APPEAL #

PART C – Decision under Appeal

The decision under appeal is the Ministry of Social Development's (the ministry) reconsideration decision dated March 21, 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* (EAPWDA) for designation as a person with disabilities (PWD). The ministry found that the appellant met the age requirement and that the appellant's impairment was likely to continue for at least two or more 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 that
- as a result of those restrictions, the appellant requires the significant help or supervision of another person, 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

APPEAL #

PART E – Summary of Facts

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

1) The appellant's Request for Reconsideration dated February 26, 2013 (RFR) with attached letter from the appellant's advocate faxed March 8, 2013 (the Submission) and letter from the appellant's physician dated March 8, 2013 (the Physician's Letter);

2) Letter from the Ministry to the appellant with a PWD Designation Decision Summary dated January 21, 2013;

3) A PWD application comprised of a Self-report (SR) that the appellant chose not to complete; a Physician Report (PR) dated October 10, 2012 completed by the appellant's physician; and an Assessor Report (AR) also dated October 10, 2012 and completed by the appellant's physician. On the PR and AR the general practitioner reports that he has known the appellant more than 10 years and has seen the appellant two to ten times in the last year; and

4) Fax from the Ministry to the appellant's physician dated January 9, 2013 requesting clarification of information provided on the PR and the AR. The Physician reports that he agrees with what was written on the AR except for the parts that he crossed out on page 16 of the AR (the Clarification Letter).

In her Notice of Appeal the appellant states that she disagrees with the Ministry's decision because she is a disabled person with lots of DLA restrictions and in need of help.

New information

At the hearing, the appellant and advocate submitted additional information elaborating on the impact of the appellant's physical and mental impairment. The appellant also submitted the following documentation:

1. Letter from the appellant's physician to an orthopedic surgeon dated November 30, 2012 requesting investigation of the appellant's left knee;
2. Right knee imaging report dated February 14, 2011;
3. Pharmacare Special Authority Request dated February 22, 2011 for medication after the appellant's right knee surgery;
4. Left knee x-ray report dated November 27, 2012;
5. Bilateral knee x-ray report dated January 23, 2013;
6. Consult report from an orthopedic physician to the appellant's physician dated January 23, 2013 (the Surgeon Letter) regarding the appellant's knees;
7. Clinical records of the appellant's physician from January 11, 2011 to March 7, 2013 (Clinical Records) (7 pages);
8. Witness statement detailing the witnesses interactions and care giving of the appellant (5 pages); and
9. Submissions (7 pages) containing argument and referring to the additional documentation (the Advocate Submission)

The ministry did not object to the new evidence as it appeared to relate to the appellant's health conditions, although the ministry did note that there was a lot of new information and because it was late, there was not sufficient time to adequately review and respond to the new information.

The panel has admitted the oral and written testimony into evidence as they are in support of information and records that were before the ministry at the time of reconsideration, in accordance with section 22(4) of the *Employment and Assistance Act*. In particular, the panel finds that the new evidence relates to the appellant's impairment and their impact on her functioning.

The ministry relied on the reconsideration decision and submitted no new information.

Physical Impairment

The appellant stated that despite having right knee surgery she has ongoing right knee pain that varies in intensity. The appellant stated that her left knee pain, which she describes as a grinding pain, has gotten much worse in the last six months, she has been using walker for the past four months, and is waiting for surgery. She states that she was relying on her left leg due to her right knee pain but now that her left knee is so bad, she has problems with both of them, has fallen several times and is fearful of falling again. The appellant states that she has a hard time bending her leg to get in and out of the shower so she will only take a shower when her friend is there to be sure she is safe. She also states that she has difficulty lifting more than five pounds and some days cannot get out of bed. She also states that even after she has left knee surgery there is no guarantee that her knee will improve and given the ongoing pain in her right knee, despite previous replacement, she is very concerned about her future.

In the PR, the physician reports that the appellant has severe post-herpetic facial neuralgia since 2008 with only minimal benefit from medication and bilateral knee osteoarthritis subsequent to a right total knee replacement in 2011. The physician also reports that the appellant has chronic problems with neuralgia, depression and osteoarthritis.

