

## PART C – Decision under Appeal

The decision being appealed is the reconsideration decision of the Ministry of Social Development and Social Innovation (the “Ministry”) dated September 11, 2014 in which the Ministry determined that the Appellant was not eligible for Persons with Disabilities (“PWD”) designation because she did not meet all the requirements for PWD designation in section 2(2) of the *Employment and Assistance for Persons with Disabilities Act*. Based on the information provided, the Ministry was not satisfied 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 was satisfied that the Appellant has reached 18 years of age and in the opinion of a medical practitioner her impairment is likely to continue for at least 2 years.

## PART D – Relevant Legislation

*Employment and Assistance for Persons with Disabilities Act* (“EAPWDA”) Section 2(2) and 2(3).

*Employment and Assistance for Persons with Disabilities Regulation* (“EAPWDR”) Section 2.

## PART E – Summary of Facts

For its reconsideration decision, the Ministry had the following evidence:

Appellant's PWD application consisting of the following three parts:

- The Appellant's self report ("SR") signed by her on March 4, 2014;
- A physician's report ("PR") dated April 29, 2014 completed by the Appellant's family physician who indicated that the Appellant had been a patient of his for 6 ½ years and he'd seen the Appellant 2-10 times in the 12 months preceding the report; and
- An assessor's report ("AR") dated April 29, 2014, completed by a physiotherapist who indicated that his first visit with the Appellant was on the date he completed the AR for her.

Appellant's request for reconsideration dated August 14, 2014, to which she attached the following documents:

- A 4-page document Daily Living Activities Checklist, not dated ("DLA Checklist"), showing a series of check marks beside lists of tasks set out under headings for each daily living activity after the words "my disability makes it difficult for me to do the following activities." At the hearing, the Appellant said she completed the DLA Checklist with an advocate for the reconsideration.
- A 2-page document, Supplemental Medical Opinion, signed by the Appellant's family physician and dated August 20, 2014. The Supplemental Medical Opinion sets out a series of questions and the physician has handwritten his answers on the form, discussed below.
- A 2-page letter from the physiotherapist who completed the AR to the Appellant's advocate indicating it was faxed to the advocate on August 27, 2014, in which the physiotherapist indicates that he is denying the advocate's request for further medical information because, "I do not have a history with [the Appellant]. Therefore the information provided in the request would come primarily from her accounts and it would be difficult to provide a medical opinion based on this and one physiotherapy visit."
- The following medical reports from the early 1990s when the Appellant lived in another province: report of a lumbar x-ray (myelogram) dated April 20, 1990 indicating "bulging annuli at L3-4 and L4-5"; letter dated August 11, 1992 to the Appellant's former family physician from a back surgeon noting that the Appellant "is not sure that she would want to go ahead with a fusion operation"; letter dated October 14, 1992 to the former family physician from an orthopedic surgeon noting "she has been advised to have a spinal fusion operation" and responding to questions posed by the Appellant about her chronic back pain and possible treatments; report dated July 30, 1992 regarding appellant's facet block at L4-5; and a letter from the former family physician to a workers' compensation claims adjuster dated March 31, 1999 in which the physician wrote, "she is unable to do any particular work either standing or sitting for any period of time without developing any back pain ... It is a chronic ongoing disease which is not going away ... this patient's status has not changed since 1993 and there is no evidence that she is going to improve either."

The Appellant submitted the following four additional documents prior to the hearing:

- Letter dated September 30, 2014 to the Ministry from another physiotherapist regarding an examination of the Appellant conducted on September 30, 2014 (this is a different physiotherapist from the one who completed the AR);
- Letter dated September 23, 2014 to the Appellant's family physician from a radiologist

reporting on a CT scan and x-ray of the Appellant's spinal area indicating, "there is a very minor scoliosis convex to the left at L3. Disc space narrowing is seen at L3-4, L4-5 and less obviously at L5-S1" and that the Appellant may have kidney or gall stones;

- Letter dated September 29, 2014 from a clinical nurse specialist in the community response unit of a public mental health and addiction services confirming that the Appellant "is currently attending services at our office and explains she is unable to work because of health reasons"; and
- A copy of a heart test conducted September 25, 2014 from a medical laboratory.

