

## PART C – Decision under Appeal

The decision under appeal is the Ministry of Social Development and Social Innovation (the ministry) reconsideration decision dated March 5, 2014 which found that the appellant did not meet three of the five statutory requirements of Section 2 of the *Employment and Assistance for Persons with Disabilities Act* for designation as a person with disabilities (PWD). The ministry found that the appellant met the age requirement and that her impairment is likely to continue for at least two years. However, the ministry was not satisfied that the evidence establishes that:

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

## PART D – Relevant Legislation

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

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

## PART E – Summary of Facts

The evidence before the ministry at the time of the reconsideration decision included the Person With Disabilities (PWD) Application comprised of the applicant information and self-report dated September 20, 2013, a physician report (PR) and an assessor report (AR) both dated September 19, 2013 and completed by a general practitioner who has known the appellant for 18 months. In describing the approach and information sources used to complete the AR, the physician indicated reliance on an office interview with the appellant as well as consults from a lawyer, neurosurgeon, neurologist and physical evidence and noted that she had access to all the appellant's "old records." The evidence also included the following:

- 1) Letter dated June 3, 2013 from a lawyer to a physician who is a specialist in physical medicine and rehabilitation requesting an expert report regarding the appellant's disability from employment due to accident or illness;
- 2) Letter dated July 3, 2013 from the specialist physician to the lawyer providing a medical legal opinion as requested; and,
- 3) Request for Reconsideration dated January 30, 2014 to which was attached a letter dated January 30, 2014 from an advocate, which has been completed and signed by the appellant's family physician on February 1, 2014, and a handwritten letter from the appellant dated February 16, 2014.

### ***Diagnoses***

In the PR, the appellant was diagnosed by the medical practitioner with mechanical neck and t-spine pain secondary to degenerative changes and muscle spasm, with a date of onset of June 2012 and a reference to the diagnostic codes for arthritis and musculoskeletal system- other. There was no diagnosis indicated in the PR for a mental disorder.

### ***Physical Impairment***

In the PR, the appellant's physician reported that:

- In terms of health history, the appellant has "severe pain in neck and upper back; chronic, recurrent headaches. Multilevel degenerative changes confirmed on MRI along with mild-mod. [moderate] spinal stenosis "
- The appellant does not require any prosthesis or aid for her impairment.
- With respect to degree and course of impairment, the appellant may get some improvement with physiotherapy and may have brief periods of decreased symptoms, but the underlying condition is lifelong and progressive.
- In terms of functional skills, the appellant is able to walk 2 to 4 blocks unaided on a flat surface, climb 5 or more steps unaided, lift under 2 to 7 kg. (5 to 15 lbs.), and remain seated less than 1 hour.

In the AR, the appellant's physician indicated that:

- The appellant is assessed as independent with walking indoors and outdoors, climbing stairs, and standing. She requires periodic assistance from another person with lifting and carrying and holding, with a note that "when her pain is bad she cannot lift/bend or carry hold any weight."
- The section of the AR relating to assistance provided through the use of assistive devices is marked "N/A", or 'not applicable' to the appellant.

In her self-report, the appellant wrote that:

- She has neck-upper spine pain, headaches on a regular basis and she is not able to do what she used to. She tries to sit on the floor to play with her young child and she lasts about 10 minutes before having to get up.
- She can only sit in a chair for an hour or less.
- Sometimes she gets good days when her pain would be at 40%.
- Sleeping is difficult as she wakes up each time she needs to turn over, because of the pain.

In her letter dated February 16, 2014, the appellant wrote that:

- She can barely lift 15 lbs. on a good day but she cannot walk with it. When she buys a jug of milk and walks one block home, she has to switch arms and she is in a lot of pain.
- She has no choice but to walk 3 or 4 blocks since she has to take her young child to school, and she found someone to pick her up after school because it is too hard on her. At times, her pain is so bad that she cannot walk without assistance.
- On a rating of 1 to 10, her pain is never less than 5 out of 10 and 70% [of the time] it is 8 out of 10.

In the letter dated July 3, 2013 to the lawyer from the specialist physician providing a medical legal opinion as requested, the specialist wrote that:

- The history and physical findings are consistent with mechanical pain affecting the cervical spine. The mechanical pain is a combination of degenerative changes in the spine and tightness in the neck muscles which are tender to palpitation.
- The appellant has lost range of motion.
- There is also a separate area of ligament tenderness in the upper thoracic spine.
- There is no evidence of radiculopathy or neuropathy. Her headaches are cervicogenic and are secondary to the tight and tender neck muscles.
- The high levels of pain apparent on physical examination and on history has rendered the appellant incapable of sitting for prolonged periods (one hour maximum), and has rendered her totally disabled from gainful employment.

