

PART C – Decision under Appeal

The decision under appeal is the Ministry of Social Development and Social Innovation's (the ministry) reconsideration decision dated May 31, 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

PART E – Summary of Facts

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

- 1) The appellant's Request for Reconsideration (RFR) dated May 2, 2013 requesting an extension of time as she is waiting for medical reports from another province and is not sure if they will arrive in time;
- 2) The appellant's Request for Reconsideration (RFR) dated May 24, 2013 with no additional information included in the box to be completed stating the RFR;
- 3) Letter from the appellant's physician dated May 22, 2013 (Physician's Letter);
- 4) Chart Summary dated August 8, 2010 to April 6, 2011;
- 5) MRI Left Shoulder dated April 19, 2011;
- 6) Attending Physician's Statement dated August 3, 2010;
- 7) PWD Designation Decision Summary dated April 4, 2013; and
- 8) A PWD application comprised of a Self-report (SR) signed by the appellant on November 20, 2012; a Physician Report (PR) dated November 27, 2012 completed by the appellant's general practitioner; and an Assessor Report (AR) dated November 27, 2011 and completed by the appellant's general practitioner. On the PR the generally practitioner notes that the appellant's first visit was October 12, 2011 and he has seen the appellant 2-10 times in the last year.

In the Notice of Appeal the appellant states that she is waiting for a referral to a nerve specialist and that the past medical records and physician reports are incomplete.

Adjournment Request

At the hearing the appellant requested an adjournment as she is still waiting for her medical records from another province and because the new doctor she is seeing wants to send her for further medical investigations. The ministry stated that as a previous adjournment was granted in order to allow the appellant to obtain her previous medical records from another province, as well as other medical records she wanted to support her appeal, the appeal should proceed and that if the appellant was not successful on this appeal she could obtain further records and re-apply.

The panel notes that in the RFR dated May 2, 2013 the appellant stated that she was waiting for further medical reports and records, and that the hearing initially set for June 27, 2013 was adjourned in order to allow the appellant an opportunity to obtain and provide further records. Since that time, although the appellant states that she has obtained a new physician, there is no evidence other than her oral testimony to indicate that she has made any further attempts to obtain her medical records from another province. The panel notes that the appellant states that she has no funds to obtain the additional medical records, and there is no indication that a further adjournment will result in the records being obtained in the near future. The appellant has not provided any information to indicate that she has made reasonable efforts to obtain the medical records from another province in order to have them for the hearing.

While the panel notes that it may be beneficial for the appellant to have an opportunity to obtain further medical information that may support her application, there will be little detrimental impact in refusing the adjournment as the appellant can re-apply for PWD designation in the future if her appeal is not successful. In addition, the panel notes that the appellant could have requested an adjournment earlier but did not do so until the date of the appeal. While there may not be any prejudice to the ministry by granting the appellant's request for an

adjournment, the panel also notes that one objective of the legislation is to provide a speedy appeal hearing. Taking all of these factors into consideration, the panel finds that the hearing should proceed and the appellant's request for an adjournment is denied.

Admissibility of New Evidence

At the hearing the appellant provided additional oral testimony regarding her impairment and circumstances. She reports that she used to be a hairdresser, ballroom dancer, piano player and writer but because of a motor vehicle accident, slip and fall, workplace injury, bulging disc, and fibromyalgia, she can't sit for long, can't play piano much, needs help carrying her groceries, cannot walk far, and has ongoing pain in her back that radiates down her leg to her right ankle. The appellant reports that she has a pinched nerve between her shoulder blades that causes stabbing pain between her shoulder blades. She reports that her hip pain has limited her sexual relations and her spouse has now left her. She also reports that she has not worked since 2009 and she is depressed because she needs dentures, has bills to pay, and because she can't do very much and needs her daughter to help her with almost everything but that when her daughter moves out she does not know what she will do and may need some kind of assisted living.

The appellant also reports that because she has no molars she requires Ensure but she is running out of it and has no funds to purchase any more. She also states that her sleep is very disturbed, that she only goes out twice a month for grocery shopping and has no other social interactions. The appellant states that her physician wanted her to try a pain medication but she refused because she does not want drugs except Tylenol. The appellant also stated that she has recently obtained a new general practitioner who wants to send her for further medical investigations regarding her ongoing symptoms.

