

PART C – Decision under Appeal

The decision under appeal is the Ministry of Social Development and Social Innovation (Ministry) Reconsideration Decision dated April 11, 2014, which held that the Appellant is not eligible for designation as a Person with Disabilities (PWD). The Ministry found that the Appellant did not meet three of the five criteria set out in Section 2(2) of the Employment and Assistance for Persons with Disabilities Act. 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 found that the information provided does not establish that the Appellant has a severe mental or physical impairment, that her impairment significantly restricts her ability to perform daily living activities continuously or periodically for extended periods or that as a result of those restrictions she requires the significant help or supervision of another person to perform daily living activities .

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

Information before the Ministry at Reconsideration included:

- The Appellant's Persons with Disabilities Designation Application, stamped as received by the ministry October 29, 2013:
 - Self Report dated September 30, 2013: The Appellant stated that she has been suffering from muscular/spinal pain, spasms and fibromyalgia for 13 years, and extreme muscular spasms and pain for five years, which affects her sitting, standing and every day activities. She stated that she has balance problems with chronic dizziness and nausea, and that she cannot sit for more than one hour. She stated that she does not have a clear diagnosis for her dizziness and balance problems, she suffers from environmental disease, she is a cancer survivor and she has had six abdominal surgeries.
 - Physician's Report dated September 13, 2013: The physician reported that the Appellant is diagnosed with chronic anxiety/depressive illness, degenerative disc disease cervical thoracic spine, chronic fatigue syndrome, fibromyalgia and environmental sensitivities, with a health history of endometriosis, osteoporosis and arthritis [sic], breast cancer, environmental disease, 3 motor vehicle accidents, degenerative disc disorder, fibromyalgia, spinal stenosis and chronic balance problems and dizziness. The physician confirmed that the Appellant's impairment is likely to continue for two years or more, with the comment "this patient's condition appears to be chronic + not amenable to remedial treatments".
 - Functional Skills: The physician reported that the Appellant can walk 1 to 2 blocks unaided, climb 5+ steps, cannot lift, can remain seated less than one hour and has no difficulties with communication. With respect to cognitive and emotional function, the physician reported that there are significant deficits with memory, emotional disturbance and attention or sustained concentration, with no comments.
 - Assessor Report dated September 20, 2013: This section was completed by the same physician and contained the following information:
 - Mental or Physical Impairment: The physician's brief summary in section 1 indicated "generalized symptoms of weakness, dizziness, back and abdominal pains". The physician reported that all aspects of the ability to communicate are good or satisfactory; and that mobility and physical ability are as follows: Walking indoors, independent; Walking outdoors and climbing stairs, periodic assistance from another person, with the comment "dizziness/balance problems"; standing, independent; lifting, continuous assistance from another person or unable, with the comment "unable to lift due to muscle weakness"; carrying and holding, periodic assistance from another person. With respect to cognitive and emotional functioning, the physician reported no impact with executive, motor activity, language, psychotic symptoms and other neuropsychological or emotional or mental problems; minimal impact with consciousness, memory and motivation; moderate impact with insight and judgment and attention/concentration and major impacts with bodily functions, emotion and impulse control.
 - Daily Living Activities (DLA's): The physician reported that four aspects of personal care: dressing, grooming, bathing and toileting, take significantly longer than typical, with the comment "x2 normal length of time due to malaise, LOE [loss of energy], dizziness"; Four aspects of personal care: feeding self/ regulate diet, transfers in/out of bed and transfers on/off of chair, are independent. With respect to basic housekeeping, the physician reported that both aspects, laundry and basic housekeeping, take significantly longer than typical, with the comment "x2 normal time due to above reasons". With respect to shopping, the physician reported that two aspects, going to and from stores and reading prices and labels, take significantly longer than typical; two aspects, making appropriate choices and paying for purchases are independent and one aspect, carrying purchases home, requires periodic