Functional skills reported in the PR indicate that the appellant can walk 4+ blocks (uses a cane), can climb 5+ stairs unaided (uses a handrail), is limited to lifting 2 to 7 kg (5 to 15 lbs), and has no limitations with being seated.

In the AR, the physician reports that the appellant's ability to communicate in all four listed areas of speaking, reading, writing and hearing is good. The physician reports that the appellant uses assistive devices with walking indoors and outdoors, climbing stairs, standing, lifting, and carrying and holding. The physician reports that the appellant has problems with mobility due to knee problems, has difficulty going up and down stairs and walking lengthy distance.

In the Submission, the advocate reports that there was confusion around section 3 of the PWD, the AR, in that at the beginning, the appellant asked the social worker to complete the AR, and that the social worker had started on it then asked the appellant to have her physician complete it. However the advocate states that the physician was not informed that the social worker had started completing the AR and assumed that it was the appellant who started completing it.

In the Physician's Letter, the physician confirms that the appellant has severe conditions including depression, anxiety and panic attack, post herpetic neuralgia, bilateral knee osteoarthritis and arthritis in her hands that will continue for at least 2 years. The physician also reports that the appellant is in constant pain because of arthritis and on a pain scale from 1(low) to 10(high), she is experiencing a level of 7 on her right knee and 10 on her left knee, and is on a waiting list for left knee surgery. The physician states that she is unable to lift more than 5 pounds because of chronic fatigue and severe arthritis, suffers from chronic fatigue and sleep interruption and is severely restricted using public transportation.

The Clinical Records contain various entries regarding the appellant's left knee pain getting worse with resulting increased pain medication.

The left knee x-ray dated November 27, 2012 indicates that the appellant has severe degenerative medial tibiofemoral joint space loss and osteophytes detected.

The bilateral knee x-ray report dated January 23, 2013 indicates that the appellant had a 2-part right knee

replacement and prosthetic components are in satisfactory alignment. It also states that the appellant's left knee has moderate to severe narrowing of the medial tibiafemoral joint compartment.

The Surgeon Letter states that the appellant had full range of motion of the left knee, severe left knee medial compartment arthritis, persisting pain with a right knee replacement. The Surgeon Letter also states that treatment options were discussed including viscosupplementation and partial knee arthroscopy.

Mental Impairment

In the PR, the physician reports that the appellant has depression with moderate benefit from medication. He also reports that the appellant has significant deficits with executive, memory, emotional disturbance, motivation and attention due to chronic pain, depression and medication.

In the AR, under section 4, cognitive and emotional functioning, the physician reports that there is no impact to the appellant's impulse control, motor activity, language, psychotic symptoms, other neuropsychological problems or other emotional and or mental problems, minimal impact to the appellant's insight and judgments, moderate impact to the appellant's bodily functions, consciousness and executive and major impact to the appellant's attention/concentration and motivations.

Under the comments, the physician reports that due to the level of depression and anxiety, the appellant has difficulty with tasks of daily living, motivation is extremely low and the appellant has problems with social aspects of life.

In the Physician's Letter, the physician reports that the appellant suffers from severe depression, anxiety and panic attacks which will likely continue for at least 2 years. He also reports that the appellant has significant deficits with cognitive function, (emotional disturbance, major impact), memory (not able to learn and recall information), motivation (lack of initiative and interest), attention/concentration, impulse control (cries often, irritability), emotional control, communication, appropriate social interaction and developing and maintaining relationship.

The Clinical Records contain entries noting the appellant's depressive disorder and note various medications prescribed by the physician for her depression.

DLA

In the PR, the appellant's physician reports that the appellant has been prescribed medications, namely Seroquel and Gabapentin, that interfere with her ability to perform all DLA and that the anticipated duration of the medications is chronic.

In the AR, the general practitioner reports that the appellant is independent with the following tasks: dressing, grooming, bathing, toileting, feeding self, regulating diet, reading prices and labels, making appropriate choices, paying for purchases, meal planning, food preparation, cooking, safe storage of food, banking, budgeting, paying rent and bills, filling/refilling prescriptions, taking prescriptions as directed and safe handling and storage of medications.