The Ministry did not object to the admission of the additional documents. The letter of the physiotherapist dated September 30, 2014 repeats and expands upon information provided by the Appellant in her SR, as well as in the PR and AR portions of the PWD application. The information in the letters of September 23 and 29, 2014 also repeats information set out in the PWD application materials, and the heart test information also repeats information in the PWD application materials. Accordingly, the panel admits the additional documents under section 22(4)(b) of the *Employment and Assistance Act* as it is written testimony in support of information that was before the Ministry when the decision being appealed was made.

The following is a summary of the relevant evidence from the PWD application, as well as the information before the Ministry at reconsideration, and the evidence provided at the hearing.

#### *Diagnoses*

In the PR, the Appellant's physician diagnosed the Appellant with heart problems (mitral valve prolapse and cardiac arrhythmia), osteoarthritis in her hips and lumbar spine onset October 2007, kidney stones onset August 2008, chronic pain syndrome and acid reflux syndrome. In the September 30, 2014 letter, the physiotherapist wrote that the Appellant "reported ongoing chronic back pain which was preventing her from performing many activities of normal daily living ... she reports that she also suffers from depression and anxiety." The Appellant told the panel that she is seeing a psychiatrist every two weeks and the September 29, 2014 letter from the clinic nurse indicates the Appellant is receiving treatment at a mental health clinic, but the Appellant's physician does not provide a medical diagnosis of a mental health condition or mental impairment in the PR or in the Supplemental Medical Opinion.

#### *Physical Impairment*

In the functional skills section of the PR, the Appellant's physician indicated that the Appellant can walk unaided 2-4 blocks, climb 2-5 stairs unaided, lift 2-7 kg (5-15 lbs), and can remain seated less than 1 hour. The physician reported that the Appellant does not require any prostheses or aids for her impairment. In the AR, the physiotherapist described the Appellant's impairments as "based on chronic pain in low back – able to perform [activities of daily living] independently – limited mobility and activity" and also reported that the Appellant's ability to communicate in all aspects is good. In the mobility and physical ability section of the AR, the physiotherapist indicated that the Appellant could independently perform all of the listed activities with the following comments beside each activity (other than walking indoors): walking outdoors – "occasionally uses cane"; climbing stairs – "uses railing"; standing – "requires rest breaks"; lifting – "limited to 5-15 lbs"; and carrying and holding – "limited to 5-15 lbs." The physiotherapist also wrote that the Appellant "uses cane to assist mobility

as needed outdoors and increases activity according to pain/symptoms.” In her SR, the Appellant wrote that her left leg is very weak and she uses a cane at times and if she sits or walks “too long,” she has severe pain in her left leg and lower back.

In the September 30, 2014 letter, the physiotherapist reported that the Appellant has problems bending from her back, she rated her pain at 6 out of 10, that she successfully walked the length of the room, but needed a cane for anything beyond that length, that she had to hold the railing to ascend 5 stairs and that descending was “far more difficult,” and that her grip strength was normal for a woman her age. This physiotherapist wrote that the Appellant’s spinal function sort test result was 31/254 “which can be interpreted as significantly disabled” although no further explanation was provided to interpret these results.

### *Mental Impairment*

In the PR, the physician reported significant deficits with cognitive and emotional function in two areas – emotional disturbance and attention or sustained concentration. In the section of the AR regarding cognitive and emotional functioning, the physiotherapist has written the comment “no mental impairment or brain injury” and although he initially checked “minimal impact” beside three listed areas (consciousness, attention/concentration and motivation) and “moderate impact” beside emotion, these check marks were crossed out and the physiotherapist has checked “no impact” beside each listed area. The Appellant’s physician does not diagnose the Appellant with a mental impairment or mental health condition in the PR. At the hearing, the Appellant stated that she is “not doing well emotionally or physically” and has been seeing a psychiatrist every 2 weeks, but the psychiatrist does not want to prescribe medications until questions about her heart condition and its medications are resolved.

