

PART C – Decision under Appeal

The decision under appeal is the Ministry of Social Development and Social Innovation (the ministry) reconsideration decision dated September 30, 2014 which found that the appellant did not meet two 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 she has a severe physical impairment that, in the opinion of a medical practitioner, 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 mental impairment;
- the appellant's daily living activities (DLA) are, in the opinion of a prescribed professional, directly and significantly restricted either continuously or periodically for extended periods; and,
- as a result of these restrictions, the appellant requires the significant help or supervision of another person, the use of an assistive device, or the services of an assistance animal to perform DLA.

PART D – Relevant Legislation

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

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

PART E – Summary of Facts

The evidence before the ministry at the time of the reconsideration decision included the Person With Disabilities (PWD) Application comprised of the applicant information dated May 22, 2014, a physician report (PR) and an assessor report (AR) both dated May 15, 2014 and completed by a general practitioner who had known the appellant since October 2007.

The evidence also included the following:

- 1) Consultation Report by an internist dated August 30, 2013;
- 2) Letter of consultation by a respirologist dated November 8, 2013;
- 3) Confirmation of Application for Medical Benefits dated March 4, 2014; and,
- 4) Request for Reconsideration dated September 16, 2014 attaching letters from the general practitioner dated September 15, 2014, undated letters from the appellant's daughter and a friend who had previously been a client of the appellant's, as well as a letter dated September 16, 2014 from another friend.

Diagnoses

In the PR, the appellant was diagnosed by the general practitioner with severe COPD [chronic obstructive pulmonary disease], obstructive sleep apnea, exertional hypoxemia, fibromyalgia, and mood disorder- depression with an onset before 2007.

Mental Impairment

In the PR, the appellant's general practitioner reported that:

- In terms of health history, the appellant's depression is "moderate and refractory to many med [medication] trials; limits energy, concentration, memory."
- Regarding the degree and course of impairment: "we've tried so many treatments for depression; never really remits."
- The appellant does not have difficulties with communication.
- The appellant experiences significant deficits in her cognitive and emotional functioning in the areas of emotional disturbance, motivation, and attention or sustained concentration. The general practitioner did not add any comments.
- In the additional comments to the AR, the general practitioner wrote that the appellant has been hospitalized for hypoxemia and has seen an internist and respirologist, with consults attached.

In the AR, the general practitioner indicated that:

- The appellant's mood disorder limits her energy, memory, concentration, focus, interests.
- The appellant has a good ability to communicate in all areas.
- There is a major impact in 1 of 14 listed areas of cognitive and emotional functioning, namely with motivation. There is a moderate impact in the area of memory. There is minimal or no impact in the remaining areas of functioning. The general practitioner did not elaborate with any additional comments.

In her self-report, the appellant wrote that:

- She has very limited breathing which limits the places she can go and what type of activities she can do.

In her Request for Reconsideration, the appellant wrote that:

- She is constantly tired from her sleep apnea, which fuels her depression.
- Her back pain does not allow her to sit, stand or lie for any duration of time, which aggravates her already depressed state of mind as she frequently feels unable to help herself live a full, active life.
- The mental and emotional toll [of not being able to spend time outside with her family] is overwhelming.
- Her fibromyalgia is aggravated by stress and her depression is aggravated by her pain.
- She and her doctor have gone through endless combinations of medications to get her depression under control but to no avail.

In the letter dated September 15, 2014, the general practitioner indicated that:

- The appellant has refractory depression not resolved by counseling and medication treatments.
- This leads to difficulty with energy levels, focus, concentration and dealing with the general public.
- He feels that the appellant is completely and permanently disabled from work. He feels that this is a severe disability as a result of the numerous medical factors that the appellant has to contend with on a daily basis.

