

PART C – Decision under Appeal

The decision under appeal is the Ministry of Social Development and Social Innovation (the ministry) reconsideration decision dated May 7, 2014 which found that the appellant did not meet three of the five statutory requirements of Section 2 of the *Employment and Assistance for Persons with Disabilities Act* for designation as a person with disabilities (PWD). The ministry found that the appellant met the age requirement and that her impairment is likely to continue for at least two years. However, the ministry was not satisfied that the evidence established that:

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

PART D – Relevant Legislation

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

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

PART E – Summary of Facts

The evidence before the ministry at the time of the reconsideration decision included the Person With Disabilities (PWD) Designation Application comprised of the applicant information and self-report dated October 28, 2013, a physician report (PR) dated November 20, 2013 and an assessor report (AR) dated December 11, 2013, both completed by the appellant's family physician. The physician has known the appellant for 1 year and obtained the information through an office interview with her.

The evidence also included the following:

- 1) Appellant's Request for Reconsideration dated April 13, 2014 with the following documents attached:
- 2) Questionnaire prepared by an advocate (the questionnaire) dated April 21, 2014, completed and signed by the appellant's physician, in which the physician noted "asked to fill out with patient"; and
- 3) A copy of Section E of the PWD Designation Application: Daily Living Activities (additional DLA information) dated April 21, 2014, completed by the appellant's family physician and containing the notation "asked to fill out again with patient".

Diagnoses

- In the PR, the appellant was diagnosed by her family physician with Mood Disorders, onset in 1995, and Degenerative Disc Disease (DDD) since 1991.

Physical or Mental Impairment

In the PR, under Health History, the appellant's physician reported:

- With regard to the severity of the medical conditions, specifically physical impairment: "DDD with lower back pain - limitations in walking; climbing stairs; lifting; remaining seated affecting patient's daily life and work opportunities." And with regard to Depression: "low mood; poor sleep and concentration or alternatively sleeping all day long."
- The appellant does not require any prostheses or aids for her impairment.

In the AR, in reply to the question: "What are the applicant's mental or physical impairments that impact his/her ability to manage Daily Living Activities", the physician commented:

- "Patient has DDD with lower back pain – this limits her when walking; climbing stairs; lifting; sitting".
- "Depression – doesn't feel like doing things; poor sleep or sleeping all day".

In her self-report, the appellant indicated:

- She was diagnosed with DDD in 1991 and suffers from lower back pain, hip pain, sciatic nerve pain, and numbness and tingling in her legs.
- Some arthritis has set in with age; she was previously very physically fit.
- She has had acupuncture, physiotherapy, chiropractic therapy, and massage therapy to improve her quality of life, and she has been on different medications but cannot take one of her medications daily because it causes stomach acid. She also uses heat and ice.
- She suffers from clinical depression, diagnosed in 1995, and she also has anxiety and takes

- an anti-depressant medication.
- Her back pain brings on her depression.
- She has asthma, diagnosed in 2009, and has been in the hospital and takes medication for this condition.

In the questionnaire, when asked whether the appellant has a severe impairment, the physician stated:

- The appellant had 2 (hospital) admissions for suicidal ideation in 1994 and 2009 and is currently awaiting a psychiatry consultation.
- She suffers from DDD and takes medications for her pain; and
- She has asthma and reports 2 emergency room visits in the past year.

Functional Skills

In the PR, the physician indicated:

- The appellant can walk less than 1 block on a flat surface.
- The appellant can climb 5 or more steps unaided.
- She is limited to lifting weights of less than 2 kg (under 5 lbs.); and
- She is also limited to remaining seated for less than 1 hour.
- There are no difficulties with communication.
- The appellant has significant deficits with cognitive and emotional function, with "Emotional disturbance (e.g., depression, anxiety)" check marked. No comments were provided in the Comments section.

In the AR, under Ability to Communicate, the physician check marked:

- "Good" in all aspects: Speaking, Reading, Writing, and Hearing.

In the AR under Mobility and Physical Ability, the physician indicated:

- The appellant is independent in 1 of the 6 areas: Standing; and she takes significantly longer than typical in the other 5 areas: Walking indoors, Walking outdoors, Climbing stairs, Lifting, and Carrying and holding. The physician commented: "Main difficulties when in severe back pain and when depressed."

In the AR under Cognitive and Emotional Functioning, the physician indicated the appellant's mental impairment had a moderate impact on her daily functioning in 4 of the 14 listed items:

- Bodily functions (sleep disturbance was underlined);
- Emotion (excessive or inappropriate anxiety, depression, etc.)
- Attention/Concentration (e.g., distractible, unable to maintain concentration, poor short term memory); and
- Motivation (e.g., lack of initiative; loss of interest).

The physician did not assess impacts for the other 10 areas of daily functioning and did not provide comments for any of the reported impacts.