The panel admitted the oral testimony into evidence as it was in support of the information before the ministry at the time of reconsideration in accordance with section 22(4) of the *Employment and Assistance Act*. In particular, the oral testimony provided additional information regarding the appellant's physical impairment and the impact on her functioning.

Physical Impairment

In the SR, the appellant states that her disability is as follows: constant back pain from three bulging discs in her back, left shoulder and elbow pain, muscle incompetence in arms, asthma getting worse, top teeth very bad and require removal as soon as possible as per her dentist orders, left knee tendons and ligaments, right hip fracture 1999, right hand arthritis and arthritis in her spine. The appellant states that her back and hip pain prevent her from vacuuming, driving more than 20-30 minutes and that although she wore a hip brace for a few months it did not help. She reports that her disability interferes with her sexual relations and has caused her relationship to break up. She reports that her right hand arthritis makes her unable to hold onto cutlery or dishes for more than five minutes and due to arm and shoulder pain she cannot carry groceries to her car, put her hair up in a ponytail, put her bra on, or shovel snow. She also states that she cannot play piano (which she has loved to do for over 30 years) due to shoulder and arm pain as her muscles cramp and give way. The appellant states that she cannot play outdoor games with her children (running, playing, tobogganing, skating, or baseball) and that she cannot walk for more than 5-10 minutes without pain and exhaustion. The appellant also states that she is exhausted by noon and has to rest for 1-2 hours daily, cannot drive

In the PR, the general practitioner reports that the appellant has degenerative disc disease as per a CT spine 2011, left-sided shoulder syndrome, COPD vs. Asthma (definitive testing not documented) and chronic dental pain and pathology. Under the "Health History" section, the physician reports multiple documentations of dental problems; records indicate family abuse (psychiatric evaluation requested but no record was completed), records indicate only one acute episode suggestive of asthma, mild chronic changes noted on MRI of shoulder, mild/moderate changes noted on CT of spine.

Functional skills reported in the PR indicate that the appellant can walk 1 to 2 blocks unaided, can climb 2 to 5 stairs, can lift under 5 pounds and can remain seated less than one hour (then back/hip pain). 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 is independent with walking indoors, walking outdoors, climbing stairs, and standing but requires periodic assistance with lifting and carrying and holding. The physician explains that the appellant's children help with carrying and lifting (groceries and laundry). Under the "comments" section the physician further notes that the appellant had whiplash 20 years ago, the MRI April 19, 2011 indicates tendinopathy left shoulder, that the chart notes of January 25 and 27 indicate that the appellant "injured left shoulder while carrying bag on bus", and that she was referred to physiotherapy but there was no report from the physiotherapist.

Under Part E – Additional Information, the physician reports that the chart note of April 2011 notes a call from a supervisor wanting to know why the appellant was not employable. The note indicates that the physician could not see anything, but would wait for the MRI report.

The Chart Summary indicates that the appellant was previously diagnosed with fibromyalgia. It also indicates that the appellant reported that she has a lot of money, has many designer clothes and has made millions from her CD's. It also reports that she has songs she would like to record on CD but that her fibromyalgia prevents her from recording music. The Chart Summary indicates that her religion doesn't allow her to do drugs or even take Tylenol but that when fibromyalgia medications were discussed, the appellant stated she could not afford them.

The Physician's Letter states that completion of the forms has been slowed by incomplete records. He notes that the MRI right wrist was received after completion of the PR and AR and it was read as normal. He also states that nerve conduction studies of the upper extremities would help clarify some of the appellant's complaints and that a medical assessment by a neurologist, orthopedic surgeon, and/or physiatrist would be helpful.

At the hearing the appellant stated that she has constant, daily pain, particularly stabbing shoulder pain, back and hip pain that radiates down her leg to her ankle, and that she requires help from her daughter with household tasks and carrying groceries. The appellant reports that because of her impairments she has not been able to work since 2009 and her recreational activities that she loves, particularly piano playing, are very limited.

Mental Impairment

In the SR the appellant does not provide any reports of mental impairment.

In the PR, the general practitioner reports that the appellant has significant deficits with cognitive and emotional function in the area of emotional disturbance. The physician reports that the records highly suggest depression and post-traumatic stress, but there is no record of any psychiatric evaluation and these diagnoses are not entered anywhere in the records.

