

## 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 15, 2014 denying the appellant designation as a person with disabilities (PWD). The ministry determined that the appellant did not meet two 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 criteria of being 18 years of age or older (criterion 1), that in the opinion of a medical practitioner, her impairment is likely to continue for two or more years (criterion 2), and the minister is satisfied that she has a severe mental impairment (criterion 3). However, the ministry determined that, based on the information provided, the following criteria as set out in section 2(2)(b) of the EAPWDA were **not** met:

- 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. Two versions of the appellant's PWD Designation Application, the first version contained the following two parts:
  - The appellant's Self Report (SR) completed June 17, 2013;
  - The Physician Report dated June 17, 2013 completed by the appellant's psychiatrist (PR-Psychiatrist) who has known the appellant since May 2012 and indicated he had seen her 11 or more times in the previous year. The psychiatrist did not complete or certify the Assessor Report of the PWD Designation application.The second version of the PWD Designation Application contained the following two parts (the appellant did not complete the SR in this version):
  - The Physician Report dated July 22, 2013 completed by the appellant's family physician (PR-Physician) who has known the appellant for 3 years and indicated he had seen her 11 or more times in the previous year.
  - The Assessor Report (AR) dated July 22, 2013 also completed by the appellant's family physician.
2. The appellant's request for reconsideration dated December 30, 2013, attached to which was a one-page letter from the appellant's psychiatrist dated December 30, 2013. In this letter, the psychiatrist wrote that he wished to "clarify the following points":
  - The appellant has "significant and chronic difficulties with her mental health";
  - She has "marked difficulty in coping and her interpersonal functioning is chronically inadequate so that she is quite vulnerable on an ongoing basis and has had frequent episodes of intense distress, marked anxiety, and periods of sadness, tearfulness and inability to cope";
  - The appellant "has some support in the community but has family of origin issues and has limited resourcefulness to work through therapies"; and
  - "In view of the above, I do feel that she would benefit from designation as a person with disabilities."

The appellant completed her notice of appeal on January 20, 2014, and on it she wrote that she is "not physically or mentally able to hold down a job" and that she had tried to do volunteer work, but had to give that up due to physical and mental problems. She concluded by writing that right now, she is too ill to do anything.

Prior to the hearing, the appellant submitted the following three additional documents to the panel:

1. A copy of a one-page letter from her family physician dated January 29, 2014 in which her physician has written the sentence, "This is to confirm that [the appellant] will not be employable because of medical reasons for the foreseeable future."
2. A 4-page computer print out dated January 30, 2014 from a drug store listing all of the medications prescribed for the appellant.
3. A 2-page initial assessment report dated January 31, 2014 to the appellant's family physician from a respiratory service that had conducted tests on the appellant for obstructive sleep apnea.

In her submissions at the hearing, the appellant said that she wanted the panel to consider the additional documents because in document #1, her doctor has confirmed she is unable to work, document #2 - the list of medications - shows how many medications the appellant takes, their dosage and frequency and supports that she has a severe impairment that affects her ability to perform daily living activities, and document #3, the report from the respiratory centre, shows that her health is deteriorating and she is now having respiratory difficulties and sleep apnea.

The ministry representative did not contest the admission of additional documents #1 and #2 and said that these two documents contained information that was before the ministry at the time of the reconsideration (document #2) or was in support of information before the ministry at reconsideration (document #1). However, the ministry argued that the panel should not admit document #3, as there was no information before the ministry until the appeal hearing that the appellant suffers from sleep apnea and this constitutes new information.

The panel finds that the information in document #2 provided by the appellant at the hearing is admissible as information that was before the ministry at the time of the reconsideration – the ministry had information about the appellant's medications, their dosages and frequency as set out in document #2. The panel also finds that the information in document #1 provided by the appellant at the hearing is admissible as information from her family physician in support of the information provided by the family physician in the PR and AR that was before the ministry at the reconsideration. The panel therefore admits the additional information in documents #1 and #2 pursuant to section 22(4)(a) and (b) of the *Employment and Assistance Act*. However, the panel finds that the information contained in document #3 submitted by the appellant at the hearing constitutes new information that was not before the ministry at the reconsideration – there was no reference to the appellant suffering from respiratory problems or sleep apnea in either the PR-Physician or the PR-Psychiatrist. Accordingly, the panel does not admit the additional information in document #3 because it does not meet the tests set out section 22(4)(a) or (b) of the *Employment and Assistance Act*.