In her self-report, regarding functional skills, the appellant stated:

- She cannot sit for more than 40 minutes without having lower back pain.
- She cannot "bend over to do something. I must go on my knees as I cannot stay bent over, or cannot get up."

- "I cannot stand for very long and it causes back pain."
- "Sleeping at night can be very difficult, try to get comfortable."
- She had to leave her last two jobs due to the physical requirements of standing for long periods, "heavy walking", and walking up stairs and hills.
- She needs 2 friends to help her walk her pets "due to my back and pulling on the leash." In addition, she can no longer train pets.

In the questionnaire, the physician reported that the appellant can walk a maximum of 1 block, climb a maximum of 2-5 steps; lift a maximum of 5 lbs., and remain seated for a maximum of 10 minutes "and must change positions".

Daily Living Activities (DLAs)

In the PR, the physician indicated that the appellant's impairments directly restrict her ability to perform DLAs as follows:

- The appellant is restricted in 8 of 10 DLAs including Meal preparation, Management of medications, Basic housework, Daily shopping, Mobility both inside and outside the home, Management of finances, and Social functioning. The physician reported that the DLAs of Personal self-care and Use of transportation are not restricted.
- The restriction is reported as periodic for the 8 restricted DLAs with the comment "Unable to perform certain activities when depressed or in severe lower back pain."
- With regard to the impact on Social Functioning, the physician wrote "unable when depressed."
- Regarding the degree of restriction, no additional comments were provided.
- With regard to what assistance the appellant needs with her DLAs, the physician wrote "Help with walking animals; shopping".
- With regard to any additional information relevant to the significance or impact of the impairments the physician did not provide further comments.
- The physician indicated the appellant had not been prescribed any medications/ treatments that interfere with her ability to perform DLAs.

In the AR, the physician indicated the following with regard to restrictions in the ability to perform DLAs:

- The appellant is independent in all 8 areas of Personal Care: Dressing, Grooming, Bathing, Toileting, Feeding Self, Regulate Diet, and Transfers in/out of bed and on/off chair.
- She takes significantly longer for both of the Basic Housekeeping tasks: Laundry, and Basic Housekeeping.
- She is independent in 4 out of 5 Shopping tasks: Going to/from stores, Reading Prices/labels, Making appropriate choices, and Paying for purchases. However, the appellant was reported to take significantly longer in Carrying purchases home.
- With regard to the restrictions reported for Basic Housekeeping and Shopping, the physician commented: "Takes longer when in pain and depressed."
- The appellant is independent in 2 out of 4 Meal tasks including Meal planning and Safe storage of food. She was reported as taking significantly longer than typical with Food preparation and Cooking. The physician provided no comments regarding these restrictions.
- She is independent in 2 out of the 3 tasks listed under Pay Rent and Bills: Banking and Budgeting. However, she was reported to take significantly longer with Paying rent and bills, with the comment "forgets when depressed".

- Regarding Medications, the appellant is independent in 2 out of 3 tasks: Filling/Refilling prescriptions, and Safe handling and storage. She was reported to take significantly longer with Taking (medications) as directed, with the comment: "forgets sometimes when depressed".
- The appellant is independent with all 3 activities under Transportation: Getting in/out of a vehicle, Using public transit, and Using transit schedules/ arranging transportation.
- With regard to any additional comments relevant to the type and amount of assistance required and identification of any safety issues, the physician did not provide further comments.
- With regard to Social Functioning, the appellant is independent in all 5 areas including making appropriate decisions, developing and maintaining relationships, interacting appropriately, dealing appropriately with unexpected demands, and securing assistance from others.
- The appellant has marginal functioning with her immediate and extended social networks as a result of her mental impairment. The physician provided no comments, however.

In her self-report the appellant stated that her DLAs are restricted as follows:

- She has trouble vacuuming the house and cleaning.
- She can no longer do fitness work-outs due to back pain, or play her musical instrument due to sitting for a long period which causes back pain.
- When she is going through a deep depression, "all I want to do is sleep, not cook for myself, (do) banking, pay bills, not see the outside world, or see friends, or answer the phone. Some days I forget to take my meds. I do not have the quality of life that I once had due to (the) pain and the pain then brings on depression."
- She is unable to work but could possibly work 1-2 days per week maximum on the days that she is rested.

In the questionnaire, the physician stated the following with regard to restrictions in performing DLAs:

- In response to the question of whether the appellant 's mental impairment significantly restricts her ability to cope with the stresses of daily life, make appropriate decisions, and interact with other people, the physician wrote: "Yes, as per patient's report."
- In response to the question of how often the appellant is restricted in performing her DLAs, the physician wrote: "Daily as per patient's report."
- In response to the question of whether the appellant's health limitations significantly restrict her ability to perform her DLAs on an "ongoing basis", the physician stated that the appellant is restricted in meal preparation, housework, shopping, transportation (with the comment "pain prevents driving"); personal self-care (with the comment "Restricted ROM" – Range of Motion); and moving indoors and outdoors.
- With regard to Depression with suicidal ideation, the physician stated that these conditions restrict "medications and finances management; interacting with other people and decision-making - impaired concentration: short-term memory and motivation."

