

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 January 6, 2014 denying the appellant designation as a person with disabilities (PWD). The ministry determined that the appellant did not meet three of the five criteria required for PWD designation as set out in the *Employment and Assistance for Persons with Disabilities Act* (EAPWDA) section 2. The ministry found that the appellant meets the first two criteria of age (in that she is over 18), and that in the opinion of a medical practitioner, her impairment is likely to continue for two or more years. However, the ministry determined that, based on the information provided, the following criteria set out in section 2(2)(b) of the EAPWDA were **not** met:

- The minister is satisfied that the appellant has a severe mental or physical impairment.
- In the opinion of a prescribed professional, the appellant's impairment significantly restricts her ability to perform daily living activities (DLA) either continuously or periodically for extended periods; and
- As a result of the restrictions, the appellant requires the significant help or supervision of another person to perform the DLA restricted by her impairment.

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 reconsideration consisted of the following:

1. The appellant's PWD Designation Application, containing the following three parts:
 - The appellant's Self Report (SR) completed July 10, 2013;
 - The Physician Report (PR) dated July 15, 2013 completed by the appellant's family physician who indicates he has known the appellant for 2 years and had seen her 2-10 times in the previous year; and
 - The Assessor Report (AR) dated July 31, 2013 completed by a social worker who indicates that the date of completing the AR was her first contact with the appellant.
2. A 2-page letter dated April 26, 2011 from the head of vascular surgery at a hospital to the appellant's former physician reporting that the appellant attended at hospital in March 2011 with swelling and lump in her left wrist and an MRI showed a mass which may be a low flow vascular malformation.
3. A 2-page medical imaging report prepared March 23, 2011 confirming a lobulated mass along the volar and ulnar soft tissues of the appellant's left wrist.
4. A 2-page outpatient clinic note dated December 20, 2011 prepared by a specialist in hand surgery ("Hand Surgeon") stating "this right-hand dominant previous child care worker who is currently not working returns to see me with regards to a vascular anomaly in the left forearm." In this note, the Hand Surgeon writes, "[the appellant] continues to have daily symptoms as a result of this lesion. She avoids many activities as a result of her left forearm and hand pain and feels that her hand is quite weak. She avoids using the left hand for most heavy activities as a result of pain." The report indicates the appellant had agreed to proceed with an operation to remove the lesion.
5. A one-page ministry Medical Report-Employability form completed by the appellant's family physician on May 1, 2012 in which he identified her primary medical condition as left forearm vascular anomaly for which the expected duration was more than 2 years but the prognosis was "unknown at this time" and the physician wrote that she is "unable to use L forearm properly."
6. A 2-page outpatient clinic note dated May 1, 2013, prepared by the Hand Surgeon, in which he notes the appellant "is now almost 1 year out from attempted resection of a low-flow vascular anomaly" and that she "initially did reasonably well" but had started to develop some neuropathic pain so he had started her on pain medication. In this note, the Hand Surgeon wrote that the appellant's condition, in particular the neuropathic pain, was likely to be a chronic issue although he hoped to be able to control it with medication. The Hand Surgeon also wrote, "I would support her claim for long-term disability as she is having difficulty using the left hand and she works with children. She is unable to perform any 1-handed duties using just the right hand."
7. The appellant's request for reconsideration dated December 17, 2013 to which she attached the following:

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- One-page written submission; and
 - Two-page questionnaire prepared by the appellant's advocate and completed with handwritten notes by the Hand Surgeon and dated December 19, 2013 [the panel notes the date on the form is December 19, 2014, but this is an error].

The appellant completed her notice of appeal on January 13, 2014, and on it she wrote that "based on the facts of my case it was unreasonable to deny the PWD designation." Attached to her written submission on appeal is a one-page printout from the internet providing her Hand Surgeon's credentials. In her written submissions on appeal, the appellant indicated that the ministry has granted her status as a person with persistent multiple barriers to employment. The appellant wrote that she has a severe impairment in her left arm that directly and significantly restricts her ability to perform her DLA and, as a result, she requires assistance with the tasks of DLA.

The following is a summary of the evidence from the PR and the AR, as well as the appellant's other medical reports, as they relate to the PWD criteria at issue. The panel has also included reference to the appellant's SR in the PWD application, as well as her written submissions on reconsideration and the hearing.

