



PART C – Decision under Appeal

The decision under appeal is the Ministry of Social Development and Social Innovation (the “ministry”) reconsideration decision of July 22, 2014, which found that the appellant did not meet three of five statutory requirements of section 2 of the Employment and Assistance for Persons With Disabilities Act (“EAPWDA”) for designation as a person with disabilities (“PWD”). The ministry found that the appellant met the age requirement and that in the opinion of medical practitioner the appellant’s 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 that
- as a result of those restrictions, the appellant requires the significant help or supervision of another person, an assistive device, or the services of an assistance animal.

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 information in chronological order that was before the ministry at the time of reconsideration included the following:

1. A letter from a specialist dated July 21, 1994 indicated that the appellant needs a bowel resection and arrangements will be made.
2. A Medical History Report on the appellant dated August 17, 1994 indicated that she was booked for right Hemicolectomy resection for Crohn's.
3. A Clinical History Final Report dated August 30, 1994 indicated the appellant's diagnoses as Right Hemicolectomy, Severe Active Crohn's Disease and Terminal Ileum.
4. A Consultation Report dated June 16, 2002 indicated ongoing Crohn's disease.
5. A letter dated August 19, 2002 from a consultant in Rheumatology indicated that the appellant has right knee arthropathy associated with Crohn's disease and it has improved considerably with her treatment.
6. An Operative Report dated February 18, 2003 indicated that a portion of the appellant's bowel was removed and that the Crohn's disease was not the cause of the bowel obstruction and she was left with a short gut syndrome.
7. A Surgical Summary Report dated May 1, 2003 indicated that the appellant's discharge diagnosis was Small Bowel Obstruction, secondary to adhesions and the secondary diagnosis was Crohn's disease - moderately active.
8. An X-Ray Report for Chest and Abdomen dated July 17, 2004.
9. An X-Ray Report for multiple views - Abdomen dated July 18, 2004.
10. A CT Report for Abdomen/Pelvis with Contrast dated December 5, 2004 indicated severe, recurrent Crohn's disease, with evidence of mechanical small bowel obstruction.
11. An Operative Report dated December 5, 2004 indicated that a laparotomy with lysis of adhesions and small bowel resection was performed.
12. A Clinical History Report dated December 9, 2004.
13. A Treatment Record dated March 7, 2005 (unreadable) concerned a right swollen knee.
14. An Operative Report dated April 28, 2009 indicated that a colonoscopy was performed and no evidence of obvious active Crohn's disease in the area was seen.
15. A standing order from a medical laboratory which expired November 12, 2011.
16. A Visit Note for the appellant from a Gastroenterology & Endoscopy Center dated March 5, 2012.
17. The appellant's PWD Designation Application, dated November 6, 2013.
18. The appellant's Self Report (SR) dated November 6, 2013.
19. A letter from an Internal Medicine/Gastroenterology specialist dated December 11, 2013 indicated that the appellant may be having a recurrence of Crohn's disease and that she hasn't had major activity proven for a number of years and that a colonoscopy will be organized.
20. An Operative and Procedural Document dated December 17, 2013 which indicated that a colonoscopy was performed and no obvious evidence of Crohn's recurrence was seen.
21. A list of Medication dated December 28, 2013.
22. A Physician Report (PR) not-dated, completed by the appellant's medical practitioner who has known the appellant since 1994 and seen her once in the past 12 months.
23. An Assessor Report (AR) dated January 29, 2014 completed by the same medical practitioner.
24. The appellant's Request for Reconsideration dated June 18, 2014.

25. The appellant's advocate's submission dated July 22, 2014.

Diagnosis

In the AR, the appellant's physician has diagnosed the appellant with a right hemi-colectomy for Crohn's, anxiety and arthritis-osteoarthritis. It is noted that she has declined a colostomy.

In response to the question; Has the applicant been prescribed any medication and/or treatments that interfere with her ability to perform DLA? The physician indicated no.

In response to the question; Does the applicant require any prostheses or aids for her impairment? The physician indicated no.