In the additional DLA information, the physician check marked that 10 out of 10 DLA's are restricted with the following notations for 9 of these DLAs:

- Personal self-care, "limited ROM (range of motion) – difficulty shoes, socks, pants".
- Meal preparation, "decreased standing and bending".
- Management of medications, "forgets to take".
- Basic housework and Daily shopping: "decreased standing, bending, lifting".
- Mobility inside the home, "hard to get off chair".

- Mobility outside the home, "max. 1 block".
- Use of transportation, "pain restricts driving".
- Management of finances, "forgets".

The physician further check marked that the appellant requires continuous assistance with all 10 of these DLAs. Under the question of how Social Functioning is impacted the physician wrote, "very withdrawn and isolated and suicidal at times but will not act on it". Under additional comments regarding the degree of restriction the physician wrote, "significant ongoing restrictions with ADLs and IADLs (instrumental activities of daily living) because of depression and pain."

Need for Help

The physician reported in the AR that:

- The help required for DLAs is provided by the appellant's friends. No comments were written here.
- In the section of the report indicating assistance provided through the use of assistive devices, the physician did not indicate that any devices are used, and the physician check marked that the appellant does not have an Assistance Animal.

In the questionnaire, in response to the question of whether the appellant needs significant, ongoing help from others or assistive devices in order to manage her DLAs the physician stated:

- "Yes as per patient's report".
- Help is required with the DLAs of meal preparation, personal self-care (with the comment "foot care: shoe laces"), housework, shopping, transportation (with the comment "pain restricts driving"), and reminders to take medications and pay bills.
- With regard to the type of help or devices required, the physician wrote: "orthotics; bathroom grab bars; hot and cold packs."
- And with regard to how often the appellant requires this assistance the physician wrote: "Daily as per patient's report."

In the additional DLA information, when asked what assistance the appellant needs with DLAs, the physician wrote, "Bathroom grab bars; extra pillows; hot/iced packs; orthotics. Needs help with foot care and self-care, meal prep; reminders to take meds and pay bills; housework; shopping and counselling."

Appellant's additional evidence

In her Notice of Appeal dated May 22, 2014 the appellant stated that she had x-rays done; was referred to a physical therapist but BC Medical does not pay for it; is now seeing a psychiatrist; and was the victim of childhood abuse. She provided 4 new documents as follows:

- 1) Letter from a psychiatrist dated June 5, 2014 stating that the appellant suffers from "chronic recurrent episodes of Major Depressive Disorder (MDD) which impairs her ability to function." The appellant requires daily monitoring and support and her current episode of MDD has lasted for several months resulting in her spending "several days per month in bed." The psychiatrist added that the appellant's depression is "exacerbated by chronic back pain"; and the appellant is motivated to work and will try and return to work in the future if her conditions improve considerably.

- 2) Nuclear Medicine Consultation Report dated May 27, 2014 describing a brain imaging study that was performed on the appellant by a specialist in Nuclear Medicine. This report included 3 (dark, poor quality) images of the appellant's brain and under the heading "Opinion", the specialist stated: "Cerebral perfusion study changes most suggestive of unipolar depression."
- 3) Radiologist Report dated September 30, 2013 regarding an x-ray of the appellant's lumbar spine indicating "...an S1 segment which appears partially lumbarized. The lumbar vertical heights are maintained. Mild degenerative changes are noted at L3/4, L4/5 and L5/S1. A rudimentary disc space is noted at S1/2. The remaining lumbar disc spaces are maintained. There is normal alignment of the lumbar spine."; and
- 4) Letter from a police detective dated May 2, 2013 stating that the appellant reported that she was the victim of historical childhood abuse; an investigation was conducted; charges were not recommended based on the evidence available; and the file would be concluded.

In her oral testimony the appellant stated that she saw a "back specialist" who recommended physiotherapy or massage for her DDD and arthritis. The specialist wanted her to begin it right away but she was unable to because Medicare does not cover the cost and she could not afford the user fee. She explained that the ministry would not help her out and she was unable to negotiate an affordable fee with the physiotherapist.

In response to questions from the panel, the appellant reported that in filling out the questionnaire, her doctor sat down with her and asked her some questions "but the doctor only had so much time and it was a pretty quick meeting." The appellant explained that she had retained the same family physician after she moved to a different community. The physician referred the appellant to the psychiatrist and it took 10 months to get an appointment. She has now seen the psychiatrist 3 times, will continue to see the psychiatrist, has anxiety as well, and is taking medications when she can tolerate the side effects.