Severity of impairments (criteria set out in subs. 2(2) EAPWDA)

The appellant's family physician diagnosed her in the PR as having left ulnar artery AV [arterial venous] malformation with an onset of 2011, depression onset in 2011, asthma onset in 2013 and kidney stones/nephrolithiasis onset in 2011. The left ulnar artery malformation is confirmed in all of the medical reports of the Hand Surgeon. In the PR section indicating the severity of the appellant's medical conditions relevant to her impairment, the physician wrote that the appellant's left ulnar artery malformation caused "chronic neuropathic pain" and she is "unable to use left hand for activity including feeding, bathing, writing, laundry, shopping [and] dressing." The physician indicated that the appellant has been prescribed medication that interferes with her ability to perform DLA, but did not explain the nature of the interference, only the name of the medication. The physician indicated that the appellant needs aids of bathroom grab bars for support. The physician also wrote in the PR that while likely to continue for 2 years or more, the prognosis for the appellant's impairment is "unknown or certain" and the appellant has a "severe chronic condition [that] will require further surgery."

In the 2-page questionnaire of December 19, 2013, the Hand Surgeon answered the question, "When the impact of her medical conditions on her daily functioning is considered, does [the appellant] have a severe impairment? If so, please explain" as follows: "Yes, left ulnar neuropathy secondary to ulnar artery vascular malformation – constant neuropathic pain and severe dysfunction of left hand/forearm." In his earlier report of May 1, 2013, the Hand Surgeon wrote that "as discussed with the [appellant] previously, the vascular anomaly is likely to be a chronic and sometimes even permanent issue. She is likely to have waxing and waning symptoms to a degree but always having some symptoms. ... I would support her claim for long-term disability as she is having difficulty using the left hand and she works with children. She is unable to perform any 1-handed duties using just the right hand."

In the functional skills assessment in the PR, the appellant's physician indicated that the appellant could walk 2-4 blocks unaided on a flat surface, writing, "due to S.O.B. [shortness of breath] she needs further Rx for asthma", that she could climb 5+ steps unaided, that she could lift 2-7 kg (5-15

pounds) but with the comment, "not able to use L [left] hand," and there was no limitation on the time she could remain seated. The physician also noted that the appellant had difficulties with writing under communication, which he identified as, "cannot use L hand for keyboarding."

In the AR, the social worker identified the appellant's impairments as, "L ulnar artery malformation, depression, asthma and kidney stones." The social worker assessed the appellant as taking significantly longer than typical for all aspects of mobility and physical ability. For walking outdoors, the social worker wrote, "2-4 blocks max, shortness of breath." For climbing stairs, the social worker also checked that the appellant uses an assistive device, writing, "needs rail, no downstairs, 10 steps max". For standing, the social worker wrote, "5 min max," and for both lifting and carrying and holding, the social worker wrote, "no lifting L hand, 10 lbs max R [arm]." The social worker commented that all moving about takes at least 3 times longer. In the additional information section of the AR, the social worker commented that overuse of the appellant's right side "now causing RSI [repetitive strain injury] in shoulder."

In the PR, the physician checked that the appellant has significant deficits with cognitive and emotional function in the areas of emotional disturbance and motivation, but did not provide any commentary. In the AR, the social worker indicated that of the appellant's communication skills, the appellant had good hearing, her speaking and reading were satisfactory, but she had poor writing with the comment, "very poor literacy level. Writing incomprehensible." Further in the AR in the assessment of the effect of the appellant's mental impairment on her cognitive and emotional functioning, the social worker indicated that the appellant's mental impairment had no impact on 11 of the listed areas, a moderate impact in the area of bodily function, and a major impact in the areas of emotion and other neuropsychological problems emotion, writing the comment, "Always in special ed class due to learning difficulties. Depression, related to disabilities and mobility restrictions."

In her submissions on appeal, the appellant said that her physician reports and the medical consults show increasing disability in her left forearm and hand.

