

PART C – Decision under Appeal

The decision under appeal is the Ministry of Social Development and Social Innovation (the ministry) reconsideration decision dated April 9, 2015 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

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 January 29, 2015, a physician report (PR) dated January 23, 2015 completed by a general practitioner who has known the appellant for 9 years, and an assessor report (AR) dated January 23, 2015 completed by a registered nurse who has known the appellant for one year.

The evidence also included the following documents:

- 1) Medical Imaging Report dated December 12, 2014 for a CT scan of the appellant's head;
- 2) Medical Imaging Report dated January 27, 2015 for a MRI scan of the appellant's head;
- 3) Letter dated February 25, 2015 from a physician who is a specialist in neurology to another physician; and,
- 4) The appellant's Request for Reconsideration dated March 31, 2015.

Diagnoses

In the PR, the appellant was diagnosed by the general practitioner with dementia, with an onset of August 1980. In the AR, asked to describe the impairments that impact the appellant's ability to manage daily living activities, the registered nurse wrote "head injury from MVA [motor vehicle accident], August 8, 1980, coma for over 2 months."

Physical Impairment

In the PR, the general practitioner reported that:

- The appellant does not require an aid for her impairment.
- For functional skills, the appellant can walk 4 or more blocks unaided, she can climb 5 or more steps, and she has no limitation with lifting or remaining seated.

In the AR, the registered nurse indicated that:

- The appellant is independent in all areas of mobility and physical ability, specifically walking indoors and outdoors, climbing stairs, lifting and carrying and holding.
- In the section of the AR relating to assistance provided through the use of assistive devices, the registered nurse did not identify any of the listed items.

Mental Impairment

In the PR, the general practitioner reported :

- In terms of health history, the appellant has "memory loss, loss of judgment."
- The appellant has cognitive difficulties with communication, described as: "poor memory, poor judgment."
- The appellant has significant deficits in her cognitive and emotional functioning in the areas of consciousness, executive and memory and, under comments, the general practitioner wrote: "patient too confused to answer a lot of questions, please assess this person yourself."
- It is unknown whether the appellant is restricted with her social functioning. The general practitioner noted that he "confirmed medical duration" and that the "patient too confused to answer."

In the AR, the registered nurse indicated:

- The appellant has a good ability to communicate in speaking, writing and hearing, and a satisfactory ability with reading.

- 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 registered nurse indicated major impacts in the areas of executive, memory and other emotional or mental problems. The appellant has moderate impacts to bodily functions, emotion (note: “scared to try things”), insight and judgment, attention/concentration, and other neuropsychological problems. There are minimal or no impacts in the remaining six listed areas of functioning. The registered nurse wrote that the appellant has “poor concentration, poor memory, difficulties comprehending questions, emotionally labile, ‘cries easily.’”
- The appellant requires periodic support/supervision in all 5 areas of social functioning, specifically making appropriate social decisions, developing and maintaining relationships, interacting appropriately with others, dealing appropriately with unexpected demands, and securing assistance from others. There is no explanation or description provided by the registered nurse regarding how much or how often the support/supervision is required by the appellant.
- The appellant has good functioning in her immediate social network and marginal functioning in her extended social networks. No further comment is added by the registered nurse.
- Asked to describe the support/supervision required which would help maintain the appellant in the community, the nurse left this section blank.

In her self-report, the appellant’s mother wrote on the appellant’s behalf that:

- She has difficulty remembering things. Someone can tell her something and a half hour later she cannot remember it.
- Her social life is affected because friends cannot understand why she has to be told things over and over. She does not have friends.
- She is waiting for the results from an MRI as she had a CT Scan and her brain is shrinking.
- Her mother has to explain everything to her and she still does not understand.
- She can look after herself until it comes to making a major decision and then she has to go to her mother to help her and tell her what to do.
- She has some federal disability allowance, but it is not enough money for her to carry on.