### *Severity of Impairments*

In the PR, the physician wrote the following comment to indicate the severity of the Appellant’s medical conditions: “chronic joint and muscle pain with mobility problems. Heart problems limit ability to undertake sustainable employment.” He added the following comment later in the PR: “chronic illness with lifelong duration and impacts on daily living with pain and mobility problems. Restricted activities due to heart problems etc.” In the August 20, 2014 Supplemental Medical Opinion, the Appellant’s physician has circled the word “yes” in response to the question, “In your professional opinion, does [the Appellant] have a severe physical and/or mental impairment?” He wrote, “see above” to explain his answer.

### *Daily Living Activities*

In the PR, the Appellant’s physician has indicated that her impairment directly restricts her ability to perform DLA (he checked “yes”) and has checked that she is restricted with her mobility outside the home, but did not indicate if this restriction was continuous or periodic. For all of the other listed DLA, the Appellant’s physician has reported that her condition has no impact, although he checked “continuous” beside the DLA “use of transportation.” In the commentary below the listed DLA, the physician has written, “disability impacts mobility.”

In the AR, the physiotherapist wrote that the Appellant is “able to perform ADL’s independently:

limited mobility and activity” and reported that the Appellant could independently perform every listed task of every listed DLA. The physiotherapist wrote the comment, “reports using a cane on occasion to assist mobility outside of the home.” In the section of the AR for social functioning, the physiotherapist has circled the words “identified mental impairment, including brain injury,” written the word “none” and crossed out all areas to be completed.

In the August 20, 2014 Supplemental Medical Opinion, the Appellant’s physician was asked “In your professional opinion, is [the Appellant’s] ability to perform her [DLA] considered severely restricted due to her impairments? If so, please check the box beside the listed DLA if there is a restriction beyond that of a typical healthy person” and provide details. The Appellant’s physician checked the boxes beside “perform housework to maintain acceptable sanitary conditions” and “move about indoors and outdoors”; however, he did not write any comments.

In the Supplemental Medical Opinion, the Appellant’s physician was asked, “In your professional opinion, is [the Appellant’s] ability to perform these daily living activities, directly and significantly restricted?” The physician circled the word “yes” and wrote, “Difficulty mobilizing to clean floors & bathtubs & laundry. Difficulty mobilizing with walking moderate distances.” The Appellant’s physician circled the words “continuously restricted” in response to the question, “if the [DLA] listed on the previous page are considered restricted, is [the Appellant’s] ability to perform these DLAs restricted continuously or periodically for extended periods?” and wrote, “as above.”

In the September 30, 2014 letter, the physiotherapist wrote that because of the “significant limitations interpreted from the test results ... it is evident that she is restricted significantly and continuously in her ability to perform normal activities of daily living. ... she could handle chores between shoulder and hip levels with ease; however, anything further would magnify her symptoms.”

In her SR, the Appellant wrote that she has “trouble lift[ing] laundry and sometimes with some housework like washing floors.” In the information set out in the DLA Checklist, the Appellant indicated that her disability makes it difficult for her to complete the following activities for each listed DLA, as set out in the document (she did not check any of the tasks listed under the DLA of taking medications, managing money and paying bills, eating, communication, and social skills):

Personal Care:

- getting in and out of the bath tub; reaching out to wash my body all over; shaving; applying lotions and creams; remembering or having the energy/motivation to bathe everyday.

Preparing Meals:

- standing at the sink and stove; timing cooking; lifting food from cupboards to counters.

