

PART C – Decision under Appeal

The decision under appeal is the Ministry of Social Development and Social Innovation (the ministry) reconsideration decision dated March 26, 2014 which found that the appellant did not meet three of the five statutory requirements of Section 2 of the *Employment and Assistance for Persons with Disabilities Act* for designation as a person with disabilities (PWD). The ministry found that the appellant met the age requirement and that her impairment is likely to continue for at least two years. However, the ministry was not satisfied that the evidence establishes that:

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

PART D – Relevant Legislation

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

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

PART E – Summary of Facts

The evidence before the ministry at the time of the reconsideration decision included the Person With Disabilities (PWD) Application comprised of the applicant information and self-report dated September 10, 2013, a physician report (PR) and an assessor report (AR) both dated September 9, 2013 and completed by a general practitioner who has known the appellant for 17 years.

The evidence also included the following:

- 1) Letter dated August 1, 2013 from the ministry to the appellant requesting supporting information for a diet supplement;
- 2) Letter dated September 10, 2013 from the appellant's physician to the ministry stating in part that the appellant has severe irritable bowel syndrome [IBS] and microscopic lymphocytic colitis and the gastroenterologist wants her to eat less fatty and processed food and more fresh fruits and vegetables and whole grains;
- 3) Letter dated February 3, 2014 from the appellant's sister 'To whom it may concern,' in which she wrote that the advocate requested that she describe how often she helps the appellant. Every couple of weeks she buys the appellant some groceries that she needs and gas for her vehicle and gives her tobacco and filters. The appellant comes to her place to do laundry 2 to 3 times per month and does not bring her own supplies, maybe once in a while;
- 4) Letter dated February 3, 2014 from the appellant parents 'To whom it may concern,' in which they wrote that about a week and a half after the appellant's payday, she starts to run out of groceries. They usually end up either giving her \$20 for gas or groceries every month;
- 5) Undated Daily Living Activities Checklist;
- 6) Supplemental Medical Opinion signed by the appellant's physician March 24, 2014; and,
- 7) Request for Reconsideration dated January 30, 2014.

Diagnoses

In the PR, the appellant was diagnosed by the medical practitioner with microscopic lymphocytic colitis diagnosed in 2013, nissen fundoplasty in the past, severe recurrent abdominal pain, nausea and bloating for years, chronic diarrhea, GERD [gastroesophageal reflux disease], gallstones, and anxiety.

Physical Impairment

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

- In terms of health history, the appellant "suffers from frequent, episodic abdominal pain. During her attacks, she is mostly incapacitated and often soaks in hot baths for hours. She has scald marks on her skin from this. She also has chronic diarrhea [illegible] due to microscopic lymphocytic colitis."
- The appellant does not require any prosthesis or aid for her impairment.
- In terms of functional skills, the appellant is able to walk 4 or more blocks unaided on a flat surface, climb 5 or more steps unaided, and has no limitations with lifting or the time she can remain seated.

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

- The appellant is assessed as independent with all mobility and physical ability, including walking indoors and outdoors, climbing stairs, standing, lifting and carrying and holding, with a note: "during episodes of pain and wretching will just curl up on bed or be in the bathtub."

- In the section of the AR relating to assistance provided through the use of assistive devices, none of the items have been indicated by the physician.

In her self-report, the appellant wrote that:

- Her life is a nightmare and everyday she wakes up feeling sick (nausea, stomach pain and she needs to have a hot bath). No matter what she does, the pain does not go away for at least 2 to 3 hours with medication.
- She usually feels the pain in the morning, depending on what time she wakes up.
- She also feels pain when she gets hungry and sometimes when she eats.
- She usually baths whenever she feels pain. Sometimes, it will make her feel better. She gave herself third degree burns on her back but she has not burnt herself in a long time. The need to bathe will always be there.
- If she is downtown when she starts to feel sick, she has to go home right away. The nausea causes her to start to dry heave and she usually ends up incontinent and the need for a bath happens. She needs the bath to help her feel better. It does not always work but about 60% of the time it makes her better.
- She usually does not feel well after a bowel movement and the need to have a bath is extreme. It usually takes a couple of hours to feel better.
- She has diarrhea constantly.

In the Supplemental Medical Opinion dated March 24, 2014 the physician agreed that the appellant has a severe physical and/or mental impairment with a note: "severe abdominal pain and nausea of unknown causes."