In her letter, the appellant's daughter wrote that:

- Through her childhood she watched the appellant suffer with depression and anxiety and severe sciatica pain. In her younger years, she seemed to have the strength and stamina to fight it and keep on with daily life.
- In the last few years, she has watched the appellant go downhill in her physical and mental health.
- Because of the pain and frustration of not being able to function in the way she wants, her mental state becomes significantly worse.
- She has seen the appellant go for 7 to 10 days just going from the bed to the couch. She will not answer the phone, allow anyone in the house, have a shower, or eat properly.
- Her mental state has gotten to the point that even hanging a picture or deciding what to buy for food can turn into a major issue. There are times that any decision-making is much for her to cope with.
- She has seen the appellant leave her bills unpaid as she cannot decide which is the most important to pay so she pays nothing.
- She is the appellant's main support system and care giver and she is concerned about her physical and, mainly, her mental capabilities. In the physical and mental condition the appellant is in, she does not feel that the appellant would qualify for employment in any sector and she desperately needs more financial help to make ends meet and relieve the stress she is under. Her concentration and decision-making would cause problems in any employment situation.
- The fact of having to go on oxygen now has totally sent her on a loop of confusion, frustration, anxiety and depression.

In her letter, the appellant's friend, who had previously been a client of the appellant, wrote that:

- She has noticed the appellant's health declining over the past year quite quickly; not just her physical health but also her mental health.
- The appellant can get very depressed and will either not leave her house or her bed for days at

a time.

In her letter dated September 16, 2014, the appellant's other friend wrote that:

- She has known the appellant for nearly 3 years and has seen the appellant's illnesses increasingly affect her life during that time.
- She has answered phone calls for the appellant when she has been in bed for 3 days with no motivation or strength to move farther than her couch. This throws her depression into overdrive and she really struggles to push through.

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 can walk less than 1 block and climb 2 to 5 steps unaided.

In the AR, the general practitioner reported that:

- The appellant uses an assistive device for walking indoors and outdoors and for climbing stairs, namely: "oxygen tank and tubing required."
- The appellant is independently able to perform every task of the personal care DLA, namely: dressing, grooming, bathing, toileting, feeding self and regulating diet, and transferring in/out of bed and on/off of a chair.
- The appellant requires periodic assistance from another person with doing her laundry and basic housekeeping, for which she uses an assistive device, described as: "daughter may help; wears oxygen."
- For shopping, the appellant is independently able to read prices and labels, make appropriate choices and pay for purchases while requiring an assistive device for going to and from stores ("oxygen") and periodic assistance from another person for carrying purchases home. The general practitioner added: "no safety issues other than running out of oxygen if caught out too long."
- The appellant is independent in performing all of the applicable tasks of each remaining DLA, namely: managing meals, paying rent and bills, medications and transportation.
- The appellant is also independent in all 5 aspects of social functioning, including making appropriate social decisions, developing and maintaining relationships, interacting appropriately with others, dealing appropriately with unexpected demands, and securing assistance from others.
- The appellant's level of functioning with her immediate and extended social networks is assessed as good in both areas.

In her self-report, the appellant wrote that:

- She has very limited breathing which limits her movement in exercise, housework, etc.

In her Request for Reconsideration, the appellant wrote that:

- She is in great need of help and support in order to have a safe and healthy life style.
- Her illnesses affect her daily life to the point that she has a difficult time doing everything from sleeping through the night to keeping her house clean and in order.
- Motivation and concentration are hard to sustain and she struggles with the smallest of tasks without stopping to use an oxygen tank. Simply having a shower is enough to take her breath

and requires a 20 to 30 minute oxygen session to regain her strength.

- There are many days when she requires help. She has to call her daughter or other family to help her with laundry, vacuuming or dishes as repetitive motion aggravates her fibromyalgia.
- She had to leave the last two jobs she had because she could not keep up with the expectations they had for her in keeping up with the daily associated tasks.
- In not being able to secure employment, it has been difficult to make ends meet.

In the letter dated September 15, 2014, the general practitioner reported:

- He has been the appellant's family physician for the past 7 years.
- He concurs that the appellant "is not always severely disabled enough to be unable to complete her ADL's;" however, it is not possible for her to work outside the home."
- She has to wear oxygen at times through the day.
- The unpredictable nature of her pain leads to her availability and reliability (for work) to be unpredictable as well.
- She has obstructive sleep apnea and the treatment device (CPAP) does not work exactly as it should each and every night, which can result in daytime somnolence. This affects her ability to work outside the home, and also affects her ability to do her ADL's.
- She also has refractory depression not resolved by counseling and medication treatments. This leads to difficulty with energy levels, focus, concentration and dealing with the general public. Sometimes this also affects her ability to complete her ADL's.
- He feels that the appellant is completely and permanently disabled from work.