Ability to perform DLA (criteria set out in subs. 2(2)(b) EAPWDA)

In the DLA section of the PR, the appellant's physician indicated that the appellant was restricted continuously in the DLAs of personal self care, meal preparation, management of medications, basic housework, daily shopping, mobility outside the home, use of transportation, and periodically with social functioning. The physician indicated the appellant was not restricted in performance of mobility outside the home or management of finances. The physician wrote the following explanation for periodic restriction, "Withdrawn and isolated" and the comment regarding the degree of restriction, "cannot use L hand." The physician's comment regarding the impact on the appellant's social functioning was, "withdrawn – needs to be started on medications." The physician also wrote in the PR, "not being able to use L hand disrupts her ADLs – chronic pain."

In the AR, the social worker indicated that the appellant takes significantly longer than typical to perform almost every listed task of each of the DLAs. For the DLA of personal care, the social worker indicated that in addition to taking significantly longer than typical to perform all 8 listed tasks, the appellant requires periodic assistance for bathing and toileting and uses an assistive device for bathing and toileting commenting, "needs grab bars." The social worker indicated the appellant also requires periodic assistance dressing, "cannot use L hand" and with grooming. For the 2 tasks of the

DLA of basic housekeeping, the social worker indicated that the appellant requires continuous assistance from another person or unable, writing "always needs help" for both tasks. For the 5 tasks of the DLA of shopping, the social worker indicated that the appellant takes significantly longer than typical and requires periodic assistance from another person, with the following comment for each task: "needs ongoing help." The social worker wrote the additional comment, "she needs significant, ongoing help with dressing, washing, meal prep, opening medications, housework, shopping and transportation (no driving and she cannot hang on while on bus).

In the AR, the social worker indicated that the appellant requires periodic assistance to perform all 3 tasks of paying rent and bills, writing the comment "often needs help" beside each task. For the DLA of medications, the social worker indicated that the appellant could independently perform the task of safe handling and storage, but that she required periodic assistance for filling/refilling prescriptions and taking as directed, writing the comment "often needs help" beside each task. For the DLA of meals, the social worker indicated that the appellant requires periodic assistance with the task of meal planning, writing "needs some help," and for the tasks of food preparation and cooking, the appellant requires continuous assistance or is unable to perform the task, writing the comment "always needs help" beside these 2 tasks. For the DLA of transportation, the social worker indicated that the appellant could independently perform the task of using transit schedules and arranging transportation, but that she required periodic assistance and uses an assistive device when using public transit, writing "needs seat & some assistance." The social worker wrote the same additional comment as on the previous page ("She needs significant, ongoing help with dressing, washing, meal prep, opening medications, housework, shopping and transportation (no driving and she cannot hang on while on bus).").

In the AR section regarding the appellant's social functioning, the social worker indicated that the appellant is independent in the aspect of appropriate social decisions, requires periodic assistance for the 3 aspects of "able to develop and maintain relationships," "interact appropriately with others," and "able to secure assistance from others." For the aspect of "able to deal appropriately with unexpected demands," the social worker indicated that the appellant requires continuous support and wrote, "stressed & overwhelmed." The social worker indicated that the appellant has marginal functioning with her immediate and extended social networks, writing "withdrawn and isolated" for each.

In the 2-page questionnaire of December 2013, the Hand Surgeon wrote "yes" in answer to the question "is [the appellant's] level of activity significantly reduced as a direct result of her impairment?" and wrote in response to the question, "how often is [the appellant] significantly restricted in her daily functioning by one or more of her medical conditions?" the word "daily." In answer to the question, "overall, do [the appellant's] health limitations significantly restrict her ability to perform a range of daily living activities on an ongoing basis?" the Hand Surgeon wrote, "yes, meal prep, transportation (unable to use L hand to hold on), self care, use of computer."

In her submissions on appeal, the appellant reiterated the information set out by the social worker in the AR, as well as by the Hand Surgeon in his December 2013 questionnaire.

Assistance required/provided (criteria set out in subs. 2(2)(b)(ii) EAPWDA)

In the PR, the appellant's physician wrote the following in response to the question regarding the

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assistance the appellant needs with DLA: “needs bathroom grab bars, help with dressing and washing, meal prep, ongoing medications, transportation.” In the 2-page questionnaire of December 2013, the Hand Surgeon wrote “yes, she requires help with meal prep, transportation, housework, getting dressed” in answer to the question “as a result of her health conditions can you confirm that [the appellant] needs significant help from other people and/or assistive devices?” and the Hand Surgeon indicated the appellant needs this help “daily.”

