

## PART C – Decision under Appeal

The decision under appeal is the Ministry of Social Development and Social Innovation (the ministry) reconsideration decision dated December 29, 2014 which found that the appellant did not meet four 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. However, the ministry was not satisfied that the evidence establishes that:

- the appellant's impairment is likely to continue for at least two years;
- 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 and self-report dated June 7, 2014, a physician report (PR) dated June 30, 2014 and an assessor report (AR) dated June 25, 2014 and completed by a general practitioner who has known the appellant less than 12 months.

The evidence also included the following:

- 1) Consultation Report dated March 27, 2013 from a physician who is a specialist in endocrinology to the appellant's general practitioner;
- 2) Consultation Report dated July 17, 2013 from an attending physician to the appellant's general practitioner;
- 3) Prescription dated May 14, 2014 for compression stockings for varicose veins;
- 4) Scan dated June 26, 2014 of the appellant's lumbar spine with findings that the appellant has osteoporosis and her fracture risk is high; and,
- 5) Request for Reconsideration dated December 11, 2014, completed by the appellant's child.

### **Diagnoses**

In the PR, the appellant was diagnosed by the general practitioner with left/ right shoulder pain/calcific tendonitis, varicose veins legs, stomach pain, and low back pain, with no dates of onset indicated for any of these conditions. In the AR, the general practitioner wrote that the physical impairment that impacts the appellant's ability to manage her daily living activities is post-menopausal osteoporosis. There is no mental health diagnosis

### **Duration**

- In the PR, the appellant's general practitioner did not indicate a response to the question whether the appellant's impairment is likely to continue for two years or more and the general practitioner did not provide an explanation.

### **Physical Impairment**

In the PR, the general practitioner reported that:

- In terms of health history, the appellant is "unable to do her household chores" as a result of calcific tendonitis. She is unable to walk properly due to her low back pain. She experiences sleep disorder due to ongoing pain. She has pain in her mid-chest radiating to her back. The varicose veins cause aches in her legs and she cannot afford to get compression stockings.
- For functional skills, the appellant can walk less than a block unaided and can do no lifting and it is unknown how many steps she can climb unaided or how long she can remain seated.
- The question whether the appellant requires an aid for her impairment has not been answered.
- The appellant is continuously restricted with mobility outside the home but is not restricted with mobility inside the home. Regarding the degree of restriction, the appellant has "sleepless nights due to pain. Extreme shoulder and joint and lower back pain due to osteoporosis."
- In the additional comments, the appellant has "ongoing shoulder pain, restricted range of motion. Aches in legs due to varicose veins, flat feet. Sleep disorder due to shoulder pain, fatigue and tiredness."

In the AR, the general practitioner indicated that:

- There is no assessment of the appellant's relative independence with walking indoors, walking outdoors, climbing stairs, or standing.
- The appellant requires continuous assistance from another person with lifting and carrying and holding. The associated comment is "painful to do any activity that use more than normal physical exertion."
- In the section of the AR relating to assistance provided through the use of assistive devices, the general practitioner has not identified any of the items listed.

In her self-report, the appellant wrote:

- Her disability includes post-menopausal osteoporosis, calcium deposit, shoulder pain, neck pain, varicose veins, lower back pain, [illegible] needed for walking, right ankle pain resulted from injury. Left needs surgery.
- She has had a few hospitalizations due to blood pressure and chest pain, seizure. Her right shoulder tendon is torn and she has headaches from neck pain.

In the Consultation Report dated March 27, 2013, the endocrinologist wrote:

- The appellant was diagnosed with post-menopausal osteoporosis in 2011.
- The exercise/lifestyle recommendation is for 10 to 20 minutes of walking a day or at least 20 minutes of "walking-type" exercises a day.

In the Consultation Report dated July 17, 2013, the physician wrote that:

- The appellant was seen for follow-up of her left shoulder impingement and calcific tendonitis symptoms. An ultrasound investigation confirmed the calcium deposits in her rotator cuff tendon as well as proximal biceps tenosynovitis.
- There was no discrete rotator cuff tear associated with the tendonitis.
- She has had some improvement in her symptoms with supervised physiotherapy and she has not yet participated in radial shock-wave treatment, which she has agreed to trial.

