

PART C – Decision under Appeal

The decision under appeal is the Ministry of Social Development and Social Innovation (the ministry) reconsideration decision dated August 14, 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 dated April 19, 2013, a physician report (PR) dated September 21, 2013 completed by a general practitioner who had known the appellant for approximately 1 year and an assessor report (AR) dated October 7, 2013 completed by the appellant and signed by the general practitioner.

The evidence also included the following:

- 1) Handwritten Notes (3 pages) made by the appellant dated April 10, 2013 and signed by the general practitioner;
- 2) Medical Report- Persons With Persistent Multiple Barriers (PPMB) undated;
- 3) Medical Report- Persons With Persistent Multiple Barriers (PPMB) dated April 2013;
- 4) Medical Report- Employability dated April 25, 2013;
- 5) Medical Report- Persons With Persistent Multiple Barriers (PPMB) dated July 11, 2013;
- 6) Telephone Log dated June 17, 2014 setting out the contents of a conversation between the general practitioner who completed the PR and the AR and the ministry; and,
- 7) Request for Reconsideration dated July 30, 2014.

Diagnoses

In the PR, the appellant was diagnosed by the medical practitioner with fibromyalgia (onset June 2006), epilepsy (onset June 1983), auto immune disorder (onset August 2000), asthma (onset April 2010), anxiety disorder (onset May 2003), visual impairment (onset August 2009), and chronic fatigue syndrome (onset October 2005).

Physical Impairment

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

- In terms of health history, with fibromyalgia there is chronic MSK [musculoskeletal] pain, stiffness, and secondary weakness which impairs her motor function and cognitive function. The appellant "needs high dose of [medications] for pain control and up to a point that she cannot carry out minimal activities (e.g. self care) without these medications. On the other hand, these medications further compromise her intellectual and cognitive function required for normal job activities."
- The appellant does not require an aid for her impairment.
- Regarding the degree and course of impairment, it is "likely lifelong. Patient already on [medications] which helps with the pain and enables her to carry out activities for her minimal daily lives. But these meds further compromise her cognitive function."
- Functional skills are set out in a checklist to indicate that the appellant is able to walk less than 1 block unaided on a flat surface, cannot climb any stairs unaided, cannot lift any weight and can remain seated less than 1 hour.

In the Medical Report- PPMB dated July 11, 2013, the appellant's physician reported that:

- The appellant's primary medical condition is fibromyalgia and no secondary medical condition was listed.
- This condition has existed for 10 years and will continue for 2 years or more.
- This condition is episodic in nature, occurring 3 to 4 times per month.
- The nature of the restrictions specific to the medical condition are "pain (mainly back pain) and multiple MSK pain [leading to] stiffness/weakness related to the pain."



In the telephone Log dated June 17, 2014, it is reported that the appellant's physician stated:

- The diagnosis section of the PR is accurate.
- In terms of functional skills, the appellant is able to walk 1 or 2 blocks unaided, climb 2 to 5 steps unaided, lift up to 5 lbs. and remain seated for 2 to 3 hours.
- The appellant's "physical impairment is mild" and no assistance is required.
- The appellant takes 2 times longer than normal to complete physical activities.

In the AR, the appellant indicated that:

- She requires continuous assistance from another person with walking indoors and standing.
- She can do "no lifting at all; too hard" and she requires continuous assistance with carrying and holding.
- She takes significantly longer than typical with walking outdoors (note: "5 min. walks take 30 minutes plus") and with climbing stairs (note: "needs assistance from others").
- In the section of the AR relating to assistance provided through the use of assistive devices, the appellant indicated a cane and wrote that when she has days where it is too hard to walk, she uses a standard walking cane.

Mental Impairment

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

- As set out in the appellant's handwriting: she has difficulties with communication which are identified as "other" and the appellant wrote: "periodic pauses in speech, also stuttering and severe short and long term memory loss."
- A checklist indicates significant deficits with the appellant's cognitive and emotional function in all the listed areas: consciousness, executive, language, memory, perceptual psychomotor, psychotic symptoms, emotional disturbance, motivation, impulse control, motor activity, and attention or sustained concentration. There are no comments added by the physician.
- A checklist indicates that the appellant is continuously restricted with her social functioning, with the comment added by the physician: "poor social cues. Takes much longer time than usual to understand and carry out tasks. Compromised in the ability of social interaction."
- Regarding the degree of restriction, the physician wrote: "Medications used for pain further jeopardizes her cognitive and intellectual function."