Mental Impairment

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

- The appellant has no difficulties with communication.
- There is a significant deficit with the appellant's cognitive and emotional function in the area of emotional disturbance.
- In the additional comments, the physician wrote that "previous sexual abuse as child with ongoing chronic anxiety. Symptoms are daily for years and patient submerges herself in hot water to help with her symptoms. She has discolouration to her low back and flanks from previous scalding baths over the years. Patient usually experiences her symptoms daily from anywhere to 2 hours to 16 hours."

In the AR, the physician indicated that:

- The appellant has a good ability to communicate in all areas, including speaking, reading, writing and hearing.
- There are major impacts to the appellant's cognitive and emotional functioning in the areas of emotion, impulse control and motor activity.
- There are moderate impacts in the areas of bodily functions and motivation.
- There are minimal impacts to insight and judgement, attention/concentration, executive, and memory and no impacts in the areas of consciousness, language, psychotic symptoms, and other neuropsychological problems. The physician did not add further comment.
- The appellant is assessed as independent with all aspects of social functioning, including making appropriate social decisions, developing and maintaining relationships, interacting appropriately with others, dealing appropriately with unexpected demands, and securing

assistance from others.

- The appellant has good functioning in both her immediate and extended social networks.

In her self-report, the appellant wrote that:

- When she starts to feel sick, after going to the bathroom or eating or when hungry, she usually starts to have bad anxiety attacks and she cries a lot because she does not want to feel like this anymore. She has been sick for about 28 years.

Undated Daily Living Activities Checklist, the appellant indicated that her disability makes it difficult for her to do the following activities in the areas of mental, emotional and social skills:

- Coping with anxiety and agitation, depression and stress.
- Attending to the most important things first.
- Controlling irrational (unreasonable) impulses.
- Remembering information and appointments and completing tasks.
- Interacting with friends, family, partner and developing and maintaining relationships.
- Being able to deal with unexpected situations.

Daily Living Activities (DLA)

In the PR, the physician indicated that:

- The appellant has not been prescribed any medication and/or treatment that interfere with her daily living activities.

In the AR, the physician reported that:

- The appellant is independent with moving about indoors and outdoors, with a note that during episodes of pain and wretching she will be in bed or in the bathtub.
- The appellant is independent in 8 out of 8 tasks of the DLA personal care: dressing, grooming, bathing, toileting, feeding self, regulating diet, transfers in/out of bed and transfers on/off chair. The appellant physician noted "except when sick."
- The appellant is independent with basic housekeeping, including doing her laundry, with the note by the physician "not during attacks of abdominal pain and nausea."
- The appellant is independent in performing 5 of 5 tasks of the DLA shopping: going to and from stores, reading prices and labels, making appropriate choices, paying for purchases and carrying purchases home. The physician referred to his other comments: "not during attacks of abdominal pain and nausea."
- The appellant is independent with 4 out of 4 tasks of the DLA meals: meal planning, food preparation, cooking and safe storage of food.
- The appellant is independent with 3 of 3 tasks of the DLA paying rent and bills: banking, budgeting and paying rent and bills.
- The appellant is independent in performing all 3 tasks of managing her medications: filling/refilling prescriptions, taking as directed and safe handling and storage.
- The appellant is independent in performing all 3 tasks of managing her transportation: getting in and out of a vehicle, using public transit, and using transit schedules and arranging transportation.
- The physician noted that the appellant "...is well when attacks are not present but usually bed ridden or soaking in hot bath during the attacks."

In the Supplemental Medical Opinion dated March 24, 2014 the physician agreed that:

- The appellant's ability to perform her DLA is severely restricted due to her impairment in the areas of: preparing her own meals, shopping for personal needs, using public or personal transportation facilities, performing housework to maintain acceptable sanitary conditions, moving about indoors and outdoors and managing personal medication, with a handwritten note: "during attacks of abdominal pain."
- The appellant's ability to perform these DLA is directly and significantly restricted, with a note: "...has daily debilitating attacks of abdominal pain and nausea."
- There are no restrictions indicated to the two DLA relating to a person with a severe mental impairment.
- The appellant's ability to perform DLA is periodically restricted, with a note: "usually attacks are most mornings I believe."
- The frequency and duration of these restrictions are "several hours each day."

Need for Help

The physician reported in the AR that the help required for DLA is provided by the appellant's family. 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.

In the Supplemental Medical Opinion dated March 24, 2014 the physician reported that:

- He is "not sure" if the appellant requires help to perform her DLA.
- He is "not sure" how many times per week help is required.

In her Notice of Appeal dated March 10, 2014, the appellant expressed her disagreement with the ministry's reconsideration decision and wrote that she believes she has met all the criteria in the legislation for PWD designation.

