

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 13 March 2014 denying the appellant designation as a person with disabilities (PWD). The ministry determined that the appellant did not meet all of the required criteria for PWD designation set out in the *Employment and Assistance for Persons with Disabilities Act*, section 2. Specifically, the ministry determined that the information provided did not establish that the appellant has a severe mental or physical impairment that in the opinion of a prescribed professional

(i) directly and significantly restricts her ability to perform daily living activities (DLA) either continuously or periodically for extended periods; and,

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

The ministry determined that the appellant satisfied the other 2 criteria: she has reached 18 years of age and her impairment in the opinion of a medical practitioner is likely to continue for at least 2 years.

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 dated 15 June 2013. The Application package contained:
 - A Physician Report (PR) dated 26 February 2013 completed by the appellant's general practitioner (GP) who has known the appellant for 7 months and has seen her 2-10 times in that period.
 - An Assessor Report (AR) of the same date, completed by the same GP.
 - A Self Report (SR) completed by the appellant.
 - A Disability Self Assessment dated 20 November 2006 completed by the appellant, with additional notes dated 10 August 2007.
2. The appellant's Request for Reconsideration, dated 07 February 2014, with a request for an extension. The appellant provided the following additional information at reconsideration: a submission from the appellant (reconsideration submission), an email from the appellant's son dated 25 January 2014 and a letter from the appellant's GP dated 26 February 2014.

The appellant's Notice of Appeal is dated 14 March 2014.

Summary of the evidence

In the PR, the GP diagnoses the appellant with lower back pain (onset 2003) and depression (onset 2006). The panel will first summarize the evidence from the PR and AR relating to the appellant's impairments as it relates to the PWD criteria at issue.

Physical impairment

PR:

Under health history, the GP comments that persistent lower back pain limits mobility.

The GP notes the appellant's height and weight are relevant: 165 cm and over 70 kg.

The GP reports that the appellant has not been prescribed any medication and/or treatments that interfere with her ability to perform DLA and that she does not require any prostheses or aids for her impairment.

Regarding functional skills, the GP reports that the appellant can walk 2 to 4 blocks unaided, climb 2 to 5 steps (uses rails), is limited to lifting under 5 lbs. and can remain seated for 1 to 2 hours.

Mental impairment

PR:

Under health history, the GP comments that the appellant has mood swings and depression affecting social functioning; there has been improvement in cognitive functioning after sleep improved, but she still has short term memory issues. She uses lists to aid day-to-day activities

The GP indicates that the appellant has no difficulties with communication.

The GP identifies significant deficits with cognitive and emotional function in the areas of memory, emotional disturbance, motivation, and attention or sustained concentration.

AR:

The GP assesses the following impacts on daily functioning:

- Major impact – none.
- Moderate impact – other emotional or mental problems.
- Minimal impact – emotion, attention/concentration, executive, memory, and motivation.
- No impact – bodily functions, consciousness, impulse control, insight and judgment, motor activity, language, psychotic symptoms, and other neuropsychological problems.

The GP provides no further comments.

Restrictions in the ability to perform DLA and help required

AR: (The GP's comments in parentheses.)

The GP assesses the appellant's ability to communicate as good for speaking, reading, writing and hearing.

As to mobility and physical ability, the GP makes the following assessments:

- Walking indoors – uses assistive device (uses furniture).
- Walking outdoors – uses assistive device (stick).
- Climbing stairs – takes significantly longer than typical (no stairs at home).
- Standing – uses assistive device.
- Lifting – periodic assistance from another person required.
- Carrying and holding – periodic assistance from another person required.

The GP provides the following assessments on the appellant's ability to perform DLA:

- Personal care – uses assistive device for toileting (rail); uses an assistive device and periodic assistance from another person required for transfers in/out of bed (4 poster bed – grabs posts); periodic assistance from another person required for dressing and bathing; independent for grooming, feeding self, regulating diet and transfers on/off of chair.
- Basic housekeeping – periodic assistance from another person required for laundry and basic housekeeping.
- Shopping – uses an assistive device for going to and from stores (never alone) and carrying purchases home; independent for reading prices and labels, making appropriate choices, and paying for purchases.
- Meals – periodic assistance from another person required for meal planning, food preparation, cooking, and safe storage of food
- Pay rent and bills – independent in all aspects.
- Medications – periodic assistance from another person required for taking as directed (has to write down notes on when taken), independent for filling/refilling prescriptions and safe handling and storage.
- Transportation – periodic assistance from another person required for getting in and out of vehicle; “no longer uses” for using public transit and using transit schedules, arranging

transportation.