In the SR, the appellant indicated that her last major surgery was in 2004 and that the next surgery – colostomy - is one that she is trying not to have as she doesn't believe she could cope with it and the devices it entails.

Physical Impairment

In the PR, under functional skills, the physician reports that the appellant can walk unaided 4+ blocks, climb 5+ stairs, lift 5 to 15 pounds, remain seated 1 to 2 hours and has no difficulties with communication. In terms of DLA, the physician indicates that the appellant's arthritis makes walking difficult; she can't sleep in one position too long and cannot make it to the toilet which leads to accidents.

In the AR, under mobility and physical ability, the physician assesses the appellant as independent with respect to walking indoors and standing (short periods only), and requiring periodic assistance from another person with respect to walking outdoors (assistance required on hills or uneven ground), lifting and carrying and holding (son assists). The appellant is noted to take significantly longer than typical with climbing stairs and that she needs help. It is also indicated that the appellant's ability to speak and write is good whereas her writing is satisfactory because of arthritic cramping and her hearing is also satisfactory – right ear plugs with wax.

In the SR, the appellant writes that the arthritis in her right knee is partly due to Crohn's and after surgeries has swollen to the size of a football causing severe pain and making personal tasks difficult. She indicates that she has disabilities in walking, sitting, lying down or any movement. The appellant reports that she had a couple of falls, one at her job in 2010 and another this year at her daughter's home out of the country. Her diarrhea started to be really bad in the summer of 2012 and since that time she takes spare clothes with her, "everywhere". She indicates that she moves with a slow limping gait, takes stairs one at a time up or down as she doesn't want to repeat the fall at her daughter's home in May.

Mental Impairment

In the PR, the physician indicated that the appellant has 1 significant deficit with cognitive and emotional function – Emotional disturbance and no problems with communication.

In the AR, under Cognitive and Emotional Functioning, the physician assesses a major impact with bodily functions (toileting – unable to reach toilet in time resulting in diarrhea accidents up to 2-3 times a day) and a moderate impact with emotion. Minimal impacts are noted for consciousness, and

memory (cannot put names and faces together until she has seen them 3-4 times) while no impact is noted for; impulse control, insight and judgment, attention/concentration, executive, motivation, motor activity, language, psychotic symptoms, other neuropsychological problems and other emotional or mental problems.

In the SR, the appellant states that she has high levels of stress and anxiety for any outing because of "diarrhea".

Daily Living Activities

In the AR, the physician indicated that the appellant:

Under Personal Care - requires periodic assistance from another person to manage bathing (son helps her get in and out of tub/shower); while she independently manages grooming, toileting, feeding self and regulate diet. The appellant takes significantly longer than typical for dressing (sits to dress) and for toileting if she has an accident and has to clean-up and re-dress). For transfers in/out of bed and transfers on/off chair, it is commented that knees stiff/hard to get up. Under Basic Housekeeping, she requires periodic assistance in both laundry and basic housekeeping (son carries items up and down and helps). Under Shopping she independently manages reading prices and labels, making appropriate choices and paying for purchases. She requires periodic assistance for going to and from stores and for carrying purchases home (son does most of this). Under Meals, the appellant independently manages meal planning and safe storage of food whereas she requires periodic assistance with food preparation; her son cooks most meals. Under Pay Rent and Bills, the appellant independently manages all 3 aspects of DLA - banking, budgeting and paying rent and bills. Under Medications, the appellant independently manages all 3 aspects of DLA - filling/refilling prescriptions, taking as directed and safe handling (misses medications occasionally). Under transportation, the appellant requires periodic assistance getting in and out of a vehicle (friend or son assists). She does not use public transit (because of lack of access to toilet). Under additional comments, it is noted that the appellant is currently paying for occasional extra assistance with getting in/out of shower and to change the bed.

Part C pertaining to Social Functioning is noted N/A.

