

PART C – Decision under Appeal

The decision under appeal is the Ministry of Social Development (the ministry) reconsideration decision dated March 18, 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 evidence before the ministry at the time of the reconsideration decision included the following:

- 1) Person With Disabilities (PWD) Application comprised of the applicant information dated February 3, 2012, the physician report dated June 11, 2012 completed by a general practitioner who has known the appellant approximately 2 years, and an assessor report dated December 2, 2012 completed by a social worker who has known the appellant 1 year;
- 2) Supplemental Medical Opinion dated March 14, 2013 by both the general practitioner and the social worker who completed the reports in the PWD application; and,
- 3) Request for Reconsideration dated February 13, 2013.

Diagnoses

The appellant has been diagnosed by her general practitioner with knee and back pain, depression, and osteoarthritis.

Physical Impairment

- In the physician report under health history, the general practitioner indicated that "...pain in knees, back and arms impact daily living, make it difficult to do IADL's [instrumental activities of daily living] or hold a cup, at times. Finds it hard to walk or stand due to pain in knees, this limits abilities."
- Functional skills reported in the physician report indicated that the appellant is able to walk 2 to 4 blocks unaided, climb 2 to 5 steps unaided, lift 5 to 15 lbs. and remain seated 1 to 2 hours.
- The general practitioner reported that the appellant has not been prescribed medications or treatment that interfere with her ability to perform her daily living activities (DLA) , and she does not require any aids for her impairment. In the assessor report, the social worker did not indicate that any assistive devices are required.
- In the physician report, the general practitioner indicated that the appellant is not restricted with mobility inside the home or with mobility outside the home.
- The appellant is assessed by the social worker as independent with walking indoors and walking outdoors although she takes significantly longer than typical (with a note: "right knee and back pain"). She requires periodic assistance with climbing stairs ("going up and down stairs difficult and painful") and also takes significantly longer than typical. The appellant requires continuous assistance with standing ("needs help with standing activities like at sink washing dishes") and carrying and holding ("arms are too painful"), and she takes significantly longer than typical. The social worker also commented that the appellant has "...elbows and knee and back pain and finger cramping; even difficult to lift coffee mug due to elbow pain (and wrist) and finger cramping."
- In the Supplemental Medical Opinion, the social worker agreed with the statement that the appellant is severely restricted with moving about indoors and outdoors and commented that "...on bad days, needs assistance." The social worker also agreed with the statement that the appellant has a severe physical and/ or mental impairment and wrote: "...combination of history of trauma, loss and grief and arthritis, mood problems, sleep problems, breathing/ lung issues result in severe impairment."
- In the Supplemental Medical Opinion, the general practitioner did not indicate that the appellant is restricted with moving about indoors and outdoors. The general practitioner agreed with the statement that the appellant has a severe physical and/ or mental impairment and wrote: "...combination of abuse, physical and emotional issues add to severe impairment."
- In her self-report included with the PWD application, the appellant wrote that recently her tennis elbow is bothering her much more to the point where she cannot carry a bag of groceries. Her knees bother her more now too. Her knees "buckle back", especially her right knee, and this is very painful. She has a difficult time climbing stairs and it takes her much longer than it used to.
- The appellant wrote that her back aches when she stands or walks for more than 1 hour and she has to take Tylenol 3 so she will not feel as much pain. Her fingers and hands get numb and so do her big

toes. She has difficulty holding on to things.

- The appellant wrote that she fell down the stairs about 4 years ago and was knocked unconscious and woke up in the hospital. She has had ongoing dizziness, balance issues, and headaches since then.
- The appellant wrote that she had a hysterectomy in October and still gets sharp pains and she needs to relieve herself very often, almost every 30 minutes.
- In her Request for Reconsideration, the appellant wrote that she has severe pain in her back, knees, elbows and feet. In the morning, it is a struggle to get out of bed. Her condition is getting worse, especially in her feet.