### ***Mental Impairment***

In the PR, the general practitioner reported that:

- The appellant has no difficulties with communication other than a lack of fluency in English.
- It is unknown whether the appellant has any significant deficits in her cognitive and emotional functioning; however, several areas are identified as having significant deficits, namely: language, memory, emotional disturbance, motivation, motor activity, and attention or sustained concentration. The comment is that "most resulting or byproduct of attached diagnosis."
- The appellant is not restricted with social functioning.

In the AR, the general practitioner indicated that:

- The appellant has a satisfactory ability to communicate in speaking, reading (note: "use of glasses") and hearing ("constant ear infection, pain. Hearing ringing in right ear"). The appellant has poor writing, with no explanation or description provided.
- For the section of the AR assessing impacts to cognitive and emotional functioning for an applicant with an identified mental impairment or brain injury, the general practitioner placed a checkmark at the top of the page but did not identify the relative impact to any of the 14 areas of functioning. For comments, the general practitioner wrote: "Sleeplessness due to painful

shoulder, lower back and neck pain affects memory and other cognitive functions that require energy.”

- The section of the AR for assessing impacts to areas of social functioning has also been marked with a check mark at the top of the page and 2 of 5 areas have been indicated as requiring periodic support/supervision, namely: making appropriate social decisions and securing assistance from others. There is no other explanation or description provided.
- The appellant has marginal functioning in both her immediate and extended social networks.

### **Daily Living Activities (DLA)**

In the PR, the general practitioner indicated:

- No response to question whether the appellant has been prescribed any medications and/or treatments that interfere with her DLA.
- The appellant is not restricted with the DLA of personal self care, meal preparation, management of medications, part of mobility (inside the home), and social functioning.
- The appellant is continuously restricted with basic housework and part of mobility (outside the home) and both continuously and periodically restricted with daily shopping.
- It is unknown whether the appellant is restricted with use of transportation or management of finances.
- Asked to describe the nature and extent of the assistance required by the appellant with DLA, the general practitioner wrote: “sons assisting in most day-to-day activities, especially filling any forms, reading instructions, physical activity, travel assistance.”

In the AR, the general practitioner reported:

- No assessment for the appellant’s ability to move about indoors and outdoors.
- No assessment with respect to any of the tasks of the DLA of personal care (dressing, grooming, bathing, toileting, feeding self, regulate diet, transfers in/out of bed, transfers on/off of chair) and meals (meal planning, food preparation, cooking, safe storage of food).
- No assessment for 1 of 2 tasks for the DLA housekeeping (laundry), 4 of 5 tasks for the DLA shopping (going to and from stores, reading prices and labels, making appropriate choices, and paying for purchases), 2 of 3 tasks of the DLA medications (filling/refilling prescriptions, safe handling and storage), 2 of 3 tasks of transportation (getting in and out of a vehicle, using public transit), and 3 of 5 aspects of social functioning (developing and maintaining relationships, interacting appropriately with others, and dealing appropriately with unexpected demands).
- The appellant requires continuous assistance from another person with the tasks of basic housekeeping due to “finger arthritis” and carrying purchases home due to “shoulder pain.” The general practitioner wrote that “anything requiring minor use of tools or set up such as screw drivers or filling forms requires constant assistance from family members.”
- For the DLA paying rent and bills, the appellant requires continuous assistance with banking and paying rent and bills and periodic assistance with budgeting. There is no explanation or description provided.
- For the DLA medications, the appellant requires periodic assistance with taking her medications as directed. There is no explanation or description provided.
- For the DLA transportation, the appellant requires continuous assistance from another person with using transit schedules and arranging transportation described as “assistance needed for new addresses.” The general practitioner also wrote: “need special of shoe wear, socks for flat feet syndrome and varis (sic).”

In the Request for Reconsideration, the appellant's child wrote:

- The appellant is in no condition to work without risk to her health or her life. Her conditions might seem small individually but, added up, they are a serious impediment to any full-time work.
- The appellant has artrosis (sic) which limits her choices severely.
- To deny the appellant relief at her age and with these conditions would be cruel and inhumane.

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

In the PR, when asked what assistance the appellant needs with DLA, the general practitioner responded that her "sons assisting in most day-to-day activities, especially filling any forms, reading instructions, physical activity, travel assistance." The general practitioner reported in the AR that the appellant lives with family, friends or caregiver and help required for DLA is provided by family.

In the section of the AR relating to assistance provided through the use of assistive devices, the general practitioner did not identify any of the listed items as routinely used by the appellant. The general practitioner indicated that the appellant does not have an assistance animal.