In her letter, the appellant's daughter wrote that:

- The appellant no longer keeps her home clean. Junk is piling up, and the carpets are stained and dirty to the point that she removed them because she was worried about the appellant's lungs and breathing.
- She and a couple friends go to the appellant's home once or twice a week to help out with cleaning floors and bathrooms, changing the bed, laundry, etc.
- Because of the pain the appellant is in and the lack of oxygen due to COPD, she sometimes has difficulty having a shower, cleaning her home, or just going for a walk.
- When the pain is too much for the appellant to function, the friends help keep her home up to a clean and safe living standard, pick up her groceries, do laundry, etc.

In her letter, the appellant's friend, who had previously been a client of the appellant, wrote that:

- She has helped the appellant tidy her house, grocery shop and has visited her to "boost her spirits." She has helped with simple tasks such as folding laundry or vacuuming, sweeping, dusting, loading the dishwasher and putting away dishes because the appellant is in too much pain to accomplish these tasks.
- She feels that as the appellant's physical pain and dependency on the oxygen has increased, the appellant "may not be able to perform her regular activities of daily living;" ... "with the need of her oxygen and other help she cannot keep up with employment or gain employment."

In her letter dated September 16, 2014, the appellant's other friend wrote that:

- She has seen the appellant "in tears, stressed and in pain, struggling to keep the laundry under control."
- The appellant "struggles to make ends meet as she can no longer meet the physical demands of gainful employment."

Need for Help

In the PR, when asked whether the appellant requires an aid for her impairment, the general practitioner wrote: "yes, oxygen concentrator, tank, tubing, mask, nasal prongs."

The general practitioner reported in the AR that the appellant lives alone and the assistance required for DLA is provided by family, friends, and community service agencies. The appellant routinely uses a breathing device ("CPAP") and oxygen as assistive devices.

In her Notice of Appeal dated October 15, 2014, the appellant expressed her disagreement with the ministry's reconsideration decision and wrote that although her doctor knows of all of her health issues, he does not live in her house and see personally the pain and limitations she has. Although she has periods (short ones) where she needs no help, most days she needs someone to help do something. With winter coming, help will be needed as she is housebound because of the cold and wood stove smoke.

At the hearing, the appellant stated:

- She believes that the ministry did not take her mental condition into consideration. There are times when she will go 10 days without getting out of bed or off the couch. She once attempted suicide.
- She has fibromyalgia and osteoarthritis in her neck and lower back and she cannot afford the pain medication required so she is in constant pain.
- When she is in pain, her depression is worse. On her "good" days, then she is okay, but this may be followed by a week where she can do nothing.
- She is worried that her oxygen levels will become so low that she might fall and not be able to get back up. Her daughter had an alarm system installed so that she can call for help if she falls.
- Her daughter now cooks dinner for her every night and stays so that the appellant can shower with supervision.
- Every day someone comes to help her clean. One friend helps with the laundry and tidying and the other friend comes twice a week for vacuuming.
- There are three people who come and check on her every morning.
- In the summer, she was confined to the house because of the smoke outside due to forest fires and, if she had to go out, she had to wear a mask outside. She has also been advised to stay away from the cold so she needs more help in the winter. She has to have someone get her groceries and clear her driveway, for example.
- Her neighbor will ask and help her with outdoor chores, if needed.
- She is concerned because if she cannot make it to some appointments, her home oxygen may be taken away.
- Her doctor knows her health history but he does not live in her house. She also does not want people to know how much she cannot do so she has tended to downplay her limitations.
- With her depression, she can experience periods where she does not leave the house for 10 days to 2 weeks. She will not answer the phone or do anything.
- She uses the oxygen two times per day, in the morning and again in the evening. If she becomes winded, she will also use it during the day.
- She has good days and bad days. She will be fine for 2 to 3 weeks and then her depression will "set in."

