

## PART C – Decision under Appeal

The decision under appeal is the Ministry of Social Development and Social Innovation (the ministry) reconsideration decision dated October 9, 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

With the consent of both parties, the hearing was conducted as a written hearing, pursuant to section 22(3)(b) of the *Employment and Assistance Act*.

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 October 31, 2014, a physician report (PR) dated November 6, 2014 and completed by a general practitioner who has known the appellant for 4 years and an assessor report (AR) dated November 22, 2014 and completed by a registered nurse who has known the appellant for approximately 2 to 3 years.

The evidence also included the following:

- 1) Letter dated October 4, 2013 from a physician who is a specialist in internal medicine;
- 2) Letter dated October 9, 2013 from a physician who is a medical consultant with an arthritis program;
- 3) Endocrinology Reports dated April 25, 2014 and October 25, 2013;
- 4) Reports dated December 15, 2013 of MRI conducted on the appellant's cervical spine and brain;
- 5) Letter from a physician who is a specialist in neurology and electrodiagnostic results dated August 12, 2014; and,
- 6) Request for Reconsideration dated September 24, 2014.

In her Notice of Appeal dated October 9, 2014, the appellant expressed her disagreement with the ministry's reconsideration decision and wrote that she is awaiting approval for a walker and more detailed information from the general practitioner and the registered nurse.

Prior to the hearing, the appellant provided the following additional information:

- 1) Written submission on behalf of the appellant with highlighted excerpts from the ministry's reconsideration decision;
- 2) Letter dated October 10, 2014 signed and stamped by the general practitioner who completed the PR and sets out that:
  - The appellant was diagnosed with lupus by a rheumatologist in 2012. She also has a thyroid disorder, a pituitary disorder and an anxiety disorder. She has pain in her knees, feet, hands, shoulders, neck and lower back. The pain is present most days and is worse in the winter and in damp and cold weather. Her feet and ankles swell most days.
  - The appellant cannot walk further than 2 blocks due to pain and she is awaiting an assessment by an OT (occupational therapist) for a walker.
  - The appellant requires someone to be with her when she is outside of the house. She finds climbing stairs very difficult and uses rails to help her get up the 3 stairs to her house.
  - The appellant has difficulty standing for any period.
  - The appellant has to hold onto furniture to get around indoors and tries to walk around as little as possible.
  - Regarding lifting, the appellant is unable to carry such items as heavy pans full of water for cooking or heavy shopping bags. She can prepare smaller items of food which do not weigh very much.

- The appellant takes significantly longer to dress and she requires a shower chair or bath bench when cleaning herself.
  - The appellant suffers from frequent anxiety attacks which cause problems at the time with memory and concentration. She does not have a permanent neurological deficit.
  - The appellant requires help with daily housework, daily shopping, and is unable to lift shopping bags or household tools. She requires help with laundry due to her inability to carry heavier items.
  - Regarding all of the listed tasks, the appellant takes at least twice as long to complete the tasks and sometimes longer than this; and,
- 3) Letter dated November 14, 2014 in which an OT sets out:
- The appellant has comorbid health conditions which impair her ability to function independently. She has lupus, degenerative disc disease and osteoarthritis. These conditions make activities of daily living tiring and painful.
  - The fatigue, brain fog, and chronic pain that the appellant experiences poses significant barriers in her daily life.
  - She has recently prescribed a walker to assist with ambulation as well as a bath seat to assist with personal care.

The ministry relied on its reconsideration decision as its submission.

#### ***Admissibility of New Information***

The ministry did not raise an objection to the admissibility of the new information submitted on behalf of the appellant. The letter dated October 10, 2014 from the general practitioner elaborates on the appellant's mental and physical impairments and how they impact her ability to function and is consistent with and tends to corroborate the information that the ministry had at reconsideration. Therefore, the panel has admitted this letter as being in support of information and records that were before the ministry at the time of reconsideration, in accordance with Section 22(4) of the *Employment and Assistance Act*.

The letter dated November 14, 2014 from the OT included a reference to osteoarthritis, which had not been diagnosed by a medical practitioner, and provided a recent prescription for a walker to assist with ambulation whereas the original assessment in the PR and AR did not list a walker as a required aid to the appellant's impairment. In her Request for Reconsideration, the appellant stated that she does not have a walker or a cane because her apartment is too narrow. Therefore, the panel did not admit this letter as it provides information that is not consistent with the information that the ministry had at reconsideration. The panel considered the written submission as argument on behalf of the appellant.