Mental Impairment

- The general practitioner reported that the appellant has no difficulties with communication and the social worker assessed good or satisfactory ability to communicate in all areas except speaking which is poor, with the explanation "hesitant- delayed."
- In the physician report, the general practitioner indicated that there is a significant deficit in the appellant's cognitive and emotional functioning in the area of emotional disturbance, with no comments provided. The general practitioner reported that there are no restrictions to the appellant's social functioning.
- In the assessor report, the social worker indicated that there is a major impact to the appellant's cognitive and emotional functioning in the area of emotion ("anxiety") and moderate impacts in consciousness ("confusion"), attention/concentration, executive, memory, motivation, language ("comprehension"), other neuropsychological problems ("learning disabilities") and other ("emotional"). There are minimal impacts assessed in the remaining 4 areas of functioning. The social worker wrote that the appellant fell down stairs 4 years ago and was unconscious and was in the hospital overnight for observation. She has "...severe problems with depression at times which reduced motivation and ability to do things for herself and to get out of the house- likely linked to chronic pain and anxiety issues."
- The social worker indicated that the appellant requires periodic support/ supervision in 4 of 5 listed aspects of social functioning, with no explanation or description provided. The social worker reported that the appellant has marginal functioning in both her immediate and extended social networks, with no further explanation or description provided.
- In her self-report included with the PWD application, the appellant wrote that her physical health conditions "are depressing" so that she takes sleeping pills so that she does not have to think about these things because they stress her out.

Daily Living Activities (DLA)

- In the physician report, the general practitioner wrote that the pain in the appellant's knees, back and arms impacts daily living and makes it difficult for her to do DLA "...or hold a cup, at times." The general practitioner reported periodic restrictions with meal preparation and continuous restrictions with basic housework and daily shopping. The general practitioner wrote that the appellant's daughter does all the shopping, cleaning and most cooking.
- The general practitioner indicated that the appellant is not restricted with personal self care, management of medications, mobility inside and outside the home, use of transportation, management of finances, and social functioning.
- In the assessor report, the appellant is assessed as independent with walking indoors and walking outdoors, 2 to 4 blocks unaided without the use of an assistive device and takes significantly longer than typical due to right knee and back pain.
- The social worker reported that most listed tasks of the DLA personal care are performed independently, while dressing, grooming, and bathing take significantly longer than typical. The appellant requires periodic assistance with transfers in/out of bed ("back discomfort on getting in and

out of bed, knee seized up first thing in morning getting out of bed") and on/off chair, which both take significantly longer than typical.

- The appellant is assessed as requiring continuous assistance with laundry ("usually has help/ doesn't do it because of back pain and knee and elbow pain") and with basic housework.
- For shopping, the social worker assessed the appellant as independent with reading prices and labels, making appropriate choices, paying for purchases, while requiring periodic assistance and taking significantly longer than typical with going to and from stores ("help from daughter"), and continuous assistance with carrying purchases home ("cannot carry groceries/ items"). The social worker also wrote in additional comments that the appellant must sit to put her pants on due to knee discomfort and activities involving use of elbows, knees, and back are increasingly more painful.
- The social worker reported that the appellant is independent with all listed tasks of meals but requires periodic assistance and takes significantly longer than typical with food preparation and cooking ("sits to prepare meals and cannot stand for extended periods").
- All listed tasks for the DLA paying rent and bills and medications are managed independently while the appellant also requires periodic assistance and takes significantly longer than typical with banking and budgeting ("has payments set up in advance- landlady gets paid directly").
- For transportation, the social worker indicated that the appellant is independent with using public transit and using transit schedules and arranging transportation and requires periodic assistance with getting in and out of a vehicle, and also takes significantly longer than typical with all tasks "...because of knee and back pain."
- For additional comments, the social worker wrote that "...on bad days needs assistance to prepare meals and eat- when depressed and joints more painful."
- The social worker indicated that the appellant requires periodic support/ supervision in 4 listed aspects of social functioning, namely making appropriate social decisions, developing and maintaining relationships, interacting appropriately with others, and dealing appropriately with unexpected demands. She is independently able to secure assistance from others. There are no other comments provided by the social worker.
- In the Supplemental Medical Opinion dated March 14, 2013, the general practitioner agreed with the statement that the appellant is periodically restricted with shopping for personal needs and performing housework to maintain acceptable sanitary conditions, with the comment that the appellant "...has osteoarthritis that flares- when flared ADL's are limited." The general practitioner wrote that the appellant is restricted 1 to 4 times per week, "...depends on weather and 'must do' activities."
- In the Supplemental Medical Opinion, the social worker agreed with the statement that the appellant is periodically restricted with preparing her own meals ("on bad days this is not possible"), shopping for personal needs ("on bad days needs assistance"), performing housework ("on bad days needs assistance"), and moving about indoors and outdoors ("on bad days needs assistance"). The social worker wrote that: "...on her bad days when her arthritis is bad and/ or her mood low/ sleep impaired- or a combination of these which is often the case as they are interrelated- she is unable to do the above-listed ADL." Commenting on the frequency and duration of the restrictions, the social worker wrote that on bad days, which is several times a week, the appellant cannot do DLA on her own and requires assistance from her daughter.
- In the Supplemental Medical Opinion dated March 14, 2013, neither the social worker nor the general practitioner agreed with severe restrictions to the daily living activities which relate to a person who has a severe mental impairment, including making decisions about personal activities, care, or finances and relate to, communicate or interact with others.
- In her self-report, the appellant wrote that she hates to go to public places because she is constantly in the bathroom and this is limiting her ability to go out and do things like errands and DLA.

