

### PART C – Decision under Appeal

The decision under appeal is the reconsideration decision of the Ministry of Social Development and Social Innovation (the Ministry) dated August 19, 2013 which denied the appellant designation as a person with disabilities (PWD) on the basis that she 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 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,
- as a result of these restrictions, 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's self report (SR) completed March 22, 2013, together with a physician report (PR) and an assessor report (AR), both dated March 15, 2013 and completed by the appellant's family physician of approximately 10 years, as well as the following:

- the Ministry's PWD designation decision summary dated June 25, 2013;
- a 3-page letter prepared by the appellant's advocate directed to the appellant's family physician which sets out a series of statements intended to elicit information about the effects of the appellant's impairments on her ability to perform DLA with spaces for the appellant's physician to check "agree" or "disagree" and provide comments. The letter is dated July 23, 2013 and is signed by the appellant's physician and dated July 24, 2013 (the July Document).

At the hearing, the appellant provided the following additional documents to the panel:

- A note from her family physician dated August 25, 2013 on which the physician has written, "Patient is totally unemployable due to bilateral foot pain with the (R) being worse than the (L). She continues to walk with a cane. Her disability application should be reviewed." (Document #1)
- A Ministry form, Application for Special Transportation Subsidy, completed by the appellant and her physician on May 13, 2013. On this form, the appellant describes her disability as "cannot walk any distances at all", while her family physician describes her disability as "bilateral foot pain post-op to correct bunion deformities." Both the appellant and her family physician indicate on this form that the appellant's disability prevents her from using the bus. (Document #2)
- A copy of a computer printout of a job posting for a production worker at a manufacturing facility indicating that a production worker "must be able to lift 30-40 lbs on occasion." (Document #3)
- A copy of a prescription from the appellant's family physician dated August 25, 2013 prescribing anti-anxiety and anti-depression medications for the appellant. (Document #4)

The appellant's teenaged son who lives with the appellant testified at the hearing.

The panel will first summarize the evidence from the PR and AR relating to the appellant's impairments as it relates to the PWD criteria at issue, referencing the contents of the 3-page July 24, 2013 document where relevant. We will then summarize the information provided by the appellant in her SR, together with her testimony and the additional documents and evidence provided at the hearing.

### *Diagnoses*

In the PR, the appellant's physician diagnoses the appellant's impairment as "painful bunions both feet requiring surgery" with the onset of November 2011 and "L ulnar nerve neuropathy" with the onset of October 2011.

### *Physical Impairment*

- In the PR, the appellant's physician indicated in the health history that the appellant has "insidious onset of bilateral foot pain due to bunions" and that on November 26, 2012, the appellant underwent a bilateral bunionectomy and proximal phalanx osteotomy surgery, but that "delayed union has resulted in chronic pain (R) foot." The appellant's physician also wrote that the appellant "developed numbness and weakness (L) forearm and hand secondary to (L) ulnar nerve entrapment syndrome" and that she underwent surgical decompression on May 16, 2012. The appellant's physician wrote "the numbness has resolved but she is left with residual weakness in grip with her L hand."
- The appellant's physician checked "No" in response to the question on the PR "has the applicant been prescribed any medication and/or treatments" that interfere with her ability to perform DLA.

- Functional skills reported in the PR indicated that the appellant can walk 1-2 blocks unaided on a flat surface, she can lift 7-16 kg (15 to 35 lbs), and there is no limitation with remaining seated, but she cannot climb any stairs unaided.
- In the AR, the appellant's physician wrote "limited walking and climbing plus ability to lift heavy objects" in response to the question "what are the applicant's mental or physical impairments that impact his/her ability to manage daily living activities?" The appellant's physician also wrote that the appellant uses a cane for walking more than 1 block and "ongoing orthopedic review to assess impairments" at the conclusion of the AR.
- In the July Document, the appellant's physician agreed with the statement that the appellant states she requires a cane if she has to walk more than a block as she will lose her balance and needs support, writing the comment "needs to use a cane for prolonged walking  $\geq$  1 block." He also agreed with the statement that the appellant states she needs a cane to climb any amount of stairs if there is no rail. The physician agreed with the statement that the appellant states she cannot lift more than a jug of milk with either arm "the injury in her left arm prevents her with that arm and the injury on her right foot prevents lifting with her right arm as that increases the pain and she will lose balance" [in prepared statement, not comment of the physician].
- At the conclusion of the July Document, the appellant's physician has agreed with the statement "Would you agree that [the appellant] has a condition that is severe, that she has significant restrictions with her [DLAs] and as a result she requires assistance with [them]?" but does not provide any commentary.