- She has not responded well to the medications that have been prescribed for depression. Over the years, she has seen psychologists and psychiatrists and she has visited with mental health and she has been on many different anti-depressants but nothing has helped.
- On a good day, she will think she should see someone and she will drop into mental health but she has tried all their therapies and nothing works.
- For paying her rent and bills, there are times when her daughter has to deal with this for her because sometimes she will just let things go. She will keep putting off paying a bill and then her lights will be shut off, for example. Her daughter will “ride her” until the bill is paid.
- When she took the PWD application in to her doctor, he did not know which disability he should be focused on- either the physical or the mental health issues. He agreed that, either way, she could not go to work. She had to leave her previous employment on stress leave.
- She has not told her doctor how often she needs help from another person. She also needs financial help so she can get the pain medications and then she will be able to do more for herself.

Admissibility of New Information

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

The ministry relied on its reconsideration decision, as summarized at the hearing.

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 PWD designation, 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 impairment and that her 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.

At reconsideration, the ministry was satisfied that the information provided is sufficient evidence of a severe physical impairment, but was not satisfied that the information provided is evidence of a severe mental impairment.

Severe Mental Impairment

The appellant's position is that a severe mental impairment is established by the evidence of the impacts from her diagnosed mood disorder- depression. The appellant argued that her doctor has gone through endless combinations of medications to get her depression under control but to no avail. The appellant argued that she is constantly tired from her sleep apnea, which fuels her depression, and her back pain does not allow her to sit, stand or lie for any duration of time, which aggravates her already depressed state of mind as she frequently feels unable to help herself live a full, active life. The appellant argued that the mental and emotional toll of not being able to spend time outside with her family is overwhelming.

The ministry's position is that there is insufficient evidence to establish that the appellant has a severe mental impairment as a majority of the PWD application is focused on the appellant's physical impairment. The ministry argued that while the general practitioner reported that the appellant has significant deficits in her cognitive and emotional functioning, these were mostly assessed as having minimal or no impact on daily functioning, with the exception of a major impact in motivation and a moderate impact to memory. The ministry argued that the general practitioner assessed the appellant as independent in all 5 areas of social functioning and indicated that she has good functioning in both her immediate and extended social networks.

Panel Decision

In the PR, the general practitioner diagnosed the appellant with mood disorder- depression. The general practitioner wrote that the appellant's depression is "moderate and refractory to many medication trials; limits energy, concentration, memory" and "we've tried so many treatments for depression; never really remits." The general practitioner reported that the appellant experiences significant deficits in her cognitive and emotional functioning in the areas of emotional disturbance, motivation, and attention or sustained concentration and, while there is a major impact to daily functioning in the area of motivation, the impact to memory is moderate with minimal or no impact in the remaining areas of functioning.

In her Request for Reconsideration, the appellant wrote that she is constantly tired from her sleep apnea, which fuels her depression and her back pain does not allow her to sit, stand or lie for any duration of time, which aggravates her already depressed state of mind as she frequently feels unable to help herself live a full, active life. At the hearing, the appellant stated that she has good days and bad days. She will be fine for 2 to 3 weeks and then her depression will "set in." She can experience periods where she does not leave the house for 10 days to 2 weeks. She will not answer

the phone or do anything. The appellant's daughter wrote in her letter that she has seen the appellant go for 7 to 10 days just going from the bed to the couch. She will not answer the phone, allow anyone in the house, have a shower, or eat properly. At the hearing, the appellant also stated that she has fibromyalgia and osteoarthritis in her neck and lower back and she cannot afford the pain medication required so she is in constant pain and, when she is in pain, her depression is worse.

Given an opportunity to provide further updated information, the general practitioner wrote in his September 15, 2014 letter that the appellant has refractory depression and this leads to difficulty with energy levels, focus, concentration and dealing with the general public. He did not refer to the periods of incapacity as described by the appellant and her daughter but wrote that the unpredictable nature of her pain leads to her availability and reliability (for work) to be unpredictable as well. The appellant stated at the hearing that she was not completely forthcoming with her doctor about her situation because she has tended to downplay her limitations. In his letter, the general practitioner concluded that he feels that the appellant is completely and permanently disabled from work and that this is a severe disability as a result of the numerous medical factors that the appellant has to contend with on a daily basis. However, the ability to work and/or look for work is not one of the criteria for PWD designation in Section 2(2) of the EAPWDA nor is it listed in the definition of daily living activities in Section 2(1) of the EAPWDR.

