

### PART C – Decision under Appeal

The decision under appeal is the Ministry of Social Development (the ministry) reconsideration decision dated December 24, 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:

- 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 evidence before the ministry at the time of the reconsideration decision included the Person With Disabilities (PWD) Application comprised of the applicant information dated August 26, 2012 and the physician report and assessor report completed by a specialist in orthopedic surgery who has treated the appellant for 5 years (orthopedic surgeon #1), both reports dated October 28, 2011, as well as the following:

- 1) Operative Report dated May 7, 1996 regarding hysterectomy for endometrial carcinoma of the uterus;
- 2) Pathology Review dated June 20, 1996;
- 3) Admission and Discharge Summary dated August 16, 1996 for selectron obturator insertion;
- 4) Operative Report dated April 15, 1997 regarding a colonoscopy with biopsy and indicating an area of abnormality suggestive of radiation colitis and recommending follow-up when the biopsies come back;
- 5) Prescription dated August 19, 1999 for physiotherapy for bilateral hand tendonitis;
- 6) Letter dated June 22, 2001 from the BC Cancer Agency to a physician regarding post-hysterectomy radiation treatment received in August 1996;
- 7) Report dated May 28, 2002 for an MRI of the appellant's cervical spine with a finding of a small posterior broad based disc bulge at the C5-6 level;
- 8) Letter dated July 26, 2002 from orthopedic surgeon to the Workers' Compensation Board referring to a final diagnosis of a neuropraxic injury to the appellant's ulnar digital nerves of her thumbs;
- 9) Operative Report dated September 4, 2003 of investigation for possible gastroesophageal reflux with finding of acute gastritis more than likely related to the medications the appellant is taking and awaiting biopsy;
- 10) Letter dated January 26, 2005 from the orthopedic surgeon who completed the reports with the Person With Disabilities (PWD) application (orthopedic surgeon #1), to the ministry stating in part that the appellant's function is fairly good in her hands although they do represent a permanent disability where she cannot use or grasp for prolonged periods of time;
- 11) Histopathology Report dated May 10, 2005 with results of a urinary bladder biopsy indicating features consistent with radiation cystitis, no evidence of dysplasia or malignancy;
- 12) Letter dated June 27, 2005 from the BC Cancer Agency to the appellant regarding the appellant's bladder irritation symptoms and suggesting follow-up with urologist and a cystoscopy;
- 13) Letter dated June 22, 2007 from an obstetrician and gynecologist to the ministry stating in part that the appellant should use Replens to assist with her vaginal lubrication as she had pelvic radiation in the past;
- 14) Letter and estimate dated August 1, 2007 from a chiropractor 'To Whom It May Concern' stating in part that the appellant's work-related injury of November 27, 2006 involved sacral impact, left head impact, and the twisting of both knees, and physical exam has revealed pelvic rotation and fixation. These imbalances severely alter weight-bearing posture leading to spinal misalignment of the lumbar, thoracic, and cervical spinal joints. The degree of the appellant's injuries are severe;
- 15) Letter dated February 4, 2008 from an optometrist to the ministry stating the appellant has dry eye secondary to her oral medications as well as age and requires use of topical lubricants;
- 16) Imaging Consultation Report dated June 18, 2008 stating in part that there are no findings to suggest a breast malignancy;
- 17) Letter dated July 14, 2008 from orthopedic surgeon #1 'To Whom It May Concern' stating in part regarding the appellant's left sacrum and right knee injuries that she may return to work with the proviso that she not be required to lift more than 10 lbs.;
- 18) Letter dated July 31, 2008 from an optometrist to the ministry stating in part that the appellant requires ongoing dry eye treatment and has a need for multi-focal lenses;
- 19) Prescription dated August 20, 2008 for Replens twice a week and the appellant also suffers from dry eyes;
- 20) Letter dated October 28, 2008 from orthopedic surgeon #1 to the ministry stating in part that the appellant has had ongoing persistent pain since an injury sustained on November 27, 2006, and she also has a right knee pathology as diagnosed on MRI. Her prescribed treatment is physiotherapy and massage therapy to help her with her pain. Her symptoms are subjective and it is her pain that prevents her from performing any heavy activities, particularly lifting objects weighing more than 10 lbs. All of her DLA, including personal care, household maintenance and social functioning and mental functioning such as management of medications and finances, are curtailed because of her pain;