With respect to social functioning, the GP assesses the appellant as requiring periodic support/supervision in the areas of making appropriate social decisions and dealing appropriately with unexpected demands; the GP assesses the appellant independent in the areas of developing and maintaining relationships, interacting appropriately with others and securing assistance from others.

The GP describes the appellant's relationship with her immediate and extended social networks as marginal functioning.

Regarding help for social functioning, the GP indicates that the support/supervision required which would help the appellant maintain herself in the community is home care.

The GP reports that assistance provided to the appellant by other people is from friends.

The GP reports that the appellant routinely uses a cane as an assistive device.

Self Report

In her SR, the appellant writes that she has had varying diagnoses within the past 10 years: damaged joint within joints, chronic obstructive pulmonary disease, degenerative disc disease, carpal tunnel syndrome (both wrists), anxiety/depression attacks and sciatic nerve issues.

The appellant lists the following assistive devices she has used: power scooter, a cane, bathroom rails, furniture and people. Modifications have been made with respect to the garbage, bathroom and front entrance at home.

She writes that she has trouble with the following: from a sitting to a standing position; standing still; getting out of breath; memory, anger (no real reason), anxiety and depression; back and leg spasms; disk in the wrist when it goes out; numbness – spots on top of hands, feet; right leg still gives out without warning; and not safe to cook, bathe or shop alone.

Evidence submitted at reconsideration

The appellant's submission

In her reconsideration submission, the appellant writes that her GP would be happy to complete another form as her symptoms fluctuate between not being able to function to requiring periodic assistance. As she is off her regular anti-inflammatory drug due to trying to get her hiatus hernia under control, her functioning is not good at this time. She states that the ministry may not be aware of the diagnoses of COPD, hiatus hernia or carpal tunnel syndrome in both wrists.

In the last month she has fallen three times and has been unable to get up by herself. She has also fallen inside the house or has been caught. With other people's insight she has come to realize that she can no longer live alone, ever. For instance she is not safe to use a stove. Sometimes all she needs is supervision; at other times she needs help cutting vegetables or remembering what she was

doing. She regularly needs minor help such as putting on socks or getting out of bed after three hours sleep. She doesn't have any mobility when she first gets up. Winter or cold or wet weather always makes her worse. The worse she is the worse is her mind and concentration. She is unable to drive herself anywhere and since October has had to rely on the help of another person to go anywhere. Because of her memory she does not go one block without the assistance of a person, cane or a scooter.

The appellant goes on to write that she needs the assistance of a cane for getting up after 20 minutes, depending on how well she was feeling beforehand. She is no longer capable of traveling out of town alone. She used to be a vibrant person doing various activities with her kids and at times held down two jobs at once. In the last year she has had to give up going to church because of her pain – she can't help verbalizing it when it comes and it's embarrassing to her and disturbing to others. She tried to go back to work, but couldn't physically deal with the clothes and had difficulties with the phone, as well as the traveling to and from the worksite.

She also writes that she has gotten stuck in the bathtub due to the lack of mobility and her spasms. She has had trouble with saying what she thinks. She is estranged from her daughter and her family for the last five years and in the last year she has gotten together with her youngest son's family after seven years of him not wanting anything to do with her.

Over the years she has acclimatized herself to knowing there are certain ways she cannot move without ending up in bed for days. She spent 2 – 3 months in bed except for getting up to the bathroom – a 20 to 40 minute trip one-way with a cane. It took 1 1/2 years to teach her body to sit up again. She has come a long way but has realized that this level of functioning is the best she's ever going to get. She has been deteriorating again for the last two years. She can't go out anymore because of her mobility and dexterity and her life consists of reading and watching TV.

She writes that she used a photocopy of the PWD Application to indicate changes that should be noted. She notes that she needs help from another person for the following:

1. shop, lift, carry
2. do laundry
3. bathe – periodically needs help getting out, uses rails all the time; uses shower at times because she can't wipe herself properly
4. garbage: is modified in kitchen – cannot deal with garbage bag disposing of it in the landfill
5. feed/water and empty litter for her cats
6. periodically for preparing meals, in/out of vehicles etc.
7. vacuum/sweep/change sheets.

She writes that she can no longer own a dog – she would not be able to manage. She has to put things in the exact places or she loses them. She copes by writing down what she wants and needs to say on the phone and she writes everything on the calendar. She has been known to do dumb things like forgetting oven mitts and burning herself. She doesn't plan anymore because she doesn't know from minute to minute let alone days in advance. She is constantly uncomfortable physically. She was sure for a few years that she had Alzheimer's disease because her memory was so bad. Now she knows that this is just due to her pain level.