#### ***Diagnoses***

In the PR, the appellant was diagnosed by the general practitioner with lupus and thyroid disorder, with an onset of June 2006, pituitary dysfunction, with onset of September 2008, and anxiety disorder with an onset of July 2008.

#### ***Physical Impairment***

In the PR, the general practitioner reported that:

- In terms of health history, the appellant has pain in her knees, feet, hands, shoulders, neck and lower back. The pain is present most days and is worse in the winter. The appellant gets

swelling in her feet and ankles most days and some areas of her skin are sensitive to touch.

- The appellant cannot walk further than 2 to 4 blocks due to pain and “feels dizzy.” She needs someone to be with her when she is out walking.
- The appellant requires an aid for her impairment as she uses a shower chair in the shower due to falling in the shower and she has handrails on the stairs.
- For functional skills, the appellant is assessed as able to walk 2 to 4 blocks unaided, she can climb 2 to 5 stairs unaided, she can do no lifting, and she can remain seated less than 1 hour.
- The appellant is continuously restricted with mobility inside and outside the home.

In the AR, the nurse indicated that:

- The appellant is independent with walking indoors (note: “fine with short distances, requires railings with stairs”) and takes significantly longer than typical with walking outdoors (note: “syncope makes ambulation difficult”).
- The appellant uses an assistive device for climbing stairs, with a comment that she “requires assistance and stationary assistance.”
- The appellant requires continuous assistance from another person with standing and the nurse noted “pain in leg and back, swelling generally occurs.”
- The appellant takes significantly longer than typical with lifting (note: “unable”) and with carrying and holding, with a comment that she is “able to carry light groceries, unable to carry laundry.”
- In the section of the AR relating to assistance provided through the use of assistive devices, the nurse identified a bath bench as being routinely used by the appellant. Asked if equipment is required but is not currently being used, the nurse wrote that the appellant requires a bath bench/shower stool, plus or minus a bath bar.

In her Request for Reconsideration, the appellant wrote that:

- She does not have a walker or a cane because her apartment is too narrow.
- She has recently been diagnosed with degenerative disc disease.

In the letter dated October 4, 2013, the physician who is a specialist in internal medicine wrote:

- The appellant suffers from right upper arm numbness and a number of diagnoses were queried and further investigation was recommended.
- Diagnoses listed include depression, galactorrhea, small goiter and atypical chest pain.

In the letter dated October 9, 2013, the physician who is a medical consultant with an arthritis program wrote that:

- There is no question that the appellant has lupus.
- She had an episode of numbness involving the right upper extremity which seems to be improving and it is not clear what that was.

In the endocrinology Reports dated April 25, 2014 and October 25, 2013, the findings include:

- Ambulation is normal.
- Assessments include galactorrhea which is intermittent, pituitary asymmetry, hypotension, and palpitations.

The Reports dated December 15, 2013 of MRI conducted on the appellant’s cervical spine and brain included the following findings:

- Mild degenerative disc disease is seen. There is mild left-sided foraminal narrowing of the appellant's cervical spine. There is no evidence of nerve root impingement.
- There are a few tiny hyperintense foci involving the white matter of the right and possibly a single lesion within the left cerebellar hemisphere of the appellant's brain. These lesions do not meet the criteria for multiple sclerosis but this diagnosis cannot be excluded on the basis of this examination alone.

In the letter from the neurologist and in the electrodiagnostic results dated August 12, 2014, the following is set out:

- The appellant advised the neurologist that she had an attack of lupus two years ago. She became symptomatic with sore legs, back pain, neck pain. She was then exhausted, had galactorrhea and the appellant reports that her liver was swollen. She is now taking medications. The appellant continues with the leg pain which has an aching or burning quality. She has neck pain and low back pain. She has been "losing feeling in her hands" and they periodically swell and ache and sometimes get purplish.
- The neurologist observed that the appellant has normal deep tendon reflexes. There is no weakness or wasting. She put out full power of her right wrist dorsiflexor but complained of pain related to an old fracture. Tone is normal. She felt cool and vibration normally in all four limbs. Tests of coordination were well-performed. She had full range of motion of all the joints in her upper limbs, there was no swelling, color change or synovitis in her joints. She had a good pulse in her hands.
- The impression expressed by the neurologist is that he cannot find evidence of a neurologic disorder. He believes the appellant has diffuse myofascial pain and views her hand complaints as part of that.