- 21) Letter dated June 12, 2009 from orthopedic surgeon #1 to the ministry stating in part that he has been treating the appellant for two issues: pelvic dysfunction due to malalignment resulting in sacroiliac joint pain and cartilage damage in her right knee with treatment recommendations of physiotherapy and chiropractic manipulation;
- 22) Imaging Consultation Report dated July 28, 2009 for bilateral mammograms with no findings to suggest a breast malignancy;
- 23) Prescription dated March 8, 2010 for Replens at least once or twice per week;
- 24) Imaging Consultation Report dated January 20, 2011 for a CT scan of the sinuses and an impression of chronic changes of sinusitis;
- 25) Letter dated March 13, 2011 from a specialist in obstetrics & gynecology stating in part that the appellant has been able to alleviate some of the adverse side effects of radiation therapy for cancer with weekly use of a medication therapy;
- 26) Letter dated May 20, 2011 from an ophthalmologist to the ministry stating in part that the appellant is using Refresh Liquigel eyedrops for dry eyes and requesting financial assistance;
- 27) Laboratory Investigation results dated October 21, 2011 indicating for a vaginosis screen that there is no evidence of bacterial vaginosis, and presence of purulence suggests the presence of another infection and/or inflammatory condition;
- 28) Letter dated January 26, 2012 from the ministry to the appellant regarding a diet supplement and medical supplies;
- 29) Letter dated February 22, 2012 from an ophthalmologist 'To Whom It May Concern' stating that the appellant has been asked to use eye drops every one to two hours;
- 30) Letter dated February 22, 2012 from a specialist in obstetrics and gynecology stating in part that the appellant underwent radiation therapy for endometrial adenocarcinoma in the late 1990's and has residual radiation and atrophic vaginitis. She requires daily prn symptomatic therapy with vaginal Replens;
- 31) Report dated March 14, 2012 for an MRI of shoulder with impression of a full thickness tear of the right supraspinatus tendon, mild inferior spurring of the acromioclavicular joint which may predispose to impingement;
- 32) Letter dated May 18, 2012 from another orthopedic surgeon (orthopedic surgeon #2) to the ministry stating that the appellant has recently become a patient and she has a diagnosis of rotator cuff syndrome, adhesive capsulitis, AC joint arthritis, and glenohumeral arthritis. She is improving with injection therapy and physiotherapy with a fair amount of pain relief;
- 33) Diagnostic Imaging Report dated May 28, 2012 stating in part that a hiatus hernia could not be elicited with testing and no reflux with testing;
- 34) Polysomnography Report dated May 29, 2012 stating an impression that study does not show sleep apnea or any other content abnormality;
- 35) Consultation Report dated July 20, 2012 from orthopedic surgeon #2 stating in part that the appellant's shoulder has had improvement;
- 36) Letter dated September 19, 2012 from orthopedic surgeon #2 to the appellant's family doctor stating in part that, on examination, the appellant's shoulder has had increased range of motion and strength;
- 37) Sleep Study Report date September 26, 2012 stating in part that the results were unusual and strongly suggest significant medication effect. The appellant did not accept the results since the data did not fit with her perceived experience. Overall, the impression is that the appellant has a strong effect cumulatively of the sedating medications which probably underlies her presenting complaints of sleepiness and ongoing fatigue. Suggests exchanging sedative medications for psychoactive or antidepressant drugs;
- 38) Letter dated October 11, 2012 from orthopedic surgeon #2 to the ministry stating in part that the appellant is right arm dominant. The MRI of her right shoulder was reviewed and showed she has "...quite significant A/C joint arthritis and small, but real, rotator cuff tear at the supraspinatus insertion." For repetitive activities, this will cause problems. An MRI of the appellant's spine showed it is "...in very good shape other than some mild facet joint arthritis for someone in her age group."
- 39) Letter dated November 16, 2012 from the appellant to a doctor stating in part that she is searching for answers as her doctor "...just focuses on anxiety- I have tension because issues (valid) physical ones aren't dealt with;" and,

40) Request for Reconsideration dated November 21, 2012.