The appellant writes that she has major ups and downs. When she and her GP filled in the paperwork

she was at her best level but has fallen to a low point, due to weather mainly, in terms of mobility. As well as having to deal with recently diagnosed other medical issues – hiatus hernia – for over a year, she was diagnosed five years ago with COPD symptoms. She doesn't know what to do about it except use her puffers – she has been on the waiting list to see a respiratory nurse since June. Without friends/family to help, she would have to move into a home/ have a daycare provider. She can no longer live alone and she has to have help to make decisions.

Attached to her submission are copies of the PR and AR, with what appear to be additional handwritten entries by the appellant.

Other documents submitted at reconsideration

In his email, the appellant's son writes that often his mother would ask him the same question several times in a short period of time, not realizing she had already asked and it had been answered. Many times he received phone calls from her because she was not sure if the same bus she had taken hundreds of times was the right one or not, just to make sure she was on the right route. When she was cooking he would have to watch to make sure she didn't repeatedly season the meat or forget to turn the stovetop burners off, etc.

The son goes on to write that physically it was difficult for her to get around and do many physical activities. The short walk to the closest bus stop, about two blocks, would take her half an hour or more. Many times her back would seize just sitting in a chair, rendering her unable to stand up again, even with assistance. Any heavy lifting was out of the question. On a bad day, she wouldn't take a shower or bath without another person in residence in case she was unable to extract herself.

In her "To whom it may concern" letter dated 26 February 2014, the appellant's GP writes:

"[The appellant's] chronic conditions include persistent and enduring lower back pain due to degenerative disc disease, anxiety/depression affecting social functioning, chronic obstructive pulmonary disease affecting breathing & mobility (also at times affected by hiatus hernia) and carpal tunnel symptoms.

Her symptoms fluctuate and I would be happy to provide her current disability level in more detail should you wish to send further forms. I believe she currently meets the criteria for PWD, but of course your assessment of the clinical conditions described on such a form by me would form the basis of such a designation."

Information provided on appeal

The appellant's Notice of Appeal is dated 14 March 2014. Under Reasons for Appeal, the appellant writes that assistance is required with her daily living activities. Her various diagnoses restrict her daily living activities and her doctors, past and present, feel she is severely impaired.

Before the hearing, the appellant submitted a letter from her GP dated 03 April 2014. The GP writes:

"Unfortunately the patient did not have a second appropriate person to complete the Assessor's Report (Section 3) and so I completed this in addition to the Physician's Report. Section 3 was completed with the patient present in my office & my answers based on her description of her day to day life. It is apparent from the Decision Summary that it was felt not enough detail was included. It was also stated that the use of furniture and railing could

not be counted as assistive devices "under the legislation." This does not change the fact that the patient uses these things to help her get around as she is unable to do it unaided. She also uses a cane, support from other people and a mobility scooter. On a recent attempt to walk out unaided she reports taking 25 minutes to make the one block trip to her mailbox & back.

She tells me that she currently has help from another person for all shopping trips, as well as needing someone else to bring in wood required to heat her home. Further examples of help currently required consistently include household chores such as vacuuming & bed making.

I understand the patient has given more examples in her response to the Decision Summary.

I believe that the patient has significant restrictions on her daily living activities as a result of her medical conditions."

At the hearing, the appellant's landlord/friend with whom she lives testified that on numerous occasions he has had to catch her from falling when she has had back spasms while standing at the sink or stove. He has to help her in and out of vehicle: she recently had a back spasm when getting into the vehicle and collapsed onto the ground. He is worried that she will have a spasm while driving and so he does all the driving to and from stores and to appointments, etc.

In her presentation, the appellant covered much the same ground as in her submission at reconsideration (see above). In addition to the information provided in her submission regarding her memory difficulties, the appellant stated that with her recently diagnosed hiatus hernia, she has had to go off taking anti-inflammatory medications, so while her hiatus hernia symptoms are better, her pain and mobility difficulties are worse. She said that she is never without pain; it is always bad in the morning and if she overdoes it during the day, it will be bad in the evening as well. She has back "twinges" or minor spasms every day and major spasms, that could cause her to collapse, every 2 – 3 days. She goes through "ups and downs" and some days she cannot sit for even 10 to 20 minutes and, other times, she can function normally. She finds that her condition is worse with dampness in the weather.