Housework

- Cleaning the bathtub; making beds; cleaning the toilet; putting dishes away; vacuuming or sweeping floors; washing floors; carrying laundry; doing laundry; cleaning windows

Shopping

- Walking around stores; carrying groceries to the bus or car; carrying groceries into the house.

Moving around inside the home

- Going up or down stairs or ramps; getting in and out of chairs; getting into bed and out of bed; bending to pick up things from the floor; kneeling and getting up from the kneeling position.

Moving around outside the home

- Walking very far; walking on uneven ground; going up or down stairs or ramps

#### Using transportation

- Standing at the bus stop; standing on the bus/skytrain; going up or down stairs or ramps.

#### Mental and emotional skills

- Coping with depression; coping with stress

At the hearing, the Appellant stated that it takes her 2 hours to put on her socks and sometimes she gives up and goes without socks. She said she cannot perform personal hygiene “from the waist down.” She stated that she cannot get down to clean the bathtub, she has to get down on her hands and knees to do her laundry and her daily living is “horrendous at times.” She said she now lives alone and realizes how much she cannot do herself. The Appellant stated that, at the time of the original PWD application, she was too embarrassed to tell her physician all the things she cannot do by herself and more information was provided for the Supplemental Medical Opinion. The Appellant said that she drives to get her groceries, but only packs a few items in a bag, and seems to manage but “it’s not easy.” She can also manage her own medications and finances.

#### *Help with Daily Living Activities*

In the PR, the Appellant’s physician wrote “none” under the question, “what assistance does your patient need with [DLA]?” In the AR, the physiotherapist indicated that the Appellant “reports using a cane for mobility on occasion outside of home.”

In the August 20, 2014 Supplemental Medical Opinion, the Appellant’s physician responded “yes” to the question, “In your professional opinion, as a result of [the Appellant’s] severe restrictions, does she require help to perform her [DLA]?” and added, “daily housekeeping & laundry etc.” The physician circled “1X-2X” regarding the number of times per week the Appellant required this assistance. In the DLA Checklist, the Appellant indicated that she needs eyeglasses, raised toilet seat, bathtub or shower chair and grab bars.

In the September 30, 2014 letter, the physiotherapist wrote that he would recommend the Appellant use assistive devices as follows: “she should constantly use a cane while walking because of her left leg weakness and poor balance; high toilet seat is recommended; bath chair for safety; assisted device to put on her socks, elastic shoe laces, assistance with foot care.” At the hearing, the Appellant indicated she had difficulty with personal self care, in particular “below the waist” including foot care.

#### *Ministry’s Position*

For this appeal, the Ministry relied on and reaffirmed its reconsideration decision.

## PART F – Reasons for Panel Decision

The issue in this appeal is whether the Ministry reasonably determined that the Appellant was not eligible for PWD designation because she did not meet all of the requirements in section 2(2) of the EAPWDA, and specifically, that the Appellant does not have 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 eligibility criteria for PWD designation are set out in the following sections of the 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 “daily living activities” referred to in EAPWDA section 2(2)(b) are defined in the EAPWDR as:

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.

### Panel’s decision

The panel will now consider each party’s position regarding the reasonableness of the Ministry’s decision under the applicable PWD criteria at issue in this appeal.

### Severe Physical Impairment

The Appellant submits that she suffers from severe physical impairments which significantly impair her ability to manage her daily tasks, namely: her chronic back pain and inability to bend and to reach below her knees and her heart condition which prevents her from exerting herself. The Appellant argued that the letter from the physiotherapist of September 30, 2014, plus the earlier medical information (x-rays etc.) show that her problems have been going on for years. The Appellant told the

panel that she was not forthright with her physician when he completed the PWD application and she has realized she needs to tell her family physician the extent to which she has problems performing her daily living activities, but she should not be penalized for not being forthright at the beginning.