In the AR, the physician reports that the appellant's ability to communicate in speaking, reading and hearing is good and that her writing is satisfactory due to vision difficulties (plans to see eye doctor but cannot afford). For section 4, cognitive and emotional functioning, to be completed for an applicant with an identified mental impairment or brain injury, the appellant's physician reports that there is no impact to the following areas: consciousness, impulse control, insight and judgment, attention/concentration, executive, memory, language, psychotic symptoms, and other neuropsychological symptoms. There is minimal impact reported to motivation and other emotional or mental problems and moderate impact to bodily functions (lots of sleep disturbance), emotion, and motor activity. Under the comments section the physician notes that depression and "other" not

well described by the appellant, and that sounds most to me, like frustration, may be real primary but not previously documented/evaluated or treated. The physician also notes that on March 31, 2011 the appellant declined mental health or social services referral.

The Chart Summary indicates that on April 15, 2011 the appellant was referred for psychiatric assessment but an appointment had not yet been set. The Chart Summary also indicates that the appellant reported that she does not have a psychiatric history, has a lot of money, owns designer clothes, and has made millions from her CD's.

At the hearing the appellant stated that she is depressed because her impairments have resulted in the breakup of her relationship and because her dental problems require immediate attention but she has no funds to pay for the dental work that she needs.

DLA

In the SR, the appellant states that she needs help from others with carrying, lifting, vacuuming, shopping, and is unable to play with her children or perform outside activities.

In the PR, the general practitioner reports that the appellant's impairment continuously restricts her ability to perform DLA of basic housework and mobility outside the home, and that she has periodic restrictions with respect to daily shopping, mobility inside the home and use of transportation. The physician reports that the appellant is not restricted with DLA of personal self care, meal preparation, management of medications, daily shopping, management of finances, or social functioning. The physician comments that these restrictions are based on the appellant's reports and not independently documented. Under additional comments, the physician indicates "see pt's statement".

In the AR, the physician reports that the appellant is independent with the following tasks: dressing, grooming, bathing, toileting, feeding self, regulating diet, transfers (in/out of bed), transfers (on/off of chair), 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 medications as directed, safe handling and storage of medications and getting in and out of a vehicle.

In the AR, the physician reports that the appellant requires periodic assistance from another person with the following tasks: laundry, basic housekeeping, going to and from stores, and continuous assistance with carrying purchases home. The physician reports that the appellant requires help from her children due to her musculo-skeletal complaints, but does not use a cane, walker, or other device. He also notes that she avoids public transportation because the fumes set off her asthma.

With respect to social functioning, the general practitioner reports that the appellant is independent with all areas: making appropriate social decisions, developing and maintaining relationships, interacting appropriately with others, dealing appropriately with unexpected demands and securing assistance from others. The physician reports that the appellant has marginal functioning with her immediate social network and good functioning with her extended social networks.

At the hearing, the appellant stated she has significant limitations with respect to sitting, standing, walking, carrying and lifting items, particularly groceries.

Need for Help

In the SR, the appellant states that she needs help with her daily home chores as well as shopping and carrying items and that her children help her with these activities.

APPEAL #

In the PR the physician reports that the appellant needs assistance from family members with respect to basic housework, shopping, mobility inside and outside the home and use of transportation.

In the AR, the physician reports that the appellant's children help with carrying and lifting (groceries and laundry), has help from a friend and that she may need outside assistance if/when her children move out of the home. The physician reports that no assistance is provided through the use of assistive devices and that the appellant does not have an assistance animal.

At the appeal, the appellant stated that she cannot do very much and needs her daughter to help her.

PART F – Reasons for Panel Decision

The issue on the appeal is whether the ministry's reconsideration decision denying 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 severe physical impairments, namely fibromyalgia, degenerative disc disease, nerve problems causing stabbing pain between her shoulder blades, hip pain that radiates down her leg into her ankle that result in limitations with respect to walking, sitting, sleeping, household tasks, and recreational activities. The appellant also states that her physical impairment has resulted in the loss of her relationship. She also states that she has been unable to work since 2009.

The ministry's position is that while they acknowledge that the appellant's physical impairments may impact her functional abilities, the functional skills limitations described by the general practitioner are more in keeping with a moderate degree of impairment and that the evidence does not establish that the appellant has a severe physical impairment. The ministry acknowledges that the appellant may be undergoing further investigations that may be helpful to provide a more concise and clear picture of how her impairments impact her physical functioning. However, based on the documentation at the time of reconsideration, the ministry's position is that the information provided by the prescribed professional, the appellant's general practitioner, does not establish a severe physical impairment as required for PWD designation.