She explained that there are certain modifications around the home to help her compensate for her disability: the garbage pail is small and is raised off the floor so that she can more easily access it; the toilet is 3 inches higher than usual and there are grab bars in the bathroom. She always uses a cane when walking outside. She previously used a scooter to get around hilly areas but the ground around her residence is uneven which makes using the scooter difficult and her doctor wants her to walk everyday to lose weight because of the hernia. While she may be able to lift 5 pounds, carrying that weight is another matter. Carrying a jug of milk – 5 pounds – from the store, about a block away, would do her in for the rest of the day. She gets out of breath sometimes just putting her socks on and she needs help or she goes without.

The appellant stated that because she has forgotten food cooking on the stove, she has not used the stove without supervision for years. Sometimes she has to take someone with her to the doctor's appointment because she has difficulty understanding, and she has considered putting her son in charge of her affairs. She does not trust her own judgment and her son has helped her by telling her that she has "crossed the line" with something she has said.

The appellant clarified that the reference in her reconsideration submission to being bedridden for 2 – 3 months was related to a situation in 2003, involving to a workplace injury.

The ministry stood by its position at reconsideration.

The ministry did not object to the new information provided before the hearing and at the hearing. The panel finds that the information provided by the GP in her 03 April 2014 letter, and by appellant and her witness in their oral testimony, is in support of the evidence before the ministry when it made the decision under appeal, clarifying the material provided by the GP and the appellant at reconsideration. The panel therefore admits as evidence the information provided by GP, the appellant and the witness under section 22(4) 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 or physical impairment that in the opinion of a prescribed professional

- (i) directly and significantly restricts her ability to perform daily living activities either continuously or periodically for extended periods; and,
- (ii) as a result of those restrictions she requires help to perform those activities.

The ministry determined that she met the 2 other criteria in *EAPWDA* section 2(2) set out below.

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.

And from the EAPWDR:

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.

The panel will consider each party's position regarding the reasonableness of the ministry's decision under the applicable PWD criteria at issue in this appeal.

Severity of impairment

Physical impairment

In the reconsideration decision, the ministry reviewed the appellant's functional skills limitations as reported by the GP (can walk 2 – 4 blocks unaided, etc.). The ministry noted that the GP reported that the appellant uses a cane for mobility outdoors and furniture for mobility indoors, though furniture is not considered an "assistive device" under the legislation. The ministry noted that the GP has indicated that the appellant requires periodic assistance with lifting and carrying and holding but that no information is provided on how often this assistance is required. The GP has also indicated that it takes the appellant significantly longer than typical for climbing stairs (no stairs at home) but no information is provided on how much longer it takes. The position of the ministry is that the impacts of the appellant's impairments as described by the GP are more in keeping with a moderate degree of impairment and that therefore, based on the information provided by the GP, the ministry finds that there is not enough evidence to establish a severe physical impairment.

The position of the appellant is that the evidence provided by her GP demonstrates the restrictions in her daily living activities resulting from severe lower back pain (degenerative disc disease), hiatus hernia, COPD and carpal tunnel syndrome, and the resulting need for help, and is sufficient to establish a severe physical impairment.

Panel findings

For PWD designation, the legislation requires that a severe mental or physical impairment be established. The determination of the severity of impairment is at the discretion of the minister, taking into account all the evidence, including that of the applicant. However, the starting point must be medical evidence, with the legislation requiring that a medical practitioner (in this case, the appellant's GP) identify the impairment and confirm that impairment will continue for at least two years.

In the discussion below concerning the information provided regarding the severity of the appellant's impairment, the panel has drawn upon the ministry's definition of "impairment" in the PWD Application. This definition consists of "cause" and "impact" components: "impairment is a loss or abnormality of psychological, anatomical or physiological structure or function [the cause] causing a restriction in the ability to function independently, effectively, appropriately or for a reasonable duration [impact]." This definition is not set out in legislation and is not binding on the panel, but in the panel's view it reasonably describes the legislative intent. The cause is usually set out as a disease, condition, syndrome, injury or even a symptom (e.g. pain or shortness of breath). A severe impairment requires the identified cause to have a significant impact on daily functioning.