In the telephone Log dated June 17, 2014, it is reported that the appellant's physician stated:

- Cognitive and emotional deficits are present in the areas of executive, motivation, memory, emotional disturbance, impulse control and attention or sustained concentration.
- All of these are "moderately impacted" with the exceptions of a mild impact regarding impulse control and a major impact to executive functioning.
- The appellant is "independent" regarding social functioning and has "marginally functioning immediate and extended social networks."

In the AR, the appellant indicated that:

- Regarding her ability to communicate, she is satisfactory with speaking (note: "lots of pauses and stuttering") and writing and poor with reading (note: "hard to concentrate") and hearing (note: "hearing seems muffled").
- There is a major impact in 11 of 14 listed areas of cognitive and emotional functioning, namely bodily functions, consciousness, emotion, attention/concentration, executive, memory, motivation, motor activity, language, other neuropsychological problems, and other emotional

or mental problems. There is a moderate impact in the remaining areas, being impulse control, insight and judgment and psychotic symptoms. There are no comments added.

- There is no assessment provided for the 5 aspects of social functioning. Her level of functioning with her immediate social networks is very disrupted and no assessment is indicated for her extended social networks.

Daily Living Activities (DLA)

In the PR, the physician indicated that:

- The appellant has been prescribed medications that interfere with her daily living activities as the physician wrote that the medications for pain control “will make her sleepy/drowsy and interfere [with] her ability to function.”
- The checklist indicates that the appellant is continuously restricted with all listed DLA, namely: personal self care, meal preparation, management of her medications, basic housework, daily shopping, mobility inside and outside the home, use of transportation, management of finances and social functioning.
- Regarding the degree of restriction, the physician wrote: “medications used for pain further jeopardize her cognitive and intellectual function.”
- In the additional comments, the physician wrote: both physical (pain/joint stiffness/motor function) and psychological impairments (anxiety) impair her ability to carry out activities that require normal motor and/or intellectual ability.”

In the telephone Log dated June 17, 2014, it is reported that the appellant’s physician stated:

- All of the appellant’s DLA “take 2 times longer” than typical to complete and “do not require periodic or continuous assistance.”

In the AR, the appellant reported that:

- She requires continuous assistance with moving about indoors and takes significantly longer than typical with moving about outdoors.
- She is independent with feeding herself and regulating diet and requires continuous assistance from another person with toileting. She takes significantly longer than typical with dressing, grooming, bathing, and with transfers in/out of bed and on/off of a chair. The appellant commented: “needs help from others.”
- For basic housekeeping, she takes significantly longer with doing laundry and housekeeping, with the comment: “needs help from others.”
- Regarding shopping, she requires periodic assistance with reading prices and labels and paying for purchases, continuous assistance with making appropriate choices and takes significantly longer than typical with going to and from stores and carrying purchases home, with the comment: “needs help from others.”
- With respect to meals, she requires continuous assistance from another person with all tasks, namely: meal planning, food preparation, cooking and safe storage of food.
- For paying rent and bills, she requires continuous assistance from another person with banking and takes significantly longer than typical with budgeting and paying rent and bills (note: “needs help from others”).
- Regarding medications, she requires continuous assistance with taking the medications as directed and for safe handling and storage, and takes significantly longer than typical with filling/refilling prescriptions (note: “needs help from others”).
- With respect to transportation, she requires continuous assistance with using public transit,

periodic assistance with using transit schedules and arranging transportation and takes significantly longer than typical with getting in and out of a vehicle (note: "needs help from others").

In the handwritten Notes (3 pages) made by the appellant dated April 10, 2013 and signed by the general practitioner, it is reported that:

- The appellant's ex-partner helps out with laundry, cooking, cleaning.
- He also helps the appellant dress and undress daily and with daily bathing.
- He drives the appellant to doctor visits and grocery shopping and helps her get up and down stairs.