In the SR, the appellant writes that she needs her son's help to get into the tub because the sides are very high, to get out she holds onto the open bathroom door – places left leg over side and pulls the right leg after her, hoping that the right leg doesn't slip while still in tub. Sometimes due to an accident (diarrhea), she does this twice a day. She has tried a bathmat but states that if she slips at the side of it, it will bunch up.

The appellant states that preparing meals is a slow process – her son usually prepares the main meals – and she helps the best she can. The appellant states that when standing in one position for a length of time that her right knee pops out and she grabs counters for support. The appellant's son helps her with housekeeping, meal prep and dishes (pots and pans). Her son brings the finished laundry to her to fold and then he carries the baskets upstairs where he will help her put them away. Her son vacuums and cleans the tub and toilet while the appellant wipes down the sink and counters.

Although the appellant's son handles most of the shopping, the appellant has gone with him and has managed fairly well as long as she is pushing a buggy. She is always aware of the location of the bathrooms and carries a change of clothes. She has used the adult underwear; however, finds that it

does not always hold back the flow which needs to be dealt with as soon as possible, sometimes meaning a return home before the shopping is finished. The appellant states that moving about outdoors is stressful – she must know where she is going- bathrooms must be close – she must know if the ground is level or uneven, hilly, rocky or paved walkways.

Help Required with DLA

With respect to assistance provided by other people, the physician indicates that the son helps on a daily basis but will be leaving the province for work and that a friend helps occasionally.

The appellant states that her son pays a care worker who comes in on an on-call basis to help with her room and bathing. She uses a grabber to pick things up or reach things down from a high self. Also, specified is that she would like “grab bars” for shower/tub and a non-slip mat appellant is noted not to have an Assistance Animal.

Prior to the hearing the appellant submitted:

1. a 2nd submission by her advocate dated August 28, 2014;
2. a letter dated July 14, 2014 written by the appellant’s advocate to the appellant’s physician which included a copy of a prepared letter for the physician;
3. the prepared letter dated July 23, 2014 signed by the appellant’s physician which confirmed that the appellant is on multiple prescribed medications for Crohn’s and a painkiller for arthritis; that she takes approximately 3 times longer than an average person due to pain and stiffness from arthritis, that her son provides assistance at least 3 times a week for DLA, that she can climb no more than 5 stairs unaided, that she can lift up to 12 lbs., and that she could benefit from access to a mental health professional; and
4. an X-Ray - Right Knee for the appellant dated May 2, 2014.

At the hearing, the appellant’s advocate presented an updated list of medications written by the appellant.

The appellant’s advocate’s submission went to argument.

In answer to questions by her advocate, the appellant stated that;

- after surgery her right knee swelled to the size of a football and it occurs again occasionally,
- she takes medication 3-4 times per day as needed,
- her B-12 injections have stopped as the part of the intestine to which it was absorbed has been removed,
- a worst day is described as not making it to the toilet during the night and her son has to help her in the shower,
- when her son’s away - she moves downstairs - there is no shower there,
- she keeps 2 changes of clothes downstairs,
- she uses an office chair to get around to prepare breakfast and do housework,
- she uses Facebook to stay in touch with relatives and friends,
- she takes a lot of preparation to go out – usually once a week – lasts about 15 minutes- son finishes the shopping,
- the sides of the tub are high and she is nervous getting out,
- she plans to see someone about her anxiety,
- she missed an appointment with a physician due to an accident on August 25, 2014 and

- her worse days occur 4 - 5 times a week.

In response to the ministry's questions, the appellant indicated that she gets 3-5 hours a sleep per night and takes Tylenol 3's every evening. The appellant indicated that her son spends time in and out of the province, but will be keeping his residence locally and that he pays her occasional helper by doing computer work for him. The last paid help was in February as the helper is extremely busy. It was confirmed by the appellant that she takes 3 times as long as a normal person to complete DLA.