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 general practitioner reported in the AR that the appellant independently manages her finances (banking, budgeting, pay 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. The appellant stated at the hearing that there are times when her daughter has to pay bills for her because sometimes she will just keep putting it off and "let things go." The appellant's daughter wrote in her letter that the appellant's mental state has gotten to the point that even hanging a picture or deciding what to buy for food can turn into a major issue. However, these periods of restrictions to the appellant's decision-making were not confirmed by the general practitioner in his September 15, 2014 letter.

Regarding the DLA of social functioning, the appellant is assessed by the general practitioner as independent in developing and maintaining relationships, interacting appropriately with others, and securing assistance from others. The appellant is also assessed with a good ability to communicate in all areas. 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 severe 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 daughter and her friends, and also the use of a CPAP machine and oxygen as assistive devices.

The ministry's position is that the information from the prescribed professional does not establish that

impairment significantly restricts DLA either continuously or periodically for extended periods. The ministry argued that the general practitioner's comments, in his September 15, 2014 letter, are directed towards whether or not the appellant is employable and not her ability to perform basic DLA. The ministry argued that the general practitioner agreed that the appellant is not always severely disabled enough to be unable to perform DLA. The ministry argued that the general practitioner has not supported the assessments made by the appellant's family and friends regarding her DLA capabilities.

Panel Decision

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

In the appellant's circumstances, the general practitioner reported in the PR that the appellant has not been prescribed any medications and/or treatments that interfere with her DLA. The appellant uses oxygen as an assistive device for walking indoors and outdoors and for climbing stairs, and can walk less than 1 block and climb 2 to 5 steps unaided.

In the AR, the general practitioner assessed the appellant as independently able to perform every task of the DLA personal care, managing meals, paying rent and bills, medications and transportation. Although the appellant wrote in her Request for Reconsideration that simply having a shower is enough to take her breath and requires a 20 to 30 minute oxygen session to regain her strength, this has not been confirmed by the general practitioner as the prescribed professional. The appellant requires periodic assistance from another person with doing her laundry and basic housekeeping, for which she uses an assistive device, described as: "daughter may help; wears oxygen." For shopping, the appellant is independently able to read prices and labels, make appropriate choices and pay for purchases while requiring an assistive device for going to and from stores ("oxygen") and periodic assistance from another person for carrying purchases home. The general practitioner added: "no safety issues other than running out of oxygen if caught out too long" but does not provide clarification as to how often assistance is required or for how long. The appellant is also assessed as independent in all 5 aspects of social functioning, including making appropriate social decisions, developing and maintaining relationships, interacting appropriately with others, dealing appropriately with unexpected demands, and securing assistance from others.

In his September 15, 2014 letter, the general practitioner reported that he concurs that the appellant "is not always severely disabled enough to be unable to complete her ADL's;" however, it is not possible for her to work outside the home." The unpredictable nature of her pain leads to her availability and reliability for work to be unpredictable. She has obstructive sleep apnea and the CPAP does not work as it should each night, which can result in daytime somnolence. This affects her ability to work outside the home, and also affects her ability to do her ADL's. She also has refractory depression which leads to difficulty with energy levels, focus, concentration and dealing with the general public and "sometimes" this also affects her ability to complete her ADL's. He feels that the appellant is completely and permanently disabled from work. The panel finds that the general practitioner, as the prescribed professional, has considered the appellant's restrictions as

they relate to her ability to be employed and has not defined the frequency or duration of the restrictions to her DLA.

Given the absence of reported impacts to the appellant's mental or social functioning, and little detail on the extent of noted restrictions to the DLA of housekeeping and shopping, the panel finds that the ministry reasonably concluded that there is not enough evidence from the prescribed professional to establish that the appellant's impairment significantly 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 and the use of assistive devices 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 appellant uses an oxygen tank 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 whether the appellant requires an aid for her impairment, the general practitioner wrote: "yes, oxygen concentrator, tank, tubing, mask, nasal prongs." The general practitioner reported in the AR that the appellant lives alone and the assistance required for DLA is provided by family, friends, and community service agencies. The appellant routinely uses a breathing device ("CPAP") and oxygen as assistive devices. 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.