With respect to getting help with her DLAs, the appellant reported that a family member or her roommate assist with vacuuming, laundry, shopping, walking her pets, and cooking meals when the appellant "doesn't feel like cooking." The family member helps her around the house once a week. On the days when the appellant is feeling better, she can throw a ball for her pets but she cannot walk them like she used to. She stated that she sometimes doesn't sleep at night due to her back pain and her depression, and the police know about her childhood abuse.

The ministry had no objections to the admissibility of any of the additional evidence. The panel finds that the appellant's 4 additional documents and her statements in the Notice of Appeal and at the hearing relate to her medical history, referrals and treatment for her conditions, and restrictions regarding her ability to perform DLAs. The panel therefore admits the additional evidence under section 22(4)(b) of the *Employment and Assistance Act* as testimony in support of the information and records that were before the ministry at the time the decision being appealed was made.

The ministry relied on its reconsideration decision and did not introduce any new evidence at the hearing. The ministry stated that it relies on the information from a medical practitioner to determine the severity of the client's impairments, and the information from a prescribed professional in determining the person's ability to perform DLAs and any help that is required. The ministry stated that it made its reconsideration decision on the basis of the information provided by the appellant up until the date of the reconsideration. It did not have the appellant's additional evidence that she submitted for this appeal.

PART F – Reasons for Panel Decision

The issue in this appeal is whether the ministry's reconsideration decision, which found that the appellant is not eligible for designation as a person with disabilities (PWD), was reasonably supported by the evidence or was a reasonable application of the applicable enactment in the circumstances of the appellant. The ministry found that the appellant does not have a severe mental or physical impairment and that her DLAs are not, in the opinion of a prescribed professional, directly and significantly restricted either continuously or periodically for extended periods and that, as a result of those restrictions, it could not be determined that the appellant requires the significant help or supervision of another person, the use of an assistive device, or the services of an assistance animal to perform DLAs.

The criteria for being designated as a person with disabilities (PWD) are set out in section 2 of the *EAPWDA* as follows:

Persons with disabilities

2 (1) In this section:

"**assistive device**" means a device designed to enable a person to perform a daily living activity that, because of a severe mental or physical impairment, the person is unable to perform;

"**daily living activity**" has the prescribed meaning;

"**prescribed professional**" has the prescribed meaning.

(2) The minister may designate a person who has reached 18 years of age as a person with disabilities for the purposes of this Act if the minister is satisfied that the person has a severe mental or physical impairment that

- (a) in the opinion of a medical practitioner is likely to continue for at least 2 years, and
- (b) in the opinion of a prescribed professional

- (i) directly and significantly restricts the person's ability to perform daily living activities either
 - (A) continuously, or
 - (B) periodically for extended periods, and
- (ii) as a result of those restrictions, the person requires help to perform those activities.

(3) For the purposes of subsection (2),

- (a) a person who has a severe mental impairment includes a person with a mental disorder, and
- (b) a person requires help in relation to a daily living activity if, in order to perform it, the person requires
 - (i) an assistive device,
 - (ii) the significant help or supervision of another person, or
 - (iii) the services of an assistance animal.

(4) The minister may rescind a designation under subsection (2).

Section 2(1)(a) of the *EAPWDR* defines DLA for a person who has a severe physical or mental impairment as follows:

Definitions for Act

2 (1) For the purposes of the Act and this regulation, "**daily living activities**" ,

- (a) in relation to a person who has a severe physical impairment or a severe mental impairment, means the following activities:
 - (i) prepare own meals;

- (ii) manage personal finances;
 - (iii) shop for personal needs;
 - (iv) use public or personal transportation facilities;
 - (v) perform housework to maintain the person's place of residence in acceptable sanitary condition;
 - (vi) move about indoors and outdoors;
 - (vii) perform personal hygiene and self care;
 - (viii) manage personal medication, and
- (b) in relation to a person who has a severe mental impairment, includes the following activities:
- (i) make decisions about personal activities, care or finances;
 - (ii) relate to, communicate or interact with others effectively.

Severe mental or physical impairment

Appellant's position

The appellant's position is that she has a severe physical and mental impairment because "I am in pain every day of my life and cannot do things. I need help from friends and my depression is severe." She submitted that she is also the victim of childhood abuse and "under-reported her psychiatric distress out of fear of being 'locked up'." She argued that she has now had x-rays and a brain scan done, and was supposed to seek chiropractic or physiotherapy treatment but could not afford the user fee because she is on welfare. She worries about finances but cannot work in her previous professions due to her physical symptoms and she also experiences disabling anxiety attacks. She does not have the quality of life she once had and though her doctor said the childhood abuse has caused her depression her doctor has not yet put that in writing.

