

PART C – Decision under Appeal

The decision under appeal is the Ministry of Social Development and Social Innovation (the ministry) reconsideration decision dated July 10, 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, 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 information dated January 21, 2013 and the physician report and assessor report both completed by a general practitioner who has treated the appellant for approximately 4 to 5 years and dated January 26, 2013, as well as the following:

- 1) Letter dated December 23, 2010 from another general practitioner to a claims representative with ICBC and stating in part that the general practitioner has treated the appellant for 2 years. At the time of their first meeting, the appellant described about 10 years of low back pain (LBP) which she had been managing with regular exercise, occasional Tylenol #3 and occasional over-the-counter anti-inflammatories. At that time, she was working up to 10 hours a day, up to 5 days a week, and would frequently work all day and then drive for 90 minutes to visit grandchildren. She was involved in a motor vehicle accident (MVA) on September 1, 2009. The general practitioner diagnosed severe soft tissue injury (STI) and query fractured scapula. The X-Rays showed the scapula and sternum were normal. A CT scan of the neck showed degenerative changes and some bulging of the discs. Since the time of the accident, the appellant has suffered from severe neck and left shoulder pain. She developed a recurrent depression following the MVA most likely secondary to pain, sleep disruption and inability to work. The neurosurgeon felt that most of her symptoms were from STI and degenerative discs and noted that surgery was not indicated. Currently, she has pain all day, every day and some days are incapacitating. She manages a few short days of work a week. She is completely disabled from all recreational activities as she cannot sit or stand for more than 2 hours without exacerbating the pain;
- 2) Medical History Summary dated February 16, 2013 setting out the current problem list as fibromyalgia, insomnia, Post Traumatic Stress Disorder, Meniere disease, COPD, degenerative cervical intervertebral, degenerative disc disease lumbar, hypertension, and depression; and,
- 3) Request for Reconsideration dated February 20, 2013.

Diagnoses

The appellant has been diagnosed by her general practitioner with fibromyalgia, anxiety/depression, COPD, PTSD [Post Traumatic Stress Disorder], and degenerative cervical and lumbar disc disease.

Physical Impairment

- In the physician report under health history, the general practitioner indicated that the appellant has "ongoing pain in shoulder/neck/ trapezius area, ongoing myalgias, LBP, pain severe."
- Functional skills reported in the physician report indicated that the appellant can walk 4 or more blocks unaided, she can climb 5 or more steps unaided, she has no limitation with lifting and can remain seated for 1 to 2 hours.
- The general practitioner reported that the appellant has been prescribed medications that interfere with her ability to perform her daily living activities (DLA), with an explanation that they are "sedating", and the appellant does not require any aids for her impairment.
- In the physician report, the general practitioner indicated that the appellant is not restricted with mobility inside and outside the home.
- In the assessor report, the appellant is assessed as independent with walking indoors and walking outdoors, with climbing stairs, standing, and with lifting and carrying and holding. Comments in the general practitioner's handwriting are: "...not from prolonged periods or repetitively. Requires help at times."
- In her self-report included with the PWD application, the appellant wrote that she has an herniated disc in her lower back, neck and shoulder injury, and fibromyalgia. The appellant wrote that it is very hard to do just about anything. She cannot sit or stand for very long and has to change positions often.
- The appellant wrote that "some days the fibromyalgia is a dull roar" and some days she feels like she has "been beaten with a baseball bat."

Mental Impairment

- The general practitioner diagnosed anxiety/depression and PTSD, and wrote in the health history that the appellant has "...anxiety and depression causing increasing isolation, low mood, poor concentration, poor coping skills/ rationalizing. Childhood traumas causing PTSD symptoms."
- The general practitioner reported that the appellant has no difficulties with communication and has a good ability to communicate in all areas.
- In the physician report, the general practitioner indicated that there are significant deficits in the appellant's cognitive and emotional functioning in the area of memory, emotional disturbance, motivation, impulse control, motor activity and attention or sustained concentration.
- In the assessor report, the general practitioner assessed a major impact to the appellant's cognitive and emotional functioning in the area of emotion and moderate impacts in impulse control, insight and judgment, attention/concentration, and executive. There are minimal or no impacts assessed to the remaining 9 areas of functioning. The general practitioner commented that the appellant's depression is resistant to treatment.
- The general practitioner indicated that the appellant is not restricted with social functioning and independently manages all 5 listed aspects, including making appropriate social decisions, developing and maintaining relationships, interacting appropriately with others, dealing appropriately with unexpected demands, and securing assistance from others. She is assessed with marginal functioning in both her immediate and extended social networks with no further comments provided by the general practitioner.
- In her self-report, the appellant wrote that her depression "...is suicidal at sometimes." She does not feel joy in very much anymore and she does not have any energy to do anything anymore.