In the AR, the physician reports that the appellant is independent with grooming, toileting, feeding self, transfers (in/out of bed) and transfers (on/off of chair), reading prices and labels, making appropriate choices and paying for purchases, meal planning, safe storage of food, banking, budgeting, paying rent and bills, taking medications as directed, safe handling and storage of medications and using transit schedules and arranging transportation. The physician reports that the appellant requires periodic assistance regulating her diet (impact on diet due to mood fluctuations), continuous assistance with basic housekeeping, going to and from stores, carrying purchases home, food preparation, cooking, filling/refilling prescriptions, getting in and out of a

vehicle and using public transit. Under the items dressing and grooming, the physician reports that the appellant is independent but there is also a check mark indicating that the appellant takes significantly longer than typical with these DLA.

With respect to social functioning, the physician reports that the appellant needs periodic supervision with making appropriate social decisions, developing and maintaining relationships, interacting appropriately with others, dealing appropriately with unexpected demands and securing assistance from others due to social withdrawal, poor motivation and depression. The general practitioner reports that the appellant has marginal functioning with respect to her relationships with her immediate social network and extended social networks.

In the Physician's Letter the physician provides further information indicating that the appellant requires significant help with personal care (for motivation, and continuous assistance because of her arthritis), that it takes her three times longer than a normal person, activities associated with personal care take three times as long due to chronic fatigue and physical pain, support and supervision with social functioning, that she avoids meal preparation and cooking because of chronic fatigue and depression, has a poor appetite and has lost 40 pounds in six months, puts off basic housework for weeks because of her depression and lack of motivation (gets help from friends), help with laundry, shopping (anxiety about her financial situation), transportation (agoraphobia, walking and standing restrictions, always with a walker), getting in and out of vehicles (requires periodic assistance 50-70% of the time), banking, budgeting and paying bills (requires assistance most of the time because of lack of concentration), needs support to maintain social network and completing forms. The physician also reports that her condition and symptoms vary from day to day so her needs vary from day to day, but overall she has a significant need for assistance with DLA.

From November 5, 2012 to March 7, 2013, the Clinical Records indicate that the appellant reported increasing left knee pain, increasing leg cramps, that she had a friend who was helping her out a lot, and that the would use Handidart.

Need for Help

In the PR, the physician reports that the appellant does not require any prostheses or aids for her impairment.

In the AR, the physician reports that the appellant would benefit from a mental health worker by a community service agency. The physician also indicates that the appellant requires assistance from a cane and walker but does not require the help of an assistance animal.

In the Physician's Letter the physician provides further information indicating that the appellant requires significant help with personal care (for motivation, and continuous assistance because of her arthritis), that it takes her three times longer than a normal person, activities associated with personal care take three times as long due to chronic fatigue and physical pain, support and supervision with social functioning, that she avoids meal preparation and cooking because of chronic fatigue and depression, has a poor appetite and has lost 40 pounds in six months, puts off basic housework for weeks because of her depression and lack of motivation (gets help from friends), help with laundry, shopping (anxiety about her financial situation), transportation (agoraphobia, walking and standing restrictions, always with a walker), getting in and out of vehicles (requires periodic assistance 50-70% of the time), banking, budgeting and paying bills (requires assistance most of the time because of lack of concentration), needs support to maintain social network and completing forms. The physician also reports that her condition and symptoms vary from day to day so her needs vary from day to day, but overall she has a significant need for assistance with DLA.

The Witness Statement and oral evidence of the witness are that she met the appellant four to five years ago and that over the time she has known her, she has observed the appellant's physical condition getting worse, but particularly so in the past six months. The Witness Statement indicates that the appellant gets confused

APPEAL #

and has trouble concentrating, manic episodes where she is hyper, has racing speech and periods of very little sleep. The Witness Statement also indicates that the witness helps the appellant with her day to day house cleaning such as vacuuming, cleaning her bathtub, getting groceries and showering. The witness states that the appellant has difficulty putting her shoes on and that the appellant will only shower if she is there due to fear of falling. The witness also indicates that she will sometimes stay overnight at the appellant's house to help her, and also assists with tasks such as picking up medications and getting the appellant's clothes ready for her.