In the section of the AR describing the assistance provided for the appellant, the social worker indicated that the appellant receives help from her family and friends, writing, “her parents provide assistance and supervision with ADLs. A friend provides transportation as transit is too difficult.” The social worker also wrote that the appellant requires “supportive counseling” to assist with her social functioning.

The panel finds that the new information provided by the appellant in her written submissions on appeal, including the one-page printout of her Hand Surgeon’s credentials, supports the information before the ministry at the time of the reconsideration. The submissions of the appellant reiterate the information in her SR and submissions on reconsideration and describe the extent of her impairment and the help provided her in managing her DLAs. The panel therefore admits the appellant’s written testimony pursuant to section 22(4)(b) of the *Employment and Assistance Act*.

PART F – Reasons for Panel Decision

The issue in this appeal is whether the ministry reasonably determined that the appellant is ineligible for PWD designation because she did not meet all the requirements in section 2 of the EAPWDA. Specifically, the ministry determined that the information provided did not establish that the appellant has a severe mental and/or physical impairment and that the information provided did not demonstrate that her impairments in the opinion of a prescribed professional directly and significantly restricts her ability to perform daily living activities either continuously or periodically for extended periods, and, as a result of those restrictions she requires help to perform those activities.

The following section of the *EAPWDA* applies to this appeal:

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.

The following section of the EAPWDR applies to this appeal:

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:

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- (i) make decisions about personal activities, care or finances;
 - (ii) relate to, communicate or interact with others effectively.

Severity of impairments

In her written submissions, the appellant pointed to the information provided by her Hand Surgeon in his May 1, 2013 report that she is suffering from ongoing neuropathic pain and that this is likely to be a chronic issue that the doctor hopes to control through medication. Both the Hand Surgeon and the family physician indicate that the appellant cannot use her left hand as a result of the vascular malformation. The appellant submitted that "to understand the nature and extent of [her] impairment, it's necessary to recognize that inability to use her left hand disrupts all her ADLs." In her submissions, the appellant took issue with the ministry's comment about the social worker preparing the AR after one visit with the appellant, writing, "the adjudicator's comment about the efficacy of the social worker who undertook [the AR] after the doctor had completed [the PR] is unrealistic. ... The appellant cannot afford the user fee involved in seeing a physiotherapist or occupational therapist long enough to have such a person act as assessor. The appellant cannot afford to pay a social worker in private practice to see her multiple times before the social worker completes [the AR]. ... To her credit, the social worker in this case probed deeply and uncovered the appellant's lifelong learning disability."

In its reconsideration decision, the ministry commented that the appellant's application "is problematic as the [AR] was completed by ... a social worker who met [the appellant] for the first time to complete the [AR] and used [the appellant's SR] and the physician's [PR] as sources of information. [The AR] is intended to be completed by a prescribed professional having a history of contact and recent experience with the applicant and is to be based on knowledge of the applicant, observations, clinical data and experience." The ministry focused on the information provided by the appellant's family physician in the PR regarding the appellant's functional skills – that she is able to walk 2-4 blocks (due to shortness of breath), to climb 5+ steps unaided, lift 5-15 lbs (but not with her left hand) and no limitations in sitting. The ministry noted the information provided by the social worker in the AR (independent function walking indoors and outdoors, climb stairs with a rail 10 steps max, periodic help lifting (no lifting with left hand, 10 pounds max right hand) and standing 5 minutes max). The ministry also wrote that its file review "located medical consults related to arterial malformation of the left arm; these show that [the appellant] is right-hand dominant and there are no reported functional limitations related to usage of [the appellant's] right arm or hand." The ministry determined that the social worker's comments in the AR are unsupported by the appellant's family physician in the PR and found that as the appellant's functional skills limitations are not significantly restricted aside from lifting with her left arm, it was not satisfied that the information provided is evidence of a severe physical impairment. The ministry also noted the additional information provided by the Hand Surgeon in the December 2013 questionnaire, but found that while limitations with the appellant's left hand are acknowledged, modifications are available and as the appellant is right-hand dominant and no pathology exists with her right hand and arm, the Hand Surgeon's new information "does not demonstrate either a severe impairment or significant restriction" in the appellant's ability to perform her DLA.