assistance, with the comment "unable to carry heavier weights". With respect to meals, two aspects are reported as independent, meal planning and safe storage of food, and two aspects, food preparation and cooking, are described as taking significantly longer than typical with the comment "takes excessive length of time (2x)". All aspects of paying rent and bills and medications are reported as independent. With respect to transportation, two aspects, using public transit and using transit schedules and arranging transportation are reported as independent, and one aspect, getting in and out of a vehicle, is reported as requiring periodic assistance, with the comment "when fast dizziness, lost of balance, nausea". Under additional comments the physician wrote: "With most of these activities has to be very careful, slow especially in the kitchen and public places." With respect to social functioning, all aspects are reported as requiring periodic support/supervision, with the comment "All of these are impacted due to chronic pain, LOE, dizziness, malaise." With respect to how the mental impairment impacts the applicant's relationship with immediate and extended social networks, the physician reported marginal functioning.

- Assistance Provided for Applicant: The physician reported that help is provided by family and friends with the comment "Needs assistance with most ADL's." The section referring to assistance provided through the use of assistive devices is blank. There is a check mark in the "no" box beside the question "Does the applicant have an assistance animal?"
- Additional information: The physician added the comment "The most severe problem of the patient is the neck condition due to the bulge disc and fibromyalgia which prevents her before performing most of the daily activities. The condition is not a subject of surgery, medications are restricted due to the low tolerance, taken periodically."

Prior to the hearing the Appellant submitted the following documents:

1. A report titled "To whom it may concern" dated May 20, 2014, stating the Appellant's report of her physical condition.
2. A note dated April 23, 2014, containing additional comments related to the Appellant's PWD application form, pages 10 and 16, indicating the address of the physician who completed the reports filed with the PWD application and a handwritten note: "Have reviewed symptomology with client." With respect to page 10, functional skills, the physician reported that functional skill limitations are restricted and are more than moderate due to the fact that the appellant can only lift light objects and always needs the help of other people with cleaning, shopping, packing, travelling, and organizing before and after meals. She cannot carry or wash "heavy pots, plates, heavy garbage, vacuuming, cleaning stairs or windows." The physician stated that the Appellant's spinal problems cause movement and balance problems, and that packing her belongings and travelling are very stressful and exhausting. With respect to page 16, which refers to mental or physical impairment, the physician stated that with reference to executive function, the Appellant has "definite problems with planning and organizing her life, problem solving is difficult and simply postponed." With respect to motor activity, the physician reported that extreme agitation and tension are noticed when there is pain, which is sometimes expressed by bizarre behaviors. With respect to psychotic symptoms and other neuropsychological function, the physician reported that the Appellant "is in anger when in pain," and that while under medication, she experiences tiredness and low energy, with inability to concentrate and limited intellectual skills.
3. A note from the appellant's physician on a prescription form dated March 19, 2014, confirming that the Appellant "continues to experience severe back pain and is considered to be totally disabled."
4. A copy of a medical legal opinion from the Appellant's physician dated August 22, 2012, stating that the most consistent and striking finding throughout the eighteen months he had known the Appellant was her severe anxiety and distress, the tendency to focus and dwell on minute details of her symptoms and an unwavering belief that her symptoms represented extremely serious and life-

threatening ailments. Pain tolerance was very low. The physician stated in his conclusion that he believes she has a mild but permanent partial disability in terms of pain and impaired function as well as emotional distress.