In response to the panel's questions, the appellant indicated that she does not want a colostomy bag as she is familiar with them from previous work and doesn't like what happens with them. The appellant indicated that she likes cooking vegetables, soups and stews and that her funds are not lasting the month. She indicated that if her son was not available, she would take a taxi. Laundry is done by her son before he leaves, she sits on the stairs while it is being done and also does laundry by hand. The appellant indicates that her son works on an on-call basis; the last time he was away with work was February when he was extremely busy. In the summer he goes away camping for up to one week at a time usually in the area. The appellant stated that she doesn't use any assistive devices and her son helps her out of chairs. The appellant stated that she has had liquid drained from her knee, received a cortisone shot in her knee on July 31, 2014 and that her arthritis is causing the problems. The appellant confirmed that she last had surgery in 2005.

The appellant's son testified that he provides the following assistance to his mother; cooks meals, helps with laundry, helps her up and down the stairs, helps her in and out of the bath, does grocery shopping - more and more, and helps her up off the couch. He added that because of her knees, her mobility is limited; she also doesn't have the strength to get around. As she ages she is becoming more confused. It's hard for her to do things; she is nervous about falling and sits when she goes up the stairs alone. He further stated that there is not a bath/shower on the main floor.

The ministry representative was asked if she had time to review the additional information submitted by the appellant's advocate and if she had any objection to the new information being accepted as evidence. The ministry representative confirmed that she had reviewed all the information submitted including the updated list of medication and had no objection or comments.

The panel finds that the new information provided by the appellant prior to the hearing, as well as her testimony and that of her son's, at the hearing is in support of the information and records that were before the ministry at the time of reconsideration as they contained additional detail with respect to issues addressed in the original PWD application forms. The panel therefore admits the new information as evidence pursuant to section 22(4) of the Employment and Assistance Act as it further describes the impacts of the appellant's medical conditions on her DLA.

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PART F – Reasons for Panel Decision

The issue in this appeal is whether the ministry reasonably determined that the appellant is ineligible for PWD designation because she did not meet all the requirements in section 2 of the EAPWDA. Specifically the Ministry determined that the information provided did not establish that the appellant has a severe mental or physical impairment that in the opinion of a prescribed professional

- (i) directly and significantly restricts her ability to perform daily living activities either continuously or periodically for extended periods; and,
- (ii) as a result of those restrictions she requires help to perform those activities.

The Ministry did determine that she met the 2 other criteria in EAPWDA section 2(2) set out below.

Relevant Legislation, EAPWDA:

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

- (a) in the opinion of a medical practitioner is likely to continue for at least 2 years, and
- (b) in the opinion of a prescribed professional
 - (i) directly and significantly restricts the person's ability to perform daily living activities either
 - (A) continuously, or
 - (B) periodically for extended periods, and
 - (ii) as a result of those restrictions, the person requires help to perform those activities.
- (3) For the purposes of subsection (2),
 - (a) a person who has a severe mental impairment includes a person with a mental disorder, and
 - (b) a person requires help in relation to a daily living activity if, in order to perform it, the person requires
 - (i) an assistive device,
 - (ii) the significant help or supervision of another person, or
 - (iii) the services of an assistance animal.

The following section of the EAPWDR applies to this appeal:

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

Severe Physical Impairment

In the reconsideration decision, the ministry reviewed the evidence set out in the PR and AR and in the appellant's SR. The ministry noted in the appellant's PR that she is able to walk 4+ blocks, climb 5+ steps unaided, lift 5 to 15 pounds and can remain seated for 1 to 2 hours. The medical practitioner indicates that the appellant takes significantly longer with climbing stairs, noting "one step at a time, stop on landing"; however, no further information is provided to explain the type or degree of the assistance that she requires to manage these abilities. In addition, the medical practitioner indicates that the appellant is independently able to walk indoors and stand which the ministry finds establishes the appellant's functional skill limitations are more in keeping with a moderate degree of physical impairment. The minister is therefore not satisfied that the information provided is evidence of a severe physical impairment.