### *Diagnoses*

In the physician report, the appellant has been diagnosed by her orthopedic surgeon (#1) with L5-S1 degenerative spinal stenosis and sacroiliac joint and pelvic dysfunction.

### *Physical Impairment*

- In the physician report under health history, the orthopedic surgeon indicated that the appellant has "...lumbar stenosis resulting in bilateral lower limb neurogenic leg pain- worsens with walking, standing" and "...lumbar joint and pelvic dysfunction results in pelvic pain with any activity."
- Functional skills reported in the physician report indicated that the appellant is able to walk 4 or more blocks unaided, she can climb 5 or more steps unaided, and she has no limitations with lifting or remaining seated.
- The physician reported that the appellant has been prescribed medications that interfere with her ability to perform her daily living activities (DLA), being anti-inflammatory and pain medications, and she does not require any aids for her impairment. In the assessor report, the physician did not indicate that any assistive devices are required.
- In the assessor report, the appellant is assessed as independent with walking indoors and walking outdoors and with climbing stairs and standing. The appellant is also assessed as independent with lifting and with carrying and holding, with no further comments added by the specialist.
- In her self-report included with the PWD application, the appellant stated that she has to take it very slowly when she goes up and down stairs because of fear of falling and pain in the sacrum and knee. She cannot lift more than 10 lbs.
- The appellant stated that she has a number of health conditions, including side effects from treatment for uterine cancer, chronic stomach, bladder and gynecological problems, cysts on her liver, breast lesions and infections, pelvic dysfunction, chronic fatigue, muscle tension in the shoulder and lower back area, a right knee injury, dry eyes and thumb injuries. She has persistent pain to both left and right sacral areas of her pelvis with paresthesia to both legs. The appellant stated that she experiences constant pain because she cannot take oral pain medications.
- The appellant stated that she experiences urge and stress incontinence. The urge incontinence gets so bad that she is constantly looking for bathrooms and it is always on her mind.
- In her notes to the documents filed on reconsideration, the appellant stated that the doctor filled out the assessor report before her severe shoulder injury. The appellant stated that she cannot lift more than 10 lbs. and she has to get her neighbours to help her lift.

### *Mental Impairment*

- The orthopedic surgeon reported that the appellant has no difficulties with communication and has a good ability to communicate in all areas.
- In the physician report, the orthopedic surgeon indicated that there are no significant deficits in the appellant's cognitive and emotional functioning.
- The orthopedic surgeon indicated that the appellant independently manages all 5 listed aspects of social functioning, including making appropriate social decisions, developing and maintaining relationships, interacting appropriately with others, dealing appropriately with unexpected demands, and securing assistance from others.
- In her notes on the documents filed on reconsideration, the appellant stated that the section of the report assessing impacts to cognitive and emotional functioning does not apply to her because she has severe physical injuries.
- In her self-report, the appellant stated that she has a severe cancer phobia because she was

misdiagnosed for a full year. This results in anxiety, panic attacks and insomnia issues. The appellant stated that she needs to see a psychiatrist because she has to be weaned off sleep medications she has been taking for 10 years.

#### DLA

- In the assessor report, the appellant is assessed as independent with walking indoors and walking outdoors.
- The orthopedic surgeon reported that all listed tasks of the DLA personal care are performed independently without any noted restriction.
- The appellant is assessed as requiring periodic assistance from another person with laundry and with basic housework, with no further explanation or description provided by the physician.
- For shopping, she is independent with going to and from stores, reading prices and labels, making appropriate choices and paying for purchases, while requiring periodic assistance from another person with carrying purchases home, with no further comment provided by the physician.
- All listed tasks for the DLA meals, paying rent and bills, medications and transportation are managed independently with no noted restrictions.
- The physician assessed the appellant as being independent in all areas of social functioning.
- In her self-report, the appellant stated that vacuuming and housework takes her 3 times as long if she does not have help. She always needs help with laundry because of the bending and carrying. She cannot lift more than 10 lbs. and needs help loading and unloading groceries.
- The appellant stated that because of pain and lack of flexibility she has difficulty getting in and out of the bathtub or the bed, and moving about indoors and outdoors, standing for too long, or getting in and out of a vehicle.
- The appellant wrote that even shampooing her hair, anything she does, is painful.