The ministry also determined in the reconsideration decision that the information and narrative provided by the appellant's physician and the social worker "are not supportive of a severe mental health condition" that significantly limits the appellant's ability to function either continuously or

periodically for extended periods. The ministry noted that the physician in the PR diagnosed her with reactive depression "without describing remedial measures taken" and had indicated two deficits with cognitive and emotional functioning (emotional disturbance and motivation). The ministry also noted the information from the social worker that the appellant's mental impairment had a moderate impact on her bodily functions and two major impacts on emotion and "other neuropsychological problems" described as "always in special ed class due to learning difficulties, depression related to disabilities and mobility restrictions." The ministry noted, "no cognitive deficit or learning disability was reported or diagnosed by a medical professional ... please note that impacts on daily functioning must be related to an identified mental impairment or brain injury – neither has been confirmed by a medical practitioner."

Analysis and decision

The legislation provides that the minister may designate a person as a PWD if the minister is satisfied that the person has a severe mental or physical impairment that in the opinion of a medical practitioner is likely to continue for at least 2 years (subs. 2(2)(a) of the EAPWDA). The appellant's physician confirmed in the PR section of the PWD application that the appellant has left ulnar artery AV malformation, reactive depression, chronic asthma and kidney stones/nephrolithiasis. The social worker indicates in the AR that the appellant has a learning disability. The appellant asserts that her medical conditions amount to severe physical and mental impairments.

In the PWD application form, the ministry has provided a definition of "impairment" which, although it is not set out in the applicable legislation, offers guidance in considering the existence and severity of an applicant's impairment. The ministry states, "impairment" is a "loss or abnormality of psychological, anatomical or physiological structure or functioning causing a restriction in the ability to function independently, effectively, appropriately or for a reasonable duration." To determine the severity of an impairment, there is both a cause – the impairment itself – and an effect – the degree to which it restricts the ability to function independently, effectively, appropriately or for a reasonable duration. The legislation provides that the determination of the severity of an impairment is at the discretion of the minister, taking into account all of the evidence, including that of the appellant. However, the starting point must be the medical evidence - the information set out in the PR section of the PWD application, together with the additional medical information.

The panel notes that although the appellant has been diagnosed with asthma (and this currently limits her ability to walk distances) and kidney stones, the focus of the information in the PR and AR is on the impact of the vascular malformation in the appellant's left forearm with the associated weakness and chronic pain and reactive depression. In the PR, the appellant's physician indicated she could walk 2-4 blocks unaided on a flat surface and that the restriction was related to her asthma (shortness of breath for which she needs further prescriptions), she could climb 5+ steps unaided, had no limitations remaining seated, and could lift 5-15 pounds with her right hand, but could not lift with her left hand. Although the ministry discounted the information of the social worker in the AR, the information provided by the social worker in the AR about the appellant's functional skills is not dissimilar to that of the physician: the social worker indicated the appellant could climb stairs with a railing 10 steps max, could walk 2-4 blocks limited by shortness of breath, could not lift with her left hand, but could lift 10 pounds max with her right hand. The social worker noted limitation in standing "5 min max" which is contrary to the information of the physician and commented that all moving about takes at least 3 times longer, with no explanation provided for the cause of this limitation given

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the physician's recommendation of further prescriptions to alleviate the appellant's asthma symptoms. The information of the Hand Surgeon in the December 2013 questionnaire reiterates that the appellant's impairment is related to the malformation in her left arm: "left ulnar neuropathy secondary to ulnar artery vascular malformation – constant neuropathic pain and severe dysfunction of left hand/forearm." While the social worker referred to repetitive strain injury in the appellant's right shoulder, this has not been confirmed by the medical practitioners in either the PR or the more recent questionnaire.