APPEAL #

PART F – Reasons for Panel Decision

The issue on the appeal is whether the ministry's decision to deny the appellant designation as a PWD was reasonably supported by the evidence or was a reasonable application of the applicable legislation in the circumstances of the appellant. In particular, was the ministry reasonable in determining that the appellant:

- does not have a severe physical or mental impairment;
- that the appellant's DLA's 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, the appellant does not require the significant help or supervision of another person, 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.

Severe physical impairment:

The appellant's position is that she has been diagnosed with severe facial post-herpetic neuralgia, bilateral knee osteoarthritis with right knee replacement in 2011, chronic left knee pain (waiting for surgery) and arthritis in her hands.

The Advocate Submission states that the physician, on the PR, answered questions #1 and #2 of Section D – Functional Skills incorrectly, in that he indicated that the appellant could walk 4+blocks unaided and climb 5+ stairs unaided as he also noted that the appellant uses a cane and handrail. The Advocate Submission states that because a cane and handrail are required, it is clear that these tasks are not completed unaided. The Advocate Submission also states that the Physician's Letter provides further detail and confirms the severity of the appellant's physical impairment, indicating that the appellant's condition has deteriorated in the six months since the PR was completed, that the appellant is now unable to walk any distance without a walker. The Advocate Submission also states that although the advocate prepared the Physician's Letter, the appellant's physician read it and confirms that he checked off the applicable boxes to confirm where, in his opinion, the appellant is directly and significantly restricted in her ability to perform DLA and required significant help to perform those DLA.

The appellant's position is that her physical impairment is severe and that the ministry has narrowly interpreted the legislation.

The ministry's position is that although the appellant has some difficulties with walking lengthy distances and going up/down stairs the limitations described by the physician do not establish that the appellant's functional skill limitations are significantly restricted and do not establish that the appellant has a severe physical impairment. The ministry states that the Physician's Letter was reviewed and considered and does provide much more detail than the information in the PR. However, the ministry's position is that the Physician's Letter provides elaboration and magnification without any information to suggest a deterioration in the appellant's physical function to warrant the discrepancies. At the hearing, the ministry representative noted that there are also discrepancies within the Physician's Letter itself in that the physician did not check off the box indicating that the appellant is unable to walk any distance without a walker but then checked off the box for transportation which indicates "*always with a walker*".

The ministry states that as the appellant had a right knee replacement, there is no rationale for pain in the scale of 7 out of 10 in that knee. The ministry also states that as the appellant is on a wait list for left knee surgery, any physical impairment caused by the osteoarthritis in this joint is unlikely to continue at that extent for 2 or more years.

The ministry also reports that while the Physician's Letter notes lifting is restricted to 5 pounds and affects the

appellant's ability to carry groceries home, but personal shopping carts are available and usage is common in the appellant's age group.

Panel Decision

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 panel finds that a medical practitioner, the appellant's general practitioner, has diagnosed the appellant with severe post-herpetic neuralgia, depression, bilateral knee osteoarthritis that is chronic. The panel also finds that an orthopedic surgeon has diagnosed the appellant with severe left knee medial compartment arthritis and the Clinical Records and Physician's Letter indicate that the appellant's physical impairment has gotten considerably worse during the five months that passed from the time the PR was completed until the time the Physician's Letter was provided for reconsideration. Although the PR indicated that the appellant could walk 4+blocks unaided and climb 5+ stairs unaided, the physician indicates that the appellant requires the use of a cane and handrail.

In the Physician's Letter, the physician reports that the appellant uses a cane all the time, uses a handrail to climb stairs, and is limited to lifting 2 to 7 kg, she has no limitations with being seated. In addition, although the AR indicates that the appellant uses an assistive device with walking indoors and outdoors, climbing stairs, standing, lifting, and carrying and holding, there is no additional information provided to indicate that the appellant takes significantly longer than typical with those activities.