The Ministry, in its reconsideration decision, considered the information in the Appellant's PWD application and in her physician's August 20, 2014 Supplemental Medical Opinion. The Ministry noted that it gave very little weight to the information provided by the physiotherapist in the AR as the physiotherapist only had 2 visits with the Appellant (one to complete the AR and the other with her request for further medical information for the reconsideration) and the physiotherapist deferred assessment of the Appellant's conditions and capabilities to her physician. The Ministry also indicated it was not taking into consideration the medical reports from the 1990s as they were very dated. The Ministry determined that the Appellant is able to manage all mobility and physical activities, based on the information provided by the Appellant's physician in the PR, and that the Appellant's level of physical capability is considered a moderate, rather than severe degree of impairment. In considering the information provided in the Supplemental Medical Opinion, the Ministry noted that the Appellant's physician "provides little narrative" and the Ministry was not convinced that the physician's "input establishes and supports" that her conditions are severe.

#### *The Panel's Findings*

The diagnosis of a medical condition is not in and of itself evidence of the severity of impairment. To satisfy the requirements in section 2(2) of the EAPWDA, evidence of how and the extent to which a medical condition restricts daily functioning must be considered. This includes the evidence from the Appellant and from a prescribed professional regarding the nature of the impairment and its impact on the Appellant's ability to manage the daily living activities listed in section 2(1) of the EAPWDR.

In this case, information about the Appellant's circumstances was provided by the Appellant's family physician (the prescribed professional) who has known the Appellant for 6.5 years in the PR completed April 29, 2014 and in the Supplemental Medical Opinion of August 20, 2014. The Appellant's physician noted some restriction to her functional skills in the PR (can walk unaided 2-4 blocks, climb 2-5 steps, lift 2-7 kg, sit less than an hour), the physician indicated that the Appellant could perform all listed DLA independently except mobility outside the home. While the physiotherapist indicated in the September 30, 2014 letter that the Appellant "should constantly use a cane while walking," the Appellant stated that she uses a cane "at times" and her physician reported in the PR that she does not require an aid for her impairment. Given an opportunity to update his response in the Supplemental Medical Opinion, the Appellant's physician did not indicate the need for a cane to assist with mobility.

In the Supplemental Medical Opinion, the physician circled "yes" in answer to the question whether, in his professional opinion, the Appellant has a "severe physical and/or mental impairment" but did not provide any comment other than "see above." The physician indicated on the Supplemental Medical Opinion that the Appellant's impairment restricted her ability to perform housework and to move about indoors and outdoors, but he did not provide any commentary to explain his answer other than, "difficulty mobilizing to clean floors & bathtubs & laundry. Difficulty mobility with walking moderate distances." The information provided by the Appellant's physician in the Supplemental Medical Opinion is consistent with the information he provided in the PR, which speaks to its reliability. Although the Appellant told the panel that her conditions are severe, but she didn't



communicate this adequately to her doctor, the panel finds that the Ministry reasonably relied on the information provided by her physician of 6.5 years, which is consistent with the information provided by the Appellant in her SR.

While the physiotherapist indicates in the September 30, 2014 letter that the Appellant's spinal function sort test result is 31/254 "which can be interpreted as significantly disabled," there is no information about what this test is. Also, this physiotherapist assessed the Appellant once and the panel, therefore, places more weight on the evidence provided by the Appellant's family physician who has known her for over 6 years.

Therefore, when the professional assessment of the Appellant's physician is considered, the panel finds that it was reasonable for the Ministry to determine that the information provided did not establish that the Appellant has a severe physical impairment.

### **Severe Mental Impairment**

The Appellant told the panel that she suffers from depression and is seeing a psychiatrist every two weeks and noted that the letter from the clinic nurse indicates she is receiving treatment at the mental health clinic. She also stated that this has not impaired her ability to think or make decisions. In the PR, the Appellant's physician indicated that she has deficits with cognitive and emotional function in the areas of emotional disturbance and attention or sustained concentration, but did not provide any commentary and did not diagnose the Appellant with a mental impairment or brain injury. In the AR, the physiotherapist expressly wrote the words, "no mental impairment or brain injury."