### ***Mental Impairment***

In the PR, the general practitioner reported that:

- In terms of health history, the appellant gets anxiety attacks when she is in a stressful situation, especially with strangers or several people. She has fitful sleep most nights.
- The appellant has no difficulties with communication.
- The appellant has significant deficits in her cognitive and emotional functioning in the areas of memory, emotional disturbance and attention or sustained concentration. The general practitioner wrote that the appellant "has anxiety attacks, difficulty with long-term memory."
- The appellant is not restricted with social functioning.

In the AR, the nurse indicated that:

- The appellant has a good or satisfactory ability to communicate in all areas. For speaking, the nurse noted that "lupus fog" makes communication occasionally difficult. With writing, she is unable to sustain writing for long periods of time secondary to pain. With hearing, the appellant experiences comprehension difficulties more than mechanical hearing (difficulties).
- There are no major or moderate impacts in the 14 listed areas of cognitive and emotional functioning. There are minimal impacts in 13 areas, including memory, emotion and attention/concentration.
- The appellant's anxiety disorder suppresses her appetite and she is unable to prepare food when she is experiencing panic.
- The appellant describes herself as inert during anxiety prone periods.

**Daily Living Activities (DLA)**

In the PR, the general practitioner indicated that:

- The appellant has not been prescribed any medications and/or treatments that interfere with her daily living activities.
- The appellant is continuously restricted with the DLA of personal self care, basic housework, daily shopping, mobility inside and outside the home, and use of transportation.
- The appellant is not restricted with the remaining listed DLA, namely: meal preparation, management of her medications, management of finances and social functioning.
- Asked to describe the nature and extent of the assistance required by the appellant with DLA, the general practitioner wrote: "assistance required for bathing, daily housework and shopping, mobility in and out of the house."

In the AR, the nurse reported that:

- The appellant is independent with moving about indoors and outdoors, taking significantly longer than typical outdoors as "syncope makes ambulation difficult." She uses an assistive device with climbing stairs as the nurse noted that she requires railings.
- The appellant is independently able to perform every task of the listed DLA, with the exception of feeding self/regulating diet, for which the appellant requires periodic assistance and the nurse wrote "as previously noted." In the previous section of the AR relating to impacts to cognitive and emotional functioning, the nurse wrote: "anxiety disorder suppresses appetite-she is unable to prepare food when experiencing panic." The appellant takes significantly longer than typical with the tasks of dressing, grooming, bathing (note: "requires shower chair as she has fallen in bath"), and transfers in/out of bed and on/off of chair.
- For basic housekeeping, the appellant requires continuous assistance from another person with doing laundry (note: "requires assistance lifting and transferring") and requires periodic assistance from another person with basic housekeeping (note: "requires assistance with any momentous movements and lifting").
- Regarding shopping, the appellant is independent with the tasks of going to and from stores (note: "able to drive; standing and movement cause syncope"), reading prices and labels, making appropriate choices, paying for purchases (note: "experiencing financial difficulties"). The appellant takes significantly longer than typical carrying purchases home, with no additional comments by the nurse.
- The appellant is independent with meal planning, cooking and safe storage of food and takes significantly longer than typical with food preparation (note: "cooking requires increased time secondary to breaks").
- The appellant independently manages all tasks of personal finances, namely banking, budgeting and paying rent and bills, as well as all tasks of managing her medications (filling/refilling prescriptions, taking as directed and safe handling and storage).
- There is no assessment for the appellant's use of transportation facilities.
- The nurse provided additional comments that "ADL's have consumed energy that client feels draining. She is experiencing swelling and muscle fatigue that is discouraging from attempting to complete necessary tasks."
- The appellant is independent in all 5 aspects of social functioning, Namely: making appropriate social decisions (note: "avoids social situation"), developing and maintaining relationships, interacting appropriately with others, dealing appropriately with unexpected demands (note: "budgeting energy is difficult to predict"), and securing assistance from others.
- The appellant has marginal functioning with her immediate and extended social networks. The

nurse commented: "anxiety and decreased energy forces client to withdraw from social situations/interactions."

- In response to a request to describe the support/supervision required to maintain the appellant in the community, the nurse wrote: "if there were more supports in home to assist with ADL, more energy would be available to have meaningful social interactions."