Ministry's position

The ministry's position is that the information provided at the time of the reconsideration does not establish a severe physical or mental impairment for 5 primary reasons:

1. The ministry argued that the physician's report which indicated the appellant's work opportunities are affected by reduced physical functioning does not establish a severe impairment because "this application is not intended to assess employability and vocational abilities. Employability is not a criteri(on) for designation as a Person with Disabilities."
2. The ministry was not satisfied that a severe impairment is established by the physician's report in the original application. The physician reported that almost all DLAs are periodically restricted when the appellant "is depressed or in severe lower back pain" and she is unable to perform "certain activities when depressed." The physician also reported that the appellant needs "Help in walking animals; shopping". The ministry argued that "how often you get depressed and to what extent is not described, and needing help with walking your pets and shopping is more in keeping with a *moderate*, rather than *severe*, degree of impairment."
3. The ministry argued that the information from the physician In the additional DLA information and questionnaire does not establish a severe impairment. Although the physician indicated that continuous assistance is required for all DLAs, "the minister considers much of the information in this

document as your own opinion of your medical conditions and restrictions rather than the opinion of your physician.” The ministry argued that it based its opinion on comments from the physician such as “asked to fill out again with patient” and “as per patient’s report”.

4, With regard to the appellant’s mental impairment, the ministry further argued that although the physician referred the appellant to a psychiatrist, “this in and of itself, does not demonstrate you have a severe impairment.” As well, the appellant’s physician “indicates only one significant deficit in your cognitive and emotional functioning”, Emotional disturbance and stated that it has a moderate impact on the appellant’s daily functioning; “No major impacts are identified.” Furthermore, the ministry noted that the appellant’s 2 hospital admissions for suicidal ideation were in the past “and is not necessarily indicative of your present mental health condition”, and that the physician’s report of independence “in all aspects of social functioning with marginal functioning in both your immediate and extended social networks...is not indicative of a *severe* mental impairment.”

5. With regard to the appellant’s physical impairment as a result of DDD, the ministry argued that the PWD application focused mainly on the appellant’s depression and the physician “did not describe the level of pain you experience or the degree of effectiveness of your medication.” The ministry was not satisfied that the physician’s comment that the appellant needs help with walking her pets and shopping indicates she has a severe physical impairment. The ministry argued that although the physician stated that the appellant cannot lift over 5 lbs., the physician also indicated the appellant does not require “periodic or continuous assistance with lifting, carrying and holding, but rather it takes you longer. ... *when in severe back pain.*” The ministry argued that the physician did not indicate how much longer the appellant takes in doing laundry, basic housekeeping, and carrying purchases home, or how often she is in pain or the degree of pain experienced. The physician had also not mentioned any physical therapies, tests, or x-rays at the time of the reconsideration.

Panel’s decision:

A diagnosis of a serious medical condition does not in itself determine PWD eligibility or establish a severe impairment. A severe mental or physical impairment is a medical condition that results in restrictions to a person’s ability to function independently or effectively. To assess the severity of the impairment, the ministry considers the nature of the impairment and the extent of its impact on daily functioning as evidenced by functional skill limitations and the degree to which performing DLAs is restricted. In making its determination, the ministry must consider all of the relevant evidence including that of the appellant. However, the legislation is clear that the fundamental basis for the analysis of restrictions is the evidence from a prescribed professional – in this case, the appellant’s physician and the information from specialists that the appellant provided for this appeal.

Severe Mental Impairment: In the PR, the physician who has known the appellant for 1 year diagnosed the appellant with Mood Disorders since 1995. When indicating the severity of this condition under Health History, the physician wrote that the appellant’s depression results in “low mood; poor sleep and concentration or alternatively sleeping all day long.” The panel notes that the physician does not indicate how often or how severely the appellant’s mood and concentration are affected nor does she provide any detail regarding the appellant’s poor sleep or how often the appellant sleeps all day long. Similarly in the AR, under Mental or Physical Impairment, the physician reported that the appellant’s depression causes her to not “feel like doing things; poor sleep or sleeping all day” but there is no explanation regarding how often this occurs. Also, in the AR, the physician check marked that the appellant’s “sleep disturbance”, depression, attention/concentration

and memory problems have only a "Moderate Impact" on her daily functioning. No further information or comments were provided.

Section 2(1)(b) of the EAPWDR prescribes two DLAs that are specific to mental impairment – make decisions about personal activities, care or finances; and relate to, communicate or interact with others effectively. In the PR, the appellant was not reported to be restricted in her personal self-care but her Management of Finances was restricted with the comment "unable to perform certain activities when depressed". In the AR, the physician indicated that in paying her rent and bills the appellant "forgets when depressed", but again the physician did not indicate how often this occurs.