At the hearing, the appellant and her advocate stated:

- She takes morphine for pain every day. When she feels the pain coming on, she takes the medication and, about 3 hours later, she will feel better.
- She also takes medication, as needed, for nausea. The medication for nausea has helped some. She can take it up to 3 times per day and she takes the maximum amount about 3 days per week.
- She is better if she gets up early. There is a rare occasion when she wakes up and feels fine.
- During an attack she has to lie in a hot bath or she can get "hysterical." She has taken anti-depressants in the past but her family physician has not currently prescribed any. She used to see a psychiatrist but she is not currently seeing a specialist.
- The appellant completed the DLA checklist and indicated that her emotional and social skills are also impacted.
- Her family doctor reported that she suffers from frequent episodic abdominal pain and soaks in the bathtub for hours. He also indicated that her symptoms occur daily "from anywhere to 2 hours to 16 hours."
- She has experienced these attacks for 28 years and the past 10 years she has gone through so many tests to try to figure out the cause. They have tried to determine a pattern or to see if it is something that she has eaten, with no success. Her twin sister has the same condition.
- Different things can bring on an attack, such as a bowel movement or when she eats. It is a battle for her every day.
- She had surgery about 16 years ago which closed a valve to deal with the acid reflux.

- Although the physician indicated that the appellant is well when she is not having an attack, he reported that she is usually bed ridden or soaking in a hot bath during the attacks and unable to perform her DLA.
- The Supplemental Medical Opinion by the appellant's physician supports the original information in the PWD application and again indicates that she is not able to perform her DLA during her attacks. These attacks occur most mornings and several hours each day.
- She has seen a gastroenterologist and he want her to eat less spicy foods. She does not eat in restaurants and is supposed to eat more fresh fruits and vegetables. Her stomach still feels the same but she is a bit more energetic when she is feeling well. She can get her house clean faster than she used to.
- She does not have anyone to help her. Her parents help her financially but she has to do things for herself.
- When she is feeling well, she can shop and cook and do her housework and other daily activities. She plans to get these things done when she is not having an attack.

The ministry relied on its reconsideration decision.

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

PART F – Reasons for Panel Decision

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

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

Persons with disabilities

2 (1) In this section:

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

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

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

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

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

(b) in the opinion of a prescribed professional

(i) directly and significantly restricts the person's ability to perform daily living activities either

(A) continuously, or

(B) periodically for extended periods, and

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

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

(a) a person who has a severe mental impairment includes a person with a mental disorder, and

(b) a person requires help in relation to a daily living activity if, in order to perform it, the person requires

(i) an assistive device,

(ii) the significant help or supervision of another person, or

(iii) the services of an assistance animal.

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

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

Definitions for Act

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

(a) in relation to a person who has a severe physical impairment or a severe mental impairment, means the following activities:

(i) prepare own meals;

(ii) manage personal finances;

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

Severe Physical Impairment

The appellant's position is that a severe physical impairment is established by the evidence of her severe recurrent abdominal pain, nausea and chronic diarrhea. The advocate argued that the evidence shows that the episodes of severe abdominal pain are debilitating and occur daily.

The ministry's position is that there is not enough information from the general practitioner to confirm that the appellant has a severe physical impairment. The ministry argued that, in terms of functional assessment, the general practitioner indicated that the appellant can walk 4 or more blocks unaided, climb 5 or more stairs unaided and she has no limitations in lifting or being able to remain seated. The ministry argued that the general practitioner indicated that the appellant does not require an aid to help compensate for impairment. The ministry argued that the general practitioner reported that the appellant is independent in all aspects of her mobility and physical abilities except during episodes of pain.

Panel Decision

The diagnosis of a medical condition is not itself determinative of a severe impairment. To assess the severity of an impairment one must consider the nature of the impairment and its impact on the appellant's ability to manage her DLA as evidenced by functional skill limitations, the restrictions to DLA, and the degree of independence in performing DLA. The ministry describes this approach when it defines the word "impairment" in the physician report as being "a loss or abnormality of psychological, anatomical or physiological structure or function causing a restriction in the ability to function independently, effectively, appropriately or for a reasonable duration." This definition is not set out in legislation and is not binding on the panel, but in the panel's view it quite appropriately describes the legislative intent.