Need for Help

- The social worker reported that the appellant lives alone and her "...daughter assists with household

chores and activities."

- The social worker indicated that the appellant's daughter is her primary support person and the appellant also receives help from community service agencies and does not use an assistive device.
- In the Supplemental Medical Opinion, the social worker agreed that assistive devices are required and that "medications" are routinely used to help compensate for her impairment.

In her Notice of Appeal, the appellant expressed her intention to dispute the reconsideration decision.

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

- The appellant has had Persons With Persistent Multiple Barriers to employment (PPMB) status for the past 2 years and lives in a trailer where she pays for room and board. The appellant receives help from her neighbours and her landlord/ roommate since her daughter has now moved out. The appellant's landlord/ roommate has taken over the cooking and cleaning and driving the appellant places. When her roommate is not there to cook, the appellant will heat up leftovers in the microwave oven. The appellant stated that her roommate does the vacuuming.
- The appellant has osteoarthritis; her knee and back pain are due to the osteoarthritis. She has also been diagnosed with ulcers and asthma.
- The appellant takes Tylenol 3 for her pain about 4 times per day. The appellant also takes a number of medications for heart burn, for her ulcers, for incontinence, sleeping pills and puffers for her asthma. The appellant stated that she just takes the sleeping pills for her depression.
- The appellant stated that she needs some special shoes because her feet have become very painful and she will sometimes use a cane at home. She cannot walk very far because of her feet. If she walks 3 or 4 blocks, then her feet will be "killing her" when she gets home. She is waiting to see a specialist about her feet.
- The appellant stated that her osteoarthritis "bothers her mostly all day" but it will be worse if she has done too much or if there is a change in the weather.
- The appellant stated that she understands from her doctor that the numbness in her fingers, hands and big toes is due to her osteoarthritis.
- The diagnosis of depression is categorized in the DSM-IV (Diagnostic and Statistical Manual of Mental Disorders) as a 'severe' mental disorder.

The ministry did not raise an objection to the admissibility of any of the appellant's oral evidence. The panel did not admit the appellant's evidence regarding diagnoses of ulcers and asthma as these were not in support of information or records before the ministry on reconsideration. The panel admitted the balance of 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 medical conditions and being in support of information and records that were before the ministry on reconsideration.

At the hearing, 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.

(2) For the purposes of the Act, "prescribed professional" means a person who is authorized under an enactment to practice the profession of

- (a) medical practitioner,
- (b) registered psychologist,
- (c) registered nurse or registered psychiatric nurse,
- (d) occupational therapist,
- (e) physical therapist,
- (f) social worker,
- (g) chiropractor, or
- (h) nurse practitioner.

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 shown by the evidence of the pain in her back, knees, elbows and feet as a result of osteoarthritis. The appellant argued that the evidence from her doctor and the social worker in the PWD application and the Supplemental Medical Opinion dated March 14, 2013, together with her evidence, establishes that she has a severe physical impairment.