In her Request for Reconsideration, the appellant wrote:

- Her disease affects her DLA since she needs help with bathing, going up and down stairs, with making decisions, and dressing.
- She cannot even put on her own socks so she always wears sandals.

Need for Help

The appellant reported in the AR that:

- She lives alone and requires help from her ex-partner, who is her child's biological father.
- When she has days "where it is too hard to walk", she uses a standard walking cane.

In her Notice of Appeal dated August 22, 2014, the appellant expressed her disagreement with the ministry's reconsideration decision and wrote that:

- Her diseases, especially fibromyalgia, is a "severe chronic" nerve disease that causes "severe chronic" musculoskeletal and skeletal pain constantly, every day, every waking hour.
- When she is sleeping the very limited amount she is constantly tossing and turning and constantly waking up at night with extremely painful muscle cramping to the point that they seize up her legs and arms so bad that she is not able to walk for a few days.
- The pain all over her body is constant. The pain never stops.

At the hearing, the appellant stated:

- The information for the PWD application was submitted by her family doctor but she only sees him for 15 to 20 minutes maximum out of the whole month. He does not see her at home as he will not do an in-home visit. Only her ex partner and father-in-law see that she is suffering every day.
- Her condition is now so debilitating that she cannot put on her own socks and shoes. Her young son helps her bathe and she has a stool that she uses.
- She does not get proper sleep because she "tosses and turns" all night.
- She has been taking a medication for her fibromyalgia and epilepsy as well as a pain medication and a muscle relaxant. About 2 to 3 weeks ago, her doctor prescribed methadone, which she has been taking.
- She does not have any family nearby and she depends on her ex-partner.
- Her medications have been costing about \$700 per month since they are expensive and she has to take a large quantity each day. Her previous father-in-law had to take money out of his retirement savings and put a mortgage on his home to help her pay these costs. She contacted charitable organizations, her MLA, and the Ministry of Health to try to find some help with paying the costs for her medications.

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- A generic version of the medication she has been taking for fibromyalgia and epilepsy has become available and she has been taking that for the last 8 months.
 - She is meeting with her doctor to see if they can get special authority to have her medication costs covered through Pharmacare on an “exceptional basis.”
 - Six years ago, she was working 3 jobs and she starting getting sick and it became worse and worse to the point that she can no longer work.
 - Her big concern is her prescription costs since she needs the medications to function. The medications are not even working to the full advantage and they only mask the symptoms in any event.
 - She is her child’s primary care giver and her condition is affecting him too because she cannot do the things with him that she would like to do as his mother.
 - For completing the PWD application, she had a half hour appointment with her doctor. She did not realize that the doctor was supposed to complete the PR, so she had already filled most of it out. She was going to get a new form, but her doctor said he would review what she had set out and, if he agreed to it, he would sign it. He agreed to what she wrote but it also seemed that he was rushing and wanted to get her out of the office. Sometimes she finds it hard to understand him because of a language issue.
 - For the AR, he wanted her to leave it with him to complete later. He kept saying he would do it but it was never done. Her ex partner and father-in-law went in to see her doctor to explain more about her situation and then her doctor seemed to believe her more and he realized how important the application is to her. She made an appointment and told her doctor she would not leave his office until the AR was signed. He asked her if she wanted to have the dosage of her medications increased, but she knows it is only masking the symptoms and not curing her disease.
 - Asked about inclusion of the various Medical Reports for PPMB, the appellant stated that she understood she was applying for both but she was never contacted and she did not receive a letter about her PPMB application.
 - The doctor said he was “standing behind her 110%” and he agrees that she is not fit to work because the medications make her tired.
 - When she searched on the internet, she saw several references to fibromyalgia being described as a “severe, chronic disease.”
 - When asked about her use of a cane, the appellant stated that pretty much every day she has days where it is “too hard to walk.” The pain is in her legs and everywhere in her body.
 - When she first wakes up, she cannot climb the stairs. It feels like someone took a hammer and smashed her legs. She also gets swelling in her legs because of water retention caused by the medications.
 - She feels like a prisoner in her own home. She considers that her life is not “living” but is “suffering.”
 - She has seen a specialist and has been on a waiting list for the pain clinic for close to 2 years.