In her Request for Reconsideration, the appellant’s mother wrote on the appellant’s behalf that:

- Her mother cannot assist her anymore financially and the appellant cannot exist on the federal disability pension she has been receiving for 35 years.
- The appellant does not need assistance from a device because she is mentally impaired.
- Her mother helps the appellant with answering the same question over and over again because she cannot remember any of it.
- The appellant’s condition seems to be getting worse.

In the letter dated February 25, 2015, the physician who is a specialist in neurology wrote:

- The appellant has been cognitively impaired since 1980.
- The appellant appears to be a “loner”, does not leave the house, but has some friends.
- The appellant has no other medical conditions.
- On the Montreal cognitive assessment, she shows impairment of short term recall and that was the main cognitive impairment noticed.
- She does not have cognitive findings of a progressive cognitive disorder such as Alzheimer’s disease. She lacks any findings to suggest cortical involvement.

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 ability to perform DLA.
- The appellant is continuously restricted with the DLA of daily shopping and management of finances and it is unknown whether she is restricted with social functioning. She is not restricted with the other listed DLA, specifically: personal self care, meal preparation, management of medications, basic housework, mobility inside and outside the home, and use of transportation.
- Regarding the degree of restriction, the general practitioner made several notes, including: “suggest walking”, “can’t make decisions”, “can’t work”, “no friends”, “daily living is impaired”, and “mother helps with most things.”

In the AR, the registered nurse reported that:

- The appellant is independently able to perform every task of several listed DLA, namely: personal care (dressing, grooming, bathing, toileting, feeding self, and transfers in/out of bed and on/off chair), basic housekeeping (including laundry), meals (meal planning, food preparation, cooking, safe storage of food), and medications (filling/refilling prescriptions, taking as directed, safe handling and storage).
- The appellant is independently able to perform most tasks of some of the DLA, specifically: shopping (going to and from stores, reading prices and labels, paying for purchases and carrying purchases home), and transportation (getting in and out of a vehicle and using public transit).
- The appellant takes significantly longer than typical with the tasks of making appropriate choices when shopping (note: “shops with mother”), with all tasks of the DLA pay rent and bills (including banking and budgeting), with a note that “mother takes care of this,” and with using transit schedules and arranging transportation.

In her Request for Reconsideration, the appellant’s mother wrote on the appellant’s behalf that:

- Her mother helps her with finances, doctors, any decision regarding her everyday life that she has to make.
- She has tried to work and have some friends but she has the same problems. She cannot remember things from one minute to the next. People cannot put up with this.

In the letter dated February 25, 2015, the physician who is a specialist in neurology wrote:

- The appellant lives with her son, but he is never there. She is able to manage her household chores with her mother’s help.
- The appellant drives but has to look up the directions before she leaves the house; however, in her neighbourhood she has no difficulty.
- She has been on long-term disability and maintains her own finances and her mother helps her as well.

Need for Help

In the PR, in response to a request to describe the assistance the appellant needs with DLA, the general practitioner wrote: “mother helps her go and shop, plan events, makes her decisions, does her banking, explains life (illegible).”

In the AR, the registered nurse reported that the 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 nurse did not identify any of the listed items as being applicable.

Additional Information

In her Notice of Appeal dated April 15, 2015, the appellant expressed her disagreement with the ministry's reconsideration decision and wrote that she is sick mentally and has been since 1980. She gets a pension but it is not enough and they do not give it to her because she is normal.

At the hearing, the appellant provided the following additional documents:

- 1) Letter dated May 4, 2015 in which the appellant's general practitioner wrote that:
 - The appellant has been demented since a car accident several years ago where she was in a coma.
 - Since then, the appellant has been unable to hold a job, is socially isolated, has poor memory, and has been seen by various specialists who agree that she is demented.
 - The appellant has trouble answering basic questions about how she is but her mother finds that she has to spend a lot of time looking after her.
 - This dementia is severe and the appellant requires a full-time disability payment.
- 2) Letter dated May 4, 2015 in which the appellant's mother wrote that:
 - The appellant does not have the capacity to remember information given to her.
 - The appellant asks the same question over again, or makes the same comment again, within a short period.
 - The appellant gets lost constantly.
 - The appellant cannot work because she cannot remember what the employer has told her to do.
 - The appellant cannot have friends because they have to have patience to put up with the constant repeated questions.
 - The appellant's son lives with her and he helps her with everything she cannot manage on her own. He is there most of the time and helps with bills if the appellant's mother is not around.
 - The appellant is incapable of moving forward in any way. She is not able to work.
 - Her doctor has the appellant's records since the time of the accident.
 - The appellant only takes medication for her joint pain.
 - She is only a phone call away and she gets many phone calls from the appellant regarding the same information.