The panel finds that the functional limitations noted by the general practitioner in the PR, AR, Physician's Letter and the Surgeon Letter indicate that the appellant has a severe physical impairment. Although the ministry argues that the physician has not provided any information to suggest a deterioration in the appellant's condition to support the information on the Physician's Letter, the panel finds that the Clinical Records contain entries confirming that the appellant's left knee pain was getting worse and that she was prescribed increased medication to deal with the increased pain. In addition, the orthopedic surgeon also confirms that the appellant has severe left knee arthritis. Although the Surgeon Letter indicates that the appellant's knee range of motion was full, the surgeon confirms that the appellant has severe left knee arthritis, the surgeon also states that there is "*intense medial joint line tenderness on palpation*". This is consistent with the appellant's evidence and the reports of pain contained in the Clinical Records.

Although the ministry states that as the appellant has had a right knee replacement there is no rationale for pain in the scale of 7 out of 10 that the appellant reports. However, the panel finds that there is no evidence to indicate that the appellant is exaggerating her pain and no evidence to suggest that this appellant cannot have knee pain even after surgery.

The evidence points to several severe impacts restricting the appellant's physical abilities. Her chronic knee pain limits her ability to walk without a cane or a walker, she is restricted with use of public transportation, household tasks including vacuuming, dishes, laundry, obtaining groceries, getting in and out of vehicles, and showering safely. Given these impacts on the appellant's ability to function effectively, the panel finds that the ministry's reconsideration decision finding that the appellant's level of independent physical functioning does not establish that the appellant has a severe physical impairment under section 2(2) of the EAPWDA was not reasonable.

Severity of mental impairment:

The appellant's position is that she suffers from depression, anxiety, and panic attacks, is sad, has little motivation, difficulty concentrating, confusion and memory difficulties. She also states that she has no social life and hardly goes out of the house at all, except to the library or appointments and has no friends except the witness.

In the Advocate Submission, the appellant's advocate states that the physician reports, and the PR, confirm significant restrictions with cognitive and emotional functioning (executive, memory, emotional disturbance, motivation and attention) due to the appellant's chronic pain, depression and medication. The Advocate Submissions state that as the appellant's physician, who has been her doctor for more than 10 years, is in the best position to determine whether her impairments are severe and that it is unreasonable that the ministry does not accept the physician's assessments. The Advocate Submission also states that when a program exists through a government body it must have reasonable and obtainable criteria to qualify and that the medical evidence in this case is sufficient to satisfy the legislated criteria. The Advocate Submission states that the ministry must use their discretion fairly and liberally and give appropriate weight to the evidence provided by the medical professionals, viewing the overall picture in its totality.

The ministry states that the physician reports that the appellant has several deficits to cognitive and emotional functioning (i.e. executive, memory, emotional disturbance, motivation and attention/concentration due to chronic pain, depression and medication, and the appellant has some difficulty with some tasks of DLA. However, the ministry found that as the physician reports that the appellant's communication is good, that she can make personal decisions with respect to personal activities, care and finances, is able to interact with others, albeit marginally, the narrative is not supportive of a severe mental health condition that significantly limits her function either continuously or periodically for extended periods.

The ministry also reports that the Physician's Letter references severe depression throughout, the physician reports moderate response to medication. While the Physician's Letter reports anxiety, panic attacks and insomnia, remedial measures such as medication and psychotherapy are available to ameliorate these symptoms.

Panel Decision

Although the AR indicates that the appellant's ability to communicate is good, the evidence of the prescribed professional, the appellant's physician, confirms that the appellant has been diagnosed with depression and on the PR the physician reports that the appellant has significant deficits with cognitive and emotional function in 5 of the 11 listed areas. With respect to impacts on daily functioning, the AR indicates four major impacts on emotion, attention/concentration, memory and motivation, three moderate impacts on bodily functions, consciousness and executive and one minimal impact on insight and judgment. Although the Physician's Letter may have been prepared by the appellant's advocate, the panel finds that the physician signed the letter and confirmed that he checked, or did not check, the applicable boxes regarding the appellant's restrictions. The panel accepts that this is the physician's medical opinion which also confirms the appellant's diagnoses of anxiety and panic attack in addition to depression. The panel also notes that while anxiety was not listed as a diagnosis on the PR, it is noted in the AR under section B, mental or physical impairment, so that is not a new diagnosis. The panel also finds that the Physician's Letter, while providing additional information regarding the appellant's mental impairment, is consistent with the impact to daily functioning reported in the PR and AR.