#### Need for Help

- The orthopedic surgeon reported that the appellant lives alone and does not use an assistive device.
- The orthopedic surgeon indicated that the help required for DLA is provided by community service agencies.
- In her self-report, the appellant wrote that she requires help with lifting more than 10 lbs. and her neighbours help her with loading and unloading groceries and with housework.

In her Notice of Appeal, the appellant expressed her intention to dispute the reconsideration decision. The appellant stated that she has a lot of severe injuries which limit her to work. She needs lots of physiotherapy for years. She always needs help for lifting and housework. Stairs are a problem. She has injured, misaligned pelvis, knee, disc bulges, and a torn tendon in her shoulder.

Prior to the hearing, the appellant provided the following additional documents:

- 1) Request for Reconsideration (1 page) dated November 19, 2010 regarding denial of custom orthotics;
- 2) Undated letter from the appellant stating in part that for two months she has not been able to find a family doctor who will take her on as a patient, that she lives in an area that is experiencing a doctor shortage. Her previous doctor retired in 2011 and, since then, she has not been able to find a doctor in B.C. who will take her on as a full-time patient. The orthopedic surgeon who completed the original PWD application has a very long wait list and cannot see her without an 8-month wait period. If she had access to a family doctor, she could be referred to other specialists who would be able to help her with the myriad of other injuries and chronic health issues she suffers with. The appellant wrote that her disability has not gotten any better and without the PWD designation she fears that her physical, financial, and emotional health will suffer greatly;

- 3) Pages 4, 5, and 10 of the PWD application with the appellant's handwritten notes stating in part that she cannot lift as a result of back pain, especially left sacrum and she cannot sit for long, 1-2 hours, and that 90 pages of medical reports were sent plus all of the booklet and that her shoulder injury happened after the orthopedic surgeon's original reports. The appellant wrote that she is in horrible pain and she needs "lots of physio;"
- 4) Note dated June 11, 2013 from the appellant to the ministry stating in part that the appellant requires an emergency root canal and crown work;
- 5) Treatment Plan Proposal dated June 14, 2013 regarding root canal work;
- 6) Treatment Plan Proposal dated June 14, 2013 regarding root canal and crown work and fillings;
- 7) Undated note regarding pain management;
- 8) Undated handwritten notes by appellant stating in part that she cannot go on pain killers since she has a liver problem and she cannot eat on the right side; and,
- 9) Letter dated August 20, 2012 from a social worker, mental health therapist, to the ministry stating in part that the appellant has been a client of the mental health program since December of 2010 and she is being treated for a debilitating anxiety disorder NOS (Not Otherwise Specified) and insomnia. Her anxiety has a strong Post Traumatic Stress Disorder quality. Her treatment has been difficult as she is extremely drug sensitive and her family physician referred her to mental health and a psychiatrist as she cannot tolerate (severe side effects) or has a low tolerance to many of the medications ordinarily used to treat the above conditions. The appellant sees the social worker and a psychiatrist (medication expert) on a regular basis. Her anxiety and insomnia are due to traumatic medical issues in the past (cancer) and a host of other overwhelming life stressors (loss, grief, financial issues, injuries) which limits her ability to maintain regular, full-time employment.

The ministry objected to the admissibility of the Request for Reconsideration relating to the denial of custom a orthotics but did not object to the admissibility of the remaining documents. The panel admitted the pages from the PWD application with the appellant's notes and the August 20, 2012 letter from the social worker, pursuant to Section 22(4) of the Employment and Assistance Act, as providing further detail relating to the appellant's medical conditions and being in support of information that was before the ministry on reconsideration. The panel did not admit the Request for Reconsideration relating to the denial of custom orthotics or the Treatment Plans or notes relating to dental work as these are medical issues that were not before the ministry at reconsideration. The undated letter from the appellant was considered as argument on her behalf.