5. A checklist dated April 5, 2013, where the Appellant stated her difficulties with daily activities.
6. A statement of the Appellant's work and health history from 1979 to 2010.
7. A copy of submissions previously provided with the Appellant's application for PWD designation.
8. Statement by the Appellant dated September 16, 2013 'To Whom It May Concern.' (App III, p. 24)
9. Copies of letters from the Appellant to the Ministry dated March 7, 2014, and April 11, 2014 listing additional details of her medical conditions.
10. A document titled "Appendix" dated March 11, 2014, listing the Appellant's health condition and working ability between February 2013 and February, 2014.
11. Eight letters from a medical specialist to the appellant's physician dated between June 21, 2000 and May 27, 2003 detailing the appellant's previous medical conditions.
12. Six letters/reports from various medical specialists dated between February 20, 2004 and April 9, 2014 detailing the appellant's various medical conditions and test results. The recent reports from 2014 indicate that certain medical tests are not necessary for patients with chronic pain; that surgery is counter-indicated for the appellant's conditions, and the tests that were performed showed normal results, mild conditions, or conditions amenable to elbow padding, vitamins, exercise, and medications for muscle spasms.
13. A report from a Registered Massage Therapist dated December 6, 2009, stating that she believes the Appellant will be able to make a nearly full recovery from her whiplash injury if she continues with treatment.
14. A copy of a letter from a friend dated July 14, 2011 stating that the appellant suffered severe neck and back pain while working, cannot lift, and was always trying to stay active by walking and exercising despite suffering a lot.
15. A copy of a letter from a friend, undated, stating that the Appellant had very bad back and neck pain 2010 and 2011, and that the last time her saw her in 2011 she was tremendously improved.
16. A copy of a letter from a former employer, undated, stating that the Appellant worked with him in 2011, but was unable to carry on due to back and neck problems.
17. A copy of a letter dated May 17, 2012 from an architect stating that the Appellant worked with him in 2011 and 2012, however she could rarely work more than two hours at a time due to neck and back pain.
18. A medical specialist's report dated June 6, 2012 stating that the Appellant has early degenerative changes of her knees that is consistent with her age, and that her major problem is a very low pain threshold.
19. A chiropractor's report dated March 20, 2014, stating that the Appellant should receive treatment for her chronic back pain to help decrease and manage her pain to a comfortable level.
20. Ten notes on a prescription pad or medical certificate form, from the appellant's physician dated between January 4, 2010 and April 8, 2013 indicating the appellant is unable to work due to her medical conditions and pain and is referred to various physical rehabilitation therapies including chiropractor and massage treatments.
21. A copy of an undated letter from the Appellant to a friend explaining that she moved to BC for her health.
22. Two submissions from the appellant dated May 29, 2014 and June 3, 2014 describing "My work and illnesses history years 1985 – 2006", "The history of Health and Work years 2006-2009", "History of work and illnesses September 2009- September 2012", and
23. Description of the events of her life from May 17 to June 1, 2014.

At the hearing the Ministry stated that they did not object to the admission of these documents. The Panel found that the documents relate to the appellant's medical history and her assessment of her ability to function. The panel therefore admitted all of the above-listed documents under section 22(4)(b) of the Employment and

Assistance Act as written testimony in support of the information and records that were before the minister when the decision being appealed was made.

At the hearing the Appellant submitted 14 photographs which she stated were to "show what makes life more difficult". The photographs depict the following:

1. The Appellant opening a window.
2. The Appellant holding the hood of a car.
3. A staircase at her former residence in 2011.
4. A staircase in the Appellant's current residence showing 8 stairs.
5. A bathtub with high sides.
6. Tables and chairs.
7. A laptop on a tabletop.
8. A drafting table.
9. A table and chair.
10. An ergonomic chair.
11. A stool and chair.
12. , 13 and 14: various mattresses.

The Ministry did not object to the introduction of the photographs, but commented that they do not reflect the Appellant's physician's recommendations regarding the type of furniture the appellant can or cannot use due to her medical conditions and symptoms. The Panel admitted all of the above-listed photographs under section 22(4)(b) of the Employment and Assistance Act as documents in support of the information and records that were before the minister when the decision being appealed was made.

At the hearing the Appellant stated that her condition affects her daily life. In the morning, she has to slow down. It can take two hours to leave the house, she feels very insecure in the bathtub or shower because there are no grab bars. The height of the bathtub, demonstrated by a photograph she provided, is making her feel dizzy. In the house, she can handle the ground floor, but not stairs. She stated that she can sometimes walk up stairs, but not down, and sometimes walking upstairs helps her lower back. She stated that her lower back (bulging disc) does not affect her legs as yet, but it does cause weakness. She stated that she needs a specific mattress to sleep and she has furniture in storage, but she needs a better place to live. She stated that she needs a cart for shopping, but it causes her to pull muscles. She stated that her doctors do not know how to describe her muscular weakness; it might be arthritis. She stated that her condition is not only about her spine; she had a lumpectomy and now has scar tissue inside her chest. Also, she has had six abdominal surgeries which have left her with adhesions causing pain in her lower back.