The ministry's position is that the functional skill limitations described are more in keeping with a moderate degree of physical dysfunction, that they may be partly age and climate-related, and are intermittent with flares of pain (good/ bad days). The ministry argued that the general practitioner indicated that the appellant is able to walk 2 to 4 blocks unaided and to climb 2 to 5 steps unaided, to lift 5 to 15 lbs., to sit for 1 to 2 hours. The social worker indicated that the appellant is independently able to walk indoors and outdoors with periodic help required to climb stairs and lift, and continuous help to stand and carry and hold. The ministry argued that activities are limited by pain and no assistive devices are used.

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 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 of approximately 2 years, has diagnosed the appellant with knee and back pain/ osteoarthritis. The general practitioner described the appellant's medical condition as "...finds it hard to walk or stand due to pain in knees; this limits abilities." However, the general practitioner reported that the appellant does not have restrictions with mobility inside or outside the home and assessed the appellant as able to walk 1 to 2 blocks unaided, climb 2 to 5 steps unaided, lift 5 to 15 lbs. and remain seated for 1 to 2 hours. In the Supplemental Medical Opinion dated March 14, 2013, the general practitioner again did not indicate that the appellant is restricted with moving about indoors and outdoors. The appellant is assessed by the social worker in the PWD application as independent with walking indoors and walking outdoors although she takes significantly longer than typical due to pain. At the hearing, the appellant stated that she needs some special shoes for her feet because they have become very painful, that if she walks 3 or 4 blocks, then her feet will be "killing her" when she gets home. The appellant also stated that her osteoarthritis "bothers her mostly all day" but it will be worse if she has done too much or if there is a change in the weather. In the Supplemental Medical Opinion dated March 14, 2013, the social worker agreed that the appellant is severely restricted with moving about indoors and outdoors and commented that "...on bad days, needs assistance," and the panel finds that the 'bad days' for the appellant's knee and back pain are mostly related to an increase in activity beyond the appellant's functional limitations.

The social worker also assessed the appellant as requiring periodic assistance with climbing stairs and continuous assistance with carrying and holding, and she takes significantly longer than typical. The social worker commented that the appellant has "...elbows and knee and back pain and finger cramping; even difficult to lift coffee mug due to elbow pain (and wrist) and finger cramping." In her self-report included with the PWD application, the appellant wrote that recently her tennis elbow is bothering her much more to the point where she cannot carry a bag of groceries, and she has a difficult time climbing stairs and it takes her much longer than it used to. The appellant wrote that her back aches when she stands or walks for more than 1 hour and she has to take Tylenol 3 so she will not feel as much pain. At the hearing, the appellant stated that she sometimes uses a cane at home. However, the general practitioner reported that the appellant does not require any aids for her impairment and the social worker did not indicate that any assistive devices are required.

In the Supplemental Medical Opinion, both the general practitioner and the social worker agreed with the statement that the appellant has a severe physical and/ or mental impairment. The general practitioner wrote: "...combination of abuse, physical and emotional issues add to severe impairment" and the social worker wrote: "...combination of history of trauma, loss and grief and arthritis, mood problems, sleep problems, breathing/ lung issues result in severe impairment." The panel finds these statements problematic since the legislation requires that the person has a severe physical "or" mental impairment and the comments also refer to conditions, such as breathing/ lung issues, that have not been diagnosed by a medical practitioner.

Looking at the evidence relating to the appellant's physical health conditions, the evidence shows that the appellant is moderately restricted in her daily functioning on her "good days." However, on "bad days," which the evidence suggests occur a few days a week, no clear picture was provided as to how much more she is restricted in her functional skills and no detailed information as to what tasks of DLA she is unable to perform. The panel finds that the ministry's determination that the evidence does not establish that the appellant has a severe physical impairment as required under Section 2(2) of the EAPWDA was reasonable.