In the PR, the appellant's physician indicated that the appellant's impairment directly restricts her ability to perform several of her DLA on a continuous basis (personal self care, meal preparation, management of medications, basic housework, daily shopping, mobility outside the home, use of transportation and social functioning). The physician indicated in the PR that the restriction was "cannot use L hand" and the appellant needs bathroom grab bars, and help with dressing and washing, meal prep, opening medications and transportation. The physician did not provide any further narrative to describe the degree of the appellant's restrictions or whether any were related to her other medical conditions. The Hand Surgeon indicated in his letter dated May 1, 2013 that he supports a claim for long term disability since the appellant is having difficulty using her left hand and she works with children; however, employability is not a factor in assessing eligibility for PWD designation. The Hand Surgeon confirms in the questionnaire dated December 19, 2013 that he thinks the appellant's impairment is severe, but his focus is on the severe dysfunction of the appellant's left hand/forearm.

The panel notes the ministry's finding that the appellant is right-hand dominant, which was stated by the Hand Surgeon in the December 2011 note, and that the focus of the medical information is on the impact of the appellant's impairment in her left hand/forearm for which the prognosis is unknown for certain. The ministry acknowledged limitations with the appellant's left hand and the panel finds that the ministry reasonably concluded that modifications are available as the appellant is right-hand dominant and no pathology exists with her right hand and arm. Further, the panel notes that the appellant's physician diagnosed her with reactive depression, but there is little information provided by the physician about the degree to which the appellant's depression impacts her daily living, other than "low motivation." The social worker indicates that the appellant has a learning disability, but the appellant's physician did not confirm this information and none of the other treating physicians identified it or provided an opinion that it is likely to continue for 2 years or more. The legislation requires that a medical professional confirm the appellant's medical condition and a social worker is not a medical professional (although she is a "prescribed professional"). Accordingly, given the information provided by the appellant's physician and the Hand Surgeon, the panel finds that the ministry's determination that the information provided does not establish a severe physical or mental impairment is reasonable.

Direct and significant restrictions in the ability to perform DLA.

In her written submissions, the appellant repeated the information provided by the social worker in the AR that indicated that the appellant takes significantly longer than typical to perform almost every listed task of each of the DLAs, and several of the tasks are indicated as requiring periodic assistance. In the PR, as noted above, the appellant's physician indicated that the appellant's impairment restricted her ability to perform several of her DLA on a continuous basis, writing "cannot use L hand" and needs help with dressing, washing, meal prep, opening medications and

transportation.

In the reconsideration decision, the ministry determined that although it acknowledged that the appellant does not have full use of her left arm and hand and this "would restrict some physical actions" the appellant's right arm is not affected and the chronic pain is minimized through medication. The ministry found that "as the functional limitation of your non-dominant hand does not reasonably restrict your function on a global basis, the information from your prescribed professionals does not establish that impairment significantly restricts daily living activities either continuously or periodically for extended periods." The ministry also noted that in the PR of July 2013, the appellant's physician had commented that the appellant "needs to be on medication" for her depression (relating to being withdrawn and isolated) but that there was no update on the appellant's treatment of her mood so the ministry could not determine the current emotional status.

Analysis and decision

Subsection 2(2)(b) of the EAPWDA requires that a prescribed professional confirm that the appellant's impairments directly and significantly restrict her ability to perform her DLA continuously or periodically for extended periods. The panel notes that although a prescribed professional may indicate that, because of a restriction, an individual requires assistance either continuously or periodically for extended periods, this does not necessarily meet the legislative test of being a "direct and significant restriction" to the person's ability to perform DLA. The DLA to be considered are, as set out in subs. 2(1) of the EAPWDR, as follows:

- Prepare own meals;
- Manage personal finances;
- Shop for personal needs;
- Use public or personal transportation facilities;
- Perform housework;
- Move about indoors and outdoors;
- Perform personal hygiene and self care; and
- Manage personal medication.

The appellant's physician indicated in the PR that the appellant's impairment continuously restricted her ability to perform several DLAs (personal self care, meal preparation, management of medications, basic housework, daily shopping, use of transportation, social functioning and mobility outside the home – but not inside the home). The physician indicated in the PR that the degree of restriction was "cannot use L hand" and that not being able to use her left hand "disrupts" her DLAs. In the December 2013 questionnaire, the Hand Surgeon indicated that the appellant's impairment restricted her ability in meal prep, transportation as she is unable to use her left hand to hold on, self care and use of computer, echoing the information provided by the appellant's physician in the PR. The panel finds that the ministry reasonably concluded that the use of a computer is not one of the listed DLA and, instead, relates to employment skills which are not assessed as part of a PWD designation.