#### *Mental Impairment*

- In the PR, the appellant's physician did not diagnose a mental disorder and checked "No" on the PR in response to the question "are there any significant deficits with cognitive and emotional functioning."
- In the PR, the physician reported no difficulties with communication and, in the AR, that the appellant has good ability to communicate in all areas.
- In the AR, the appellant's physician checked "no impact" for all of the items listed in the cognitive and emotional functioning section for an applicant with an identified mental impairment or brain injury.
- Further in the AR, the appellant's physician checked "independent" in all of the social functioning DLAs and reported the appellant has good functioning with her immediate and extended social networks.

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

- In the AR, the appellant's physician indicated that the appellant takes significantly longer than typical for 5 of the 6 listed mobility and physical abilities (walking indoors, walking outdoors, standing, lifting, carrying and holding) commenting that "unstable gait requires help to avoid falls." The appellant's physician indicated that in addition to taking significantly longer than typical, the appellant needs periodic assistance for the 2 listed DLAs of lifting and carrying and holding. He also indicated that the appellant uses an assistive device "needs a railing" for the 6<sup>th</sup> DLA of climbing stairs.
- In the section of the AR addressing the appellant's need for assistance in performing the listed DLAs, the appellant's physician has indicated that the appellant is independent for all of the 8 listed tasks of the personal care DLA, and independent in 3 of the 5 tasks of the shopping DLAs (reading prices and labels, making appropriate choices, and paying for purchases). The appellant's physician indicated in the AR that the appellant is independent in all of the 4 listed tasks of the DLAs under meals (meal planning, meal preparation, cooking and safe storage), all 3 listed under paying rent and bills (banking, budgeting, pay rent and bills), and the 3 DLAs listed under medications. The appellant's physician checked independent for 2 of the 3 listed tasks of the DLAs under transportation (using public transit and using transit schedules and arranging transportation).
- In the AR, the appellant's physician indicated that the appellant takes significantly longer to perform the tasks of DLAs of laundry, basic housekeeping, going to and from stores, and carrying purchases home, but did not provide any comments. The physician wrote "patient has her own car" beside his indication

that she takes significantly longer than typical to get in and out of a vehicle.

- In the July Document, the appellant's physician agreed with the prepared statements that the appellant states she needs a rail in her shower for transfers as she is "terrified getting in/out every time as she loses balance and fears falling and causing further injury." He agreed with the statement that the appellant states she needs to sit in order to dress and dressing takes at least 2 times longer than typical, as well as the statement that the appellant states she needs help to clean the toilet and bath as when she kneels it's too painful to get back up. The physician agreed with the statement that when cooking and preparing meals, the appellant states it takes her at least 3 times longer than typical as she is not able to maneuver throughout the kitchen as quickly as she once did. Other than the handwritten comment from the physician that the appellant needs to use a cane for prolonged walking, there is no commentary from the physician to expand on the prepared statements.

#### *Need for Help*

- The appellant's physician reported in the AR that the appellant receives help from her family "as stated with lifting, shopping and housework," that she uses a cane "for walking more than 1 block" and uses railings on stairs.
- In the July Document, the appellant's physician agreed with the statement that the appellant says she cannot carry more than a jug of milk "(8.8 lbs full)" over 50 feet and with no repetition as the "pain she experiences in her feet prevents any further carrying" and her son has to help carry groceries as she can't take them to her door. The appellant's physician agreed with the statement that the appellant says she cannot carry her laundry, that her son carries it down the hall and back for her. He also agreed with the statement that the appellant says she cannot carry out the garbage as it is too far to carry across a parking lot.

#### *The appellant's self report and evidence at the hearing*

In the SR portion of the PWD application, the appellant described how her foot condition arose, as well as the nerve damage in her arm. She wrote that she had surgery on her arm in May 2012, and bunion surgery on both her feet in November 2012. She stated that the bones in her right foot are not healing properly and that now she finds that lifting and walking has become a severe issue for her.