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

The medical practitioner, a physician who has known the appellant for a period of 17 years, diagnosed the appellant with microscopic lymphocytic colitis, severe recurrent abdominal pain, nausea and bloating for years, chronic diarrhea, GERD, gallstones and IBS. The appellant stated at the hearing that she had the nissen fundoplasty surgery about 16 years ago to deal with the GERD, she has experienced the recurrent abdominal pain and nausea for about 28 years, and testing over

the past 10 years has not resulted in a definitive cause. In the Supplemental Medical Opinion dated March 24, 2014 the physician agreed with the statement that the appellant has a severe physical and/or mental impairment with a note: "severe abdominal pain and nausea of unknown causes." In her self-report, the appellant wrote that every day she wakes up feeling sick (nausea, stomach pain) and she needs to have a hot bath and, no matter what she does, the pain does not go away for at least 2 to 3 hours. At the hearing, the appellant explained that she takes medication every day for the pain and, as needed, to control the nausea. In the PR, the physician described her condition as "frequent, episodic abdominal pain" during which "...she is mostly incapacitated and often soaks in hot baths for hours." The physician also reported that the appellant does not require any aid or assistive device for her impairment and, in terms of functional skills, she is able to walk 4 or more blocks unaided on a flat surface, climb 5 or more steps unaided, and has no limitations with lifting or the time she can remain seated.

In the AR, the appellant is assessed by her physician as independent with all mobility and physical ability, including walking indoors and outdoors, climbing stairs, standing, lifting and carrying and holding, with a note: "during episodes of pain and wrenching will just curl up on bed or be in the bathtub." Given an opportunity to provide further comment in the Supplemental Medical Opinion dated March 24, 2014, the appellant's physician wrote that the attacks of abdominal pain occur for "several hours each day," usually in the morning. The physician also indicated that he is not sure if the appellant requires help to perform her DLA and he is not sure how many times per week help is required. At the hearing, the appellant stated that when she is feeling well, or not experiencing attacks of her abdominal pain, she is able to shop and cook and do her housework and other daily activities. In the AR, the physician noted that the appellant "...is well when attacks are not present but usually bed ridden or soaking in hot bath during the attacks."

The evidence of the physician and the appellant is that when the appellant is experiencing an attack of abdominal pain, she is incapacitated. These attacks occur mostly in the morning and, while the appellant describes pain occurring for at least 2 to 3 hours requiring significant medication, she is able to perform all of her DLA when she is not experiencing an attack. The panel finds that the ministry reasonably concluded that the evidence demonstrates that the appellant is completely independent with all of her mobility and physical abilities the majority of the time. The panel, therefore, finds that the ministry reasonably determined that there is not sufficient evidence to establish that the appellant has a severe physical impairment under section 2(2) of the EAPWDA.

Severe Mental Impairment

The appellant's position is that a severe mental impairment is established by the evidence of her anxiety and the impact to her emotional and social skills.

The ministry's position is that there is insufficient evidence to establish that the appellant has a severe mental impairment. The ministry argued that the physician indicated that the appellant has deficits with cognitive and emotional functioning in the areas of emotional disturbance and, when assessing the impacts on daily functioning, the physician reported that there are major impacts in the areas of emotion, impulse control and motor activity and moderate impacts to bodily functions and motivation and minimal or no impacts to the remainder of her cognitive and emotional functioning. The ministry argued that the physician also indicated that the appellant has no difficulties with communication or any restrictions with social functioning.

Panel Decision

In the PR, the physician diagnosed on-going, chronic anxiety with experience of previous sexual abuse as a child. In the additional comments, the physician wrote that the appellant's symptoms are daily for years and she submerges herself in hot water to help with her symptoms. She has discolouration to her low back and flanks from previous scalding baths over the years. The physician further wrote that the appellant usually experiences her symptoms daily from anywhere to 2 hours to 16 hours and it is not clear whether the physician is there referring to the appellant's anxiety or the attacks of abdominal pain, or both, and how often the symptoms will last for the maximum 16 hours.

The appellant is assessed by her physician as having significant deficits in cognitive and emotional functioning in the area of emotional disturbance (e.g. depression, anxiety), with no further comment or description provided by the physician. The impacts to the appellant's daily functioning are assessed as major in the areas of emotion, impulse control and motor activity, moderate in the areas of bodily functions and motivation, and minimal or no impacts in the remaining 9 areas of functioning, with no further comment provided. In the DLA Checklist, the appellant indicated that her disability makes it difficult for her to do many activities including coping with anxiety, agitation, depression and stress, and controlling irrational (unreasonable) impulses. At the hearing, the appellant stated that, during an attack, she has to lie in a hot bath or she can get "hysterical;" she has taken anti-depressants and was seen by a psychiatrist in the past, but her family physician has not currently prescribed any medication for her anxiety or referred her to a psychiatrist. In the AR, however, there is no further description provided by the physician of these impacts to cognitive and emotional functioning to explain whether they are episodic and possibly tied to a compulsion to bathe, as described by the appellant.