Severe Mental Impairment

The appellant's position is that a severe mental impairment is established by the general practitioner's

diagnosis of depression and the evidence from both the general practitioner and the social worker of a significant deficit in cognitive and emotional function which has an impact on the appellant's daily functioning in several areas. The ministry's position is that the evidence shows that episodes of severe depression are intermittent and remedial measures in the form of anti-depressants are available to ameliorate the symptoms. The ministry argued that the social worker reported minimal and moderate impacts on daily functioning with one major impact on emotion. The ministry argued that there is no difficulty with communication and no restriction to social functioning.

Panel Decision

The general practitioner has diagnosed the appellant with depression, with one significant deficit in cognitive and emotional functioning in the area of emotional disturbance. The advocate argued that depression is categorized in the DSM-IV (Diagnostic and Statistical Manual of Mental Disorders) as a 'severe' mental disorder. However, in terms of impacts to the appellant's daily cognitive and emotional functioning, the social worker indicated that there is one major impact in the area of emotion ("anxiety"). The majority of impacts are assessed in the moderate range, including impacts to consciousness ("confusion"), attention/concentration, executive, memory, motivation, language ("comprehension"), other neuropsychological problems ("learning disabilities") and other ("emotional"). The panel finds that there was no diagnosis by the general practitioner of a learning disability. For explanation, the social worker wrote that the appellant has "...severe problems with depression at times which reduced motivation and ability to do things for herself and to get out of the house-likely linked to chronic pain and anxiety issues."

The episodic nature of the appellant's depression is also reflected in the social worker's assessment of social functioning, indicating that the appellant requires periodic support/ supervision in 4 of 5 listed aspects of social functioning, with no explanation or description provided of the source, frequency or duration of the support required. The social worker reported that the appellant has marginal functioning in both her immediate and extended social networks, with no further explanation or description provided. The general practitioner, however, indicated in the physician report that there are no restrictions to the appellant's social functioning. In the Supplemental Medical Opinion dated March 14, 2013, neither the social worker nor the general practitioner agreed with severe restrictions to the daily living activities which relate to a person who has a severe mental impairment, including making decisions about personal activities, care, or finances and relate to, communicate or interact with others.

In the Supplemental Medical Opinion, both the general practitioner and the social worker agreed with the statement that the appellant has a severe physical and/ or mental impairment. The general practitioner wrote: "...combination of abuse, physical and emotional issues add to severe impairment" and the social worker wrote: "...combination of history of trauma, loss and grief and arthritis, mood problems, sleep problems, breathing/ lung issues result in severe impairment." The panel finds these statements problematic since the legislation requires that the person has a severe physical "or" mental impairment and the comments also refer to issues, such as abuse and a history of trauma, that have not been referred to in the PWD application. The panel therefore 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 or it takes her significantly longer than typical to perform many DLA.

The ministry's position is that the evidence of the prescribed professionals establishes that the appellant has no restriction to 7 out of 10 DLA including social functioning. The ministry argued that there is an episodic nature to the restrictions identified by the social worker without any clear definition to allow the ministry to

determine the significance. The ministry argued that as the appellant's functional skills indicate that walking can be managed from 2 to 4 blocks and lifting from 5 to 15 lbs., it is likely that the appellant only requires assistance with tasks of longer distance and heavier weights.

Panel Decision

The general practitioner wrote in the physician report that the pain in the appellant's knees, back and arms impacts daily living and makes it difficult for her to do DLA "...or hold a cup, at times." However, the evidence of both the general practitioner and the social worker in the PWD application is that the appellant is independent with walking indoors and with walking outdoors. The general practitioner assessed the appellant as not restricted with mobility inside and outside the home and the social worker indicated that it takes her significantly longer than typical. The appellant does not require an assistive device.

In the physician report, the general practitioner reported periodic restrictions with meal preparation and continuous restrictions with basic housework and daily shopping. The general practitioner wrote that the appellant's daughter does most of the cooking and all the shopping and cleaning. In the assessor report, the social worker reported that the appellant is independent with all listed tasks of the DLA meals but requires periodic assistance and takes significantly longer than typical with food preparation and cooking. For additional comments, the social worker wrote that "...on bad days needs assistance to prepare meals and eat-when depressed and joints more painful." For shopping, the appellant is independent with reading prices and labels, making appropriate choices, paying for purchases, while requiring periodic assistance and taking significantly longer than typical with going to and from stores, and requiring continuous assistance with carrying purchases home. The appellant is assessed by the social worker as requiring continuous assistance with laundry and with basic housework.