At the hearing, the appellant's mother stated:

- It is hard to prove mental impairment. Everyone says that this does not relate to employment but the appellant has no money. She only gets \$500 per month from a federal disability pension.
- The appellant lives with her son who helps her a lot. She lives close to the appellant and "is a phone call away," but she will not be around forever and she worries about what will happen.
- There are times when she will be on the phone to the appellant throughout the day.
- If the appellant gets something in the mail, she will call to ask what it means.
- The appellant cannot remember anything. She says something and then says the same thing over and over again. She has no power of concentration.
- She will call to ask how to cook an egg, for example, when she has just done it.

- The doctor's office is close to the appellant's home and the appellant will go there on her own. She went to the doctor's office with the appellant to have the PWD application forms filled out. The nurse did not complete the AR at the time and did not ask any questions of the appellant.
- They have not talked to the specialist regarding the PWD application.
- She separated from her husband and does not have the financial resources available that they once did. She can no longer help the appellant financially.
- It is difficult for the appellant to do many things out in the community. She has difficulty reading prices and labels when shopping. She sometimes puts her clothes on backwards when she gets dressed. She is okay with feeding herself.
- With meal preparation, sometimes the appellant forgets how to make something. The appellant will cook simple meals and she does not cook very well.
- The appellant is independent with managing her medications. She has many aches and pains in her body and takes medication for that. She is not on medication for memory loss. The appellant takes vitamins to help her but nothing has been prescribed.
- The appellant is able to live in her own home but she does have a severe mental impairment.

The ministry relied on its reconsideration decision as summarized at the hearing and did not provide any additional evidence.

Admissibility of Additional Information

The ministry did not object to the admissibility of the additional letters and did not raise an objection to the oral testimony on behalf of the appellant, which contained corroborating information about the impact of the appellant's medical condition diagnosed at reconsideration. 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*.

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) 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.

Severe Physical Impairment

The appellant did not directly advance a position that she has a severe physical impairment, although the appellant's mother pointed out that the appellant has aches and pains in her body, for which she takes medication.

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 as able to walk 4 or more blocks, climb 5 or more stairs, and as having no limitations with lifting or with remaining seated. The ministry argued that the registered nurse also indicated that the appellant is independent in all aspects of mobility and physical abilities.

Panel Decision

The only diagnosis by the general practitioner is for dementia, for which he emphasized the impacts regarding a mental impairment rather than a physical impairment. In the PR, the general practitioner reported that the appellant does not require an aid for her impairment and she can walk 4 or more blocks unaided, climb 5 or more steps, and has no limitations in her ability to lift or to remain seated. In the AR, the registered nurse also assessed the appellant as being independent with all areas of mobility and physical ability, specifically walking indoors and outdoors, climbing stairs, standing, lifting

and carrying and holding. Given the absence of a diagnosis by the medical practitioner or an assessment of impacts to the appellant's physical functioning, 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 the impacts from long-term dementia. The appellant's mother argued, on behalf of the appellant, that the appellant has no memory or power of concentration and she helps the appellant with answering the same question over and over again because the appellant cannot remember any of it. The appellant cannot work and her condition seems to be getting worse.