In the AR, the physician reported that all aspects of the appellant's Ability to Communicate were good, but the appellant had marginal functioning with her social networks. The physician provided no comments regarding the appellant's social networks but in the PR, the physician reported that the appellant's impairment restricts the DLA of "Social functioning – daily decision-making". The physician reported that the appellant requires periodic assistance with this DLA because she is unable to function socially or make daily decisions "when depressed." The physician provided no comments regarding how often the appellant is depressed or any details regarding how the appellant behaves socially or what decisions she has difficulty with when she is depressed.

In the AR, the appellant was assessed as performing all aspects of social functioning independently, including making appropriate social decisions and interacting appropriately with others, again with no further comments provided. In the PR, the physician indicated the appellant had significant deficits with cognitive and emotional function in the area of Emotional disturbance. However, the physician added no comments for this limitation but only check marked the 'yes' boxes. The ministry was therefore not provided with details regarding the appellant's emotional functioning.

The panel acknowledges that the questionnaire and additional DLA information were presented to the physician for the purpose of obtaining more information and the physician sat down with the appellant to fill them out but did not have a lot of time. However, as the ministry noted, it is not clear that the information regarding the appellant's restrictions was the "opinion of a prescribed professional" as required by section 2(2)(b) of the *EAPWDA*; the physician remarked several times that she was "asked to fill out with patient" or that the appellant's daily functioning is restricted "as per patient's report." In the additional DLA information, with respect to continuous restrictions to social functioning, the physician commented that the appellant is very withdrawn, isolated and suicidal "at times", with no clarification of how often this occurs, and the statement that she "will not act on it."

The panel further acknowledges that the appellant provided additional information to support her claim that her mental impairment is severe: a letter from her psychiatrist; her brain imaging study (Nuclear Medicine Consultation Report); and a letter from the police regarding her complaint of historical child abuse. The panel also notes that the ministry did not have the additional evidence at the time of the reconsideration decision.

The psychiatrist reported that the appellant "suffers from chronic recurrent episodes of Major Depressive Disorder" which impair her ability to function, and the depression is exacerbated by chronic back pain. The psychiatrist did not describe the frequency of the appellant's depressive episodes but reported that "her current episode of MDD has lasted for several months. She spends several days per month in bed." The psychiatrist also commented on the appellant's vocational options, as did the appellant in her self-reports.

With regard to the ability to work, the ministry explained in its reconsideration decision that a reduced ability to work or pursue job opportunities does not establish a severe impairment because "Employability is not a criteri(on) for designation as a Person with Disabilities." The panel notes that employability is not a criterion in section 2(2) of the *EAPWDA* nor is it listed among the prescribed daily living activities in section 2 of the *EAPWDR*.

In the Nuclear Medicine Consultation Report, the nuclear medicine specialist reported that the appellant's brain imaging study was "most suggestive of unipolar depression." The panel notes that the report contains no information regarding the severity of the depression or any restrictions the appellant experiences as a result of her depression. In the letter from the police, the panel notes that this letter confirms that an investigation was conducted and the available evidence did not meet the threshold for recommending charges. The appellant referred to it with her self-report and stated at the hearing that the psychiatrist is of the opinion that the childhood abuse the appellant suffered caused her depression and contributes to its severity. The panel notes that the psychiatrist did not elaborate on the causes for the appellant's depression in the letter that was provided. As stated earlier, the ministry, in determining a severe impairment, relies on evidence of restrictions from a "prescribed professional" as set out in section 2(2)(b) of the *EAPWDA*.

With regard to the information in the PR and AR, the panel finds that the ministry reasonably determined that the physician's scant information regarding the severity of the appellant's depression and its impact on her DLAs, in particular her decision-making and ability to function socially, was not sufficient to establish a severe mental impairment. The panel notes that detail from the physician regarding how often the appellant is depressed as well as details regarding her "Emotional disturbance" would be especially salient for the ministry in determining a severe mental impairment.

The panel further finds that the ministry reasonably determined that the information in the questionnaire and additional DLA information also do not establish that the appellant has a severe mental impairment because the ministry was not satisfied that the information regarding the appellant's restrictions was in the opinion of the appellant's physician, or that the information indicated how often the appellant's social functioning is impaired. With regard to the physician's comments that the appellant was awaiting a psychiatry consultation and had past suicidal ideation, the panel finds that the ministry reasonably concluded that these factors are not determinative of a current, severe mental impairment.

With regard to whether the appellant's additional evidence makes the ministry's determination regarding a severe mental impairment unreasonable, the panel notes that the recent psychiatrist's letter does not describe the frequency of the appellant's MDD episodes or how they limit her ability to function other than spending "several days per month in bed." As well, although the psychiatrist's letter states the "current episode of MDD has lasted for several months", the vagueness of the psychiatrist's other comments such as "These episodes impair her ability to function" does not close the gap in the appellant's physician's evidence. Further, as the appellant's brain imaging study did not address the severity of her depression, and the psychiatrist did not discuss the causes or severity of the appellant's depression in relation to the information in the police report, the panel finds that the ministry's determination that there was no severe mental impairment was reasonably supported by the evidence.