The evidence is that in the PR the GP diagnosed the appellant's physical impairment as lower back pain. In her letter at reconsideration, the GP added that the lower back pain is a result of degenerative disc disease and provided additional diagnoses of COPD, hiatus hernia and carpal tunnel syndrome. In the PR, the GP assessed the appellant is able to walk unaided 2-4, climb 2 – 5 steps using rails and lift under 5 pounds. From the starting point, the panel notes many gaps and inconsistencies in the information provided by the GP. For instance, no narrative is provided as to the impact on the appellant's daily functioning of her COPD, hiatus hernia or carpal tunnel syndrome besides the comment in her February 26, 2014 letter that COPD affects breathing and mobility (also at times affected by hiatus hernia) and carpal tunnel symptoms. In her testimony at the hearing, the appellant made frequent reference to back spasms, which at their worst can cause her to collapse, which she estimates to occur every 2 to 3 days. The appellant also stated that she goes through "ups and downs" and some days she can function normally but her condition is worse with dampness. No reference to these occurrences, and their frequency, appear in the material provided by the GP, despite being provided with an opportunity to do so in her most recent letter dated April 3, 2014. In the PR, the GP indicates that the appellant has not been prescribed any aid for her impairment, yet in the AR the GP notes that the appellant routinely uses a cane. In her letter on appeal the GP noted that the appellant took 25 minutes to walk the 1 block distance to and from her mailbox but did not explain whether this represented a revision to the original 2 – 4 block walking unaided ability assessment.

In terms of impacts of the appellant's impairments on daily living activities, the GP has assessed the appellant as requiring periodic assistance from another person with several aspects of personal care, housekeeping, meals, medications and transportation; however, no information is provided as to how often this assistance is required. The GP also assessed the appellant as requiring continuous assistance from another person for going to and from stores and carrying purchases home, but the nature of this assistance is not described. (See also below under Significant restrictions in the ability to perform DLA).

Given the level of restrictions reported by the GP and the gaps and inconsistencies in the information provided by the GP, including that in the PR and AR and at reconsideration and on appeal, the panel finds that there is insufficient evidence of the frequency of the exacerbations of the appellant's symptoms and the ministry was reasonable in determining that a severe impairment had not been established.

Mental impairment

In the reconsideration decision, the ministry noted that the GP indicated that the appellant has deficits with cognitive and emotional function in the areas of memory, emotional disturbances, motivation and attention or sustained concentration. In assessing the impacts on daily functioning, the GP indicated that the appellant has a moderate impact to other emotional or mental problems and minimal impacts in several other areas. In addition the GP reported that the appellant has no difficulties with communication. Based on the information provided by the GP the ministry position was that there was not enough evidence to establish a severe mental impairment.

The position of the appellant is that she has serious short-term memory problems, with a huge impact on her daily functioning. These impacts range from the fear of getting lost venturing outside the home alone and embarrassment from repeating herself in conversation to the risk of forgetting to turn off

the stove. She submits that this is sufficient to establish a severe mental impairment.

Panel findings

The evidence is that the GP has diagnosed the appellant's mental impairment as depression. The GP noted in the PR that mood swings and depression affect social functioning and that there has been improvement in cognitive functioning after sleep improved but the appellant still has short-term memory issues. She uses lists to aid day-to-day activities. The GP indicated the appellant has significant deficits with cognitive and emotional function in the areas of memory, emotional disturbance, motivation, and attention or sustained concentration. At the hearing, the appellant described her loss of memory issues requiring supervision for several tasks, including safety concerns, as well as her perceived lack of judgment and difficulty understanding that require help from others for decision-making. In terms of the impacts on daily functioning, however, the GP indicated that there are no major impacts, and one moderate impact in the area of "other emotional or mental problems," without explaining what these were. The GP also indicated minimal impacts in the areas of emotion, attention/concentration, executive, memory, and motivation, but provided no additional comments. As the ministry noted, the GP also reported no difficulties with communications. The GP also indicated that the appellant requiring periodic support/supervision in the areas of making appropriate social decisions and dealing appropriately with unexpected demands, but no explanation is provided as to the degree and duration of support/supervision required. Similarly, while the GP assesses the appellant's relationship with her immediate and extended social networks as marginal functioning, no narrative is provided to explain this assessment.

Given that the GP assessed one impact on daily functioning in the moderate range, without explaining what was meant by "other emotional or mental problems," with other impacts at the minimal level, the panel finds that the ministry was reasonable in determining that a severe mental impairment had not been established.

Significant restrictions in the ability to perform DLA.

The position of the ministry is that, based on the information provided by the GP, the ministry does not have enough evidence to confirm that the appellant's impairment significantly restricts her ability to perform DLA either continuously or periodically for extended periods.