In the letter dated January 30, 2014, the appellant's physician agreed with the statements that:

- The appellant is undergoing testing concerning her lower back including a CT of her L-spine on February 15, 2014.
- The appellant states that she is able to walk up to 3 blocks at a time; the physician then wrote "she can walk farther than 3 blocks at a time."
- The appellant states that she is only able to lift or carry up to 10 lbs. at a time; the physician then wrote "can go up to 15 lbs."
- The appellant states that she is only able to sit for less than one hour at a time; the physician wrote "though with a short stretch she can continue sitting longer."

### ***Mental Impairment***

In the PR, the appellant's physician reported that:

- The appellant has no difficulties with communication.
- There are no significant deficits with the appellant's cognitive and emotional function.
- The appellant is not restricted with social functioning.

In the AR, the physician indicated that:

- The appellant has a good ability to communicate in all areas, including speaking, reading, writing and hearing.
- The section of the AR describing impacts to cognitive and emotional functioning is marked not applicable to the appellant.
- The section of the AR assessing support/supervision required with aspects of social functioning is marked not applicable to the appellant.

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

In the PR, the physician indicated that:

- The appellant has not been prescribed any medication and/or treatment that interfere with her daily living activities.
- The appellant is not restricted in performing a majority of her DLA, including personal self care, meal preparation, management of medications, daily shopping, mobility inside and outside the home, use of transportation, management of finances and social functioning.
- The appellant is periodically restricted in performing the basic housework DLA with the comment added that "when her pain is bad she can't do house work."
- In response to a question about assistance needed with DLA, the physician wrote that the appellant "needs someone to come in and clean when she can't."

In the AR, the physician reported that:

- The appellant is independent with moving about indoors and outdoors.
- The appellant is independent in all 8 tasks of the DLA personal care: dressing, grooming, bathing, toileting, feeding self, regulating diet, transfers in/out of bed and transfers on/off chair.
- The appellant is independent with doing her laundry and requires periodic assistance from another person with basic housekeeping, with a comment added that "when her pain is bad, she needs help with housework, especially tasks that involve bending/lifting or carrying weights."
- The appellant is independent in performing 4 of 5 tasks of the DLA shopping, including going to and from stores, reading prices and labels, making appropriate choices, and paying for purchases. The appellant requires periodic assistance with carrying purchases home and the physician refers to his comment that when her pain is bad she needs help with tasks that involve bending/lifting or carrying weights.
- The appellant is independent with all 4 tasks of the DLA meals: meal planning, food preparation, cooking and safe storage of food.
- The appellant is independent with all 3 tasks of the DLA paying rent and bills: banking, budgeting, and paying rent and bills.
- The appellant is independent in performing all 3 tasks of managing her medications: filling/refilling prescriptions, taking as directed and safe handling and storage.
- The appellant is independent with all 3 tasks of managing transportation: getting in and out of a vehicle, using public transit and using transit schedules and arranging transportation.

In her self-report, the appellant wrote that:

- A lot of time, just getting in and out of her car is difficult.
- If she takes the garbage out and mops the floors, she pays for it with the pain that follows so she does not do these things often. She has washed her floors 2 times in 4 months because it

is too difficult.

- At times, she gets her mother to pick up her young child from school because she is in too much pain.
- On her good days, she can clean her house (dishes, broom, clean counters), and do some laundry but she needs multiple breaks during the day to get this accomplished.

In her letter dated February 16, 2014, the appellant wrote that:

- As for cleaning her house, she does only a little at a time because it's too hard on her. She has no one willing to help and she cannot afford to pay someone so most of the time her house is a mess. Her cousin helps her once in a while.
- She is not able to get out of bed without help.
- As for her diet, 90% of the time she eats once a day because of the pain, she is never hungry, and she does not have enough money.
- She does what she can, things like groceries and natural, normal life things at home because it is only her and her young child. She does not get any help from anyone.

In the letter dated January 30, 2014, the appellant's physician:

- Agreed with the statement that the appellant is in need of continuous assistance or is unable to do basic housekeeping *when pain levels too severe* (emphasis added by physician) and she will go a few days without doing.
- Agreed that she is in need of continuous assistance and unable to carry a laundry basket "only when pain is severe."
- Disagreed that she is in need of continuous assistance or she is unable to regulate her diet and that she only eats one meal a day.
- Wrote that the appellant "is fairly independent most of the time; would only require help when having a bad flare-up of symptoms."