Daily Living Activities (DLA)

- In the physician report, the general practitioner wrote that "...all basic functions are difficult to perform. She will not cope with gainful employment."
- In the physician report, in response to the question whether the appellant's impairment directly restricts her ability to perform DLA, the general practitioner has marked "no." The general practitioner reported that the appellant is not restricted with personal care, meal preparation, management of medications, basic housework, daily shopping, mobility inside and outside the home, use of transportation, management of finances and social functioning.
- In the additional comments to the physician report, the general practitioner wrote that "...any activity requires huge effort which is then followed by severe muscle pain."
- In the assessor report, the appellant is assessed as independent with walking indoors and walking outdoors, 4 or more blocks unaided without the use of an assistive device.
- The general practitioner reported that all listed tasks of the DLA personal care are performed independently without any noted restrictions.
- The appellant is assessed as independent with laundry and basic housekeeping, and the general practitioner added a comment that the appellant is "...unable to do housework like vacuuming or sweeping. Basic tasks and small laundry load takes extra time."
- For shopping, the general practitioner assessed the appellant as independent with all tasks, including going to and from stores, reading prices and labels, making appropriate choices, paying for purchases, and carrying purchases home.
- The general practitioner reported that the appellant is independent with all tasks of meals with no additional comments provided by the general practitioner.
- All listed tasks for the DLA paying rent and bills, medications and transportation are managed independently with no noted restrictions.
- The general practitioner assessed the appellant as being independent in all areas of social functioning.

- In her self-report, the appellant wrote that dishes, vacuuming, sweeping and bed-making "are hell and take time" for her to do. Shopping is a "real chore" since she cannot walk around the store very long and she will get what she needs and get out.

Need for Help

- The general practitioner reported that the appellant lives with family, friends or caregiver and does not use an assistive device.
- The general practitioner indicated that the help required for DLA is provided by family and friends.

In her Notice of Appeal, the appellant expressed her intention to dispute the reconsideration decision since she is severely impaired and cannot sit, stand or walk for any length of time. She also cannot drive more than 15 or 20 minutes. She cannot do household chores. She cannot carry or pick up her young grandson. She has help with household chores and with shopping and requires the help.

Prior to the hearing, the appellant provided a copy of her handwritten journal entries (20 pages) for the period May 27, 2013 through June 25, 2013 which included the following:

- The appellant experiences pain every day which she assessed on a scale from 1 to 10, with 10 being the most pain, and it ranged from 4 to 9 each day.
- With pain assessed at 9, the appellant could not walk more than half a block and she went back to bed. After sleeping, the pain reduced to 6 and was able to go out for coffee.
- When the pain was assessed as 8.5, the appellant went to bed and stated that she would like to find stronger medications as the pain is "unbearable."
- With pain assessed at 8, the appellant could walk her dogs but not bathe or get out of her pajamas all day. Soaking in a hot tub brought the pain down to level 5 which the appellant described as "bearable" and she was able to go grocery shopping. At this level, the appellant was also able to unpack boxes.
- Even with the pain level at 5, the appellant spent a day in bed as she stated she had no motivation. She stated that she was tired and upset and managed the evening walk with the dogs "but nothing else."
- When the pain was assessed at 6 to 7, the appellant stayed on her bed and stated that Tylenol 3's "don't even touch it."
- With the pain at level 4 which the appellant described as "manageable", the appellant was able to do some housekeeping, pick up some groceries, walk her dogs, do some cooking, as well as go for coffee.
- The appellant wrote that the pain from fibromyalgia is manageable but the pain in her back, neck, shoulders, hips, legs, arms and down into her feet that is hard to deal with. The appellant wrote that the Tylenol 3's are not working anymore and she cannot sit and wait at the clinic to get pain killers.