The appellant's position is that, considering that her mobility inside and outside the home is significantly restricted and that she needs continuous assistance for shopping and periodic assistance from another person for such activities as cooking and housework, she has met this criterion.

Panel findings

The panel notes that, according to the legislation, the direct and significant restriction in the ability to perform DLA must be a result of a severe impairment, a criterion which has not been established in this appeal. This DLA criterion must also be considered in terms of the preceding legislative language of section 2 of the EAPWDA, which provides that the minister may designate a person as a person with disabilities "if the minister is satisfied that" the criteria are met, including this one. In exercising

the discretion conferred by the legislation, it is reasonable that the minister would expect that the opinion of a prescribed professional be substantiated by information from the prescribed professional that would satisfy the minister that there are direct and significant restrictions in the ability to perform DLA, either continuously or periodically for extended periods, by presenting a clear and complete picture of the nature and extent of these restrictions.

The panel has set out in detail in Part E above the GP's assessments regarding the appellant's ability to perform DLA, as contained in the AR and in the GPs letter on appeal. In summary, the GP has provided information pointing to a greater degree of restriction in the following DLA:

- Moving about indoors and outdoors – in the AR, the GP has assessed the appellant able to walk 2 – 4 blocks unaided, and though she has not been prescribed any aids, the appellant does use a cane, and sometimes a scooter, for outdoor use. In the letter on appeal, the GP reports that the appellant took 25 minutes to walk the 1 block to her mailbox and back, without explaining whether this represented the new assessment and if so, why. Indoors, the GP reports that the appellant relies on furniture for support as she moves about. While, as the ministry notes, furniture is not considered an “assistive device” under the legislation, the panel recognizes that the use of furniture in this way is an indicator of some degree of restriction in the appellant's mobility; however, no information is provided as to whether, relying on furniture for support, she can move about at a reasonable pace or whether she takes significantly longer than typical or encounters other difficulties (e.g. shortness of breath).
- Shopping – the GP reports the appellant requires continuous assistance from another person for going to and from stores and carrying purchases home, with the comment “never alone.” The GP does not explain the nature of the help provided, though the panel obtained the impression from her landlord/friend that he provided this assistance as he was concerned about the appellant's safety should she have a back spasm while driving to or from stores.

With respect to other DLA applicable to a person with a severe mental or physical impairment, the GP has assessed the appellant requiring periodic assistance from another person in the noted aspects of the following DLA: personal care (dressing, bathing, transfers in/out of bed), basic housekeeping (laundry, basic housekeeping), meals (meal planning, food preparation, cooking, and safe storage of food), medications (taking as directed) and transportation (getting in and out of vehicle). The panel notes that no information is provided as to the frequency of when this help is needed, or under what circumstances, in what way or to what extent the help is required. For the meals DLA, for example, the GP does not explain the nature of the help provided and whether it is related to the safety concerns as described by the appellant and her son or to the appellant's variable physical symptoms.

Regarding the 2 DLA applicable to a person with a severe mental impairment – make decisions about personal activities, care or finances and relate to, communicate or interact with others effectively – the GP has assessed the appellant as requiring periodic assistance from another person in making appropriate social decisions and dealing appropriately with unexpected demands; however, no information is provided as to how often, under what circumstances, in what way and for how long such help is required.

On the basis of the above analysis of the information provided by the appellant's GP, the panel considers it reasonable that the ministry would not have had a clear and complete picture of how the appellant's impairments restrict her ability to perform her DLA. The panel therefore finds that the ministry was reasonable in determining that the information provided did not establish that the

appellant's impairments, in the opinion of a prescribed professional – her GP – directly and significantly restricts her ability to perform DLA, either continuously or periodically for extended periods.

Help with DLA

The position of the ministry is that as it has not been established that DLA are significantly restricted, it cannot be determined that significant help is required from other persons.

The appellant's position is that she requires the use of a cane to move about outdoors and the support of furniture and bathroom rails indoors as well as the occasional use of a power scooter, and the ongoing assistance of another person for other DLA, particularly for housekeeping, shopping and transportation.

Panel findings

The panel notes that the legislation requires that in the opinion of a prescribed professional the need for help must arise from direct and significant restrictions in the ability to perform DLA that are either continuous or periodic for extended periods. While the evidence is that the appellant uses a cane for walking outdoors, occasionally uses a mobility scooter, and benefits from the help of another person for other DLA requiring physical effort, the panel finds that the ministry reasonably determined that since 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.

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 was reasonably supported by the evidence. The panel therefore confirms the ministry's decision.