### ***Need for Help***

The physician reported in the AR that the help required for DLA is provided by the appellant's family. In response to the request to describe assistance necessary if none is available, the physician wrote "housekeeping, assistance with carrying groceries into car/house." The section of the report indicating assistance provided through the use of assistive devices is marked as not applicable to the appellant.

In her Notice of Appeal dated March 10, 2014, the appellant wrote:

- She needs someone to help but she has no one and cannot afford anyone.
- Most of the time her house is a mess and when she cannot stand the mess, she picks up a little at a time and has her young child help.
- In the last week, she has not been able to do anything and her young child has to help her put on her socks and coat because she cannot move her right shoulder.
- The medications only help a very little for the pain.
- The CT scan showed she has a herniated disc.

At the hearing, the appellant stated:

- She understands that, reading the doctor's notes, it does not give a clear picture because she does not complain when she goes to see her doctor. She has never sat down and explained all her specific problems to the doctor because she feels the doctor cannot do anything.

- She is in severe pain all the time. Not "24/7" but in the morning and at night the pain is "horrendous." In the middle of the day, the pain varies. She is never without pain and she has a high threshold for pain. In the past, she had a caesarian section with no pain medications afterwards.
- She is taking pain medications now because she needs it, but not the strong ones her doctor suggested, because she does not want to become addicted to them.
- She does not get help around her house but if she does not do some cleaning, the place is a mess. She cleans sporadically.
- She has to walk 4 blocks to take her young child to school because she has no other option.
- She can lift 15 lbs. and put it back down but she cannot carry that weight. She has to alternate arms just to carry a jug of milk home from the grocery store. She is able to walk slowly to the store and she needs to take breaks.
- Her young child helps her as much as possible. Her child helps her get out of bed.
- She had to beg her doctor to have a CT-scan done of her back and they discovered that she has a herniated disc. Her doctor wants her to see a neurosurgeon but she is not ready to consider surgery at her age since there are always risks associated with surgery.
- Previously, the X-Ray reports indicated it was just arthritis in her back but she knew it was more than that. She was taking anti-inflammatory medications but they were not helping much.
- As a result of the pain, she has to brace herself when she coughs or sneezes. She wakes up at night because of the pain.
- She can do the cooking but she either has to start very early in the day to prepare something for dinner or take many breaks.
- For shopping, she can walk to the store or, if she can afford it, take a cab, since there is no one to drive her. The driver will often bring the groceries to the door for her. She uses the buggy when she gets to the store but it often takes twice as long as normal to do her shopping.
- The more she does during the day, the worse her pain is at night.
- Although her son lives with her, he does not help her at all.
- She does not use a cane or any other assistive devices. She will sometimes lean on her child's shoulder.

The ministry relied on its reconsideration decision.

The ministry did not raise an objection to the admissibility of the information in the appellant's Notice of Appeal or her oral testimony. The panel admitted the information as it provided more detail relating to the impact of the appellant's previously diagnosed medical conditions and is in support of information before the ministry on reconsideration, pursuant to Section 22(4) of the *Employment and Assistance Act*

## PART F – Reasons for Panel Decision

The issue on the appeal is whether the ministry's reconsideration decision, which found that the appellant is not eligible for designation as a person with disabilities (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 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 a severe physical impairment is established by the evidence of her constant pain due to degenerative changes and muscle spasm as well as a herniated disc in her back. The appellant stated that, on a rating of 1 to 10, her pain is never less than 5/10 and 70% of the time it is 8/10 and this has significant impacts on her functioning.

The ministry's position is that there is not enough information from the general practitioner to confirm that the appellant has a severe physical impairment. The ministry argued that, in terms of functional assessment, the general practitioner indicated that the appellant can walk 2 to 4 blocks and climb 5 or more stairs, lift 5 to 15 lbs. and remain seated for less than 1 hour. The ministry pointed to the additional letter signed by the general practitioner, which further indicated that the appellant can walk up to 3 blocks at a time and lift 15 lbs., and "with a short stretch" she can continue sitting longer than 1 hour. The ministry argued that while the general practitioner reported that the appellant requires periodic assistance with lifting and carrying and holding when her pain is bad, it has not been reported how often the appellant suffers from this higher level of pain. The ministry argued further that while the specialist provided an opinion that the appellant is totally disabled from working, employability is not a component of a PWD application.