Admissibility of New Information

The ministry did not raise an objection to the admissibility of the information in the appellant’s oral testimony, which provided additional information regarding the appellant’s impairment and the circumstances surrounding completion of the application. As this information provides additional detail with respect to issues addressed in the original PWD application, the panel has admitted this additional information as being in support of information and records that were before the ministry at the time of reconsideration, in accordance with s. 22(4) of the *Employment and Assistance Act*.



The ministry relied on its reconsideration decision, as summarized at the hearing. The ministry clarified that the appellant's PPMB application was never adjudicated; since the Medical Report is now dated, a new application would need to be submitted.

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.

Evidentiary Considerations

The ministry's position, as set out in the reconsideration decision, is that there were some issues identified with the reliability of the reports filed in support of the PWD application. The ministry pointed out that there were parts of the PR that were completed by the appellant and that the AR was not signed by her family doctor. The ministry argued that more weight be placed on the information provided by the appellant's family doctor in a telephone conversation with the ministry, as documented in the telephone log dated June 17, 2014.

The appellant's position is that equal weight should be given to the information provided by her family doctor in the telephone conversation and in the PR and AR. The appellant argued that her family doctor read what she wrote in the PR and that she would not leave his office until he signed the AR because he was not completing it as promised. The appellant argued that she only sees her doctor for short appointments once per month and he does not know how she struggles at home. The appellant pointed out that her doctor has told her that he is "behind her 110%."

Panel decision

While the appellant's position is that equal consideration be given to the information provided by her doctor in both the telephone conversation and the reports because her doctor signed the reports and he is not aware of her difficulties at home, the panel finds that there are significant discrepancies in the information that cannot be resolved. In the checklists in the PR and AR, for example, continuous restrictions are indicated to all DLA with a need for assistance in various tasks of DLA, while the doctor stated in the telephone conversation with the ministry that "all DLA take 2 times longer" than typical to complete and "do not require periodic or continuous assistance." While the appellant admitted that she completed many parts of the PR, including the checklists, there are also portions completed by the doctor in his own handwriting. Given the inconsistencies in the evidence from the doctor in the telephone conversation with those portions of the PR completed by the appellant, the panel finds that the ministry reasonably placed more weight on the information in the telephone conversation as being a more direct communication of the doctor's opinion; however, the panel finds that it is also reasonable to place weight on the written comments made by the doctor in the PR, where those appear in his distinct handwriting.

Although the ministry stated in the reconsideration decision that the AR had not been signed by the doctor, the panel finds that his signature has been affixed to the certification section of the AR, along with his stamp and registration number. The appellant expressed her frustration with her doctor not completing the AR and the panel notes that all of the comments in the AR are in handwriting consistent with that of the appellant, and not that of the doctor, as made in the PR. The appellant

also stated that she would not leave the doctor's office until he signed the AR and he seemed to be rushing her. Given the rushed nature of the appointment with the doctor to address the AR and the apparent completion of the AR by the appellant, the panel finds that the ministry reasonably placed more weight on the information of the doctor provided in the telephone conversation with the ministry over that in the AR. However, the panel finds that it is also reasonable to consider the information in the AR as part of the appellant's self-report.

Severe Physical Impairment

The appellant's position is that a severe physical impairment is established by her diseases, especially fibromyalgia, which is a "severe chronic" nerve disease, and the evidence of her "severe chronic" musculoskeletal and skeletal pain which she experiences constantly, every waking hour. The appellant wrote in the AR that she requires continuous assistance from another person with walking indoors and standing, she can do "no lifting at all; too hard" and she requires continuous assistance with carrying and holding. The appellant indicated in the AR that she takes significantly longer than typical with walking outdoors (note: "5 min. walks take 30 minutes plus") and with climbing stairs (note: "needs assistance from others"). The appellant indicated in the AR that when she has days where it is too hard to walk, she uses a standard walking cane, and clarified at the hearing that walking is "too hard" every day.

