

APPEAL #

PART C – Decision under Appeal

The decision under appeal is the reconsideration decision of the Ministry of Social Development and Social Innovation (the Ministry) dated August 26, 2013 which denied the appellant designation as a person with disabilities (PWD) on the basis that she did not meet three of the five statutory requirements of Section 2 of the *Employment and Assistance for Persons with Disabilities Act* for designation as a PWD. The Ministry found that the appellant met the age requirement and that her impairment is likely to continue for at least two years. However, the Ministry was not satisfied that the evidence establishes that:

- the appellant has a severe physical or mental impairment;
- the appellant's daily living activities (DLA) are, in the opinion of a prescribed professional, directly and significantly restricted either continuously or periodically for extended periods; and,
- as a result of these restrictions, the appellant requires the significant help or supervision of another person, the use of an assistive device, or the services of an assistance animal to perform DLA.

PART D – Relevant Legislation

*Employment and Assistance for Persons with Disabilities Act* (EAPWDA), Section 2  
*Employment and Assistance for Persons with Disabilities Regulation* (EAPWDR), Section 2

## PART E – Summary of Facts

The evidence before the Ministry at the time of the reconsideration decision included the Person With Disabilities (PWD) Application comprised of the applicant's self report (SR) completed March 8, 2013, together with a physician report (PR) and an assessor report (AR), both dated March 8, 2013 and both completed by the appellant's family physician who indicated he had treated her for 3 years, as well as the Ministry's PWD designation decision summary dated June 5, 2013, and a written submission from the appellant dated September 5, 2013.

Just prior to the hearing, the appellant provided the following additional documents to the panel:

- A letter from her counselor dated October 9, 2013 in which he has written: "This letter will confirm that [the appellant] has been in my psychological care from December of 2008 to February of 2009 and again from September of 2011 to this present time. She suffers from disabling anxiety and has not been able to work. She has experienced only moderate response to treatment." (Document #1)
- A letter from the appellant's chiropractor dated October 10, 2013 who indicates that the appellant seeks care at his office 2-6 times per year to help with headaches and "musculoskeletal nature of her illness." In this letter, the chiropractor indicates that the appellant has been his patient since 2009 and her main complaints include "general body ache that is focused in the neck, mid to low back, soles of the feet and headache. She also experiences abdominal cramping, dysmenorrhea, and sleep disturbance. She describes fatigue as a major inhibiting factor to activities of daily living and work tasks." The chiropractor writes that the appellant struggles with concentration and mental focus, and does not tolerate well lifting or repetitive tasks. The chiropractor writes: "As a result of this she has not been able to work for two years now. This has created some level of anxiety and she has been prescribed medication for depression and anxiety. She seems to have the most difficulty with physical tasks or with tasks related to increased need to concentrate, large audiences such as in a department store, or where there is heightened noise." (Document #2)

The appellant lives with her mother and father. The appellant's mother attended the hearing with the appellant and testified at the hearing.

The panel will first summarize the evidence from the appellant's physician in the PR and AR relating to the appellant's impairments as it relates to the PWD criteria at issue. We will then summarize the information provided by the appellant in her SR, together with her testimony at the hearing, and the additional documents and evidence provided at the hearing.

### *Diagnoses*

In the PR, the appellant's physician diagnoses the appellant's impairment as Fibromyalgia, multiple chemical sensitivities and depression/anxiety, all with the onset of 2007.

### *Physical Impairment*

- In the PR, the appellant's physician indicated in the health history that the appellant has Fibromyalgia with the following bulleted conditions: generalized myalgia, insomnia, depression/anxiety, fatigue, exercise intolerance and "emotional lability." He also wrote "multiple chemical sensitivity – sensitive to chemicals fragrances."
- The appellant's physician checked "No" in response to the question on the PR "has the applicant been prescribed any medication and/or treatments that interfere with his/her ability to perform DLA?"
- Functional skills reported in the PR indicated that the appellant can walk less than 1 block unaided on a flat surface, she can climb 2 to 5 steps unaided, she can lift under 2 kg (5 lbs), she can remain seated for 1-2 hours.

- In the AR, the appellant's physician wrote "Fibromyalgia" in response to the question "what are the applicant's mental or physical impairments that impact his/her ability to manage daily living activities?" The appellant's physician indicated in the AR that the appellant is independent in all areas of mobility and physical ability, indicating she takes significantly longer than typical, writing "takes 3-4 times longer to do the ADL's."