### ***Appellant's Additional Information***

In her Notice of Appeal dated January 8, 2015, the appellant expressed her disagreement with the ministry's reconsideration decision and wrote that she had surgery on her ankle in her country and both of her feet are very painful. She cannot stand a long time and cannot sit a long time because she has lower back pain. Her shoulders also have tendon problems and calcium deposit in her shoulders and bone problems. All information is provided from her special doctors and family doctor. She tries to protect herself from all pain to help her children.

Prior to the hearing, the appellant also provided an advocate's written submission on her behalf.

### ***Admissibility of Additional Information***

The ministry relied on its reconsideration decision as the ministry's submission and did not raise an objection to the admissibility of the information in the appellant's Notice of Appeal or the written submission on her behalf. The appellant's Notice of Appeal contained information about her medical conditions that tends to corroborate the diagnoses reviewed at reconsideration and the panel admits this 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)(b) of the *Employment and Assistance Act*. The panel considered the advocate's written submission as argument and not evidence.

## 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 that, in the opinion of a medical practitioner, is likely to continue for at least 2 years. The ministry also found 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) 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.

Section 2(2) of the EAPWDR defines prescribed profession as follows:

- (2) For the purposes of the Act, "**prescribed professional**" means a person who is
- (a) authorized under an enactment to practise the profession of
    - (i) medical practitioner,
    - (ii) registered psychologist,
    - (iii) registered nurse or registered psychiatric nurse,
    - (iv) occupational therapist,
    - (v) physical therapist,
    - (vi) social worker,
    - (vii) chiropractor, or
    - (viii) nurse practitioner, or
  - (b) acting in the course of the person's employment as a school psychologist by
    - (i) an authority, as that term is defined in section 1 (1) of the Independent School Act, or
    - (ii) a board or a francophone education authority, as those terms are defined in section 1 (1) of the School Act,
 if qualifications in psychology are a condition of such employment.

### **Duration**

The appellant did not directly maintain a position regarding the duration of her impairment. The appellant argued, through her advocate in a written submission, that it was unreasonable for the ministry to find that the appellant's application did not establish a severe physical or mental impairment.

The ministry's position is that the appellant's general practitioner has not confirmed that the appellant's impairment will continue for two years or more.

### ***Panel Decision***

Section 2(2)(a) of the EAPWDR requires that there must be the opinion of a medical practitioner indicating that the appellant's impairment is likely to continue for at least two years. In response to the question in the PR whether the appellant's impairment is likely to continue for two years or more, the general practitioner did not check either a "yes" or a "no" response and did not write any comments, leaving this section of the application blank. Despite the submission provided by the appellant's advocate, there was no further information provided by the appellant's general practitioner indicating the duration of the appellant's impairment. The panel finds that the ministry's determination

that the medical practitioner had not confirmed that the appellant's impairment will continue for two or more years from the date of the application was reasonable.

### **Severe Physical Impairment**

The appellant's position is that a severe physical impairment is established by her pain due to left/right shoulder calcific tendonitis, varicose veins in her legs, stomach pain, and low back pain. The appellant argued, through her advocate, that the court decision in *Hudson v. EAAT, 2009 BCSC 1461* is authority for the position that the evidence for a PWD application must be read in its entirety and in a broad way, including narrative portions. The appellant argued that this means that even if the physician does not tick a specific box, the ministry must look at narrative portions to determine if eligibility confirmation can be found. The appellant argued that the sum total of the narrative portions of the appellant's PWD application provides confirmation that the appellant has a severe physical impairment. The appellant argued that the ministry has not given any reasons for the statement in the reconsideration decision that the impairments described are more in keeping with a moderate, rather than severe, impairment and has, therefore, not provided adequate reasons as required of administrative decision-makers.

The ministry's position is that there is not sufficient information from the general practitioner to confirm that the appellant has a severe physical impairment. The ministry argued that the general practitioner assessed the appellant's physical ability as able to walk less than one block and not able to lift any weight, but that it is unknown how many stairs she can climb or how long she can remain seated. The ministry argued that although the general practitioner indicated that the appellant requires continuous assistance with lifting and carrying and holding, there is no other information provided on the other aspects of mobility and physical abilities. The ministry argued that the impacts described by the general practitioner are more in keeping with a moderate degree of impairment.