The ministry's position is that there is not sufficient 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 in the telephone conversation with the ministry that the appellant can walk 1 to 2 blocks unaided, climb 2 to 5 stairs unaided, can lift up to 5 lbs. and remain seated for 2 to 3 hours. The ministry argued that the general practitioner also reported that the appellant's physical impairment is "mild" and that no assistance is required but she takes two times longer than normal to complete physical activities.

Panel Decision

A diagnosis of a serious medical condition does not in itself determine PWD eligibility or establish a "severe" impairment. An "impairment" is a medical condition that results in restrictions to a person's ability to function independently or effectively.

To assess the severity of an impairment, the ministry must consider both 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 DLA is restricted. In making its determination the ministry must consider all the relevant evidence, including that of the appellant. However, the legislation is clear that the fundamental basis for the analysis is the evidence from a prescribed professional – in this case, the appellant's general practitioner.

The general practitioner, who has known the appellant for approximately one year, diagnosed the appellant with fibromyalgia, epilepsy, auto immune disorder, asthma, visual impairment, and chronic fatigue syndrome. Although these diagnoses were set out in the appellant's handwriting, the general practitioner confirmed in the telephone conversation with the ministry that this information is accurate. In terms of health history, the general practitioner wrote that, with fibromyalgia there is chronic MSK pain, stiffness, and secondary weakness which impairs the appellant's motor function and cognitive function. The appellant "needs high dose of [medications] for pain control and up to a point that she cannot carry out minimal activities (e.g. self care) without these medications. On the other hand, these medications further compromise her intellectual and cognitive function required for normal job

activities.” The general practitioner also reported, regarding the degree and course of impairment, that the medication helps with the pain and “enables her to carry out activities for her minimal daily lives. But these meds further compromise her cognitive function.” The general practitioner indicated that the appellant’s cognitive function is compromised for normal job activities and the panel notes that the ability to search for, accept, or continue in employment is not listed as one of prescribed DLA, and employability is not a factor in assessing eligibility for PWD designation.

In the Medical Report- PPMB dated July 11, 2013, the general practitioner reported that the appellant’s primary medical condition is fibromyalgia and the condition is episodic in nature, occurring 3 to 4 times per month. The appellant indicated in the AR that when she has “days where it is too hard to walk”, she uses a standard walking cane, and clarified at the hearing that she finds walking is “too hard” every day. At the hearing, the appellant stated that when she first wakes up, she cannot climb the stairs and it feels like someone took a hammer and smashed her legs. The appellant stated that she was referred to a specialist and is on a waiting list to consult with a pain clinic. The general practitioner indicated in the PR, however, that the appellant does not require an aid for her impairment. While the appellant argued that there has been deterioration in her condition since the time of completing the Medical Report and the PWD application approximately a year ago, there was no further written information provided by the general practitioner or any pain specialist to indicate an increase in the frequency of the appellant’s bad days.

In terms of physical functional skills, the general practitioner reported in the June 17, 2014 telephone call with the ministry, that the appellant is able to walk 1 or 2 blocks unaided, climb 2 to 5 steps unaided, lift up to 5 lbs. and remain seated for 2 to 3 hours. The general practitioner stated that the appellant’s physical impairment is “mild” and no assistance is required, but it takes the appellant takes 2 times longer than normal to complete physical activities.

The panel finds that the evidence demonstrates that while the appellant requires high dose of pain medication, she can independently carry out her physical activities and they take her 2 times longer than typical. In the absence of further detail from the general practitioner regarding the nature, extent and frequency of any exacerbated impacts to the appellant’s current physical functioning, the panel finds that the ministry reasonably determined that there is not sufficient evidence to establish that the appellant has a severe physical impairment, pursuant to 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 the impacts from her diagnosed anxiety disorder. The appellant indicated in the AR that her mental impairment causes a major impact in 11 of 14 listed areas of cognitive and emotional functioning, namely bodily functions, consciousness, emotion, attention/concentration, executive, memory, motivation, motor activity, language, other neuropsychological problems, and other emotional or mental problems, as well as moderate impact in the remaining areas, being impulse control, insight and judgment and psychotic symptoms. The appellant wrote in her Notice of Appeal that her general practitioner confirmed there is a major impact to her executive functioning and the appellant argued that this establishes a severe mental impairment.