At the hearing, the appellant expressed her disappointment that the orthopedic surgeon in another province had not provided a further letter prior to the hearing, as he had undertaken on July 8, 2013, and the panel afforded the appellant an opportunity to review with her advocate whether she was prepared to proceed with the hearing with the documents currently available. The appellant advised that she was prepared to proceed. The appellant provided the following oral evidence:

- The appellant confirmed that the orthopedic surgeon completed the reports filed with the PWD application in October 2011 and that she held on to the reports for some time before completing her self-report in August of 2012.
- The appellant stated that the orthopedic surgeon refers in these reports to her injuries being "severe" and that they will last longer than 2 years.
- The appellant explained that it takes about 8 months to see the orthopedic surgeon in B.C. so she consulted another orthopedic surgeon in a different province who is treating her shoulder injury. He has stated that although surgery is needed, the appellant is not a good candidate because of her other health problems. He has given her three cortisone injections which has provided some pain relief and has recommended that the appellant have physiotherapy three times per week but she cannot afford it.
- The appellant stated that she cannot take many medications because of her sensitivities and she almost died when a sleep medication impacted her liver.
- The appellant stated that she needs help with lifting and she relies on her neighbours all the time and that the orthopedic surgeon made a mistake when he said she has no limitation with lifting in the

physician report.

- The appellant stated that she had 21 hours of radiation at one time and she was "burned in the bladder."
- The appellant stated that her symptoms of Post Traumatic Stress Disorder started after she was initially misdiagnosed and then treated for cancer which has caused a phobia of cancer. She does not currently have a family doctor and she has "cancer in the background." The appellant stated that her previous family doctor referred her to a psychiatrist because he did not know what to prescribe for her. The appellant stated that she chose to talk to the mental health counselor on her own and she will still have telephone counseling sessions from time to time.
- The appellant stated that her previous family doctor who treated her for about 12 years passed away and he had all of her health history.
- The appellant stated that she has a high degree of anxiousness, frustration and she is not sleeping well, that her "insomnia is huge."
- The appellant stated that she has great difficulty functioning "...with all these problems."

The panel admitted the appellant's evidence, pursuant to Section 22(4) of the Employment and Assistance Act, as providing further detail of her diagnosed conditions and being in support of information that was before the ministry on reconsideration.

At the hearing, the ministry relied on its reconsideration decision. The ministry also added that it can be beneficial to have a general practitioner complete the reports for the PWD application where there are a number of conditions, since the specialist only focuses on the particular area of his or her expertise. The ministry pointed out that the orthopedic surgeon addressed the appellant's physical injuries but did not include information about her mental health issues.

## 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 a severe physical impairment is established by the evidence of her pain due to degenerative spinal stenosis and sacroiliac joint and pelvic dysfunction. The appellant argues that she also suffers from side effects from treatment for uterine cancer, chronic stomach, bladder and gynecological problems, cysts on her liver, breast lesions and infections, chronic fatigue, a right knee injury, dry eyes and thumb injuries. The appellant argues that she experiences constant pain because she cannot take oral pain medications as a result of the effect on her liver. The appellant argues that the evidence of the medical practitioner in the PWD application and in the "90 pages of medical reports" provided on the appeal, establishes that she has a severe physical impairment.

The ministry's position is that the orthopedic surgeon reported no untoward functional skill limitations and independent mobility and physical abilities. The ministry argues that no assistive devices are routinely used. The ministry argues that the extensive medical history/charts/records describe physical symptoms in detail; however, for the most part, remedial measures were in place and improvement with medical management prevailed. The ministry acknowledged that it is clear that a high degree of anxiety exists about the appellant's physical health, especially following her diagnosis of uterine cancer treated with surgery and radiation in 1997.