At the hearing, the appellant told the panel that because her left arm has nerve damage it is "useless." She says that when she lifts with her right arm, it increases the pain in her right foot and she can't lift things. The appellant said that there were mistakes in the Ministry's reconsideration decision – the decision refers to chronic pain in her left foot, but the appellant states that it is her right foot which is worse and has chronic pain, as supported by the information provided by her physician in the PR. She referred the panel to additional Document #1 (physician's note of August 25, 2013) in which her doctor confirmed that she has pain in both her feet, with the right worse than the left, and that she continues to walk with a cane, to support that it is her right foot which suffers from chronic pain and that she uses a cane to walk. The Ministry representative did not object to the admission of Document #1.

The appellant referred the panel to additional Document #2 (Ministry form for special transportation subsidy) and told the panel that she had been provided this form by a Ministry worker and she and her doctor completed this form in May 2013, indicating that her impairments affected her ability to take the bus – that she can't take the bus and has to use her own car, as she can't walk the distances to catch the bus. The Ministry representative explained that the form was for people who have received designation as a PWD and that the appellant should not have been provided with this form as it was given to her in error. The Ministry representative did not object to the admission of Document #2.

The appellant told the panel that she and her doctor were confused in completing the PWD application forms and that she in fact can't lift 15-30 pounds as stated in the PR, which is why the additional information was

provided in the July Document, where her doctor agrees with the statement that she cannot carry a jug of milk any distance. The appellant told the panel she used to be a production worker, but that she can't do that job anymore as she is required to lift 40 pounds and she can't. The appellant referred the panel to additional Document #3, a job posting for a production worker, which lists the ability to lift 40 pounds as a job requirement. The Ministry representative did not object to the admission of Document #3. The appellant told the panel she could sit at a desk for 8 hours, but she can't go back to production work because of her impairments in her left arm and her feet.

In the course of her testimony, the appellant told the panel that she is on medication to treat anxiety and depression, that she has been on this medication since March 2013 and her doctor recently increased her dosage, as indicated on the prescription of August 25, 2013 (additional Document #4). The appellant told the panel that her doctor had not confirmed that she suffers from anxiety and depression in the PWD application (the PR or AR) as he wanted to protect her privacy and keep the information confidential. The appellant told the panel that she has learned how to cover up her depression and anxiety, but that it occasionally causes her to stutter when she is under stress. She told the panel that since her foot pain has not resolved, her stress and anxiety has increased. The panel notes that the appellant's physician completed the sections of the AR applicable to those applicants with an identified mental impairment or brain injury, and this was part of the PWD application. The Ministry representative did not object to the admission of Document #4.

The panel admits the additional evidence provided by the appellant in Documents #1-4 as written testimony in support of the information that was before the Ministry at the time the decision being appealed was made, pursuant to subs. 22(4)(b) of the *Employment and Assistance Act*. The information in Document #1 confirms that it is the appellant's right foot, which causes her chronic pain, that both feet have pain, and that she walks with a cane as reported in her PWD application. Document #2 contains reference to the appellant's need to use her own car, as reported in the PWD application. Document #3 provides information about the lifting requirements for the appellant's previous type of employment, although the panel does not place much weight on this document. Finally, Document #4 provides additional information regarding the appellant's mental state, relevant to those portions of the PWD application completed by the appellant's physician without elaborating on the appellant's possible mental impairment.

The appellant's son testified at the hearing. He told the panel that he lives with his mother, that he has dropped out of his previous high school and is now taking courses by correspondence so that he can be available to help his mother. He told the panel that he keeps their apartment clean and makes sure there is nothing laying around that his mother could trip over. He says he stays in the apartment when she takes a shower so he can help her if she falls. The appellant's son testified that he helps the appellant get up and make coffee and breakfast, that he carries the groceries from the car, carries the laundry and takes out the garbage.

The panel admitted the evidence of the appellant's son as oral testimony in support of information that was before the Ministry at the time the decision being appealed was made, pursuant to subs. 22(4)(b) of the *Employment and Assistance Act*, namely, that the appellant receives some assistance from family members for certain tasks related to her DLA.

## PART F – Reasons for Panel Decision

The issue on the appeal is whether the Ministry's determination that the appellant is not eligible for designation as a PWD, 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 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.

### **Severe Physical Impairment**

The appellant's position is that she has a severe physical impairment – that the nerve damage in her left arm, coupled with the chronic pain in both her feet but particularly her right foot as a result of the bunions and surgery, has caused her to be totally disabled. She said the discrepancy between the information provided by her family physician in the PR and AR and the July Document was because she and her physician had hoped her condition would improve at the time they completed the PWD application (March 2013), but by the summer of 2013 realized that her condition is not improving. The appellant argued that she is required to rely on her cane for walking and that this is supported by her physician in the July Document, and that she requires the help of her son on a continuous basis for many DLA.