At the hearing, the appellant told the panel that the ministry has qualified her as a person with persistent medical barriers to employment ("PPMB") for the last 20 years and her most recent renewal of her PPMB status was a few months ago. She told the panel that she should be designated as a person with disabilities and she and her representative, her mother, described the ways in which the appellant's impairments affect her ability to perform her DLA and this is noted where applicable in the following summary of the evidence. The following is a summary of the evidence from the two PRs, and the AR, as well as the psychiatrist's letter of December 30, 2013, and the information set out in admitted documents #1 and #2, 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 submissions at the hearing.

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

The appellant's physician and psychiatrist have diagnosed her as having a major depressive disorder, panic disorder with agoraphobia, dependent and borderline personality disorder, as well as scoliosis and back pain. At reconsideration, the ministry changed its original decision and accepted that the information provided establishes that the appellant has a severe mental impairment. At the



hearing, the appellant asserted that her scoliosis and back pain is severe and the ministry should have found that she also has a severe physical impairment.

In the PR-Physician and PR-Psychiatrist, both doctors diagnosed her with scoliosis and her family physician also indicated she suffered from back pain. In her SR, the appellant wrote that she has scoliosis that required surgery, that she has Harrington rods in her back which have "settled in" over the years causing a lot of pain limiting her physical activities. Her psychiatrist noted in the PR-Psychiatrist that the appellant's surgery occurred in 1990 and wrote that the appellant has a Harrington rod inserted in her back and this has caused chronic back pain. The appellant told the panel at the hearing that the rod can never be removed from her back. In the PR-Psychiatrist, the appellant's psychiatrist indicated that the appellant has been prescribed medications that interfere with her ability to perform DLA, writing, "medications cause SEs [side effects] and impair functioning."

In the functional skills assessment in the PR-Physician, the appellant's physician indicated that the appellant could walk 4+ blocks unaided on a flat surface, that she could climb 5+ steps unaided, and that she could lift 2-7 kg (5-15 pounds). The physician check marked "unknown" regarding how long the appellant can remain seated. In this same section of the PR-Psychiatrist, the appellant's psychiatrist check marked "unknown" in answer to the question of how far the appellant can walk unaided on a flat surface, and indicated the appellant could climb 5+ steps unaided. The psychiatrist check marked "unknown" with respect to the appellant's limitations in lifting, and indicated she had no limitations in remaining seated.

In the AR completed by the appellant's family physician, he indicated that the appellant was independent in 4 aspects of mobility and physical ability (walking indoors, walking outdoors, climbing stairs and standing). The physician indicated that the appellant required periodic assistance with the tasks of lifting and carrying and holding, writing the comment, "scoliosis with chronic back pain limiting her lifting abilities." The appellant's psychiatrist did not complete the AR section of the PWD application.

The appellant told the panel that she is in constant pain because of her scoliosis and the rod in her back and as a result she takes strong, prescribed pain medication three times per day which she has been taking for a year. She told the panel that she saw a pain specialist a few years ago, but that she could not afford the therapies the pain specialist recommended (such as massage and physio therapy).

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

In the PR-Psychiatrist, the psychiatrist indicated that the appellant's impairment directly restricts her ability to perform the DLA of daily shopping and management of finances periodically. The psychiatrist wrote the comment, "During periods of more intense symptoms vulnerable to monetary exploitation" to explain his answer. The psychiatrist also indicated that the appellant's impairment directly restricts her social function continuously, writing the comment, "Due to anxiety, low self esteem, panic attacks & fears of negative appraisal and rejection." The appellant's psychiatrist did not complete the AR section of the PWD application.

The appellant's physician completed the AR. The physician indicated that the appellant is independent in performing all aspects of the DLAs of personal care, meals, paying rent and bills,

[REDACTED]

medications and transportation. The physician indicated that the appellant is independent in performing 4 of the 5 listed tasks of the DLA of shopping, indicating that the appellant requires periodic assistance carrying purchases home, commenting "back pain." The appellant's physician indicated the appellant required periodic assistance "[secondary] to back pain" for the task of basic housekeeping, but was able to independently perform the task of laundry, under the DLA of basic housekeeping. In the AR, the appellant's physician indicated that she was independent in all aspects of social functioning and had good functioning with her immediate social network. The physician indicated that the appellant had marginal functioning with her extended social networks, and wrote, "borderline and dependent personality trait."