#### *Mental Impairment*

- In the PR, the appellant's physician checked "Yes" in response to the question "are there any significant deficits with cognitive and emotional functioning?" The appellant's physician checked the areas of emotional disturbance (depression, anxiety) and attention or sustained concentration, but did not provide any narrative to explain his response or add details of the severity of her anxiety.
- In the PR, the physician reported no difficulties with communication and, in the AR, indicated that the appellant has good ability to communicate in all areas (speaking, reading, writing and hearing).
- In the AR, the appellant's physician checked "no impact" for 9 of the 14 items listed in the cognitive and emotional functioning section for an applicant with an identified mental impairment or brain injury. The appellant's physician indicated "low impact" for the 5 areas of emotion (e.g. excessive or inappropriate anxiety, depression etc), attention/concentration (e.g. distractible, unable to maintain concentration, poor short term memory), memory (e.g. can learn new information, names etc. and then recall that information; forgets over-learned facts), motivation (e.g. lack of initiative; loss of interest), and other emotional or mental problems (e.g. hostility). The appellant's physician did not provide any additional narrative in the comments section about any of these items, including the nature of the "other" emotional or mental problems.
- Further in the AR, the appellant's physician checked "independent" in 3 of the 5 social functioning tasks, but that she requires periodic support/supervision in the 2 social functioning tasks of DLAs of able to develop and maintain relationships and able to deal appropriately with unexpected demands. The appellant's physician reported the appellant has marginal functioning with her immediate and extended social networks, noting "avoids social situations" and "can do the above just takes longer."

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

- Although the appellant's physician completed both the PR and the AR, he completed the section for DLA in the PR, which is not required if the same person is also completing the AR. In the PR, the appellant's physician indicated that the appellant's impairment directly restricts her ability to perform DLA. He checked that her activity is restricted continuously in the following 5 areas: personal self care, meal preparation, basic housework, daily shopping and mobility outside the home. The appellant's physician indicated that her activity was not restricted in management of medications, mobility inside the home, use of transportation, management of finances or social functioning. The appellant's physician wrote in this section of the PR, "general restricted in activities of daily living" as well as the comment, "she can do these things herself but takes 3-4 X longer to do them."
- In the AR, the appellant's physician indicated that the appellant was able to perform all of the listed mobility and physical ability activities independently (walking indoors and outdoors, climbing stairs, standing, lifting, carrying and holding) but that she takes significantly longer than typical. The appellant's physician has written, "takes 3-4 times longer to do the ADLs."
- The panel notes that one page of the AR was missing from the appeal materials – on this page of the standard AR form (page 17 of 23) the assessor is asked to indicate the assistance required related to the applicant's impairment(s) that directly restrict the applicant's ability to manage in the areas of personal care (dressing, grooming, bathing, toileting, feeding self, regulating diet, transfers in and out of bed and transfers on and off a chair), basic housekeeping (laundry and basic housekeeping) and shopping (going to and from stores, reading prices and labels, making appropriate choices, paying for purchases, and carrying purchases home).
- In its reconsideration decision, the Ministry refers to the information set out on the missing page of the

AR noting that the appellant's physician indicates that she is "independent in all areas [of DLA], including personal care, basic housekeeping, shopping, meals, paying rent and bills, medications, and transportation. [The appellant's] physician indicates that [the appellant takes] significantly longer in some areas, noting "takes 3-4 [times] longer." However, he does not indicate that [the appellant] requires assistance from another person or require the use of an assistive device to manage [her] daily living activities."

- In the remaining pages of the AR available to the panel, the appellant's physician indicated that the appellant is independent for all of the listed DLAs in the areas of meals (meal planning, food preparation, cooking, safe storage of food), paying rent and bills (banking, budgeting and paying rent and bills), medications (filling/refilling prescriptions, taking as directed, safe handling and storage) and transportation (getting in and out of a vehicle, using public transit and using transit schedules and arranging transportation). The appellant's physician checked that the appellant takes significantly longer than typical for all aspects of meals (meal planning, food preparation, cooking and safe storage of food) and all aspects of paying rent and bills (banking, budgeting and paying rent and bills), writing "takes 3-4 X longer."
- Given that the appellant's physician's responses on the pages of the AR included in the appeal materials indicate that the appellant is independently able, but takes significantly longer – 3-4 times longer – to perform all of the listed DLAs, as noted by the Ministry in its reconsideration decision, the panel accepts as fact the Ministry's statement in the reconsideration decision that the appellant's physician indicated in the AR that the appellant is able to perform the listed DLA (personal care, basic housekeeping, and shopping) independently but takes 3-4 times longer than typical. The panel notes that at the hearing, the appellant did not challenge the Ministry's recounting of her physician's responses to these questions on the AR.