The ministry's position is that there is insufficient evidence to establish that the appellant has a severe mental impairment. The ministry acknowledged that the general practitioner assessed significant deficits to the appellant's cognitive and emotional functioning, but argued that the impacts assessed by the registered nurse are mostly moderate. The ministry pointed out that while the general practitioner indicated that the appellant has difficulties with communication, the registered nurse reported that she has a good ability to speak, write and hear and a satisfactory ability to read. The ministry pointed out that the appellant emphasized her inability to work and argued that the PWD application is not intended to assess employability or vocational abilities as employability is not an eligibility criterion for designation as a PWD.

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 and a registered nurse.

The general practitioner, who has known the appellant for 9 years, diagnosed the appellant with dementia since 1980 and wrote in the PR that the appellant has "memory loss, loss of judgment." There are significant deficits reported to the appellant's cognitive and emotional functioning in the areas of consciousness, executive and memory, with the comment "patient too confused to answer a lot of questions, please assess this person yourself." The general practitioner provided further information in a letter dated May 4, 2015 and wrote that since a car accident several years ago where the appellant was in a coma, she has been demented. The appellant has been unable to hold a job, is socially isolated, has poor memory, and has been seen by various specialists who agree that she is demented. The appellant has trouble answering basic questions about how she is but her mother finds that she has to spend a lot of time looking after her. The general practitioner wrote that the appellant's dementia is severe. In the letter dated February 25, 2015, the neurologist wrote that on cognitive assessment the appellant shows impairment of short term recall and that was the main cognitive impairment noticed. The neurologist indicated the appellant does not have cognitive findings of a progressive cognitive disorder such as Alzheimer's disease and she lacks any findings

to suggest cortical involvement.

In the AR, the nurse assessed the degree of impact to the appellant's daily functioning and indicated that there are major impacts in the areas of executive, memory and other emotional or mental problems. The appellant has moderate impacts to bodily functions, emotion, insight and judgment, attention/concentration, and other neuropsychological problems. There are minimal or no impacts in the remaining six listed areas of functioning. The nurse wrote that the appellant has "poor concentration, poor memory, difficulties comprehending questions, emotionally labile, 'cries easily.'"

The appellant's mother wrote in her letter that the appellant does not have the capacity to remember information given to her. She asks the same question over again, or makes the same comment again, within a short period and gets lost constantly. The appellant cannot work because she cannot remember what the employer has told her to do. At the hearing, the appellant's mother argued that everyone says that the PWD application does not relate to employment but the appellant has no money since she only gets \$500 per month from a federal disability pension and she is incapable of moving forward in any way. As for searching for work and/ or working, the panel finds that the ministry reasonably concluded that employability is not a criterion in section 2(2) of the EAPWDA nor is it listed among the prescribed daily living activities in Section 2 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 does not establish that the appellant is significantly restricted in either. Regarding the decision making DLA, the nurse reported in the AR that the appellant independently manages the decision-making components of the DLA meal preparation (meal planning and safe storage of food) and managing her medications (taking as directed and safe handing and storage). While the appellant takes significantly longer than typical with the decision-making component of the DLA shopping (making appropriate choices) as she shops with her mother, and with the DLA transportation (using transit schedules and arranging transportation), there is no indication of how much longer it takes her and there is no indication of a need for assistance from another person.

The appellant is also assessed as taking significantly longer than typical with her finances DLA (banking, budgeting and paying rent and bills) and although the nurse noted that the appellant's "mother takes care of this," the nurse does not provide additional information about how much longer it takes the appellant to complete these tasks on her own. In the PR, the general practitioner indicated continuous restrictions with the management of finance DLA. In the letter dated February 25, 2015, the neurologist indicated that the appellant has been on long-term disability and maintains her own finances and her mother helps her as well. At the hearing, the appellant's mother stated that she has helped the appellant financially but she is no longer able to do so, suggesting a need for assistance as a result of lack of finances rather than as a result of impairment, although the evidence is not clear. The nurse also reported in the AR that the appellant requires periodic support/supervision with making appropriate social decisions; however, she did not provide an explanation or description of how often or for how long the appellant requires this support/supervision. In the self-report, the appellant's mother wrote that the appellant can look after herself until it comes to making a major decision and then she has to go to her mother to help her and tell her what to do. Asked to describe the support/supervision that would help to maintain the appellant in the community, the nurse left this section of the AR blank.