The Appellant stated that she moved back to B.C in 2013. She wanted to go back to work, but failed. Her income was from computer work, but she can no longer do this type of work because she cannot sit for long periods. She stated that she cannot find work in her field.

In response to questions from the Panel, the Appellant stated that she is scheduled for an MRI in December, and she is on a list for cancellations since her doctor has said no decision will be made about surgery until the MRI is done. She was told several times that her condition "is not classified for surgery." She also asked for a cortisone injection but it was not recommended. She recently had an MRI, but it was for her neck and spine, not her lower back. She stated that the results showed mild scoliosis and a narrowing of the space between discs but no pressure on the nerve. It appears that there has been some improvement in her neck and thoracic spine, probably because she has not been working. In response to a question about the physician's comment on the PWD application form "needs assistance", the Appellant stated that she needs help with DLA's, such as vacuuming, lifting heavy objects and heavy household cleaning. She knows when she needs to stop housework and she will rest for 1 or 2 hours. For shopping, she stated that she needs help when she buys large amounts and needs a ride to bring purchases home because she no longer has a car. She

submitted that she also requires assistance for activities that need muscle strength and she receives help from people at the house where she lives. She stated that she has difficulty lifting weights greater than 2 or 3 kilograms, such as 2 liter milk containers. The Appellant stated that she has chronic dizziness and balance problems, probably related to her inner ear, causing vertigo which severely limits her ability to perform DLA's.

The Ministry did not submit any evidence in addition to the Reconsideration Decision.

PART F – Reasons for Panel Decision

The issue in this appeal is the reasonableness of the Ministry's Reconsideration Decision dated April 11, 2014, which held that the Appellant is not eligible for designation as a Person with Disabilities (PWD). The Ministry found that the Appellant did not meet three of the five criteria set out in Section 2(2) of the Employment and Assistance for Persons with Disabilities Act. 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 found that the information provided does not establish that the Appellant has a severe mental or physical impairment, that her impairment significantly restricts her ability to perform daily living activities continuously periodically for extended periods or that as a result of those restrictions she requires the significant help or supervision of another person to perform daily living activities.

Legislation

EAPWDA

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).

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.

(2) For the purposes of the Act, "**prescribed professional**" means a person who is

(a) authorized under an enactment to practise the profession of

- (i) medical practitioner,
- (ii) registered psychologist,
- (iii) registered nurse or registered psychiatric nurse,
- (iv) occupational therapist,
- (v) physical therapist,
- (vi) social worker,
- (vii) chiropractor, or
- (viii) nurse practitioner, or

(b) acting in the course of the person's employment as a school psychologist by

- (i) an authority, as that term is defined in section 1 (1) of the *Independent School Act*, or
- (ii) a board or a francophone education authority, as those terms are defined in section 1 (1) of the *School Act*,

if qualifications in psychology are a condition of such employment.

The Appellant's position is that she meets the requirements for designation as a PWD, but the application form does not ask for information that reflects her condition. The Appellant holds that although her condition is not covered in the application process, she meets the requirements to be designated as a PWD because she is in a lot of pain and has movement difficulties that restrict her daily function. The Appellant argued that the application form for PWD designation does not cover certain types of conditions, such as hers. She stated that she suffers mostly from scoliosis and fibromyalgia, which affect her cervical spine and lower back and that has become the more critical condition, whereas it used to be the problem with her neck. She stated that she goes to the hospital almost every second week, and that she is currently awaiting an MRI, then surgery. She stated that surgery has been denied for some time. The Appellant stated that she has the most difficulty with sitting and standing, which she finds exhausting. She is having more difficulty with walking, but that "walking 3, 4, 5 blocks helps to relieve pain" and has been recommended, though some days she can only walk 1-2 blocks

due to pain in her lower back and weakness in her legs. She stated that she has difficulty climbing stairs, especially in the past two months, and she had to move to a ground floor apartment because she could not climb stairs several times per day. She stated that her living conditions are critical, she has no permanent address, and when she moved to live on the ground floor she improved somewhat.