#### *Need for Help*

- The appellant's physician reported in the AR that the appellant lives with her mother and father (which was confirmed by both the appellant and her mother during the hearing). There was no indication in the PR or AR by the appellant's physician that she requires an assistive device or an assistive animal.

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

In the SR portion of the PWD application, as well as in her written submission on reconsideration and in her testimony at the hearing, the appellant described the symptoms of her Fibromyalgia, telling the panel that she has constant pain in her neck and back and finds it difficult to stand for long periods, and that the pain wakes her up several times in the night. She also described her multiple chemical sensitivities (for example, exposure to fragrances causes severe headaches and dizziness), and the food allergies she experiences which causes her to have stomachaches. She told the panel she has restricted her food intake and dietary choices as a result (she told the panel she avoids any foods with soy, for example). The appellant told the panel that she has scoliosis and that because of the curvature of her spine which tilts her shoulders forward, when she is exposed to chemicals or fragrances, she has difficulty breathing and her scoliosis exacerbates the situation as her lungs are compressed. She described that she can't keep up with her friends and experiences a great deal of anxiety as she is afraid she will be exposed to chemicals or fragrances. The appellant suffers from severe menstrual cramps and this has also affected her mood.

At the hearing, the appellant told the panel that she tried taking medication for her anxiety, but that it made her symptoms much worse. She said that she takes some Tylenol for her pain, occasionally taking a Tylenol 3 if the pain is very bad, but that she doesn't like to take these medications because they will affect her other symptoms. When asked by the panel to describe what a typical day is like for the appellant, she told the panel she typically sleeps late as she has insomnia and difficulty sleeping (as a result of her pain) so she sleeps as late as she can. She says that she doesn't eat much, but might eat what her mother prepares for her (for example, she said she'd had perogies for breakfast the previous day). The appellant said she will work on her

computer, but that she can't concentrate for long periods or sit for long periods, so this will often only be for 10-15 minute periods. She said that she often watches "Anime" as she can lay down to do this. She told the panel she will often go out with her mother in the car to run errands, although she sometimes stays in the car because of her anxiety. She said she tries to go for walks, but not very far or for very long.

The appellant told the panel that her doctor did not complete the PWD application forms correctly – that he should have provided more information about the severity of her impairments. The appellant and her mother both expressed frustration with the appellant's physician and told the panel that the physician is no longer in practice and the appellant (and her family) no longer have a family physician. The appellant told the panel that the information provided by her counselor in Document #1 and by her chiropractor in Document #2 provides a more accurate description of her impairments and the effects of her impairments on her ability to perform DLA than that provided by her physician in the PWD application materials. The Ministry representative did not object to the admission of Documents #1 and #2.

The panel admits the additional evidence provided by the appellant in Documents #1 & #2 as written testimony in support of the information that was before the Ministry at the time the decision being appealed was made, pursuant to subs. 22(4)(b) of the *Employment and Assistance Act*. The information in Document #1 from the appellant's counselor confirms that the appellant suffers from anxiety, as noted by her physician in the PWD application materials. Document #2 also provides information from the appellant's chiropractor that the appellant suffers from the symptoms of Fibromyalgia and reports difficulty concentrating, as well as increased anxiety, which is also noted by the appellant's physician in the PWD application materials.

The appellant is a young woman who lives at home with her mother and father. The appellant's mother told the panel that she does all of the cooking for the family, that her daughter doesn't cook. The appellant confirmed this, and told the panel that she needs to learn how to cook so that she can feed herself foods that don't aggravate her symptoms. The appellant's mother described how she takes the appellant to all of her appointments and shopping, but that sometimes the appellant has to stay in the car as a result of her anxiety about being exposed to fragrances or chemicals or large crowds. The appellant's mother confirmed that she does most of the housework, as well as all of the grocery shopping, although the appellant told the panel she cleans her own room, makes her own bed, takes a shower and dresses herself.

Although the appellant's mother did not indicate to the panel that she would provide evidence and was with the appellant during the entire teleconference hearing, the panel admitted the evidence of the appellant's mother as oral testimony in support of information that was before the Ministry at the time the decision being appealed was made, pursuant to subs. 22(4)(b) of the *Employment and Assistance Act*, namely, that the appellant lives with her mother and father and receives assistance from family members for tasks related to her DLA.