Regarding the DLA of social functioning, the general practitioner reported in the PR that it is unknown whether the appellant is restricted and he wrote that the appellant was “too confused to answer.” In the AR, the appellant is assessed as requiring periodic support/supervision with developing and maintaining relationships, interacting appropriately with others, and securing assistance from others; however, the nurse did not elaborate with details of how often or for how long the appellant requires the support or supervision. In the letter dated February 25, 2015, the neurologist wrote that the appellant appears to be a “loner” and does not leave the house, but she has some friends. In the May 4, 2015 letter, the general practitioner indicated that the appellant is “socially isolated,” but did not elaborate, and the appellant’s mother wrote in her letter that the appellant cannot have friends because they have to have patience to put up with the constant repeated questions. In the PR, the general practitioner reported that the appellant has cognitive difficulties with communication but, in the AR, the nurse reported that the appellant has a good or satisfactory ability to communicate in all areas.

Given the lack of detail in the evidence, which demonstrates mostly moderate impacts to the appellant’s cognitive, emotional and 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 mental impairment directly and significantly restricts her ability to perform DLA on an ongoing basis to the extent that she requires the significant assistance of another person, including her mother and her son.

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 wrote that the majority of the listed tasks of DLA are performed independently by the appellant although some tasks take longer and, for those areas that require periodic support/supervision, the nurse has not provided sufficient information to establish that there is a significant restriction in the appellant’s ability to perform these activities.

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 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 either 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 medications that interfere with her DLA. The general practitioner indicated that the appellant’s impairment restricts her ability to perform DLA, specifically the DLA of daily shopping and management of finances, and it is unknown whether her social functioning is restricted. Regarding the degree of restriction, the general practitioner noted: “suggest walking”, “can’t make decisions”, “can’t work”, “no friends”, “daily living is impaired”, and “mother helps with most things.” The general practitioner also assessed the appellant as not being restricted with the remaining listed DLA, specifically: personal self care, meal preparation, management of medications, basic housework, mobility inside and outside the home, and use of transportation. In the letter dated February 25,

2015, the neurologist indicated that the appellant is able to manage her household chores with her mother's help. He reported that the appellant drives and, in her neighbourhood, she has no difficulty.

In the AR, the registered nurse reported that the appellant is independently able to perform every task of several listed DLA, namely: personal care (dressing, grooming, bathing, toileting, feeding self, and transfers in/out of bed and on/off chair), basic housekeeping (including laundry), meals (meal planning, food preparation, cooking, safe storage of food), and medications (filling/refilling prescriptions, taking as directed, safe handling and storage). At the hearing, the appellant's mother stated that the appellant sometimes puts her clothes on backwards when dressing and that she only cooks simple meals, sometimes forgetting how to cook something she has done before, but acknowledged that the appellant can look after herself "until it comes to making a major decision." The nurse indicated that the appellant is independently able to perform most tasks of the DLA, shopping (going to and from stores, reading prices and labels, paying for purchases and carrying purchases home), and transportation (getting in and out of a vehicle and using public transit) but takes significantly longer than typical with the tasks of making appropriate choices when shopping (note: "shops with mother") and with using transit schedules and arranging transportation. As discussed under the severity of mental impairment, with respect to the management of finances DLA and 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.

The panel finds that the evidence demonstrates that the appellant manages her DLA without assistance and that the ministry reasonably determined that there is insufficient information to allow the ministry to determine that the periodic support/supervision that is required for social functioning is required 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 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 assistive devices are required and the appellant 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.

In the AR, the nurse reported that the 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 nurse did not identify any of the listed items as being applicable. The general practitioner wrote that the appellant's "mother helps her go and shop, plan events, makes her decisions, does her banking, explains life."

The appellant's mother stated that the appellant's son also helps her, but did not elaborate.

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 under Section 2 of the EAPWDA, was reasonably supported by the evidence and therefore confirms the decision.