### ***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.

The general practitioner, who has known the appellant for less than 12 months, diagnosed the appellant in the PR with left/ right shoulder pain/calcific tendonitis, varicose veins legs, stomach pain, and low back pain, with no dates of onset indicated for any of these conditions. As set out above, the general practitioner also did not confirm that the appellant's medical conditions causing her impairment are likely to continue for two years or more. In the AR, the general practitioner wrote that the physical impairment that impacts the appellant's ability to manage her daily living activities is post-menopausal osteoporosis, which was not one of the initial diagnoses. In terms of health history, the general practitioner wrote in the PR that the appellant is "unable to do her household chores" as a result of calcific tendonitis, she is unable to walk properly due to her low back pain and the varicose veins cause aches in her legs. The appellant has been given a prescription for compression stockings as treatment for her varicose veins, which the general practitioner wrote she cannot afford. In the additional comments to the PR, the general practitioner wrote that the appellant has "ongoing



shoulder pain, restricted range of motion. Aches in legs due to varicose veins, flat feet. Sleep disorder due to shoulder pain, fatigue and tiredness.”

For functional skills, the general practitioner reported in the PR that the appellant can walk less than a block unaided and can do no lifting and it is unknown how many steps the appellant can climb unaided or how long she can remain seated. The appellant is continuously restricted with mobility outside the home but is not restricted with mobility inside the home. Regarding the degree of restriction, the general practitioner wrote that the appellant has “sleepless nights due to pain; extreme shoulder and joint and lower back pain due to osteoporosis.” The scan of the appellant’s lumbar spine dated June 26, 2014 indicated that the appellant has osteoporosis and her fracture risk is high, but there were no other interpretive comments regarding the scan. In her Notice of Appeal, the appellant wrote that she had surgery on her ankle in her country and both of her feet are very painful. She cannot stand a long time and cannot sit a long time because she has lower back pain. The appellant wrote that she tries to protect herself from all pain to help her children.

In the Consultation Report dated March 27, 2013, the endocrinologist wrote that the exercise/ lifestyle recommendation for treatment of her post-menopausal osteoporosis was for 10 to 20 minutes of walking or at least 20 minutes of “walking-type” exercises a day. There was no additional information provided regarding the outcome of the recommended treatment which included daily exercise. The question in the PR whether the appellant requires an aid for her impairment has not been answered by the general practitioner and no assistive devices have been identified as being routinely used by the appellant, such as those to assist with her mobility.

In the AR, the general practitioner did not provide an assessment of the appellant’s relative independence with walking indoors, walking outdoors, climbing stairs, or standing. The general practitioner reported that the appellant requires continuous assistance from another person with lifting and carrying and holding as it is “painful to do any activity that use more than normal physical exertion.” It is not clear whether the general practitioner considers any lifting/carrying/holding “more than normal physical exertion” and whether the restriction relates to one or both arms. In the Consultation Report dated July 17, 2013, the physician wrote that the appellant has had some improvement in her symptoms of left side shoulder impingement and calcific tendonitis with supervised physiotherapy and she has agreed to trial radial shock-wave treatment. In the appellant’s self-report, she wrote that her right shoulder tendon is torn and she has shoulder pain but there is no reference to her left shoulder. There was no additional information provided to indicate the outcome of the treatment for her left shoulder or regarding the extent of any impact to her right shoulder.

The appellant’s child wrote in the Request for Reconsideration that the appellant is in no condition to work without risk to her health or her life and, while her conditions might seem small individually, when added up, they are a serious impediment to any full-time work. The panel notes that the ability to search for, accept, or continue in employment is not listed as one of prescribed DLA, and employability is not a factor in assessing eligibility for PWD designation. While the advocate argued that the ministry did not provide adequate reasons for concluding that the appellant’s impairments are more in keeping with a moderate impairment, the panel finds that the ministry reviewed the available evidence in accordance with the *Hudson* decision, which included many areas of the application that were not completed by the general practitioner or where the response was “unknown,” and reasonably acknowledged that the appellant has an impairment but concluded that the available information shows that her impairment falls on the continuum at a point that is less than severe.