Panel Decision

The panel finds that a medical practitioner, the appellant's general practitioner, has diagnosed the appellant with degenerative disc disease, left sided shoulder syndrome and chronic dental pain and pathology. The panel notes that while the general practitioner indicates that the appellant may have COPD or asthma, he also indicates that definitive testing is not documented and there is only one acute episode suggestive of asthma.

The panel notes that there is inconsistency between the PR and AR, even though they were both completed by the general practitioner. For example, on the PR, the physician reports that the appellant is restricted with mobility inside and outside the home, but in the AR, the same physician reports that the appellant is independent with walking indoors, walking outdoors, climbing stairs, and standing. Although the information indicates that the appellant requires periodic assistance with lifting and carrying and holding and that the appellant's children help with carrying and lifting (groceries and laundry), there is no further information to explain the frequency or duration of the assistance provided. In addition the physician notes that the identified restrictions are based on the appellant's self reports and not independently documented.

At the hearing the appellant stated that her physician was hoping that the ministry or the tribunal would refer the appellant for nerve conduction studies or further assessments with a neurologist, orthopedic surgeon and/or physiatrist but the panel explained that their role is limited to determining whether the ministry's reconsideration decision was reasonable or not.

The panel notes that the physician, in the PR and AR, reports that the appellant's restrictions are based on her self-reports, and are not independently documented. While it may be that the physician does not understand the appellant's daily struggles and functional limitations, and while the legislation 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, 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 the functional limitations described by the general practitioner indicate that the appellant's functional limitations are in the moderate range rather than severe.

Although the appellant may be unemployable, the panel notes that employability is not a legislated criterion for designation as PWD.

The panel concludes that based on all of the evidence but particularly that of the prescribed professional, the ministry reasonably determined 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. Therefore, the panel finds that the ministry's decision, which concluded that the evidence does not establish a severe physical impairment under section 2(2) of the EAPWDA, was reasonable.

Severity of mental impairment:

The appellant's position is that she is depressed due to her teeth, financial difficulties and loss of her relationship. The appellant stated that she has attended counseling in the past but was reluctant to include any reports from the past as she was worried about how she would be viewed.

The ministry's position is that although there is a significant deficit identified in the area of cognitive and emotional functions regarding emotional disturbance, and that the physician reports that the records are highly suggestive of depression and post traumatic stress, there are no psychiatric records and no mental impairment is diagnosed. The ministry's position is that based on the information provided by the general practitioner, there is not enough information to establish a severe mental impairment.

Panel Decision

While the physician comments that the records are highly suggestive of depression and/or post traumatic stress, there is no diagnosis of a mental impairment and the physician reports that the appellant's ability to communicate in speaking, reading and hearing is good.

Despite the fact that there is no identified mental impairment or brain injury, the physician completed section 4, cognitive and emotional functioning, to be completed for an applicant with an identified mental impairment or brain injury, the appellant's physician reports that there is no impact to the following areas: consciousness, impulse control, insight and judgment, attention/concentration, executive, memory, language, psychotic symptoms, and other neuropsychological symptoms. There is minimal impact reported to motivation and other emotional or mental problems and moderate impact to bodily functions (lots of sleep disturbance), emotion, and motor activity.

Although the appellant reports that she has had counseling in the past she did not submit any of those records because she was worried how she might be viewed, the panel notes that the Chart Summary had previously indicated that she did not have a psychiatric history. The panel also notes that the general practitioner noted that the medical records dated March 31, 2011 indicate that the appellant declined mental health or social services referral and the Chart Summary indicates that on April 15, 2011 the appellant was referred for psychiatric assessment but an appointment had not yet been set.

The panel notes that there is also inconsistency between the PR and AR. For example, in the PR, the physician reports that the appellant is not restricted with respect to social functioning, but in the AR, he reports that she is independent in social functioning but has marginal functioning in her immediate social network and good functioning with her extended social network. This information is also inconsistent with the appellant's evidence as she reports that she only goes out twice per month and has almost no social interactions with anyone besides her children.