The ministry representative argued that taking 3 times as long for DLA is not considered severe by the ministry but rather a moderate impairment. She indicated that the new information was not very different than what had been presented in the PWD application, that there were no specific details reported by the prescribed professional, that lifting up to 12 lbs. is in a mild to moderate range and that it had been noted that the appellant can walk up to 4 blocks, even though it may no longer be the case. The ministry representative noted that the appellant has not yet secured a family physician and that her application was completed by the gastroenterologist. The ministry representative further stated that severity is the ministry's consideration and that she is not seeing severe impairments in the information. She stated that the PWD designation involves 2 issues; the need for money and the need for help because of the impairment. The ministry representative stated that in her opinion the appellant met the need for assistance with DLA but the need for additional funds was not apparent in the application.

The advocate responded to the ministry's argument by citing the relevant legislative criteria and arguing that the ministry representative's position regarding the 2 issues of PWD designation, the need for money and the need for help because of the impairment, are inappropriate considerations as they are not included in the legislation. The advocate further argued that the appellant taking 3 times longer than typical to complete DLA is also not legislative criteria. The advocate highlighted Section 8 of the Interpretation Act [RSBC 1996 c. 238] as requiring that every enactment be construed as being remedial and given such fair, large and liberal construction and interpretation that best ensures the attainment of its object. The advocate also points to case law as authority for the position that if there is any ambiguity in the interpretation of the criteria, it is to be resolved in favour of the appellant [Abrahams v. Canada 1983 142 D.L.R. (3d) 1] and that the evidence of the prescribed professional indicating a direct and significant restriction on at least 2 DLA, that there is no statutory requirement for more than 2 DLA and the physician and the assessor must be read in its entirety and in a broad way and the legislation interpreted with a benevolent purpose in mind [Hudson v. EAAT 2009 BCSC 1461]. The advocate also argues that there is no indication in the reasons for denial that the information provided in the SR was considered at all, let alone given considerable weight.

The position of the appellant, as set out in her advocate's submission, is that the ministry has not adequately assessed the nature of her impairments. In her submission, the appellant's advocate states that when reading the entirety of the appellant's application, one can see that she lives with multiple and severe health conditions; primarily Crohn's disease, current abdominal pain and diarrhea

– limiting her lifestyle, arthritis + stress – when leaving the house, plans extra clothing and worries about access to toilet facilities. She finds walking difficult can't sleep in one position too long and cannot make it to the toilet which leads to accidents (2 -3 times per day). She is on multiple prescribed medications for Crohn's as well as a painkiller for her arthritis.

The appellant in her SR states that moving about outdoors is stressful and must be carefully planned to ensure that toilet facilities are available. She has difficulty with uneven or sloping ground and needs paved walkways. She moves now at a slow limping gait, takes stairs one at a time up or down as she has no wish to repeat the fall she had in May at her daughter's home. The appellant submits that she can currently climb no more than 5 stairs unaided and the maximum she can lift is 12 pounds and that she can no longer walk 4 blocks and that her arthritis is also in her other knee and hands.

Panel Decision

In considering the information provided regarding the severity of the appellant's impairments, the panel has drawn upon the ministry's definition of "impairment," as set out in the PR, recognizing that it is instructive rather than a legislated definition. This definition consists of "cause" and "impact" components: "impairment is a loss or abnormality of psychological, anatomical or physiological structure or function [the cause] causing a restriction in the ability to function independently, effectively, appropriately or for a reasonable duration [impact]." The cause is usually set out as a disease, condition, syndrome or even by a symptom (e.g. pain). In the present appeal, the primary cause is Crohn's disease. A severe impairment requires the identified cause to have a severe impact. The assessment of severity is therefore based on of the impact on daily functioning, in such areas as functional skill limitations, cognitive and emotional deficits, restrictions on the ability to manage DLA and assistance required.

The determination of severity of impairment is at the discretion of the minister – the ministry must be "satisfied" that the statutory criteria for granting PWD designation are fulfilled. In making its determination the ministry must act reasonably and consider all the relevant evidence, including that of the appellant. While the legislation is clear that the fundamental basis for the analysis is the evidence from prescribed professionals, the professional evidence has to be weighed and assessed like any other evidence.