In the reconsideration decision, the Ministry determined that there is not sufficient information to establish that the appellant has a severe physical impairment. The Ministry noted that the appellant's physician had indicated in the PR that she could walk unaided for 1-2 blocks, but could not climb stairs without a handrail. The Ministry in its reconsideration decision referred to the PR in which the appellant's physician indicated she can lift 15-35 pounds and does not have any limitations with remaining seated. The Ministry also referred to the information in the July Document that the appellant requires a cane to walk more than one block and to climb stairs, but stated that it was unclear to the Ministry from the physician's information how the appellant has difficulties lifting a jug of milk if she is able to lift 15-35 pounds. The Ministry also noted that the appellant is able to manage the majority of her DLA independently, although a few take significantly longer to perform. The Ministry acknowledged that while the appellant's impairment may impact her physical functioning, her physician does not provide enough evidence to indicate she has a severe physical impairment.

### *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 PR 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 prescribed professional respecting the nature of the impairment and its impact on daily functioning.

The appellant's family physician of 10 years diagnosed the appellant with painful bunions in both her feet, which causes bilateral foot pain, which pain is chronic in her right foot even post-surgery. The physician also confirmed the appellant has nerve damage in her left arm and that she has had surgery to decompress the

nerves but that her grip is weakened. At the hearing, the appellant stated that her foot pain is not abating and that because of the impairments on both sides of her body (left arm and right foot), she feels that she is disabled. She now has to walk with a cane and can only climb stairs with a railing, and relies on her teenaged son to help her around the house.

In terms of functional skills, the appellant's physician reported in March 2013 that the appellant can walk 1-2 blocks unaided on a flat surface, does not require an aid for her impairment, and takes significantly longer than typical with walking indoors and outdoors; in July 2013, he reported that the appellant requires a cane to walk, but did not provide commentary to explain the change in the appellant's ability or add how much longer than typical it takes her. In the PR, the appellant's physician reported that she could only climb steps with the aid of handrails, which is reiterated in the July Document. The appellant's physician reported in the PR in March 2013 that she could lift 15-35 pounds, but by the time of the July Document, agreed with the statement that the appellant could not lift more than a jug of milk weighing 8.8 pounds with either arm, or carry more than a jug of milk over 50 feet. The physician did not provide any commentary about the appellant's ability to lift objects in the PR. Although the appellant stated that her physician had come to terms with the degree of her impairment by July 2013, the appellant's physician did not comment on why and/or how her ability to lift objects had deteriorated between March and July 2013 in the July Document. The appellant agreed with her physician's assessment in the PR that there is no limitation with remaining seated.

In the AR, the appellant's physician indicated that the appellant takes significantly longer than typical with the majority of mobility and physical abilities (5 of 6) as her unstable gait may result in falls, and that in the 6<sup>th</sup> ability (climbing stairs), she needs a railing, and that with respect to lifting and carrying and holding, the appellant requires periodic assistance, for which the physician did not provide an explanation or description. The appellant's physician reported in the AR that the appellant is independent in the majority of DLA, but takes significantly longer going to and from stores, carrying purchases home, and getting into and out of her own car. In the July Document, the appellant's physician agreed with statements that the appellant takes 2 times longer than typical to get dressed, and 3 times longer than typical to cook and prepare meals, although these limitations to these DLAs were not indicated in the PR. In the July Document the appellant's physician agreed with statements that the appellant's son assists her carrying groceries from the car to their door, carrying laundry, and taking out the garbage and the panel heard evidence from the appellant's son about his level of assistance. There is no commentary from the appellant's physician qualifying or elaborating any of these answers and while the appellant's evidence is that because of her weakened left arm and foot pain, it takes her longer to perform certain DLAs than prior to the onset and she relies on her son to assist her, she did not provide evidence that she is incapable of performing DLAs other than lifting heavy objects and relying on a cane to walk more than a block.

The evidence demonstrates that the appellant is able to independently perform all the tasks of personal care, (although she may take longer to get dressed and bathe), as well as tasks associated with meals (although again, it may take somewhat longer to maneuver around her kitchen), pay rent and bills, deal with her medications, use public transit, and shop (other than carrying groceries). She takes significantly longer to perform laundry and basic housekeeping and to get in and out of a vehicle, relying on her son for assistance. However, there is no indication from the appellant's physician that she cannot perform these DLA.