The appellant's impairment has also not translated into significant restrictions to her ability to manage DLA, as discussed in more detail in these reasons for decision under the heading "Restrictions in the Ability to Perform DLA." Considering all of the evidence currently available, the panel finds that the ministry reasonably determined that there is not sufficient evidence to establish that the appellant has a severe physical impairment under 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 significant deficits to her cognitive and emotional functioning. The appellant argued, through her advocate, that the court decision in *Hudson* is authority for the position that the evidence for a PWD application must be read in its entirety and in a broad way, including narrative portions. The appellant argued that this means that even if the physician does not tick a specific box, the ministry must look at narrative portions to determine if eligibility confirmation can be found. The appellant argued that the narrative portions of the appellant's PWD application provide confirmation that the appellant has a severe mental impairment.

The ministry's position is that there is insufficient evidence to establish that the appellant has a severe mental impairment. The ministry argued that while the general practitioner indicated that the appellant has deficits with cognitive and emotional functioning in several areas, there has been no assessment of specific impacts on daily functioning. The ministry argued that the general practitioner indicated that the appellant does not have any difficulties with communication, having a satisfactory ability in all areas except writing.

### ***Panel Decision***

The general practitioner did not diagnose a mental health condition. In the PR, the general practitioner reported that it is unknown whether the appellant has any significant deficits in her cognitive and emotional functioning; however, several areas are identified as having significant deficits, namely: language, memory, emotional disturbance, motivation, motor activity, and attention or sustained concentration. The general practitioner commented that "most resulting or byproduct of attached diagnosis," being the pain to the appellant's shoulder(s), legs, feet, stomach and lower back. For the section of the AR assessing impacts to cognitive and emotional functioning for an applicant with an identified mental impairment, the general practitioner placed a checkmark at the top of the page but did not identify the relative impact to any of the 14 areas of functioning. For comments, the general practitioner wrote: "sleeplessness due to painful shoulder, lower back and neck pain affects memory and other cognitive functions that require energy," and the panel finds that the ministry reasonably concluded that the general practitioner has not related the impacts to an identified mental impairment.

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 panel finds that the ministry reasonably concluded that the evidence is not sufficient to indicate that the appellant is significantly restricted in either. With respect to the decision making DLA, the general practitioner reported in both the PR and the AR that the appellant requires assistance with her finances (undefined periodic assistance from another person with budgeting and continuous assistance for paying rent and bills) and some assistance with her medications (periodic assistance with taking as directed but no assessment for safe handling). The general practitioner also does not give an assessment for the decision-making components of the DLA of daily shopping (making appropriate choices), and meal preparation (meal planning and food

storage). The appellant requires continuous assistance with transportation (using transit schedules and arranging transportation) defined only as “assistance needed for new addresses.” The appellant also requires periodic support/supervision to make appropriate social decisions, which has not been explained or described by the general practitioner.

Regarding the DLA of social functioning, the appellant is assessed by the general practitioner in the PR as having no restrictions. In the AR, there are no assessments provided by the general practitioner for 3 of 5 aspects of social functioning (developing and maintaining relationships, interacting appropriately with others, and dealing appropriately with unexpected demands) and there is no explanation provided for the reported marginal functioning in both the appellant’s immediate and extended social networks. In the PR, the general practitioner reported that the appellant has no difficulties with communication other than a lack of fluency in English and, in the AR, that the appellant has a satisfactory ability to communicate in speaking, reading and hearing and has poor writing, with no explanation or description provided. As the general practitioner wrote that the appellant requires continuous assistance from another person with the tasks of basic housekeeping due to “finger arthritis,” the panel finds that it is more likely than not that the appellant’s difficulty with writing relates to her physical, rather than mental, impairment.

Given the absence of a mental health diagnosis and incomplete evidence regarding specific 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. The appellant argued, through her advocate, that although the general practitioner did not provide clarifying details for every restriction, this should not lead the ministry to question whether or not those restrictions are due to her medical condition since the application instructs the physician to “indicate the assistance required related to impairment(s) that directly restrict the appellant’s ability to manage in the following areas.” The advocate argued that the *Hudson* decision mandates that only two DLA must be significantly restricted, so the fact that the general practitioner did not provide information on some DLA should have no affect on the appellant’s eligibility. The advocate argued that while the ministry stated that it relies on the opinion of the general practitioner, it appears that the ministry has questioned the general practitioner’s opinions and assessments simply because she did not provide a certain, arbitrary level of detail.

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 due to a lack of explanation or detail, it is not clear whether the restrictions reported to some tasks relate to a medical condition, such as the assistance with transportation “for new addresses.”