In the Supplemental Medical Opinion, the general practitioner agreed that the appellant is periodically restricted only with shopping and housework with the comment that the appellant has osteoarthritis that flares and, when flared, her DLA are limited. The general practitioner indicated that the frequency and duration of the restrictions occur 1 to 4 times per week and that this "...depends on weather and 'must do' activities." The general practitioner also commented that the appellant requires help with these DLA and her daughter helps with shopping, cooking and housework on "bad days", 2 to 4 times per week and this occurs more in winter or rainy weather. In the Supplemental Medical Opinion, the social worker agreed that the appellant is periodically restricted with preparing her own meals ("on bad days this is not possible"), shopping for personal needs ("on bad days needs assistance"), performing housework ("on bad days needs assistance"), and moving about indoors and outdoors ("on bad days needs assistance"). The social worker wrote that: "...on her bad days when her arthritis is bad and/ or her mood low/ sleep impaired- or a combination of these which is often the case as they are interrelated- she is unable to do the above-listed ADL." Commenting on the frequency and duration of the restrictions, the social worker wrote that on bad days, which is several times a week, the appellant cannot do DLA on her own and requires assistance from her daughter. The social worker indicated that help is required 2 to 4 times per week and that this "...depends on her pain as a result of her arthritis which affects her sleep and mood."

In the physician report, the general practitioner indicated that the appellant is not restricted with personal self care, management of medications, mobility inside and outside the home, use of transportation, management of finances, and social functioning. The social worker reported that most listed tasks of the DLA personal care are performed independently, while periodic assistance is required with transfers in/ out of bed and on/off chair. All listed tasks for the DLA paying rent and bills and medications are managed independently while the appellant also requires periodic assistance and takes significantly longer than typical with banking and budgeting. For transportation, the social worker indicated that the appellant is independent with using public transit and using transit schedules and arranging transportation and requires periodic assistance with getting in and out of a vehicle, and also takes significantly longer than typical with all tasks "...because of knee and back pain." For those DLA which relate to a person who has a severe mental impairment, in the Supplemental

Medical Opinion neither the social worker nor the general practitioner agreed with severe restrictions to these DLA, including making decisions about personal activities, care, or finances and relate to, communicate or interact with others.

The panel finds that the evidence of the prescribed professionals demonstrates that the appellant is periodically restricted with some tasks of meal preparation and shopping as well as with the DLA housework and that these restrictions occur when the appellant's osteoarthritis flares, approximately 2 to 4 times per week. The frequency is variable and also affected by the cold or wet weather and the appellant's activity level or 'must do' activities. The panel finds that the ministry reasonably determined that there is not sufficient information to establish periodic restrictions for extended periods. While there is more information provided in the Supplementary Medical Opinion about the frequency of the appellant's flares, there is not a clear definition of the duration of these flare-ups and details about the appellant's resulting need for assistance with specific tasks on these "bad days." The panel concludes that the noted restrictions in the appellant's ability to perform some aspects of some DLA were reasonably viewed by the ministry as not constituting a direct and significant restriction of the appellant's ability to perform DLA in the opinion of a prescribed professional 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 and the use of a cane as an assistive device at home.

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 assistance animal or 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 social worker indicated that the appellant lives alone, and it was clarified at the hearing that the appellant now lives with a roommate. At the time of the PWD application, the social worker indicated that the appellant's daughter was her primary support person and the appellant also received help from community service agencies and does not use an assistive device. At the hearing, it was clarified that the appellant's roommate now provides the required assistance. In the Supplemental Medical Opinion, the social worker agreed that assistive devices are required in the form of "medications," which are routinely used to help compensate for the appellant's impairment. The panel finds that medications do not fall within the definition of assistive device as set out in the legislation as a device designed to enable a person to perform a DLA that the person is unable to perform as a result of a severe mental or physical impairment. The appellant stated at the hearing that she sometimes uses a cane to move about indoors, but this has not been confirmed by one of her prescribed professionals. 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.

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.