### ***Panel Decision***

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 ability to manage her DLA as evidenced by functional skill limitations, the restrictions to DLA, and the degree of independence in performing 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, an orthopedic surgeon who had known the appellant for 5 years, has diagnosed the appellant with L5-S1 degenerative spinal stenosis and sacroiliac joint and pelvic dysfunction. In the physician report under health history, the orthopedic surgeon indicated that the appellant has "...lumbar stenosis resulting in bilateral lower limb neurogenic leg pain- worsens with walking, standing" and "...lumbar joint and

pelvic dysfunction results in pelvic pain with any activity." However, with respect to impact on the appellant's functioning, the orthopedic surgeon indicated that the appellant is able to walk 4 or more blocks unaided, climb 5 or more steps unaided, and that she has no limitations with lifting or remaining seated. The appellant explained that her shoulder injury occurred after the reports for the PWD application were prepared and the letter dated October 11, 2012 from another orthopedic surgeon indicates that the MRI of the appellant's right shoulder, which is her dominant arm, was reviewed and showed she has "...quite significant A/C joint arthritis and small, but real, rotator cuff tear at the supraspinatus insertion." The orthopedic surgeon stated that, for repetitive activities, this will cause problems but he does not elaborate. The orthopedic surgeon also reported that an MRI of the appellant's spine showed it is "...in very good shape other than some mild facet joint arthritis for someone in her age group."

The appellant has provided several dozen medical reports. The majority of these medical reports pre-date the reports in support of the PWD application and identify several chronic medical conditions, including neuropraxic injury to the appellant's ulnar digital nerves of her thumbs which restricts use or grasping for prolonged periods of time, bladder irritation symptoms, dry eye secondary to oral medications and age, and residual radiation and atrophic vaginitis. However, this volume of medical reports contain little evidence of resulting impact or restrictions to the appellant's ability to function independently or effectively. The appellant stated that, as a result of the injury to her right shoulder, she cannot lift more than 10 lbs. and she has to get her neighbours to help her lift. She takes stairs slowly for fear of falling as well as pain in the sacrum and knee. The appellant stated that she experiences constant pain from her conditions because she cannot take oral pain medications. The appellant stated that she experiences urge and stress incontinence and that she is constantly looking for bathrooms and it is always on her mind. In the PWD application, the appellant is assessed as independent with walking indoors and walking outdoors, with climbing stairs and standing and also with lifting and with carrying and holding, with no further comments added by the specialist. In the assessor report, the orthopedic surgeon did not indicate that any assistive devices are required. In a previous letter dated October 28, 2008, the orthopedic surgeon stated that the appellant's symptoms are subjective and it is her pain that prevents her from performing any heavy activities, particularly lifting objects weighing more than 10 lbs. However, a restriction to heavier lifting over 10 lbs. does not establish a severe physical impairment overall. The panel finds that the ministry reasonably determined that there is insufficient evidence to establish that the appellant has a severe physical impairment, as required under section 2(2) of the EAPWDA.

### **Severe Mental Impairment**

The appellant argued that she has a severe mental impairment as a result of stress in coping with many physical health conditions, as well as a phobia caused by a misdiagnosis and subsequent extensive treatment for cancer. This results in anxiety, panic attacks and insomnia issues. The appellant argues that she receives ongoing counseling from a social worker and needs to see a psychiatrist because she has to be weaned off sleep medications.

The ministry's position is that there is no mental health diagnosis and therefore no evidence of a severe mental impairment.

### ***Panel Decision***

The panel finds that that medical practitioner did not diagnose a mental disorder. In the physician report, the orthopedic surgeon indicated that there are no significant deficits in the appellant's cognitive and emotional functioning. The orthopedic surgeon indicated that the appellant independently manages all 5 listed aspects of social functioning, including making appropriate social decisions, developing and maintaining relationships, interacting appropriately with others, dealing appropriately with unexpected demands, and securing assistance from others. At the hearing, the appellant stated that she has a high degree of anxiousness, frustration and she is not sleeping well, that her "insomnia is huge." A social worker, mental health therapist, reported in a

letter dated August 20, 2012 the appellant has been a client of the mental health program since December of 2010 and she is being treated for a debilitating anxiety disorder NOS (Not Otherwise Specified) and insomnia. The social worker reported that the appellant's treatment has been difficult as she is extremely drug sensitive and her family physician referred her to mental health and a psychiatrist as she cannot tolerate many of the medications ordinarily used to treat these conditions. The social worker stated that, at that time, the appellant was seeing the social worker and a psychiatrist on a regular basis. Although this additional letter provides information in support of a mental impairment, the panel finds that a social worker is not a "medical practitioner" and there is no confirmation by a medical practitioner that the impairment is likely to continue for at least 2 years, as required by the legislation. For these reasons, 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 appellant argues that the evidence of the orthopedic surgeon seen together with her evidence and that of the other medical reports provided confirm that her DLA are directly and significantly restricted either continuously or periodically for extended periods.