In her Request for Reconsideration, the appellant wrote that:

- She is able to drive herself to the store to do shopping but she needs assistance going to/from the vehicle and needs assistance in the store with lifting/carrying items.
- Basic housekeeping is continuously assisted as she cannot stand for long periods without getting dizzy and she cannot lift anything. Her daughters do the housework. Her doctor shows in the report that she cannot lift anything.

### ***Need for Help***

In the PR, when asked what assistance the appellant needs with DLA, the general practitioner responded that assistance is required for bathing, daily housework and shopping, mobility in and out of the home. The nurse reported in the AR that the appellant lives with her children, both adult and teenagers, some of whom "have impairments that decrease ability to help in home" and that "children offer appropriate, age-related assistance." Asked to describe what assistance would be necessary if help is required but none is available, the nurse wrote: "assistance with basic housekeeping (cleaning, laundry), would help conserve energy. Assistance with tasks that require standing. Client would like to secure more affordable housing that is safe and accessible."

## 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 PWD are set out in Section 2 of the EAPWDA as follows:

### Persons with disabilities

2 (1) In this section:

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

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

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

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

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

(b) in the opinion of a prescribed professional

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

(A) continuously, or

(B) periodically for extended periods, and

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

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

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

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

(i) an assistive device,

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

(iii) the services of an assistance animal.

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

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

### Definitions for Act

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

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

(i) prepare own meals;

(ii) manage personal finances;

(iii) shop for personal needs;



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

### **Severe Physical Impairment**

The appellant's position is that a severe physical impairment is established by her experience of pain, swelling and dizziness due to lupus, thyroid disorder, and pituitary dysfunction. The advocate argued that although the appellant can walk 2 to 4 blocks, the physician indicated that the appellant needs someone to be with her when she is out walking, which means that she requires assistance with walking, and the physician wrote that assistance is required for mobility "in and out of the home." The advocate argued that the appellant can only lift light items when dressing, she can only lift light items and requires a bath chair for bathing, and she can only carry light groceries when shopping. The advocate argued that while the appellant may be able to prepare a meal, it takes her significantly longer as she must take frequent rests while doing so and the physician indicated that the appellant requires continuous assistance with 6 out of 10 DLA.

The ministry's position is that there is not sufficient information from the general practitioner and the nurse to confirm that the appellant has a severe physical impairment. The ministry argued that for those tasks that take the appellant significantly longer than typical or for which she requires periodic assistance, there is not enough information about how longer it takes the appellant or how often or how long she requires assistance.

### ***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 the ability to perform 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 as well as other specialist physicians and the nurse.

The general practitioner, who has known the appellant for 4 years, diagnosed the appellant with lupus and thyroid disorder with an onset of June 2006, and pituitary dysfunction with onset of September 2008. In the recent letter dated October 10, 2014, the general practitioner who completed the PR and sets out that the appellant has pain in her knees, feet, hands, shoulders, neck and lower back. The pain is present most days and is worse in the winter and in damp and cold weather. Her feet and ankles swell most days. In the letter dated August 12, 2014, the neurologist wrote that the appellant is now taking medications for lupus and continues with leg pain which has an aching or burning quality, neck pain and low back pain. The appellant had been "losing feeling in her hands" and they

periodically swell and ache. The neurologist reported that the appellant has normal deep tendon reflexes, no weakness or wasting, and that she “put out full power of her right wrist dorsiflexor but complained of pain related to an old fracture.” Her tone was normal, tests of coordination were well-performed, she had full range of motion of all the joints in her upper limbs, there was no swelling, color change or synovitis in her joints. The neurologist’s impression is that he cannot find evidence of a neurologic disorder and he believes the appellant has diffuse myofascial pain and views her hand complaints as part of that. In her Request for Reconsideration, the appellant wrote that she has recently been diagnosed with degenerative disc disease and, as set out in the Report dated December 15, 2013, the MRI of the appellant’s spine indicated mild left-sided foraminal narrowing and no evidence of nerve root impingement. In the endocrinology Reports dated April 25, 2014 and October 25, 2013, it was indicated that the appellant’s ambulation is normal.