## PART F – Reasons for Panel Decision

The issue on the appeal is whether the Ministry's determination that the appellant is not eligible for designation as a PWD, was reasonably supported by the evidence or was a reasonable application of the applicable enactment in the circumstances of the appellant. The Ministry found that the appellant does not have a severe mental or physical impairment and that her daily living activities (DLA) are not, in the opinion of a prescribed professional, directly and significantly restricted either continuously or periodically for extended periods and that, as a result of those restrictions, it could not be determined that the appellant requires the significant help or supervision of another person, the use of an assistive device, or the services of an assistance animal to perform DLA.

The criteria for being designated as a PWD are set out in Section 2 of the EAPWDA as follows:

### Persons with disabilities

2 (1) In this section:

"**assistive device**" means a device designed to enable a person to perform a daily living activity that, because of a severe mental or physical impairment, the person is unable to perform;

"**daily living activity**" has the prescribed meaning;

"**prescribed professional**" has the prescribed meaning.

(2) The minister may designate a person who has reached 18 years of age as a person with disabilities for the purposes of this Act if the minister is satisfied that the person has a severe mental or physical impairment that

(a) in the opinion of a medical practitioner is likely to continue for at least 2 years, and

(b) in the opinion of a prescribed professional

(i) directly and significantly restricts the person's ability to perform daily living activities either

(A) continuously, or

(B) periodically for extended periods, and

(ii) as a result of those restrictions, the person requires help to perform those activities.

(3) For the purposes of subsection (2),

(a) a person who has a severe mental impairment includes a person with a mental disorder, and

(b) a person requires help in relation to a daily living activity if, in order to perform it, the person requires

(i) an assistive device,

(ii) the significant help or supervision of another person, or

(iii) the services of an assistance animal.

(4) The minister may rescind a designation under subsection (2).

Section 2(1)(a) of the EAPWDR defines DLA for a person who has a severe physical or mental impairment as follows:

### Definitions for Act

2 (1) For the purposes of the Act and this regulation, "**daily living activities**",

(a) in relation to a person who has a severe physical impairment or a severe mental impairment, means the following activities:

(i) prepare own meals;

(ii) manage personal finances;

(iii) shop for personal needs;

(iv) use public or personal transportation facilities;

- (v) perform housework to maintain the person's place of residence in acceptable sanitary condition;
  - (vi) move about indoors and outdoors;
  - (vii) perform personal hygiene and self care;
  - (viii) manage personal medication, and
- (b) in relation to a person who has a severe mental impairment, includes the following activities:
- (i) make decisions about personal activities, care or finances;
  - (ii) relate to, communicate or interact with others effectively.

### **Severe Physical Impairment**

The appellant's position is that she has a severe physical impairment – that her Fibromyalgia and multiple chemical sensitivities (together with her anxiety and depression as described below) cause her to be totally disabled. She said that her family physician did not accurately describe the severity of her symptoms and the impact of her impairments in the PWD application materials of March 2013, but because her physician is no longer in practice, she cannot get him to provide additional information about the severity of her impairments and she relies on the additional evidence in Documents #1 and #2. The appellant did not assert that as a result of her impairments, she is completely unable to perform any specific DLA, but repeatedly told the panel she takes much longer to perform many DLA, or that she gets her mother to do them for her, and she has great difficulty concentrating and focusing.

In the reconsideration decision, the Ministry determined that it was not satisfied that the information provided establishes that the appellant has a severe physical impairment. The Ministry noted that the appellant's physician had indicated in the PR that she was able to walk unaided for less than 1 block, could climb 2-5 steps unaided, lift under 2 kg, and remain seated for 1-2 hours. The Ministry also noted that in the AR, the appellant's physician had indicated that the appellant is able to manage all of her DLA independently, although it takes her "3-4 times longer" to manage her mobility and physical ability DLAs. According to the Ministry in the reconsideration decision, the functional skill limitations described by the appellant's physician are more in keeping with a moderate degree of physical impairment.

### *Panel Decision*

The diagnosis of a medical condition is not itself determinative of a severe impairment. To assess the severity of an impairment, one must consider the nature of the impairment and its impact on the appellant's ability to manage her DLA as evidenced by functional skill limitations, the restrictions to DLA, and the degree of independence in performing DLA. The Ministry describes this approach well when it defines the word "impairment" in the PR as being "a loss or abnormality of psychological, anatomical or physiological structure or function causing a restriction in the ability to function independently, effectively, appropriately or for a reasonable duration." This definition is not set out in legislation and is not binding on the panel, but in the panel's view it quite appropriately describes the legislative intent.