Severe Physical Impairment: In the PR, the appellant's diagnosis was DDD since 1991. When indicating the severity of this condition under Health History, the physician wrote that DDD causes back pain that limits walking, climbing stairs, lifting, and remaining seated and that these limitations affect the appellant's "daily life and work opportunities." In terms of functional skills, the physician reported in the PR that the appellant is able to walk less than 1 block unaided on a flat surface, climb 5 or more steps unaided, lift under 5 lbs., and remain seated for less than an hour. The appellant reported that she was previously physically fit and could work out, exercise her pets, and play her musical instrument. However, she no longer functions as she used to and she has back pain if she sits for more than 40 minutes. She reported that she cannot bend over or stand for very long due to her back pain, and it can be difficult to find a comfortable position for sleeping.

Despite these functional limitations, the physician reported in the PR that physical DLAs such as shopping and mobility (inside and outside the home) were only periodically restricted "when in severe lower back pain" and the appellant requires help with walking her pets and shopping. As the ministry noted, the physician provided no information regarding the frequency or duration of the appellant's back pain and the panel therefore finds that the ministry reasonably determined that the appellant's impairment is moderate based on the medical information provided in the PR.

In the AR the physician reported that the appellant's back pain "limits her when walking, climbing stairs, lifting, and sitting." However, the appellant was reported as independent with standing and she was reported to take significantly longer with all other aspects of Mobility and Physical Ability, again with the comment that her difficulties are "when in severe back pain". The physician provided no information regarding the frequency or duration of these pain episodes. Further, the physician indicated the appellant does not require an aid to help compensate for her impairment or a device to assist with her mobility.

Section 2(1)(a) of the EAPWDR lists the DLAs that are specific to a severe physical impairment including meal preparation, managing finances, shopping, using transportation, performing housework, mobility indoors and outdoors, personal self-care, and management of medications. In the AR, the physician reported that the appellant is independent in the majority of these areas but takes significantly longer than typical with Basic Housekeeping and Carrying Purchases home "when in pain". The physician provided no detail regarding the frequency or duration of the pain episodes. The appellant was also reported to take significantly longer with Food preparation and Cooking but no explanation or comments were provided here either. The panel finds that the ministry reasonably determined that the physician's information regarding restrictions to the above DLAs was insufficient to establish a severe physical impairment.

With regard to the questionnaire and additional DLA information in relation to the appellant's physical impairment, the physician listed the same functional limitations and restrictions to DLAs that she had reported in the AR. The ministry argued at the hearing that "it was more or less what (the appellant) told the doctor without any corroborating evidence...and there was no significant difference in what the doctor gave in the initial application and on reconsideration." The panel notes that although the physician check marked in the additional DLA information that all DLAs were now restricted continuously due to decreased function and pain, the physician noted "asked to fill out again with patient" and there is no clear indication or corroborating test results that the increased impact is the physician's opinion rather than the appellant's self-report. The panel therefore finds that the ministry reasonably determined that a severe physical impairment was not established pursuant to section

2(2) of the *EAPWDA* on the basis of the information in the questionnaire and additional DLA information.

In the radiologist's report for the appellant's lumbar spine, the panel notes that the report suggests a less severe impairment with the following observations making up the bulk of the report: "partially lumbarized"; "body heights are maintained"; "Mild degenerative changes are noted"; "remaining lumbar disc spaces are maintained"; and "There is normal alignment of the lumbar spine." The radiologist has not commented on the frequency or duration of pain or restrictions to daily functioning, or the ability to perform DLAs. The panel therefore finds, given the radiologist's observations of less severe spinal issues and his lack of commentary regarding any restrictions, that the ministry's determination that there was no severe physical impairment was reasonably supported by the evidence.

Restrictions in the ability to perform DLAs

Appellant's position

The appellant's position is that her physical and mental impairments directly and significantly restrict her ability to perform DLAs on an ongoing basis to the extent that she requires the significant assistance of another person or the use of assistive devices.

Ministry's position

The ministry's position is that a severe impairment has not been established and the appellant's physician indicates the appellant does not require any periodic or continuous assistance in any DLAs. The ministry argued that the physician reported that the appellant is independent in 26 out of 38 tasks of DLAs. Of the 12 remaining tasks of DLAs, the physician indicated the appellant takes significantly longer "but does not describe how much longer and makes comments such as *forgets sometimes when depressed, takes longer when in pain and depressed.*" The ministry argued that because the information in the PR and AR does not explain the degree of physical pain and depression, it was not satisfied that the appellant's impairments restrict her ability to perform DLAs as set out in section 2(2)(b) of the *EAPWDA*.