The panel finds that while the appellant's Crohn's disease (for which she underwent surgery in 2005) and fears of a potential colostomy, anxiety for which she intends to seek counselling and arthritis may limit her ability to function, the evidence does not establish that the symptoms restrict the appellant's ability to function independently, effectively, appropriately or for a reasonable duration. For example, the physician confirms that the appellant's ability to perform DLA is not interfered with by medication or treatment and that she does not require any prostheses or aids for her impairment. Furthermore, the information provided by the prescribed professional respecting physical Functional Skills including the step climbing and lifting limits reported in the July 23, 2014 physician's letter, and the description of the appellant's Mobility and Physical Ability in the AR were reasonably viewed by the ministry as a moderate rather than severe impairment of daily physical functioning.

Based on all the evidence, the panel finds that the ministry reasonably determined that the information provided did not establish a severe physical impairment.

Severe Mental Impairment

In the reconsideration decision, the ministry noted that the PR indicates that the appellant has a significant deficit with cognitive and emotional functions in the areas of emotional disturbance, "anxiety". In the AR, the physician indicates that the appellant has one major impact with bodily functions, a moderate impact with emotion, 2 minimal impacts in the areas of consciousness and memory and no other impacts in the other areas. In assessing communication, the physician indicates no difficulties and the ability to write and hear are satisfactory, noting arthritic cramping and ear wax plugging in the right ear. Speaking and reading ability are noted as good. The ministry's position is that most of the appellant's cognitive and emotional functioning as minimal or no impact on DLA and her ability to communicate is good, the minister is not satisfied that the information provided is evidence of a severe mental impairment.

In her submission, the appellant's advocate combined her arguments with respect to the severity of the appellant's mental impairment with those regarding physical impairment.

The appellant argues that she has recently started experiencing additional symptoms of anxiety such as challenges with attention, concentration and memory. She has experienced a significant decrease in motivation with performing multiple DLA which is concerning for her as she used to be a highly motivated individual and she feels that she could benefit from access to counselling to help her cope with her loss of independence. Due to the appellant's high levels of anxiety she gets approximately 4-5 hours of sleep per night.

Panel Decision

In the appellant's case, the PR does not diagnose any mental impairment or brain injury and the physician has not reported that the appellant has been prescribed any medication and/or treatments that interfere with her ability to perform DLA. The appellant is noted to have 1 significant deficit with cognitive and emotional function – Emotional disturbance (anxiety) and in the AR, under Cognitive and Emotional Functioning, the physician assesses a moderate impact with emotion.

Section 2(1)(b) of the EAPWDR prescribes two DLA that are specific to mental impairment – make decisions about personal activities, care or finances (decision making), and relate to, communicate or interact with others effectively (social functioning).

In the AR, it was indicated that the appellant independently manages all aspects of pay rent and bills, and medications and that she independently manages to regulate her diet, meal planning and safe storage of food and is able to make appropriate choices when shopping. The area of social functioning was determined as N/A by the prescribed professional.

Based on the evidence, the panel finds that the ministry reasonably determined that a severe mental impairment had not been established.

Significant Restrictions to DLA

In the reconsideration decision, the ministry noted that the physician indicates that the appellant

requires periodic assistance with bathing, basic housekeeping, going to and from stores, carrying purchases home, food preparation and getting in and out of a vehicle. The physician notes that the appellant's son helps most times and that the appellant is currently paying for occasional extra assistance with getting in and out of the shower and changing the bed. The frequency, the degree and duration of the assistance remains unclear. Therefore, it cannot be determined that the appellant's ability to manage these activities is severely impacted. The physician indicates that the appellant takes significantly longer to manage dressing and toileting; however, no information is provided to explain how much longer the appellant takes to manage these activities. In addition, the physician indicates that the appellant is able to independently manage all other activities of DLA including personal care, shopping, meals, paying rent and bills and medication. In assessing social functioning the physician indicates N/A. No information is provided to explain the appellant's relationship with both her immediate or extended networks. The ministry acknowledges that the appellant experiences some limitations as a result of her condition however, the information from the prescribed professional does not establish that impairment significantly restricts DLA either continuously or periodically for extended periods.