The legislation clearly provides that the determination of severity of impairment is at the discretion of the minister, taking into account all of the evidence including that of the appellant. However, the legislation is also clear that the fundamental basis for the analysis is the evidence from a prescribed professional respecting the nature of the impairment and its impact on daily functioning.

The appellant's family physician of 3 years diagnosed the appellant with the physical impairments of Fibromyalgia and multiple chemical sensitivity. However, in the section of the PR asking the appellant's physician to provide details of the severity of the appellant's medical conditions relevant to her impairment, the appellant's physician did not provide information about the severity of her impairments – instead, he listed her symptoms. At the hearing, the appellant reiterated to the panel that the pain caused by her Fibromyalgia and the symptoms of her multiple chemical sensitivity (dizziness and severe headaches) are severe and she feels

that as a result, she is disabled because she cannot function like a normal person of her age – she cannot work and had to quit her job at a department store as a result. While the appellant told the panel she suffers from scoliosis, there is no evidence before the Ministry or the panel from a prescribed professional confirming that the appellant has scoliosis.

In terms of functional skills, the appellant's physician reported in March 2013 in the PWD materials that the appellant can walk less than 1 block unaided on a flat surface, can climb 2-5 steps unaided, can lift under 2 kg and can remain seated for 1-2 hours. The appellant's physician did not provide any narrative with the functional skills assessment.

In the DLA section of the AR available to the panel, the appellant's physician indicated that the appellant is independent but takes significantly longer than typical with all of the listed mobility and physical ability DLAs (walking indoors and outdoors, climbing stairs, standing, lifting, carrying and holding), as well as the DLAs of meals, paying rent and bills, medications, and transportation DLAs, writing "takes 3-4 times longer." The panel accepts that the appellant's physician indicated that she is able to independently perform the DLAs of personal care, basic housekeeping and shopping, but takes significantly longer than typical as noted by the Ministry in its reconsideration decision, and this is supported by the testimony of both the appellant and her mother at the hearing.

The evidence demonstrates that the appellant is able to independently perform all the DLAs, although she may take 3-4 times longer than typical to do them. Although several of the DLA are performed by her mother because the appellant lives with her parents, there is no indication from the appellant's physician or a prescribed professional that the appellant cannot physically perform these DLA. The appellant and her mother agreed that her mother performs many of the appellant's DLA for her as the appellant lives at home with her parents; however, the appellant's mother did not tell the panel that her daughter is physically incapable of performing any DLAs.

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

### **Severe Mental Impairment**

The appellant's physician diagnosed the appellant with anxiety and depression. The appellant told the panel she had taken medication for her anxiety and depression in the past, but she felt that it negatively affected her and she does not take medications anymore. The appellant's physician reported in the PR that the appellant has not been prescribed any medications or treatments that interfere with her ability to perform her DLA. The appellant's physician indicated in the PR that she has significant deficits with cognitive and emotional functioning in the areas of emotional disturbance and attention or sustained concentration. In the AR, the appellant's physician indicated that the appellant's mental impairment had no impact on several areas of daily cognitive and emotional functioning (bodily functions, consciousness, impulse control, insight and judgment, executive, motor activity, language, psychotic symptoms or other neuropsychological problems). The appellant's physician reported in the AR that the appellant's mental impairment has minimal impact on her daily cognitive or emotional functioning in the areas of emotion, attention/concentration, memory, motivation and "other emotional or mental problems" but provided no narrative to explain his answers.

In its reconsideration decision, the Ministry determined that a severe mental impairment had not been established as the appellant's family physician reported that she has minimal to no impacts on daily functioning due to cognitive and emotional functioning, and that the appellant has no difficulty with communication and her ability to communicate is good in all areas. The Ministry found that the information provided by the appellant's physician did not satisfy it that the appellant has a severe mental impairment.

*Panel Decision*

Although the appellant's physician diagnosed the appellant with anxiety and depression in the PR, and indicated that she had significant deficits with emotional disturbance and attention or sustained concentration, he did not provide any narrative with these answers. In the AR, the appellant's physician reported the appellant does not have difficulties with communication and she has a good ability to communicate in all areas and he indicated that the appellant's mental impairment has minimal impact on her daily cognitive and emotional functioning in the areas of emotion, attention/concentration, memory, motivation and "other" without any narrative to explain the nature or degree of the impact. The appellant's physician noted in the AR that the appellant requires periodic support in 2 of the 5 areas of social functioning (able to develop and maintain relationships, and able to deal appropriately with unexpected demands), but did not provide any narrative to explain or describe the degree and duration of support required, writing the comment "can do the above just takes longer." The appellant's physician indicated in the AR that the appellant has marginal functioning with her immediate and extended social networks, with the comment "avoids social situations."