With regard to the questionnaire and additional DLA information, the ministry's position is that it was not satisfied the information submitted in these documents "is of the medical opinion of your physician, but rather in your own self-assessment." The ministry further argued that the physician "does not explain why your degree of restrictions ha(s) changed in the four month period since completing your original application."

Panel's decision

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

In the appellant's circumstances, the physician check marked "Yes" in the PR, that the appellant's impairments directly restrict her ability to perform DLAs. The physician reported that the appellant experiences periodic restrictions "when depressed or in severe lower back pain" in the DLAs of Meal preparation, Management of Medications, Basic Housework, Daily shopping, Mobility both inside and outside the home, and Management of finances. With regard to social functioning, the physician commented that the appellant is periodically "unable" to make daily decisions and relate to others "when depressed." The panel notes that the physician provided no details regarding the frequency or duration of the appellant's back pain or depression.

The physician reported in the AR that the appellant is independent in all areas of personal care, transportation, and Social Functioning although the physician check marked that the appellant has marginal functioning in her immediate and extended social networks with no explanation provided. The physician reported the appellant to be independent in all but one shopping task (carrying purchases home), and all but one financial task (Pay rent and bills) and Medication task (Taking as directed). For those 3 tasks where the physician did not check mark "Independent", the physician noted the appellant takes longer when in pain or depressed, or forgets when depressed. The physician provided no other comments. The physician indicated a greater degree of restrictions for the DLAs of Basic Housekeeping and Meals, reporting that the appellant takes significantly longer with half of the tasks under each of these DLAs. For the housekeeping tasks the physician commented that the appellant "takes longer when in pain and depressed". The physician provided no comments for the restrictions in Meal tasks.

In the questionnaire and the additional DLA information, the physician indicated the appellant takes significantly longer to complete most DLAs "as per her report." Similarly, the physician agreed that the appellant's decision-making and social interactions are restricted by her mental impairment "as per patient's report." The physician further indicated the appellant's ability to perform DLAs is significantly restricted "Daily as per patient's report." Although the letter from the psychiatrist dated June 5, 2014 confirmed that episodes of major depressive disorder impair the appellant's ability to function and she requires daily monitoring and support, the psychiatrist wrote that the appellant's depression is exacerbated by chronic back pain and she spends several days per month in bed, without specifying how her ability is impaired and for how many days, or the type of ongoing support required.

With regard to the information in the PR and AR, the panel finds that the ministry reasonably concluded that the appellant is independent with performing almost all of her DLAs and there is not enough detail from the prescribed professional to establish that the appellant's impairments significantly restrict her ability to manage DLAs either continuously or periodically for extended periods as required under section 2(2)(b)(i) of the *EAPWDA*. With regard to the information in the questionnaire and additional DLA information, the panel finds that the ministry, in noting the physician's "as per her report" comments and lack of explanation as to why the appellant's restrictions increased in the short period of time between the original application and the reconsideration, reasonably concluded that the appellant's DLAs were not significantly restricted pursuant to section 2(2)(b)(i) of the *EAPWDA*.

Help to perform DLAs

The appellant's position is that she requires the significant assistance of a relative and her room-mate to perform DLAs and her physician indicated that she requires "help with walking animals; shopping"

as well as “meal preparation, personal self-care (foot care: shoe laces); housework; shopping; transportation (pain restricts driving); reminders to take meds and pay bills.” The appellant argued that she also requires assistive devices including “orthotics; bathroom grab bars; hot and cold packs.” The ministry’s position is that because it has not been established that DLAs are significantly restricted, it cannot be determined that significant help is required.

Panel’s decision

Section 2(2)(b)(ii) of the *EAPWDA* requires that, as a result of direct and significant restrictions in the ability to perform DLAs, a person requires help to perform those activities. Help is defined in subsection (3) as the requirement for an assistive device, the significant help or supervision of another person, or the services of an assistance animal in order to perform a DLA.

The evidence of the physician, as a prescribed professional, is that the help required with DLAs is provided by the appellant’s friends. In the AR, the physician did not indicate a need for Assistive Devices such as crutches, a scooter, or braces, nor did the physician indicate that the appellant has an Assistance Animal. While the physician reported in the questionnaire and additional DLA information that the appellant needs orthotics, bathroom grab bars, extra pillows, and hot and cold packs, the panel finds that the ministry reasonably determined that, as direct and significant restrictions in the appellant’s ability to perform DLAs have not been established, it cannot be determined that the appellant requires help to perform DLAs as a result of those restrictions, as defined by section 2(3)(b) of the *EAPWDA*.

Conclusion

Having reviewed and considered all of the evidence and relevant legislation, the panel finds that the ministry’s reconsideration decision which determined that the appellant was not eligible for PWD designation was reasonably supported by the evidence. Accordingly, the panel confirms the reconsideration decision.