Although the physician reports that the appellant's ability to communicate in all areas is good, the physician also notes, on the AR and in the Physician's Letter, that her motivation is extremely low and she has problems with social aspects of her life. This is also consistent with the appellant's evidence and the witness's evidence.

The evidence points to several severe impacts restricting the appellant's mental abilities including chronic fatigue requiring lying down partly due to mental fatigue, severe depression, poor memory recall, poor motivation, cries often, sleep interruption, some suicidal thoughts, takes medication every night, poor short

term memory, unable to maintain concentration, difficulty keeping focus on conversation, poor impulse control, emotional disturbance and difficulty interacting with people and difficulty dealing with unexpected situations. The physician's evidence and in particular the Clinical Records, confirm that the appellant takes three different medications for her depression, anxiety and sleep disruption, and despite some benefit from medication, the appellant's impairment and consequent restrictions persist.

Given these impacts on the appellant's ability to function effectively, the panel finds that the ministry's decision, which concluded that the evidence does not establish a severe mental impairment under section 2(2) of the EAPWDA, was not reasonable.

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 as confirmed by her physician. In particular, the appellant states that the witness comes to help her four to five days per week for a few hours each day with vacuuming, dishes, tidying up, taking her shopping and making sure she is safe while she showers.

The ministry's position is that the evidence of the prescribed professional establishes that many activities are performed independently, periodic help is needed to regulate diet, continuous help is needed to do basic housekeeping, carrying purchases home, food preparation and cooking, filling prescriptions, getting in/out of a vehicle and using public transit. The ministry's position is that physical restriction is likely not the cause for the need for help from another person as you are able to walk 4+ blocks and to lift up to 15 pounds. The ministry notes that while periodic supervision is reportedly required with all aspects of social functioning due to social withdrawal, poor motivation and depression, marginal functioning is reported in relationships with both immediate and extended social networks. The ministry's position is that as many DLA are performed independently or require help due to lack of motivation rather than inability to perform the task, the information from the prescribed professional does not establish that the impairment significantly restricts DLA either continuously or periodically for extended periods.

Panel Decision

The legislation requires that a severe impairment directly and significantly restricts the appellant's ability to perform DLA either continuously or periodically for extended periods. The term "directly" means that there must be a causal link between the severe impairment and the restriction. The direct restriction must also be significant – it must be more than trifling and more than merely an inconvenience. Finally, there is a component related to time or duration. The direct and significant restriction may be either continuous or periodic. If it is periodic it must be for an extended time. Inherently, an analysis of periodicity must also include consideration of the frequency. All other things being equal, a restriction that only arises once a year is less likely to be significant than one which occurs several times a week. While the legislation must be interpreted in a large and liberal manner, there still must be sufficient evidence on each of the legislative criteria to reasonably satisfy the ministry that they have been met.

In the AR, the physician reports that the appellant's mental impairment directly restricts 7 of the 8 prescribed DLA set out in EAPWDA section 2(1)(a) in relation to a person who has a severe physical impairment (*prepare own meals, perform personal hygiene and self care, shopping for personal needs, using public or personal transportation facilities, perform housework, move about indoors and outdoors, manage personal medication*). The physician indicated that the appellant is unrestricted in only one of the 8 prescribed DLA, managing personal finances. With respect to personal hygiene and self care, the panel notes that the physician indicates that the appellant is independent with these some tasks, it takes her significantly longer for dressing and bathing and she requires periodic assistance with regulating diet due to mood fluctuations.