The Appellant argued that although the answers given by her physician on the application form are correct, there are no details of her spinal condition, fibromyalgia, scoliosis and a "weird" muscular condition which is now under investigation. She stated that a few tests she had a few months apart do not show muscle atrophy; the most recent test was in April. She stated that she has weakness in her arms, legs and spine, which is muscular but her "limpness" is not detected by (medical) devices or neurological tests.. She stated that doctors do standard neurological tests, but they do not show a problem, and she has had chronic weakness after her surgery which was made worse by whiplash. These conditions contribute to her chronic balance problems and dizziness, which conditions have been described as "severe" because they affect her everyday life.

The Ministry's position is that they make a determination based on the information provided, and there is insufficient information in the Appellant's application to confirm that she has a severe mental or physical condition that restricts her ability to perform DLA's to the extent that she requires significant assistance to perform them. The Ministry argued that their decision is based on the information provided at the time of application, and that the information provided by the Appellant was not sufficient to confirm that she has a severe mental or physical condition that impacts her ability to perform DLA's to the point where she requires significant assistance to perform them. In response to questions from the Appellant, the Ministry responded that there is no definition of severity, but it depends on how the doctor completes the application, which is then reviewed by the Health Assistance Branch. The condition has to impact DLA's and the appellant's doctor did not confirm with any detailed explanation how the appellant's DLA's are restricted.

Severe physical impairment

With respect to a severe physical impairment, the Panel notes that the Appellant's physician, in the original application, refers to the Appellant's condition as chronic and not amenable to treatment under "Degree and course of impairment". Also, in the note of March 19, 2014, the physician reports that the appellant is totally disabled due to severe back pain. Nevertheless, the physician notes that the appellant can walk 1 to 2 blocks, climb 5+ steps, cannot lift and can remain seated less than one hour. Two of the five aspects of mobility and physical ability are reported as independent, three are reported to require periodic assistance and one, lifting, is reported as requiring continuous assistance. At the hearing, the appellant stated that "walking 3, 4, 5 blocks helps to relieve pain" but some days she can only walk 1-2 blocks due to pain in her lower back and weakness in her legs, and she can lift up to 2 or 3 kg. In the letter from the Appellant to the Ministry dated March 7, 2014, the appellant stated that she can climb 10 to 15 stairs and that she walks more than 2 blocks for exercise.

In the section dealing with daily living activities, the physician did not report any requirement for an assistive device, reported that periodic assistance is required with two tasks of physical DLA's and that the Appellant takes significantly longer than typical with dressing, grooming, bathing, toileting, laundry, basic housekeeping, going to and from stores, reading prices and labels, food preparation and cooking, with a notation "x2 normal". The ministry found that the functional skill limitations "are not significantly restricted and are more in keeping with a moderate degree of physical limitation" The ministry also noted that "the narrative also does not demonstrate a severe functional limitation."

Given that the physician indicated independence, periodic assistance only, and taking no more than twice as

long to perform the majority of the listed activities, the panel finds that the ministry was reasonable in concluding that there is insufficient evidence of a severe physical impairment.

With respect to the Appellant's self-reporting, the Panel notes that it is largely subjective. The medical reports and notes submitted by the Appellant are contradictory and cover dates from 2000 to the present. Therefore, a lot of the information is dated and does not address the appellant's current medical status. Further, the evidence of various medical specialists between February 20, 2004 and April 9, 2014 refers to medical tests and surgeries that are not indicated, normal test results or results that show mild conditions, and conditions that are amenable to an exercise program and other treatments. Such information suggests impairments of a lesser severity than what the appellant self reports. The Panel therefore finds that the Ministry reasonably concluded that the totality of the information provided is not evidence of a severe physical impairment.

Severe mental impairment

With respect to a severe mental impairment, the Panel notes that the diagnosis of a mental health condition in the Appellant's application is chronic anxiety and depressive illness described in the health history as emotional trauma, anxiety and depression as a result of prior breast cancer with no explanation, as noted by the Ministry, as to how major impacts on physical functions as check marked by the physician are created by the anxiety and depression. In the section dealing with cognitive and emotional functioning, major impacts are reported in the areas of bodily functions, emotion and impulse control, with moderate impacts in insight and judgement and attention/concentration and minimal impact in memory and motivation. There are no comments provided.