At the hearing, the appellant and her mother described the extent to which the appellant's impairments affect her ability to perform her DLA, some of which is also set out in the appellant's SR. The appellant told the panel that she has severe depression and she finds it very difficult to get up in the morning and to function throughout the day. She said that she does not like to go out and has anxiety. In her SR, the appellant wrote, "it is always going to be an ongoing battle for I will never be able to do these things on my own." The appellant lives in an apartment in the same complex as her mother and stepfather. The appellant's mother has a key to the appellant's apartment and told the panel that every morning, she goes to the appellant's apartment, lets herself in, wakes up her daughter and helps her get out of bed and get dressed if the appellant's back is in pain. In her SR, the appellant wrote that if her mother didn't help her get up every morning, "I would stay in bed for days" and that there are some days she can't even go outside because of her loneliness, hopelessness and feelings of anxiety. The appellant will accompany her mother to her mother's apartment, where she will eat breakfast. The appellant's mother told the panel that she does most of the cooking and meal preparation although she tries to get the appellant to help if she is up to it. If there are errands, the appellant's mother said that her husband (the appellant's step-father) will drive them to the store and to medical appointments. The appellant's mother does all of the shopping for the family. After lunch, the appellant will return to her apartment for a nap, but her mother will come and wake her up after a few hours. The appellant will eat her dinner with her mother and stepfather in their apartment. The appellant's mother will take the appellant back to her apartment and help her get ready for bed, which includes making sure the appellant takes her medications.

The appellant and her mother confirmed that her mother administers the appellant's medication to her and the appellant told the panel that when she has tried to take her medications herself, she has overdosed herself and on one occasion had to go to the hospital as a result.

The appellant's mother told the panel that she and the appellant's grandmother have been assisting the appellant financially on an ongoing basis, but that as they are both on limited incomes and the grandmother is moving into a care facility, they cannot afford to help the appellant anymore. The appellant told the panel that her stepfather pays her rent for her, ensuring that her cheques (or cash) are provided to the landlord on time.

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

In the section of the AR describing the assistance provided for the appellant, the family physician wrote, "Close contact with mother who is on disability." At the hearing, the appellant and her mother described the extent to which her mother assists the appellant with all aspects of her DLA, as set out above. The appellant told the panel that on the occasions when her mother is not available, her



grandmother, a friend or her own daughter (who lives in another city) will help her with her DLA. The appellant and her mother have a friend who they pay to clean their apartments on a regular basis (once a week) and the appellant said this friend does all of her house cleaning.

The panel finds that the new information provided by the appellant and her mother at the hearing is in support of the information before the ministry at the time of the reconsideration. The testimony of the appellant reiterates the information in her SR and describes the extent of the help provided her in managing her DLAs. The panel therefore admits the appellant's 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 physical impairment (although it establishes that she has a severe mental impairment) and that the information provided did not demonstrate that her severe mental impairment 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:
- (i) make decisions about personal activities, care or finances;
  - (ii) relate to, communicate or interact with others effectively.

### Severity of physical impairment

The appellant told the panel that her scoliosis causes her severe back pain for which she must take daily prescribed medication. She said that her back pain is sometimes so severe that her mother must help her get dressed. The appellant told the panel that she has trouble communicating with her family physician and that he "doesn't believe" her and doesn't listen to her when she tells him about her difficulties. The appellant told the panel she feels she has a good relationship with her psychiatrist and that he knows her better and has a better understanding of her situation than her family physician (who is also her mother's doctor).

In the reconsideration decision, the ministry based its determination that the appellant's back pain was not a severe impairment on the information provided by the appellant's physician in the PR-Physician and by the appellant's psychiatrist in the PR-Psychiatrist. The ministry noted the following responses of the appellant's physician and psychiatrist in the functional skills section of the PRs: that her psychiatrist indicates "unknown" when asked to assess the appellant's capability of walking and lifting, that she is able to climb 5+ steps unaided and has no limitations lifting or remaining seated; that the appellant's physician indicates she is able to walk 4+ blocks, climb 5+ stairs unaided, lift 5 to 15 lbs and does not know how long she can remain seated. For this reason, the minister was not satisfied that "the information provided from both physicians is evidence of a severe physical impairment." The ministry also noted that in the AR, the appellant's physician reports that she is able to perform independently a large majority of her DLA, and that "a large majority of the information [the appellant's psychiatrist] provides relates to [her] mental health and does not provide an assessment of [her] physical capabilities." The ministry also wrote in its reconsideration decision that the physician did not describe the degree of pain she experiences on a daily basis nor describe how her medications help her and "there are no medical reports, tests or referrals to physical therapists."