In the AR, the social worker has indicated that the appellant takes significantly longer to perform almost every task of the listed DLAs (all 8 tasks of personal care, both tasks of basic housekeeping, all 5 tasks of shopping, 3 of 4 tasks of meal planning, all 3 tasks of paying rent and bills, 2 of 3 tasks

of medications, and 2 of 3 tasks of transportation). The social worker has also indicated that in addition to taking significantly longer than typical to perform, the appellant requires periodic assistance from another person to perform several of the tasks of DLA (3 of the 8 tasks of personal care, all 5 tasks of shopping, 1 of the 4 tasks of meals, all 3 tasks of paying rent and bills, 2 of the 3 tasks of medications, and 1 of the 3 tasks of transportation). The social worker has also indicated that – in addition to taking significantly longer than typical to perform – the appellant requires continuous assistance or is unable to perform both tasks of basic housekeeping and 2 of the 4 tasks of meals. However, the social worker's comments to explain and describe the restrictions and requirements for help are "always needs help," "needs ongoing help," or "often needs help" – comments which are not explanatory. The social worker has written the same comment on both pages of the AR that the appellant "needs significant, ongoing help with dressing, washing, meal prep, opening medications, housework, shopping and transportation (no driving and she cannot hang on while on bus)."

The social worker's comments in the AR do not tie the restrictions of the appellant's DLA to her impairment and the need for periodic assistance when reading prices and labels or making appropriate choices when shopping, for example, may relate to an undiagnosed learning disability since the social worker assessed the appellant's reading ability as satisfactory and the physician identified difficulties with communication as "cannot use left hand for keyboarding." Likewise, there is no elaboration regarding the need for periodic assistance with meal planning, banking, budgeting, paying rent and bills, filling/refilling prescriptions or taking medications as directed. The panel finds that, in the absence of this detail, the ministry reasonably concluded that the frequency and duration of the periodic assistance is not established as being needed for extended periods of time, as required by subs. 2(2)(b) of the EAPWDA.

The panel finds that the ministry reasonably determined that the functional limitation of the appellant's non-dominant hand does not reasonably restrict her function on a global basis and the extent of the restrictions from the appellant's other conditions have not been sufficiently described. The information provided does not demonstrate that the appellant's impairment directly and significantly restricts her ability to perform DLA either continuously or periodically for extended periods. Without detailed information in the AR, and based on the evidence provided by the appellant's physician in the PR and by the Hand Surgeon, the panel finds that the ministry's determination that the information provided does not establish that this impairment significantly restricts her DLA continuously or periodically for extended periods is reasonable.

Help with DLA

In her written submissions, the appellant repeated the information provided by her physician in the PR that she needs bathroom grab bars, and requires help with dressing, washing, meal prep, opening medications and transportation. This information is repeated by the Hand Surgeon in the December 2013 questionnaire and by the social worker in the AR.

In its reconsideration, the ministry noted that as it "has not been established that [DLA] are significantly restricted ... it cannot be determined that significant help is required from other persons. Bathroom grab bars are recommended."

The legislation requires in subs. 2(2)(b)(ii) that in the opinion of a prescribed professional, as a result

of the appellant's restrictions, the appellant requires help to perform DLA and subs. 2(3)(b) provides that a person requires help in relation to a DLA if, in order to perform it, the person requires an assistive device, the significant help or supervision of another person, or the services of an assistance animal. The panel notes that the legislation is not limited to help from another person.

The panel notes the evidence before the ministry at the reconsideration as set out by the appellant's physician in the PR was that the appellant requires grab bars in the bathroom, and needs help with some DLA because she cannot use her left hand. While the social worker indicated that the appellant requires help with the performance of several tasks of her DLA, the social worker did not provide detail to explain the degree of help required or tie it to the appellant's impairment. The panel finds that the ministry's determination that because it has not been established that DLA are directly and significantly restricted, it cannot be determined that help is required as provided under section 2(2)(b)(ii) of the EAPWDA, is reasonable.

Conclusion

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