Section 2(1)(b) of the EAPWDR prescribes two DLA that are specific to mental impairment – make decisions about personal activities, care or finances (decision making), and relate to, communicate or interact with others effectively (social functioning). The evidence indicates that the appellant is not significantly restricted with respect to decision making in that she independently manages her finances (pay rent and bills) and her medications, and also independently manages the decision-making components of the DLA of daily shopping (making appropriate choices), meal preparation (meal planning and food storage), and requires periodic support/supervision with making appropriate social decisions due to chronic pain rather than to a mental health condition.

In the section dealing with DLA's related to social functioning, the physician reported that periodic supervision is required in all aspects, with a note that all of these are impacted due to chronic pain, LOE, dizziness and malaise. Marginal functioning is reported with relationships with immediate and extended social networks. The appellant is assessed as having a good or satisfactory ability to communicate in all areas. The Panel finds that the Ministry reasonably concluded that the information provided is not sufficient evidence of a severe mental impairment.

In the new information provided for this appeal, the physician's medical legal opinion dated August 22, 2012, indicated that the most consistent and striking finding in the appellant's medical history was her "severe anxiety and distress", tendency to focus and dwell on minute details of her symptoms and an unwavering belief that her symptoms represented extremely serious and life-threatening ailments. However, the physician did not discuss the appellant's anxiety in terms of her functional abilities and the new evidence is therefore not sufficient to establish a severe mental impairment.

Restrictions in ability to perform DLA's

The ministry found that "the majority of daily activities are performed independently albeit some tasks take twice as long" and that although periodic help is needed to carry purchases and get in and out of a vehicle, there is no indication of the frequency or duration of the assistance. Further, the ministry noted that although periodic support is required in all aspects of social functioning, the physician's narrative describes the

appellant's physical factors and not her mental health issues. The physician reported that although the appellant has been prescribed a number of medications, these do not interfere with her ability to perform DLA. As the physician's information indicated that the majority of DLA's are performed independently or require little help from others, the panel finds that the ministry reasonably determined that "the information from your prescribed professional does not establish that impairment *significantly restricts* daily living activities either continuously or periodically for extended periods as required under clause 2(2)(b)(i) of the EAPWDR.

With regard to the appellant's new information provided for this appeal, the note dated April 23, 2014 indicated that functional skill limitations are restricted and are more than moderate due to the fact that the appellant can only lift light objects and always needs the help of other people with cleaning, shopping, packing, travelling, and organizing before and after meals. She cannot carry or wash "heavy pots, plates, heavy garbage, vacuuming, cleaning stairs or windows. The physician stated that the Appellant's spinal problems cause movement and balance problems, and that packing her belongings and travelling are very stressful and exhausting. With regard to executive function, the physician stated that the Appellant has "definite problems with planning and organizing her life, problem solving is difficult and simply postponed". The Panel notes that these tasks of DLA are performed within the functional skill limitations, previously described, which are more in keeping with a moderate degree of physical limitation.

Help to perform DLA's

With respect to a requirement for significant help to perform DLA's, the Panel notes that the majority of DLA's, 15 out of 27, are reported as being performed independently, with one requiring periodic assistance, 10 taking significantly longer than typical and none requiring continuous assistance. Social functioning DLA's are all reported as requiring periodic support. In the section dealing with assistance, the Appellant's physician reported that she needs assistance with most DLA's with no comment about what assistance would be necessary. There is no assistive device reported as being required. In her self-reports the appellant argued that she needs help with heavier physical activities but can perform many activities independently with adaptations such as taking rests, buying groceries in smaller, lighter quantities, and using a cart to carry items on transit. The Panel finds that the Ministry reasonably concluded that the information provided does not establish that to perform directly and significantly restricted DLA's, the Appellant requires the significant help of another person, an assistive device or an assistance animal.

Panel's decision

In conclusion, the Panel confirms the Ministry's reconsideration decision, which found that the appellant is not eligible for designation as a person with disabilities, as being reasonably supported by the evidence.