms, writing a letter, or for "appropriate communications"; however, the panel finds that the frequency and duration of the support or supervision is not defined by the general practitioner.

The panel finds that the evidence, supplemented by the recent letter from the appellant's general practitioner, shows that the appellant is significantly restricted with the DLA mobility outside the home, basic housekeeping, shopping and transportation, as well as taking significantly longer than typical with personal care and mobility inside the home. The panel finds that the ministry's conclusion that the evidence of the prescribed professional does not establish direct and significant restriction of the appellant's ability to perform DLA, thereby not satisfying the legislative criterion of Section 2(2)(b)(i) of the EAPWDA, was not reasonable.

### **Help to perform DLA**

The appellant's position is that she requires the significant assistance of another person to perform DLA.

The ministry's position is that because it has not been established that DLA are significantly restricted, it cannot be determined that significant help is required from other persons, and no assistive devices are required.

### ***Panel Decision***

Section 2(2)(b)(ii) of the EAPWDA requires that, as a result of direct and significant restrictions in the ability to perform DLA, a person requires help to perform those activities. Help is defined in subsection (3) as the requirement for an assistive device or the significant help or supervision of another person or the services of an assistance animal in order to perform a DLA.

The panel finds that the evidence of the appellant's general practitioner, as the prescribed professional, establishes that the appellant requires assistance from her family and friends for several aspects of DLA and she uses a bath chair as an assistive device. In his March 27, 2013 letter, the general practitioner added that the appellant has severe medical impairments with significant restrictions to her DLA and requires assistance to do them. The appellant's friend stated in her letter that she helps the appellant by doing her shopping, that she drives her places and she cleans the appellant's residence occasionally. The appellant stated that her landlord does her laundry for her. Therefore, the panel finds that the ministry's determination that the evidence does not show that the appellant requires the significant help of another person to perform DLA was not reasonable.

### **Conclusion**

Having reviewed and considered all of the evidence and relevant legislation, the panel finds that the ministry's reconsideration decision which determined that the appellant was not eligible for PWD designation was not reasonably supported by the evidence, and therefore rescinds the decision. Therefore, the decision is overturned and the appellant is successful on her appeal.