#### *The Panel's Findings*

The Ministry noted that "no mental conditions are identified" in the Appellant's PWD application and that she did not mention any in her SR. The Ministry found that the information did not establish that the Appellant has a severe mental impairment.

The panel finds that there is no diagnosis of a mental health condition or mental impairment, only the physician's checking in the PR that the Appellant has deficits in the areas of emotional disturbance and attention or sustained concentration. In the Supplemental Medical Opinion, the Appellant's physician did not indicate that the Appellant's impairment has an impact on those DLA listed for persons with a mental impairment. Although the Appellant testified that she is seeing a psychiatrist every 2 weeks and provided a letter from a clinic nurse that she is attending a mental health clinic, there is no evidence from a prescribed professional diagnosing the Appellant with a mental impairment or mental health condition. Based on the information from the Appellant's physician, the panel finds that the Ministry reasonably determined that the evidence does not establish a severe mental impairment.

### **Restrictions to Daily Living Activities**

The Appellant submitted that her ability to manage daily living activities is significantly restricted, pointing to the information provided by her in the DLA Checklist and at the hearing. The Appellant told the panel that she cannot reach down below her knees to perform any housework such as cleaning her bathtub or her floors, that she cannot put on socks or tie shoe laces and she has no one

to assist her with this task, so she will go without socks even in cold weather. The Appellant argued that the physiotherapist who tested her in September 2014 has a better understanding of the degree to which her impairments affect her ability to perform her DLA.

The Appellant's physician (the prescribed professional) reported in the PR that she is restricted in performing the DLA of mobility outside the home. In the Supplemental Medical Opinion, the Appellant's physician indicated that her impairment restricts her ability to perform housework ("difficulty mobilizing to clean floors & bathtubs & laundry) and move about indoors and outdoors ("difficulty mobility with walking moderate distances") and that this was a continuous restriction. The first physiotherapist reported in the AR that the Appellant can independently perform all of the tasks of the listed DLA, but "reports using a cane on occasion to assist mobility outside of the home."

In the September 30, 2014 letter, the second physiotherapist indicated that after he performed a series of tests with the Appellant, "it is evident that she is restricted significantly and continuously in her ability to perform normal activities of daily living. I would assess that she could handle chores between shoulder and hip levels with ease, however anything further would magnify her symptoms. She requires help with activities involving sustained postures and especially those where she has to reach below knee level or reach overhead."

The Ministry determined in its reconsideration decision that the information provided by the first physiotherapist in the AR did not establish that the Appellant's impairments directly and significantly restricts her ability to perform DLA continuously or periodically for extended periods. The Ministry considered the information provided by the Appellant's physician in the PR and the Supplemental Medical Opinion that the Appellant is restricted in 2 of the listed DLA (performing housework and moving indoors and outdoors), but noted that the physician did not explain what changed in the Appellant's condition between the April PR and the August Supplemental Medical Opinion. The Ministry found the information did not satisfy it that the level of capability noted by the Appellant's physician (difficulty mobilizing to clean floors, bathtub and do laundry and walking moderate distances) would directly and significantly restrict the Appellant's ability to perform housework or mobilize inside and outside her home. The Ministry acknowledged that the Appellant has certain limitations, but that the information provided did not establish that an impairment significantly restricts her DLA continuously or periodically for extended periods.

### *The Panel's Findings*

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 daily living activities, continuously or periodically for extended periods. In this case, the Appellant's physician and the physiotherapists are the prescribed professionals. Daily living activities are defined in section 2(1) of the EAPWDR and are also listed in the PR and in the AR.