At the hearing, the appellant's room-mate provided the following evidence:

- He has known the appellant for a long time and, before her first accident, she was an outgoing person. She had been working for some years with a company and she was able to work although she was in a lot of pain and taking sleeping pills on a daily basis but she could function.
- In 2009, he and the appellant were in a car accident and she could not work as much after the injuries she sustained. She returned to her current community in April 2013 and they are room-mates.
- He sees that the appellant is in a great deal of pain every day. The appellant will attempt to do some household chores and he ends up having to complete them because she is in too much pain. He does the housework for the most part. Some days, she is in too much pain to get out of bed.
- He makes the beds, does the dishes and cooking and the cleaning. He also goes grocery shopping with her and he will drive her to see her children.
- When the appellant says she has a level 4 pain, she can get around OK but when it gets up to a level 6

she is struggling.

- He observes that the appellant tries to hide her pain when she is around friends and family and they do not understand her situation.
- More recently he has noticed that the appellant will suddenly drop something because she cannot maintain a grip. She cannot walk any distance, maybe a block or two, and she cannot sit or stand for too long. If she does anything, it is a strain on her and if she does too much, she becomes immobile.

At the hearing, the appellant provided the following oral evidence:

- The appellant stated that part of the challenge she faces is that doctors do not want to spend more than 10 minutes in their office. She cannot find a doctor to help her because she has so many issues and it takes them too much time.
- The appellant stated that the reports filed with the PWD application were completed by her previous family physician in another community. The appellant clarified that although the physician wrote that she treated the appellant for 4 to 5 years, the appellant was only in that community for 2 years so this is an error. The appellant consulted with an advocate who wrote up some papers and sent them to the physician to complete but she was away for a month and then said she would not complete the documents because the appellant is no longer her patient. The appellant stated that she had to get her appeal in so she did not seek an update from another doctor.
- The appellant stated that her family physician asked her a few questions when the reports were completed and the appellant answered based on her understanding of the questions. The appellant stated that while she can lift a 5-lb. bag and put it on a table, for example, she cannot carry the bag for any distance. She understood that if she could push through the pain to do something then it meant that she was independent in doing the activity. At that time, her roommate and her friends were doing many things for her because she could not.
- The appellant stated that her family physician in her new community has refilled her prescriptions for anti-depressant medications and prescribed one pain killer and referred her to the pain clinic. She cannot get an appointment at the pain clinic until she has the results from a CT scan which is scheduled for November 30, 2013. The problem with this pain medication is that it is also hard on her stomach.
- The appellant stated that she was seeing a counselor in her previous community but has not been referred to someone in her current community yet.
- The appellant stated that sometimes the pain is so bad that feels desperate and has considered getting heavier pain medications "off the street."
- The appellant stated that she tries to protect people from the reality of her situation because she does not want them to feel sorry for her. She is a "worker bee" and if she could work, she would.
- With the pain that she experiences, her quality of life is diminished and she is not getting the help that she needs. She might be able to do things for a couple of days when her pain is reduced, but there is never a day without pain. The appellant stated that sometimes her COPD acts up and makes it hard to breathe.
- The appellant stated that she is willing to consider surgery if it would allow her to get back to work, but the doctor is unsure about 'fusion' as an option.
- The appellant stated that her fibromyalgia acts up if she has not been sleeping enough and it feels like she be black and blue all over. In reality, she looks OK on the outside, but she does not feel OK on the inside. She hates to take medications but she could not function without them. She needs to stop taking Tylenol 3's because they are starting to affect her stomach but she cannot find a doctor to prescribe other pain medications.
- The appellant stated that her depression results in her not getting out of bed many days because she feels really tired. On those days, she sometimes wonders why she is even here.

APPEAL #

The ministry did not object to the admissibility of the appellant's journal entries. The panel admitted the 20 pages from the journal and the oral evidence, pursuant to Section 22(4) of the Employment and Assistance Act, as providing further detail relating to the appellant's medical conditions and being in support of information and records that were before the ministry on reconsideration.