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 general practitioner confirmed in the telephone conversation of June 17, 2014 that the appellant has significant deficits in her cognitive and emotional functioning in 6 areas but reported that these were moderately impacted, with the

exceptions of a mild impact in the area of impulses control and a major impact in the area of executive functioning.

Panel Decision

In the PR, the general practitioner diagnosed the appellant with anxiety disorder with an onset in May 2003. The checklist in the PR indicated that the appellant is continuously restricted with her social functioning, and the general practitioner wrote: "poor social cues. Takes much longer time than usual to understand and carry out tasks. Compromised in the ability of social interaction." Regarding the degree of restriction, the physician wrote: "Medications used for pain further jeopardizes her cognitive and intellectual function."

In the telephone conversation with the ministry on June 17, 2014, the general practitioner reported that the appellant is "independent" regarding social functioning and has "marginally functioning immediate and extended social networks." Although the appellant wrote in her Request for Reconsideration that she requires help with making decisions, the general practitioner reported that it takes her much longer than usual to understand and carry out tasks but that she remains independent. He further indicated that cognitive and emotional deficits are present in the areas of executive, motivation, memory, emotional disturbance, impulse control and attention or sustained concentration; however, all of these areas are "moderately impacted" with the exceptions of a mild impact regarding impulse control and a major impact to executive functioning. Although the appellant argued that the major impact in executive functioning establishes as severe mental impairment, the panel finds that the ministry reasonably concluded that the overriding impact to the appellant's cognitive and emotional functioning is moderate. Given the absence of detailed impacts to the appellant's mental or social functioning, the panel finds that the ministry reasonably determined that a severe mental impairment was not established under 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, namely her child and her ex partner and father-in-law.

The ministry's position is that the general practitioner indicated in the conversation with the ministry that the appellant is not significantly restricted in her DLA as, although all DLA take two times longer than typical to complete, she does not require either continuous or periodic assistance 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 general practitioner 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 continuously or periodically for extended periods.

In the appellant's circumstances, the general practitioner wrote in the additional comments to the PR that: "both physical (pain/joint stiffness/motor function) and psychological impairments (anxiety) impair her ability to carry out activities that require normal motor and/or intellectual ability." He

indicated in the PR that the appellant has been prescribed medications that interfere with her DLA as the medications for pain control "will make her sleepy/drowsy and interfere [with] her ability to function."

In the handwritten Notes made by the appellant dated April 10, 2013 and signed by the general practitioner, it is reported that the appellant's ex-partner helps out with laundry, cooking, cleaning. The appellant's ex-partner also helps the appellant dress and undress and bathe daily, drives her to doctor visits and grocery shopping, and helps her get up and down stairs. The appellant stated at the hearing that her young child also helps her with bathing and dressing. In the AR, the appellant indicated that she requires periodic assistance with reading prices and labels and paying for purchases when shopping and also with using transit schedules and arranging transportation. Continuous assistance is indicated by the appellant to be required for toileting, making appropriate choices when shopping, all tasks of meals, banking, taking her medications as directed and safely handling and storing them, as well as with using public transit. The appellant did not provide further elaboration except to write: "needs help from others."

In the telephone conversation with the ministry, the general practitioner reported that all of the appellant's DLA "take 2 times longer" than typical to complete and "do not require periodic or continuous assistance." While the general practitioner signed the handwritten Notes made by the appellant indicating that her ex-partner helps her with some tasks of DLA, the general practitioner clarified that assistance is not required. At the hearing, the appellant stated that she considers that her life is not "living" but is "suffering and, while it may be that the appellant's condition has deteriorated since the time of preparing the PWD application and the conversation with the general practitioner, there was no further information provided from a prescribed professional. The panel finds that the ministry reasonably concluded that there is not enough evidence from the general practitioner, as the prescribed professional, to establish that the appellant's impairment significantly restricts her ability to manage her 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.

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 no assistance devices or the services of an assistance animal are required.

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 appellant reported in the AR that she requires help from her ex-partner and, when she has days "where it is too hard to walk," she uses a standard walking cane. The general practitioner did not report, in either his written comments or the telephone conversation with the ministry, that the appellant requires assistance or that any assistive devices are used. 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.