In its reconsideration decision, the Ministry noted that the appellant's physician did not indicate that the appellant's mental impairment has any major or moderate impacts on her cognitive and emotional functioning in the information contained in the PWD application. At the hearing, the appellant and her mother testified that the appellant restricts her activities because she is concerned she will have an anxiety attack, and told the panel that in their opinion, the appellant's anxiety has a major impact on her ability to perform DLA and on her cognitive and emotional functioning. The appellant points to the note from her counselor and the letter from her chiropractor (Documents #1 & #2) as evidence of the severity of her mental impairment and its impact on her ability to perform DLA.

While the appellant's counselor states in Document #1 that the appellant has been treated for anxiety, the evidence of the appellant's counselor does not provide additional narrative or information about the severity of the appellant's anxiety or its impact on her DLAs. Further, the information contained in the letter of the appellant's chiropractor repeats the appellant's assertions about her impairments. The panel notes that the determination of whether the appellant has a severe mental impairment is not within a chiropractor's area of practice

Therefore, the panel finds that the Ministry reasonably determined that the information provided by the appellant's physician is not evidence of a severe mental impairment 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 on an ongoing basis as she has difficulty concentrating, takes significantly longer to perform DLAs than typical, and requires the assistance of mother to perform DLAs such as cooking and shopping.

In its reconsideration decision, the Ministry found that as the majority of DLAs are performed independently or require little help from others, the information from the appellant's prescribed professional does not establish that her impairments significantly restrict her DLA either continuously or periodically for extended periods.

*Panel Decision*

The legislation requires that, in the opinion of a prescribed professional, the appellant's impairments directly and significantly restrict her ability to perform her DLAs either continuously or periodically for extended periods. The appellant's physician stated in the PR section of the PWD application that the appellant requires continuous assistance in the DLAs of personal self care, meal preparation, basic housework, daily shopping and mobility outside the home. However, on this page of the PR, the appellant's physician also wrote "she can do these things herself but takes 3-4 X longer to do them." The evidence of the appellant and her mother at

the hearing was that the appellant's mother does all of the meal preparation, basic housework, daily shopping and drives the appellant, but that the appellant is able to clean her own room, clean herself (although she will ask her mother to help her wash her hair if she is in pain), feed herself, go shopping and take walks with friends when she feels up to it. In the PR, the appellant's physician wrote, "general restricted in activities of daily living"; however, there was no evidence from a prescribed professional before the Ministry or before the panel that the appellant cannot perform any of the DLAs. In the AR, the appellant's physician wrote the comment "takes 3-4 times longer" to perform the DLAs, but again, did not indicate that the appellant's impairments significantly and directly restrict her ability to perform DLAs.

The panel is of the view that the Ministry reasonably concluded that there is insufficient evidence from the prescribed professional to establish that the appellant's impairments directly and significantly restrict 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 assistance of her mother to perform several DLAs (for example, cooking, basic housekeeping, laundry, shopping) and her mother testified that she performs these DLAs for her daughter.

The Ministry found in the reconsideration decision that because it has not been established that DLA are significantly restricted, it cannot be determined that significant help is required.

#### **Panel Decision**

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

The evidence of the appellant's physician in the AR indicates that the appellant receives assistance from her family although the appellant's physician has written only the comment that she "lives with her mother and father." The appellant's physician does not confirm that the appellant requires significant help or supervision of her mother (or other persons) to perform her DLA. While the appellant and her mother both testified before the panel about the degree to which the appellant's mother assists the appellant and performs several DLAs for her, there was no evidence before the panel that the appellant is incapable of performing these DLAs without her mother's help (for example, the appellant admitted that she does not know how to cook, not that she cannot cook). The panel finds that the Ministry reasonably determined that as direct and significant restrictions in the appellant's ability to perform DLA have not been established, it cannot be determined that the appellant requires help to perform DLA as a result of those restrictions, as defined by section 2(3)(b) of the EAPWDA.

#### **Conclusion**

Having reviewed and considered all of the evidence and relevant legislation, the panel finds that the Ministry's reconsideration decision which determined that the appellant was not eligible for PWD designation was reasonably supported by the evidence, and therefore confirms the decision.