### ***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 when it defines the word "impairment" in the physician report as being "a loss or abnormality of psychological, anatomical or physiological structure or function causing a restriction in the ability to function independently, effectively, appropriately or for a reasonable duration." This definition is not set out in legislation and is not binding on the panel, but in the panel's view it quite appropriately describes the legislative intent.

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

The medical practitioner, a physician who has known the appellant for a period of 18 months,



diagnosed the appellant with mechanical neck and t-spine pain secondary to degenerative changes and muscle spasm, as well as mild to moderate spinal stenosis. The appellant stated at the hearing that, as a result of the degenerative changes, she also has a herniated disc, as confirmed by a recent CT scan. While her family physician has recommended a referral to a neurosurgeon, the appellant stated that she feels she is too young to consider surgery, which always has risks, so she is "not ready" to meet with a surgeon. In terms of functional skills, the appellant is assessed by her physician as able to walk 2 to 4 blocks unaided on a flat surface, climb 5 or more steps unaided, lift under 2 to 7 kg. (5 to 15 lbs.), and remain seated less than 1 hour. In the letter dated January 30, 2014, the appellant's physician disagreed with statements that the appellant has made regarding her physical functioning and clarified that the appellant "can walk farther than 3 blocks at a time," she can lift and carry "up to 15 lbs." and "with a short stretch" she can continue sitting longer than one hour.

In the letter dated July 3, 2013, the specialist physician wrote that the high levels of pain apparent on physical examination and on history has rendered the appellant incapable of sitting for prolonged periods (one hour maximum), and has rendered her totally disabled from gainful employment. For an impairment to be a "severe impairment," section 2 of the EAPWDA requires that the ministry must be satisfied that the evidence demonstrates restrictions to a specified degree in certain specified areas of daily functioning. The legislation reads that for PWD designation, the minister must be satisfied that "the person has a severe mental or physical impairment that ....directly and significantly restricts the person's ability to perform [prescribed] daily living activities and as a result of those restrictions, the person requires help [an assistive device, the significant help or supervision of another person, or the services of an assistance animal to perform those activities.]" As ability to search for, accept or continue in employment is not listed as one of prescribed DLA, the panel finds that the ministry reasonably held that employability is not a factor in assessing eligibility for PWD designation.

In the AR, the physician reported that the appellant is independent with walking indoors and outdoors, climbing stairs, and standing. The physician assessed the appellant as requiring periodic assistance from another person with lifting and carrying and holding, with a note that "when her pain is bad she cannot lift/bend or carry hold any weight." In terms of the frequency of exacerbations to her pain, the appellant wrote in her self-report that sometimes she gets good days when her pain would be at 40%. In her letter dated February 16, 2014, the appellant wrote that on a rating of 1 to 10, her pain is never less than 5/10 and 70% of the time her pain is at 8/10. At the hearing, the appellant stated that she is in severe pain "all the time," not meaning "24/7" but in the morning and often at night the pain is "horrendous." In the middle of the day, the pain varies. The appellant also stated that the amount of pain she experiences at night depends on whether she has overdone her physical exertion during the day.

Given an opportunity to provide further comment in the letter dated January 30, 2014, the appellant's physician provided an estimate of the frequency of the exacerbations of the appellant's pain as only occurring occasionally since the physician wrote that the appellant "is fairly independent most of the time" and that she "would only require help when having a bad flare-up of symptoms." At the hearing, the appellant stated that she believes that the physician did not have a clear picture of how often her pain is severe since the appellant never complains to the physician, knowing there is not much she can do for her; however, the panel notes that In describing the approach and information sources used to complete the AR, the physician indicated reliance on an office interview with the appellant as well as consults from a lawyer, neurosurgeon, neurologist and physical evidence and noted that she had access to all the appellant's "old records." The section of the AR relating to assistance provided through the use of assistive devices is marked as 'not applicable' and the appellant stated at the

hearing that she does not use any devices to assist with her mobility.

The panel finds that the ministry reasonably concluded that the evidence of the appellant's physician, which is based on a wide range of information sources including an interview with the appellant, demonstrates that the appellant is largely independent with her mobility and physical abilities, except for "when her pain is bad," the frequency of which is not provided by the physician, and requires occasional periodic assistance with lifting and carrying and holding weights in excess of 15 lbs. The panel, therefore, finds that the ministry reasonably determined that there is not sufficient evidence to establish that the appellant has a severe physical impairment under section 2(2) of the EAPWDA.

### **Severe Mental Impairment**

The appellant did not maintain a position that she has a severe mental impairment.