In the PR completed in April 2014, the Appellant's physician reported that the Appellant's impairment restricted her mobility outside the home with the comment, "disability impacts mobility." In the Supplemental Medical Opinion, he reported that she was restricted performing housework and moving about indoors and outdoors because of her difficulty with mobility cleaning floors, bathtubs and doing laundry and walking moderate distances. In the AR, the first physiotherapist reported that the Appellant could independently perform all of the tasks of each listed DLA, noting only that she

reported using a cane on occasion when walking outside her home and wrote that the Appellant is “able to perform ADL’s independently.” Given an opportunity to express her restrictions to DLA in her own words, the Appellant wrote in her SR that she has “trouble lift[ing] laundry and sometimes with some housework like washing floors.” In the September 30, 2014 letter of the second physiotherapist, he reports that the Appellant “could handle chores between shoulder and hip levels with ease” but that she requires assistance with “activities involving sustained postures and especially those where she has to reach below knee level or reach overhead.”

The Panel finds that when reading together all the information provided by the Appellant’s physician in the PR and Supplemental Medical Opinion, together with the information provided by the second physiotherapist in the September 30, 2014 letter, the Appellant’s impairment restricts her ability to perform some of the tasks of her daily living activities (in particular, housework where she has to bend down such as cleaning floors and bathtubs and doing laundry, and walking long distances outside her home, which she will do with a cane). However, the information about the duration and frequency of the restriction is not clear – the Appellant’s physician indicated in the Supplemental Medical Opinion that the restriction to housework and mobility was continuous, but also indicated she requires assistance 1-2 times per week with housework with no indication that the Appellant requires an aid for mobility, only that she experiences difficulty with “moderate distances.” Given the absence of detail, and level of independence reported by the physician and physiotherapists, the panel finds the Ministry was reasonable in determining that the information provided does not establish that the Appellant’s impairments significantly restrict her daily living activities either continuously or periodically for extended periods.

### **Help with Daily Living Activities**

The Appellant submits that because of her impairments, she needs help with housework (especially work where she has to bend to clean) and putting on her socks and tying her shoes. She told the panel that she is able to shop and do her laundry, but she has changed the way she performs these activities by purchasing lighter items and dragging the laundry behind her. She told the panel she uses a cane for walking outside her home any distances. In the AR, there is reference to the use of a cane to assist the Appellant with her mobility. In the Supplemental Medical Opinion, the Appellant’s physician indicated that the Appellant needs help with daily housekeeping and laundry. The second physiotherapist indicated in the September 30, 2014 letter that the Appellant requires assistance with activities where she has to reach below knee level or reach overhead. This physiotherapist also recommended that the Appellant use assistive devices including a cane, high toilet seat, bath chair, device to help put on her socks, and elastic shoelaces.

The Ministry’s position is that because the evidence does not establish that daily living activities are significantly restricted, it cannot be determined that significant help is required from other persons.

### *The Panel’s Findings*

Section 2(2)(b)(ii) of the EAPWDA also requires the opinion of a prescribed professional confirming that because of restrictions in her ability to manage daily living activities, the Appellant requires help with those activities. In the Supplemental Medical Opinion, the physician indicated that the Appellant requires help with basic housekeeping and laundry 1-2 times per week with no indication that she requires an aid for mobility. In the PWD application, the physiotherapist reported in the AR that the

Appellant uses a cane to assist with her mobility, and the second physiotherapist indicates in the September 30, 2014 letter that the Appellant “should constantly use a cane while walking” and also recommends that the Appellant have assistance with activities where she has to reach below knee level or overhead.

The panel notes that the second physiotherapist produced his letter of September 30, 2014 after one assessment and that he does not provide the level of detail that is set out in the AR portion of the PWD application regarding the frequency and duration of the level of required assistance. Accordingly, the panel finds that the Ministry reasonably concluded that because the evidence did not establish that the Appellant’s DLA are significantly restricted, it could not determine whether the Appellant needs significant help from assistive devices or from other persons to manage her daily living activities.

**Conclusion**

Having reviewed and considered all of the evidence and the 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. Therefore the panel confirms that decision.