In terms of health history, the general practitioner wrote in the PR that the appellant cannot walk further than 2 to 4 blocks due to pain and feeling dizzy. She needs someone to be with her when she is out walking. In the letter dated October 10, 2014 the general practitioner reiterated that the appellant requires someone to be with her when she is outside of the house; however, the panel finds that the evidence is not clear whether this relates to the appellant’s reported feeling dizzy, or anxious, or some other symptom, the reason the appellant feels dizzy and how often it occurs. The appellant wrote in her Request for Reconsideration that she cannot stand “for long periods” without getting dizzy but there is no further information provided. Although the general practitioner indicated that the appellant is continuously restricted with mobility inside and outside the home, the nurse indicated in the AR that the appellant is independent with walking indoors, she is “fine with short distances, requires railings with stairs” and takes significantly longer than typical with walking outdoors as “syncope makes ambulation difficult.”

In the AR, the nurse indicated that the appellant requires continuous assistance from another person with standing and noted “pain in leg and back, swelling generally occurs.” In the section of the AR relating to assistance provided through the use of assistive devices, the nurse has identified only a bath bench as being routinely used by the appellant. The general practitioner reported that the appellant requires an aid for her impairment as she uses a shower chair in the shower and she has handrails on the stairs. The panel finds that a railing on the stairs does not fall within the prescribed definition for an “assistive devices” as it not “a device designed to enable a person to perform a DLA that, because of a severe mental or physical impairment, the person is unable to perform.” In her Request for Reconsideration, the appellant wrote that she does not have a walker or a cane because her “apartment is too narrow”; however, the panel finds that there is no explanation provided for why a cane or a walker is not used by the appellant for outdoor mobility.

For functional skills, the appellant is assessed in the PR as able to walk 2 to 4 blocks unaided, she can climb 2 to 5 stairs unaided, she can do no lifting, and she can remain seated less than 1 hour. In the letter dated October 10, 2014, the general practitioner wrote that, with respect to lifting, the appellant is unable to carry such items as heavy pans full of water for cooking or heavy shopping bags but she can prepare smaller items of food which do not weigh very much. In the AR, the nurse reported that the appellant takes significantly longer than typical with lifting (note: “unable”) and with carrying and holding, with a comment that she is “able to carry light groceries, unable to carry laundry.” The panel finds that although the initial assessment indicated that the appellant can do no lifting, both the general practitioner and the nurse also report that the appellant is able to lift some weight but the amount has not been defined by the prescribed professionals. Although the advocate argued that the general practitioner indicated that the appellant requires continuous assistance with 6

out of 10 DLA, the panel finds that the general practitioner indicated that there are continuous restrictions in 5 DLA, with moving about indoors and outdoors being one DLA, and that the degree of assistance required with each DLA, if any, is detailed in the AR.

The panel finds that while the assessments of the appellant's functional skills varies between the prescribed professionals, the appellant remains independent with her mobility while taking longer with walking outdoors, and her physical ability is in the middle of the range. In the absence of evidence from the appellant's general practitioner regarding any exacerbated impacts to the appellant's physical functioning which may account for the discrepancies, 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 anxiety disorder.

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 assessed the appellant with significant deficits in her cognitive and emotional functioning in 3 areas but reported that the impacts were all minimal or no impact. The ministry argued that the appellant's communication is good and the appellant is independent in all areas of social functioning.

### ***Panel Decision***

In the PR, the general practitioner diagnosed the appellant with anxiety disorder and wrote that the appellant gets anxiety attacks when she is in a stressful situation, especially with strangers or several people. In the letter dated October 10, 2014, the general practitioner indicated that the appellant suffers from frequent anxiety attacks which cause problems at the time with memory and concentration but she does not have a permanent neurological deficit. The general practitioner reported that the appellant has significant deficits in her cognitive and emotional functioning in the areas of memory, emotional disturbance and attention or sustained concentration and the nurse assessed these as having a minimal impact on the appellant's daily functioning.

With respect to the 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), the evidence indicates that the appellant is not significantly restricted in either. With respect to decision making, the nurse reported in the AR that the appellant independently manages her finances (budgeting and paying rent and bills) and her medications (taking as directed and safe handling). She is also reported as independent in the decision-making components of the DLA of daily shopping (making appropriate choices), meal preparation (meal planning and food storage), and with making appropriate social decisions as part of her social functioning.

Regarding the DLA of social functioning, the appellant is assessed by the general practitioner as not restricted in social functioning and, by the nurse, as independent in developing and maintaining relationships, interacting appropriately with others, and securing assistance from others. The appellant is also assessed with a good or satisfactory ability to communicate. Given the absence of reported 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 children. The advocate argued that the general practitioner indicated in the PR that the appellant requires continuous assistance for 6 out of 10 listed DLA.