Therefore, the panel finds that the Ministry reasonably determined that the appellant's level of physical functioning does not establish that she has a severe physical impairment under section 2(2) of the EAPWDA.

### **Severe Mental Impairment**

The appellant did not argue that she has a severe mental impairment, although she told the panel that she suffers from anxiety and depression and that as a result she often stutters when she's under stress and she provided evidence to the panel that she takes medications to treat these conditions. However, the appellant's physician reported in the PR that the appellant has not been prescribed any medications or treatments that



interfere with her ability to perform her DLA and that she has no significant deficits with cognitive and emotional function.

In its reconsideration decision, the Ministry determined that a severe mental impairment has not been established as the appellant's family physician reported no deficits in her cognitive and emotional functioning, and also indicated that the appellant's impairments had no impact on her cognitive and emotional functioning and that she independently manages all her social functioning with good functioning with her immediate and extended social networks. The Ministry found that the appellant's physician did not provide enough evidence to indicate that she has a severe mental impairment.

#### *Panel Decision*

The appellant's physician did not diagnose a mental disorder in the PR as part of the PWD application. Her physician reported the appellant does not have difficulties with communication and she has a good ability to communicate in all areas. The physician indicated no significant deficits or applicable impacts to cognitive and emotional function and no noted restrictions with social functioning. Although the appellant admitted she is taking medication for anxiety and depression and said that her physician did not indicate this on the PWD application because he wanted to protect her privacy, 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 impairments directly and significantly restrict her ability to perform DLA on an ongoing basis as she requires the assistance of her cane to walk and climb stairs (or use a hand railing) and relies on her son to lift and carry groceries and garbage, as well as laundry, and keep her living area free of tripping hazards and be there to help her if she falls in the shower.

In its reconsideration decision, the Ministry stated that it relies on the medical opinion and expertise of the appellant's physician and the Ministry does not have enough evidence to confirm that the appellant's impairment directly and significantly restricts her ability to perform her DLA continuously or periodically for extended periods. The Ministry stated that it was unclear if there are undocumented medical issues since the appellant's DLA assessment in March 2013, noting the discrepancies between the PWD application and the July Document and that is unclear why by July 2013, the appellant has significant restrictions in her ability to manage some of the tasks she was able to perform independently without any periodic or continuous assistance in March 2013.

#### *Panel Decision*

The legislation requires that, in the opinion of a prescribed professional, the appellant's impairments directly and significantly restrict her ability to perform her DLAs either continuously or periodically for extended periods. The appellant's physician confirmed in the PWD application, the July Document and the additional Document #1 that the appellant requires a cane to walk distances greater than one block, and must use a handrail or her cane to climb stairs, as her impairments have resulted in unsteady gait and increased risk of falling. The appellant's physician has also confirmed that her weakened left arm prevents her from lifting with it, but there was evidence that the appellant can lift lighter objects (the July Document refers to lifting an 8.8 lb jug of milk and carrying it for 50 feet – that the appellant cannot carry more than this over a 50 ft distance with any repetition, however, she can presumably lift a lighter object). The appellant's physician has confirmed in both the AR of the PWD application and in the July Document that it takes the appellant significantly longer than typical to perform certain tasks of DLAs (dressing takes 2 times longer than typical and cooking and preparing meals takes 3 times longer than typical, she takes longer to get into and out of a vehicle). However, the appellant's physician has not provided information in the PWD application, the July Document, or the additional documents that the appellant's impairments significantly and directly restrict her ability to perform

her other tasks of DLAs and she continues to perform them independently. The panel finds that the Ministry reasonably concluded that there is insufficient evidence from the prescribed professional to establish that the appellant's impairment directly and 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 use of an assistive device, a cane, to perform the DLA of walking and that she requires the assistance of her son to perform the tasks of DLAs of lifting and carrying heavier groceries (more than an 8,8 lb jug of milk), doing laundry, and basic housekeeping (such as cleaning floors and taking out garbage).

The Ministry found in the reconsideration decision that because it has not been established that DLA are significantly restricted, it cannot be determined that significant help is required. The Ministry acknowledged that the appellant's physician had indicated she sometimes needs a cane.

### **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, 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 appellant's physician in the AR indicates that the appellant receives assistance from her family with "lifting, shopping and housework", which was reiterated by the appellant's son in his testimony, and that she uses a cane to walk distances. However, the appellant's physician does not confirm that the appellant requires significant help or supervision of her son (or other persons) to perform her DLA. 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.