The ministry's position is that the evidence of the prescribed professionals establishes that 25 out of 28 sub-activities of DLA are performed independently. Although periodic help is noted to do laundry, basic housekeeping and carrying purchases home, the ministry argues that appellant is able to walk 4 or more blocks unaided and has no limitation with lifting and, therefore, the need for help would only be required for longer distances and heavier weights. The ministry points out that the appellant is able to independently perform all aspects of social functioning. The ministry argues that as the majority of DLA are performed independently or require little help from others, the information from the prescribed professional does not establish that impairment significantly restricts DLA either continuously or periodically for extended periods.

### ***Panel Decision***

The evidence of a prescribed professional, the orthopedic surgeon, is that the appellant is assessed as independent with all tasks of managing meals, including, meal planning, food preparation, cooking and safe storage of food.

For management of finances, the orthopedic surgeon reported that the appellant is independent with all tasks, including banking, budgeting, and paying rent and bills.

For daily shopping, the orthopedic surgeon reported that the appellant is independent with all tasks with the exception of carrying purchases home, for which she requires periodic assistance. No further information is provided by the orthopedic surgeon regarding the frequency and duration of the assistance required. The appellant stated that since she cannot lift more than 10 lbs., she needs help loading and unloading groceries.

The orthopedic surgeon reported that the appellant is independent with use of transportation. In her self-report, the appellant wrote that because of pain and lack of flexibility she has difficulty getting in and out of a vehicle.

The orthopedic surgeon reported that the appellant is periodically restricted with basic housework, with no further explanation or description provided. In her self-report included with the PWD application, the appellant stated that vacuuming and housework takes her 3 times as long if she does not have help. She always needs help with laundry because of the bending and carrying as she cannot lift more than 10 lbs.

The orthopedic surgeon reported that the appellant is independent with walking indoors and walking outdoors

and that she walks 4 or more blocks unaided. The appellant stated in her self-report that because of pain and lack of flexibility she has difficulty moving about indoors and outdoors.

The orthopedic surgeon reported that all listed tasks of the DLA personal care are performed independently without any noted restriction. In her self-report, the appellant wrote that because of pain and lack of flexibility she has difficulty getting in and out of the bathtub. The appellant wrote that even shampooing her hair, anything she does, is painful.

In the physician report, the orthopedic surgeon indicated that the appellant is independent with all tasks of managing medications.

For social functioning, the orthopedic surgeon reported that the appellant is independent with all aspects, including making appropriate social decisions, developing and maintaining relationships, interacting appropriately with other, dealing appropriately with unexpected demands, and securing assistance from others.

The panel finds that the evidence from the prescribed professional indicated that the appellant is independent with 25 of a total of 28 tasks of DLA. For those tasks for which the appellant requires periodic assistance, namely laundry, basic housekeeping and carrying purchases home, no information is given as to how often, in what way, to what extent, or under what circumstance such periodic help is provided that would enable an assessment of how significantly the appellant was restricted in performing these tasks. The panel finds that the ministry reasonably concluded that there is not enough evidence from the prescribed professional to establish that the appellant's impairment significantly restricts her ability to manage her DLA either continuously or periodically for extended periods, thereby not satisfying the legislative criterion of section 2(2)(b)(i) of the EAPWDA.

#### **Help to perform DLA**

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

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 routinely used to help compensate for impairment.

#### ***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 evidence of the prescribed professional establishes that the help required for DLA is provided by community service agencies. The orthopedic surgeon reported that the appellant lives alone and does not use an assistive device. The appellant stated that she requires help with lifting more than 10 lbs. and her neighbours help her with loading and unloading groceries and with housework. The panel finds that the ministry reasonably determined that as direct and significant restrictions in the appellant's ability to perform DLA have not been established, it cannot be determined that the appellant requires help to perform DLA as a result of those restrictions, as defined by section 2(3)(b) of the EAPWDA.

**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 reasonably supported by the evidence, and therefore confirms the decision.