### 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 ministry accepted that the appellant has a severe mental impairment – specifically, severe mental health disorders including depression, anxiety and panic and agoraphobia. The appellant's physicians confirmed in the PR sections of the PWD application that, in addition to her mental impairments, she also has scoliosis and chronic back pain and the appellant asserts that this is a severe physical impairment.

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



[REDACTED]

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 panel notes that 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 sections of the PWD application, together with the additional information in documents #1 and #2, as well as the letter from the appellant's psychiatrist dated December 30, 2013.

In the PR-Psychiatrist, the psychiatrist indicated that the appellant's impairment directly restricted her ability to periodically perform daily shopping and management of finances, but his comment is directed to her mental impairment ("during periods of more intense symptoms vulnerable to monetary exploitation") and does not refer to back pain. The psychiatrist indicated that the appellant's impairment directly restricted her social functioning continuously, but his comment indicates it is related to her mental impairment, "Due to anxiety, low self esteem, panic attacks & fears of negative appraisal & rejection." In assessing the appellant's functional skills in the PR-Psychiatrist, her psychiatrist indicated she could climb 5+ steps and had no limitations remaining seated, and he did not know how far she could walk unaided on a flat surface or her limitations in lifting.

In the PR-Physician, her physician indicated she could walk 4+ blocks unaided on a flat surface, climb 5+ steps, lift 2-7 pounds, but he did not know how long she could remain seated. In the AR, the appellant's physician indicated that the impairments that impact the appellant's ability to manage DLA are "depression with [illegible] panic disorder with agoraphobia" – he did not indicate that the appellant's scoliosis and back pain impact her ability to perform her DLA in the AR. The appellant's physician indicated in the AR that the appellant required periodic assistance lifting and carrying and holding, writing "scoliosis with chronic back pain limiting her lifting abilities" but indicated that she was independent walking indoors and outdoors, climbing stairs and standing.

In his letter of December 30, 2013, the appellant's psychiatrist did not address her physical impairment and does not refer to her scoliosis or back pain. In the letter of January 29, 2014, the appellant's physician did not comment at all on the appellant's physical or mental impairment, writing only that she is unemployable "because of medical reasons" and although it is clear that the appellant is on a number of medications (as evidenced in document #2 and her testimony at the hearing), there is no information in the list of medications about their effects on her ability to perform her DLA.

Accordingly, given the information provided by the appellant's physicians, the panel finds that the ministry's determination that the information provided does not establish a severe physical impairment of chronic back pain resulting from scoliosis is reasonable.

*Direct and significant restrictions in the ability to perform DLA.*

The appellant told the panel that because of her mental impairments and her scoliosis/back pain, she is incapable of performing any of her DLA. As set out previously, the appellant and her mother described that her mother assists her with all aspects of her DLA – she starts by waking up the appellant, helping her get out of bed, bathe and dress herself. The appellant's mother prepares all of the meals for the family in her apartment, and with the assistance of her husband (the appellant's stepfather) does all of the family shopping and drives the appellant to her appointments. The appellant's mother administers the appellant's medications as the appellant gets confused and has

[REDACTED]

over dosed herself in the past. The appellant's stepfather pays the appellant's rent for her by delivering her cheques. The appellant was often emotional during the hearing, stressing to the panel that she does not know how to function without her mother.