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 established by the evidence of her pain as a result of fibromyalgia and degenerative cervical and lumbar disc disease. The appellant argued that the evidence from her physician reflects the lack of time taken to complete the reports and the appellant's misunderstanding of the questions. The appellant argued that her evidence along with that of her roommate shows that she is in constant pain and it has an impact on her functioning.

The ministry's position is that it is not satisfied that the information provided is evidence of a severe physical impairment. The general practitioner indicated that the appellant is able to walk 4 or more blocks unaided and to climb 5 or more steps unaided, that she has no limitation with lifting and can remain seated for 1 to 2 hours. The ministry argued that in terms of mobility and physical ability, the general practitioner reported that the appellant is independent in all of her mobility and physical abilities however not for prolonged periods or repetitively and that the appellant may "require help at times." The ministry argued that no information was provided by the general practitioner regarding what type or how often the appellant requires assistance.

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 about 2 years, diagnosed the appellant with fibromyalgia, COPD, and degenerative cervical and lumbar disc disease. While the Medical History Summary dated February 16, 2013 also lists Meniere disease and hypertension, there is no description of the impacts of these conditions or an opinion by the medical practitioner that they will continue for 2 years or more, as required by the legislation. In the physician report, the general practitioner indicated that the appellant has "...ongoing pain in shoulder/neck/ trapezius area, ongoing myalgias, LBP, pain severe." The general practitioner reported that the appellant is not restricted with mobility inside and outside the home and assessed the appellant as independent with walking indoors and walking outdoors, with climbing stairs, standing, and with lifting and carrying and holding. Comments in the general practitioner's handwriting are: "...not from prolonged periods or repetitively. Requires help at times." In a letter dated December 23, 2010, another general practitioner reported that since the time of a MVA on September 1, 2009, the appellant has suffered from severe neck and left shoulder pain. The general practitioner reports that the neurosurgeon to whom the appellant was referred felt that most of her symptoms were from STI and degenerative discs and noted that surgery was not indicated.

In her self-report, the appellant wrote that she has an herniated disc in her lower back, a neck and shoulder injury, and fibromyalgia. The appellant wrote that it is very hard to do just about anything. She cannot sit or stand for very long and has to change positions often. The appellant wrote that "some days the fibromyalgia is a dull roar" and some days she feels like she has "been beaten with a baseball bat." In her handwritten journal entries (20 pages) for the period May 27, 2013 through June 25, 2013, the appellant wrote that she experienced pain every day which ranged from 4 to 9 each day, out of a maximum of 10. There were some days that she remained in bed because she found the pain unbearable. At the hearing, the appellant stated that she might be able to do things for a couple of days when her pain is reduced, but there is never a day without pain. Despite the appellant's description of her experience of pain, the general practitioner reported that the appellant has a high level of functional skills and does not require an aid for her impairment, indicating in the physician report that the appellant can walk 4 or more blocks unaided, she can climb 5 or more steps unaided, she has no limitation with lifting and can remain seated for 1 to 2 hours. 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 physician's diagnosis of anxiety/depression and PTSD and evidence of the several impacts these conditions have on her daily functioning.

The ministry's position is that the general practitioner identified significant deficits in cognitive and emotional functioning in the areas of memory, emotional disturbance, motivation, impulse control, motor activity, and attention or sustained concentration but the impacts are assessed as major to emotion, moderate to impulse control, insight and judgment, attention/concentration and executive and minimal or no impact to the remainder of her cognitive and emotional functioning. The ministry argued that the information provided by the general practitioner is not sufficient to establish a severe mental impairment.

Panel Decision

In the physician report, the general practitioner diagnosed the appellant with anxiety/depression and PTSD and wrote that the appellant has "...anxiety and depression causing increasing isolation, low mood, poor concentration, poor coping skills/ rationalizing. Childhood traumas causing PTSD symptoms." In the physician report, the general practitioner indicated that there are significant deficits in the appellant's cognitive and emotional functioning in the area of memory, emotional disturbance, motivation, impulse control, motor activity and attention or sustained concentration. In the assessor report, the general practitioner assessed a major impact to the appellant's cognitive and emotional functioning in the area of emotion and moderate impacts in impulse control, insight and judgment, attention/concentration, and executive. There are minimal or no impacts assessed to the remaining 9 areas of functioning. The general practitioner commented that the appellant's depression is resistant to treatment. The appellant reported that her depression causes her to be suicidal at times, that she is taking anti-depressant medications but has not been referred to a mental health specialist in her new community.