The physician reported that the appellant has no difficulties with communication and has a good ability to communicate in all areas. In the DLA Checklist, the appellant indicated that her disability makes it difficult for her to interact with friends, family, partner, to develop and maintain relationships, and to deal with unexpected situations. However, in terms of social functioning, the appellant is assessed by the physician as independent in all areas: in making appropriate social decisions, developing and maintaining relationships, interacting appropriately with others, dealing appropriately with unexpected demands and securing assistance from others. The physician did not provide further comments to the appellant's social functioning and reported that the appellant has good functioning in both her immediate and extended social networks. The panel finds that the ministry reasonably concluded that, overall, the evidence of impacts to the appellant's social and cognitive/emotional functioning is not sufficient to establish a severe mental impairment, pursuant to section 2(2) of the EAPWDA.

Restrictions in the ability to perform DLA

The appellant's position is that her physical and mental impairments directly and significantly restrict her ability to perform DLA on an ongoing basis to the extent that she requires the significant assistance of another person. The advocate argued that her physician confirmed in the Supplemental Medical Opinion dated March 24, 2014 that she is severely restricted in 6 DLA: preparing meals, shopping for personal needs, using public or personal transportation facilities, performing housework to maintain acceptable sanitary conditions, moving about indoors and outdoors, and managing her personal medication.

The ministry's position is that the appellant's physician indicated that she is independent in all

aspects of DLA and there is no indication that she takes significantly longer to perform them, except during attacks of abdominal pain. The ministry acknowledged that the appellant has limitations due to her medical issues; however, the evidence from the physician is not sufficient to confirm that the appellant's impairments directly and significantly restrict her ability to perform DLA either continuously or periodically for extended periods.

Panel Decision

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

In the appellant's circumstances, her physician reported in the AR that the appellant is completely independent with performing all of her DLA, including moving about indoors and outdoors. The physician noted in the AR that the appellant "...is well when attacks are not present but usually bed ridden or soaking in hot bath during the attacks." In the AR, the physician did not indicate a need for assistance from another person, on a continuous or a periodic basis, with any DLA. In the Supplemental Medical Opinion dated March 24, 2014 the physician agreed with the statement that the appellant's ability to perform her DLA is severely restricted due to her impairment "during attacks of abdominal pain" in the areas of: preparing her own meals, shopping for personal needs, using public or personal transportation facilities, performing housework to maintain acceptable sanitary conditions, moving about indoors and outdoors and managing personal medication. The physician indicated that the frequency and duration of these restrictions are "several hours each day." However, asked whether the appellant requires help to perform her DLA and how many times per week help is required, the physician wrote that he is not sure. Asked to describe the help they provide to the appellant, her parents and her sister both wrote in their letters that they provide financial assistance from time to time.

At the hearing, the appellant stated that when she is feeling well, when she is not having an attack, she can shop and cook and do her housework and other daily activities. With changes to her diet, she has felt more energy and can get her housework done quicker, for example, and she plans to complete her DLA when she is not having an attack since she receives no help and has to do things for herself.

In the Supplemental Medical Opinion, the physician did not indicate restrictions to the two DLA relating to a person with a severe mental impairment, namely making decisions about personal activities, care or finances and relating to, communicating or interacting with others.

Given that the physician reported that the appellant is well when the attacks are not present, which is typically the majority of the hours in a day, and she can independently perform all of her DLA at these times, the panel finds that the ministry reasonably concluded that it cannot be determined that the appellant is restricted periodically for extended periods of time. Overall, the panel finds that the ministry reasonably concluded that there is not enough evidence from the prescribed professional to establish that the appellant's impairment significantly restrict her ability to manage DLA either continuously or periodically for extended periods, thereby not satisfying the legislative criterion of

section 2(2)(b)(i) of the EAPWDA.

Help to perform DLA

The appellant's position is that she requires the significant assistance of another person to perform DLA even if she does not currently receive help.

The ministry's position is that because it has not been established that DLA are significantly restricted, it cannot be determined that significant help is required. The ministry argued that the appellant does not require any assistive devices or an assistance animal.

Panel Decision

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

The evidence of the physician, as a prescribed professional, is that the help required with DLA is provided by the appellant's family. In the Supplement Medical Opinion, the physician wrote that he is "not sure" if the appellant requires help to perform her DLA. The panel finds that the ministry reasonably determined that, as direct and significant restrictions in the appellant's ability to perform DLA have not been established, it cannot be determined that the appellant requires help to perform DLA as a result of those restrictions, as defined by section 2(3)(b) of the EAPWDA.

Conclusion

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