#### ***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 has not reported whether the appellant has been prescribed any medications and/or treatments that interfere with her DLA and this section was left blank. In the PR, the general practitioner reported that the appellant is not restricted with the DLA of personal self care, meal preparation, management of medications, part of mobility (inside the home), and social functioning. In the AR, the general practitioner has provided no assessment with respect to the appellant's need for assistance with any of the tasks of the DLA of personal care, meals or mobility, 2 of 3 tasks of the DLA medications (filling/refilling prescriptions, safe handling and storage), and 3 of 5 aspects of social functioning (developing and maintaining relationships, interacting appropriately with others, and dealing appropriately with unexpected demands).

In the PR, the general practitioner reported that it is unknown whether the appellant is restricted with use of transportation or management of finances. In the AR, however, the general practitioner indicated that the appellant requires continuous assistance from another person with using transit schedules and arranging transportation described as "assistance needed for new addresses." The general practitioner also indicated in the AR that the appellant requires continuous assistance with banking, paying rent and bills and periodic assistance with budgeting. The panel finds that, given the general practitioner reported that it was unknown whether the appellant's impairment directly restricts her ability to perform these DLA, the ministry reasonably concluded that the need for assistance may be the result of other factors, such as a language barrier or a lack of finances.

In the PR, the general practitioner indicated that the appellant is continuously restricted with basic housework and part of mobility (outside the home) and both continuously and periodically restricted with daily shopping. Asked to describe the nature and extent of the assistance required by the appellant with DLA, the general practitioner wrote: "sons assisting in most day-to-day activities, especially filling any forms, reading instructions, physical activity, travel assistance." However, the general practitioner also indicated in the AR that the appellant has a satisfactory ability to communicate in speaking, reading (note: "use of glasses") and hearing ("constant ear infection, pain. Hearing ringing in right ear"). In the AR, the general practitioner did not provide an assessment of the appellant's need for assistance for 1 of 2 tasks for the DLA housekeeping (laundry), and 4 of 5 tasks for the DLA shopping (going to and from stores, reading prices and labels, making appropriate choices, and paying for purchases). For those tasks of DLA assessed, the general practitioner indicated that the appellant requires continuous assistance from another person with the tasks of basic housekeeping due to "finger arthritis" and carrying purchases home due to "shoulder pain." The narrative by the general practitioner is that "anything requiring minor use of tools or set up such as screw drivers or filling forms requires constant assistance from family members." With respect to the two DLA that are specific to mental impairment – decision making and social functioning, the panel finds that the ministry reasonably concluded that the evidence is not sufficient to indicate that the appellant is significantly restricted in either, as previously discussed.

The panel finds that the ministry reasonably determined that there is insufficient evidence, even considering the narrative portions of the PWD application, to demonstrate that the appellant is directly and significantly restricted in her ability to perform her DLA as a result of a physical or mental impairment and that the assistance required with a few of the tasks of DLA, when periodic, is for extended periods of time. 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 or assistive devices, namely "special of shoe wear, socks for flat feet syndrome and varis (sic)," 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 argued that no information is provided regarding the appellant's need for assistive devices and she does not require the services of an assistance animal.

### **Panel Decision**

Section 2(2)(b)(ii) of the EAPWDA requires that, as a result of direct and significant restrictions in the ability to perform DLA, a person requires help to perform those activities. Help is defined in subsection (3) as the requirement for an assistive device, the significant help or supervision of another person, or the services of an assistance animal in order to perform a DLA.

The general practitioner reported in the AR that the appellant lives with family, friends or caregiver and help required for DLA is provided by family. In the PR, when asked what assistance the appellant needs with DLA, the general practitioner responded that her "sons assisting in most day-to-day activities, especially filling any forms, reading instructions, physical activity, travel assistance." However, in assessing the specific assistance required with day-to-day activities, the general practitioner has not indicated that "most" DLA are impacted, as discussed previously. In the section of the AR relating to assistance provided through the use of assistive devices, the general practitioner did not identify any of the listed items as routinely used by the appellant. In assessing the assistance required for the DLA transportation, the general practitioner also wrote: "need special of shoe wear, socks for flat feet syndrome and varis (sic)" and the panel finds that the ministry reasonably determined that there is insufficient information provided to establish that these items qualify as assistive devices. The general practitioner indicated that the appellant does not have an assistance animal.

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.