The panel finds that the information regarding the appellant's ability to function in terms of specific daily tasks does not reflect a severe impairment of mental functioning. In particular, the general practitioner indicated in the assessor report that the appellant has no restrictions and is independent in all five areas of social functioning. While the appellant is assessed with marginal functioning in both her immediate and extended social networks, the general practitioner has not provided an explanation for this apparent discrepancy. The appellant also independently manages all other listed "mental" tasks of daily living, including no restrictions with making appropriate choices and paying for purchases when shopping, as well as managing her finances, medications and transportation. The general practitioner reported that the appellant has no difficulties with communication and has a good ability to communicate in all areas. The panel finds that the ministry reasonably determined that a severe mental impairment was not established under Section 2(2) of the EAPWDA.

Restrictions in the ability to perform DLA

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

The ministry's position is that the evidence of the general practitioner indicated that the appellant has no restrictions to her DLA. The ministry argued that the general practitioner reported that all of the appellant's DLA are performed independently and there was no indication that she takes significantly longer to perform them. The ministry argued that while the general practitioner reported that the appellant is unable to do housework like vacuuming or sweeping and basic tasks like laundry take extra time, there is not enough evidence from the general practitioner to establish that the impairments significantly restrict the appellant's ability to manage her DLA continuously or periodically for extended periods.

Panel Decision

In the physician report, the general practitioner wrote that "...all basic functions are difficult to perform" and, in the additional comments, the general practitioner also wrote that "...any activity requires huge effort which is then followed by severe muscle pain." However, in the physician report, the general practitioner indicated that the appellant's impairment does not directly restrict her ability to perform DLA, and all of her DLA are marked as not restricted.

In the assessor report, the appellant is assessed by the general practitioner as independent with all tasks of meals, paying rent and bills, shopping, transportation, personal care, and managing medications, with no additional comments provided. The general practitioner also reported that the appellant is independent with

walking indoors and walking outdoors, 4 or more blocks unaided without the use of an assistive device. The appellant is assessed as independent with laundry and basic housekeeping, and although the general practitioner added a comment that the appellant is "...unable to do housework like vacuuming or sweeping" and "basic tasks and small laundry load takes extra time," there is no detail provided about the amount of "extra time" the appellant takes. In her self-report, the appellant wrote that dishes, vacuuming, sweeping and bed-making "are hell and take time" for her to do. Shopping is a "real chore" since she cannot walk around the store very long and she will get what she needs and get out. The appellant wrote in her journal that, when her pain was at level 4 and "manageable", she was able to do some housekeeping, pick up some groceries, walk her dogs, and do some cooking, but if it was closer to 8 or 9 she would remain in bed and was incapacitated.

For those DLA relating to a person with a severe mental impairment, the general practitioner reported in the PWD application that the appellant is independent with making appropriate social decisions and with interacting appropriately with others although she has marginal functioning with both her immediate and extended social networks. The general practitioner reported that the appellant has no difficulties with communication and has a good ability to communicate in all areas.

The panel finds that the evidence of the prescribed professional shows that the majority of the tasks of DLA are performed by the appellant independently without the need for assistance that is either continuous or periodic for extended periods of time. The panel finds that the ministry reasonably concluded that there is not enough evidence from the prescribed professional to establish that the appellant's impairment significantly restricts her ability to manage her DLA either continuously or periodically for extended periods, thereby not satisfying the legislative criterion of section 2(2)(b)(i) of the EAPWDA.

Help to perform DLA

The appellant's position is that she requires the significant assistance of another person to perform DLA, namely her roommate. The appellant argued that her roommate makes the beds, does the dishes, cooking and the cleaning and he also goes grocery shopping with her.

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

Panel Decision

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

The general practitioner indicated that the appellant lives with family, friends or a caregiver and that help required for DLA is provided by her family and friends. The appellant's roommate described helping the appellant with some tasks of housekeeping, meal preparation and shopping. 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.