In the reconsideration decision, the ministry determined that although it recognized that the appellant has a severe mental impairment, the information provided does not demonstrate that "this impairment directly and significantly restricts" the appellant's ability to perform the daily living activities set out in the legislation. The ministry referred to the fact that the appellant's psychiatrist in his PR indicated that her impairment periodically restricts her ability to perform the DLA of shopping and management of finances, but that his explanatory statements ("during periods of more intense symptoms" and "vulnerable to monetary exploitation") do not "explain how frequently [the appellant] experiences periods of more intense symptoms." The ministry also acknowledged that the psychiatrist indicated the appellant requires continuous assistance for social functioning ("due to low anxiety, low self esteem, panic attacks and fears of negative appraisal and rejection") but the reconsideration decision noted that the psychiatrist "does not describe the support or supervision that would benefit [the appellant] or provide that detail that [the relevant page] in the AR would provide." The reconsideration decision noted that in the AR, the appellant's physician indicated that she could independently perform "a large majority" of her DLAs. The ministry acknowledged that the appellant's physician indicated that she required periodic assistance with the task of carrying purchases home in the DLA of shopping, because of "back pain". The ministry also noted that the appellant's physician indicated she had marginal functioning in her extended social network.

### *Analysis and decision*

The legislation requires in subs. 2(2)(b) of the EAPWDA 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." The DLA to be considered for a person with a mental impairment 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;
- Manage personal medication;
- Make decisions about personal activities, care or finances; and
- Relate to, communicate or interact with others effectively.

In the appellant's case, the appellant and her mother at the hearing set out a clear and compelling picture of the appellant's typical day and the extreme degree to which her severe mental health issues impact her ability to perform her DLA. However, the legislation requires that a prescribed professional – in other words, one or both of the appellant's treating physicians who completed the

portions of the PWD application – provide an opinion that the appellant's severe mental impairment directly and significantly restricts her ability to perform DLA either continuously or periodically for extended periods.

The appellant's psychiatrist – the physician who she says knows her better than her family physician – did not complete the AR portion of the PWD application. The appellant's physician was the only prescribed professional to complete the AR, commenting on how the appellant's impairments restrict her ability to perform her DLA. The panel notes that in the AR, her physician indicated that the appellant required periodic assistance in the task of basic housekeeping “[secondary] to back pain” under the DLA of basic housekeeping, but did not indicate that this restriction was a result of her severe mental impairment. The panel also notes that the appellant's physician indicated that her impairment restricted her periodically in carrying purchases home, one of 5 tasks listed under the DLA of shopping, but that this was related to “back pain” – as opposed to the appellant's severe mental impairment.

For the DLA specifically related to persons with a mental impairment, there is no information provided by her physician in the AR to indicate that the appellant's mental impairment has a direct and significant impact on her performance of the DLA of making decisions about personal activities, care or finances (the physician indicated she was independent in all tasks of managing her personal finances – paying rent and bills - and medications). Although the appellant's testimony that she has over dosed on her pain medication and was taken to hospital as a result directly contradicts the information in the AR provided by her physician, there is no further information from a prescribed professional before the ministry or this panel to describe this impact (such as a report from the hospital or attending physician when she over dosed). For the DLA of relating to, communicating or interacting with others effectively, the appellant's physician indicated in the AR that she was independent in all aspects of social functioning and had good functioning with her immediate social network but marginal functioning with extended social networks, writing the comment, “Borderline & dependant personality trait.”

The panel finds reasonable the ministry's assessment that the information provided does not demonstrate that the appellant's severe mental impairment – as opposed to her back pain – directly and significantly restricts her ability to perform DLA. Without such information, and based on the evidence provided by the appellant's physicians in the 2 PRs and the 1 AR, the panel finds that the ministry's determination that - although the appellant has a severe mental impairment - the information provided does not establish that this impairment significantly restricts her DLA continuously or periodically for extended periods is reasonable.

#### Help with DLA

The appellant and her mother told the panel that she needs extensive ongoing help from her mother (as well as her stepfather and, when her mother is not available, her grandmother, a friend and her daughter) to perform all of her DLA.

In its reconsideration, the ministry noted that as it “had not been established that [DLA] are significantly restricted ... it cannot be determined that significant help is required from other persons. No other assistive devices are required.”



The legislation requires in subs. 2(b)(iii) that in the opinion of a prescribed professional, as a result of the appellant's restrictions, the appellant requires help to perform DLA. The panel notes the evidence before the ministry at the reconsideration as set out by the appellant's physician in the AR was that the appellant needs periodic assistance with lifting, carrying and holding – more specifically, carrying purchases home and basic housekeeping. The physician has also check marked in the AR that the appellant received help for DLA from her family, writing "close contact with mother who is on disability" as the explanation. However, the physician does not indicate that the appellant's need for assistance is as a direct result of her severe mental impairment (her mental health issues), but rather is as result of scoliosis and back pain. 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.