The advocate submits that the appellant faces numerous challenges with personal care – takes significantly longer with dressing (she has to sit to dress), - requires periodic assistance with bathing (her son helps her in /out of shower), - takes significantly longer with toileting and if she has an accident, it takes time to clean-up and re- dress. She currently receives occasional paid assistance with getting in and out of shower and to change the bed. The appellant submits that she takes 3 times longer than a healthy person with multiple activities of personal care, such as dressing, transferring in and out of bed as well as on and off chairs. The appellant also requires periodic assistance with laundry and basic housekeeping, with going to and from stores as well as carrying purchases home - and with getting in and out of a vehicle - her son or a friend assists her. The appellant is afraid to use public transit because of lack of access to a toilet. It is further submitted by the appellant's advocate that the appellant is provided assistance at least 3 times a week with; laundry, housekeeping, grocery shopping, food preparation, cooking and getting in and out of a vehicle.

Panel Decision

The legislation requires the minister to substantially assess direct and significant restrictions of DLA in consideration of the opinion of a prescribed professional. This doesn't mean that other evidence – such as that from the appellant - shouldn't be factored in as required to provide clarification of the professional evidence, but the legislative language makes it clear that the prescribed professional's opinion is fundamental to the ministry's determination as to whether it is "satisfied". In the appellant's case, the prescribed professional has supplied little in the way of narrative to provide detail of the degree of restriction to DLA.

The legislation requires that a severe impairment directly and significantly restricts the appellant's ability to perform DLA either continuously or periodically for extended periods. The term "directly" means that there must be a causal link between the severe impairment and the restriction. There is also a component related to time or duration. The direct and significant restriction may be either continuous or periodic. If it is periodic it must be for an extended time. Inherently, any analysis of periodicity must also include consideration of the frequency. In circumstances where the evidence indicates that a restriction arises periodically, it is entirely appropriate for the ministry to require evidence of the duration and frequency of the restriction in order to be "satisfied" that this legislative

criterion is met.

The onus is on the appellant to prove on the balance of probabilities that she satisfies the legislative criteria with respect to direct and severe restrictions in her ability to manage her DLA independently. In the panel's view, while the evidence indicates that the appellant has some difficulty with her DLA; most notably, in the area of bathing (getting in and out of the tub/shower) for which she requires daily assistance, it also establishes that only periodic assistance is required for other tasks of DLA, including aspects of basic housekeeping, meals, and getting in and out of a vehicle and that she manages to do a lot by using an office chair. The panel also notes that although the legislation does not set out a specific requirement for how much longer a DLA takes to perform, it is reasonable for the ministry to consider such information in assessing whether a restriction is significant. In this case, the panel finds that based on the appellant's functional skills and her ability to manage most DLA tasks independently (though some take three times longer) or with periodic assistance (described as at least 3 times a week), the ministry reasonably determined that it has not been established that in the opinion of a prescribed professional the appellant's impairments directly and significantly restrict her ability to manage her DLA either continuously or periodically for extended periods. Accordingly, the panel finds that the ministry reasonably found that this legislative criterion is not satisfied.

Help with DLA

The ministry's position is that since it has not been established that the appellant's DLA are significantly restricted, it cannot be determined that significant help is required from other persons.

The position of the appellant is that her need for significant help from other person's results from the significant restrictions in her ability to perform DLA, as argued in the advocate's submission and summarized above.

Panel Decision

The panel notes that the legislation requires that in the opinion of a prescribed professional the need for help must arise from direct and significant restrictions in the ability to perform DLA that are either continuous or periodic for extended periods. The panel finds that the ministry reasonably determined that since it has not been established that DLA are directly and significantly restricted, it cannot be determined that help is required as provided under section 2(2)(b)(ii) of the EAPWDA.

Conclusion

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