The AR also indicates that the appellant's mental impairment directly restricts the two prescribed DLA set out

in section 2(1)(b), making decisions about personal activities, care or finances and relating to, communicating or interacting with others effectively. In particular, the AR reports that the appellant needs periodic supervision with all listed tasks and has marginal functioning with immediate and extended social networks. Although the physician may not have provided any additional information regarding the amount of assistance, the Physician's Letter provides additional information with respect to the appellant's restrictions arising from both her physical and mental impairments. For example, the Physician's Letter reports that it takes the appellant three times longer than a normal person for the appellant to start her day and that she needs help getting in and out of vehicles 50-70% of the time

The evidence clearly indicates direct and significant restrictions to the appellant's DLA periodically for extended periods. For example, the Physician's Letter states that the appellant requires significant help with personal care for motivation, continuous assistance because of her arthritis, that it takes her three times longer than a normal person to start her day and activities associated with personal care take her three times longer than a normal person. The Physician's Letter also states that the appellant puts off basic housework for weeks because of her depression and lack of motivation (gets help from friends), help with laundry, shopping (anxiety about her financial situation), transportation (agoraphobia, walking and standing restrictions, always with a walker), getting in and out of vehicles (requires periodic assistance 50-70% of the time), banking, budgeting and paying bills (requires assistance most of the time because of lack of concentration), needs support to maintain social network and completing forms. The physician also reports that her condition and symptoms vary from day to day so her needs vary from day to day, but overall she has a significant need for assistance with DLA.

Given the restrictions in the appellant's ability to perform DLA, the panel finds that the ministry's decision that the noted restrictions in the appellant's ability to perform some aspects of some DLA did not constitute a direct and significant restriction of the appellant's ability to perform DLA either continuously or periodically for extended periods, thereby not satisfying the legislative criteria of section 2(2)(b)(i) of the EAPWDA, was not reasonable.

Help with DLA

The appellant's position is that she requires help with DLA including housework, showering, mobility, obtaining groceries and social interactions. The appellant's evidence is that her friend helps her for several hours, four to five days per weeks and that without that help she would need a nurse. The appellant also stated that she requires a cane or walker almost all the time.

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

Section 2(2)(b)(ii) of the EAPWDA requires that, in the opinion of a prescribed professional, 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) of 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.

In the AR, the evidence of a prescribed professional establishes that the appellant would benefit from a mental health worker to assist the appellant with making social decision, developing and maintaining relationships, interacting appropriately with others, dealing appropriately with unexpected demands and securing assistance with others. In the Physician's Letter, the physician provides further information elaborating on the appellant's need for assistance including help with personal care, emotional support for coping with pain management, support to maintain social networks and for completing tasks such as completing forms. The physician reports that overall, the appellant can be considered a significant need for assistance with her DLA.

The witness provided considerable detail of the tasks that she assists with the appellant and the considerable amount of time that she spends at the appellant's house, helping her with various household and personal tasks.

The evidence is that there is a demonstrable need for the appellant to get significant help from someone to maintain her home (basic housework and laundry), activities associated with personal care (showering, meal preparation, cooking, putting on her shoes, shopping), transportation, mobility (getting in and out of vehicles), support with social functioning and support to cope with her pain management. The panel also notes that while the AR indicated that the appellant was independent with banking, and paying her rent with bills, at the time of the Physician's Letter, completed five months later, the physician reports that she requires assistance with these tasks due to lack of concentration and fatigue. As the appellant's impairments have worsened in the five months since the PR and AR were completed, the panel finds that the remaining evidence supports that the appellant's condition has worsened and that she required more help now than at the time the PR and AR were completed. The panel finds that the Physician's Letter and the evidence of the appellant and the witness are all consistent regarding the appellant's need for help.

Therefore, the panel finds that the ministry's determination 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 was not reasonable.

Conclusion

Having reviewed and considered all of the evidence and relevant legislation, the panel finds that the ministry's reconsideration decision which determined that the appellant was not eligible for PWD designation was not reasonably supported by the evidence and was not a reasonable application of the applicable legislation in the circumstances of the appellant, and therefore rescinds the reconsideration decision.