The ministry's position is that the physician does not provide any evidence to confirm a severe mental impairment. The ministry argued that the physician reported the appellant has no significant deficits with her cognitive and emotional function. The ministry argued that, as the appellant's assessor, the physician did not indicate that the appellant requires any support/supervision from another person to manage her social functioning.

#### *Panel Decision*

The general practitioner did not diagnose a mental health condition in the PR and reported that the appellant has no significant deficits to her cognitive and emotional function and is not restricted in her social functioning. The appellant is assessed as having a good ability to communicate in all areas and the sections of the AR describing impacts to cognitive and emotional functioning and social functioning were marked not applicable to the appellant. Given the absence of both a mental disorder diagnosis and evidence of impacts to mental and social functioning, the panel finds that the ministry reasonably determined that a severe mental impairment was not established under section 2(2) of the EAPWDA.

### **Restrictions in the ability to perform DLA**

The appellant's position is that her physical impairment directly and significantly restricts her ability to perform DLA on an ongoing basis to the extent that she requires the significant assistance of another person. The appellant argued that she is not able to get the assistance she needs: she cannot afford to pay someone and there is no one in her life, except her young child and occasionally a cousin, who can provide it.

The ministry's position is that the appellant can independently manage the majority of her DLA and, for those tasks where periodic assistance is required, the physician has not explained the extent of the periodic assistance required to indicate restrictions for extended periods of time.

#### *Panel Decision*

Section 2(2)(b) of the EAPWDA requires that a prescribed professional provide an opinion that an applicant's severe impairment directly and significantly restricts his DLA, continuously or periodically for extended periods. In this case, the appellant's physician is the prescribed professional. DLA are defined in section 2(1) of the EAPWDR and are also listed in the PR and, with additional details, in the AR. Therefore, a prescribed professional completing these forms has the opportunity to indicate

which, if any, DLA are significantly restricted by the appellant's impairments either continuously or periodically for extended periods.

In the appellant's circumstances, her physician reported in the PR that the appellant is not restricted in performing a majority of her DLA, including personal self care, meal preparation, management of medications, daily shopping, mobility inside and outside the home, use of transportation, management of finances and social functioning. Although the physician assessed periodic restrictions with basic housekeeping, the restriction is described as "when her pain is bad, she can't do house work" and the assistance needed is for "someone to come in and clean when she can't." In the AR, the physician reported that the appellant is completely independent with performing many of these same DLA, including moving about indoors and outdoors, personal care, meals, paying rent and bills, and managing his medications and transportation. The appellant is also assessed as requiring periodic assistance with basic housekeeping and carrying purchases home when shopping with the explanation provided by the physician that "when her pain is bad, she needs help with housework, especially tasks that involve bending/lifting or carrying weights."

In the letter dated January 30, 2014, although the appellant's physician agreed with statements that the appellant is in need of continuous assistance or is unable to do basic housekeeping or carry a laundry basket, the physician emphasized that this is only when the appellant's pain is severe. The physician added a comment that the appellant "is fairly independent most of the time" and that she would "only require help when having a bad flare-up of symptoms."

Given that the physician reported that "most of the time" the appellant is fairly independent with occasional flare-ups of symptoms, and in the absence of narrative to further explain how often or for how long the appellant requires assistance with the identified tasks of the housework and shopping DLA, the panel finds that the ministry reasonably concluded that it cannot be determined that the appellant is restricted periodically for extended periods of time. Overall, the panel finds that the ministry reasonably concluded that there is not enough evidence from the prescribed professional to establish that the appellant's impairment significantly restricts her ability to manage DLA either continuously or periodically for extended periods, thereby not satisfying the legislative criterion of section 2(2)(b)(i) of the EAPWDA.

### **Help to perform DLA**

The appellant's position is that she requires the significant assistance of another person to perform DLA, although she does not have anyone to assist her other than her young child and, occasionally, her cousin.

The ministry's position is that because it has not been established that DLA are significantly restricted, it cannot be determined that significant help is required. The ministry stated that the appellant does not require an assistive device.

### ***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 physician, as a prescribed professional, is that the help required with DLA is provided by the appellant's family, and the appellant stated at the hearing that she reluctantly has her young child assist her occasionally, as well as her cousin. In response to the request to describe assistance necessary if none is available, the physician wrote "housekeeping, assistance with carrying groceries into car/house." The physician reported that the appellant does not require or use an assistive device. While the panel finds that the evidence of the prescribed professional establishes that the appellant obtains some assistance from her family, the panel also 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.