The ministry's position is that the information from the prescribed professionals does not establish that impairment significantly restricts DLA either continuously or periodically for extended periods. The ministry argued that for those tasks that take the appellant longer or for which she requires periodic assistance, there is not sufficient information to allow the ministry to determine that assistance is required 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 and the registered nurse are the prescribed professionals. 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 reported in the PR that the appellant has not been prescribed any medications and/or treatments that interfere with her DLA and she is continuously restricted with 5 of the listed DLA, namely personal self care, basic housework, daily shopping, mobility inside and outside the home, and use of transportation. Asked to describe the nature and extent of the assistance required by the appellant with DLA, the general practitioner wrote: "assistance required for bathing, daily housework and shopping, mobility in and out of the house." The general practitioner reported that the appellant is not restricted with the remaining listed DLA, namely: meal preparation, management of her medications, management of finances and social functioning.

In assessing the degree of assistance required with each DLA, the nurse indicated in the AR that the appellant is independent with moving about indoors and outdoors, taking significantly longer than typical outdoors as "syncope makes ambulation difficulty." For personal care, the appellant is independently able to perform every task of the listed DLA, with the exception of feeding self/regulating diet, for which the appellant requires periodic assistance as the appellant "is unable to prepare food when experiencing panic." The appellant takes significantly longer than typical with the tasks of dressing, grooming, bathing, and transfers in/out of bed and on/off of chair. The general practitioner clarifies in the October 10, 2014 letter that these tasks take at least twice as long to complete, and "sometimes longer than this," and the panel finds that the ministry reasonably concluded that this is not sufficient evidence of significant restrictions in these tasks.

The nurse reported that the appellant requires continuous assistance from another person with doing laundry and requires periodic assistance from another person with basic housekeeping. In the letter dated October 10, 2014, the general practitioner indicated that the appellant requires help with

laundry due to her inability to carry “heavier items.” In her Request for Reconsideration, the appellant wrote that basic housekeeping is continuously assisted as she cannot stand for long periods without getting dizzy and she cannot lift anything, as reported by her doctor, and her daughters do the housework; however, the particular limitations with the appellant’s lifting have not been reported by the prescribed professionals, as previously discussed.

Regarding shopping, the appellant is assessed by the nurse as independent with all tasks and she takes significantly longer than typical carrying purchases home, with no additional comments by the nurse. The appellant is reported to be independent with meal planning, cooking and safe storage of food and takes significantly longer than typical with food preparation (note: “cooking requires increased time secondary to breaks”). In the letter dated October 10, 2014, the general practitioner indicated that the appellant is unable to carry such items as heavy pans full of water for cooking but she can prepare smaller items of food which do not weigh very much.

The nurse reported that the appellant independently manages all tasks of personal finances as well as all tasks of managing her medications and there is no assessment provided for the appellant’s use of transportation facilities. The nurse provided additional comments that “ADL’s have consumed energy that client feels draining. She is experiencing swelling and muscle fatigue that is discouraging from attempting to complete necessary tasks.” With respect to the two DLA that are specific to mental impairment – decision making and social functioning, the available evidence indicates that the appellant is not significantly restricted in either, as previously discussed.

The panel finds that the evidence demonstrates that the appellant manages most of her DLA without assistance and those tasks that take longer or require periodic assistance are tied to unspecified restrictions to lifting, periods of dizziness or panic, and there are no significant impacts identified to the appellant’s mental or social functioning. Therefore, the panel finds that the ministry reasonably concluded that there is not enough evidence from the prescribed professionals 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 from other persons. The ministry acknowledged that the prescribed professions indicate a requirement for a shower chair or a bathing bench as an assistive device.

#### ***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.

In the PR, when asked what assistance the appellant needs with DLA, the general practitioner responded that assistance is required for bathing, daily housework and shopping, mobility in and out

of the home. The general practitioner indicated that the appellant requires an aid for her impairment as she uses a shower chair due to falling in the shower and she has handrails on the stairs; however, handrails on the stairs do not fall within the definition of "assistive device," as previously discussed.

The nurse reported in the AR that the appellant lives with her children, both adult and teenagers, who "offer appropriate, age-related assistance." In the section of the AR relating to assistance provided through the use of assistive devices, the nurse identified a bath bench as being routinely used by the appellant. Asked if equipment is required but is not currently being used, the nurse wrote that the appellant requires a bath bench/shower stool, plus or minus a bath bar. 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.