The panel finds that the ministry's decision, which found that there are some impacts to the appellant's functioning, but not enough evidence to establish a severe mental impairment under section 2(2) of the EAPWDA, was reasonable.

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 including housework, walking, sitting, standing, dancing, playing piano and writing.

The ministry's position is that based on the information provided by the appellant's physician, there is not enough evidence to establish that the appellant's impairments directly and significantly restrict her DLA continuously or periodically for extended periods. The ministry notes that although the physician reports, on the PR, that the appellant is periodically restricted in her ability to manage mobility inside the home and use of transportation and has continuous restrictions with basic housework and mobility outside the home, there is no specific description of the nature and extent of the assistance required from family members. The ministry also states that although the physician reports that the appellant has continuous assistance with carrying purchases home, this limitation in and of itself does not provide evidence of a significant restriction in the appellant's ability to manage DLA. The ministry's position is that as the general practitioner reports that she is able to independently or with periodic assistance manage 27 out of 28 DLA, there is not enough evidence to establish that her impairments directly and significantly restrict DLA continuously or periodically for extended periods.

Panel Decision

The legislation requires that in the opinion of a prescribed professional 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 a few times 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.

Based on the evidence in the PR and AR, the evidence of the prescribed professional indicates that the appellant's impairment directly restricts 2 of the 8 prescribed DLA in relation to a person who has a severe physical impairment as per EAPWDA section 2(1)(a) (*use of public transportation and perform housework*). Both the PR and AR identify restrictions with transportation and housework. However, despite the continuous restriction noted with housework, the AR only indicates that periodic assistance is required with housework, which makes sense given that the appellant is reportedly independent with walking indoors, walking outdoors, climbing stairs and standing and only requires periodic assistance with lifting and carrying and holding. With respect to transportation, the AR prescribed professional indicates that the appellant avoids public transportation because of diesel fumes, which set off her asthma, but reports that the appellant is otherwise independent with getting in and out of a vehicle and independently transports herself by vehicle.

The general practitioner indicated that the appellant is unrestricted in 4 of the 8 prescribed DLA (*prepare own meals, manage personal finances, personal hygiene and self care, and manage personal medication*).

The evidence of the general practitioner is not consistent with respect to the remaining 2 of the 8 prescribed DLA (*shop for personal needs, move about indoors and outdoors*). For example, in the PR the physician reports that the appellant's shopping is not restricted but in the AR he reports that she requires periodic assistance with going to and from stores. In the PR the physician reports that the appellant has restrictions with mobility inside and outside the house but on the AR, the physician reports that the appellant is independent with walking indoors, walking outdoors, climbing stairs, and standing.

With respect to a person who has a severe mental impairment, the evidence regarding the additional two prescribed DLA, the physician reports that the appellant is not restricted with respect to making decisions about personal activities, care or finances. With respect to relating to, communicating or interacting with others effectively, the physician reports that the appellant's only restriction is that her functioning with her immediate social network is marginal.

The panel finds that while there are noted restrictions to some aspects of 2 of the 8 prescribed DLA and inconsistent evidence regarding 3 DLA, there is no additional information to indicate how much or how often the appellant requires periodic assistance, under what circumstances the periodic assistance is required, or whether it takes the appellant significantly longer to perform any of the DLA.

The panel concludes that the ministry was reasonable in finding that the appellant's impairment does not significantly restrict her ability to perform DLA, either continuously or periodically for extended periods.

Therefore, the panel finds that the ministry reasonably determined that, based on the evidence provided by the prescribed professional, 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 thereby not satisfying the legislative criteria of section 2(2)(b)(i) of the EAPWDA.

Help with DLA

The appellant's position is that she needs help with her household tasks and grocery shopping and that she has to rely on her children for help. The appellant states that when her children move out she does not know what she will do.

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.

The panel accepts the appellant's evidence that she requires some assistance from her two children that live with her. However, the evidence does not establish that the appellant requires the significant help or supervision of another person in order to perform DLA. For example, there is no additional information provided by the prescribed professional, as to the amount, frequency or duration of help or supervision performed by the appellant's children.

Based on the evidence, 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 significant help to perform DLA as a result of those restrictions as required by EAPWDA

section 2(2)(b)(ii).

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 a reasonable application of the applicable legislation in the circumstances of the appellant. Therefore, the panel confirms the ministry's reconsideration decision.