

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 the 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 an impairment that 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:

1. The appellant's PWD Application comprised of:
 - a. the Applicant Information and Self-report ("SR") prepared by the appellant and dated July 3, 2014;
 - b. the Physician Report ("PR") dated July 15, 2014 and prepared by a general practitioner ("the GP") who treated the appellant once in the previous 12 months;
 - c. the Assessor Report ("AR") dated July 18, 2014 and prepared by a social worker ("the SW") who had seen the appellant between 2 and 10 times in the previous year; and
2. The appellant's Request for Reconsideration ("RFR") dated March 26, 2015 which has attached to it 8 pages of written submissions dated March 25, 2015 and signed by the appellant ("the RFR Submissions")

The appellant clarified in evidence that a resident intern ("RI") who worked at the same clinic as her GP interviewed her and completed the majority of the PR but that once it was completed, she met with the GP and he reviewed it in its entirety with her, made some additions to it and signed it in her presence. The panel therefore attributes the evidence in the PR to the GP.

Additional Evidence and Admissibility

Documentary Evidence

There are two sets of additional documentary evidence that were submitted on the appellant's behalf subsequent to the Reconsideration Decision.

On March 28, 2015, the appellant provided the following (hereafter referred to as "Record Package #1"):

1. A 2 page bone scan report dated June 26, 2014; and
2. 9 pages of clinical records from a native health clinic covering the period from June 17, 2014 through January 13, 2015.

On June 1, 2015 the appellant, through her advocate, submitted 36 additional pages of medical records which were obtained from a medical clinic where the appellant is a patient. These records cover the period of November 16, 1989 through January 29, 1997 ("Record Package #2"). These records and Record Package #1 will be collectively referred to as "the Medical Records."

The ministry did not oppose the Medical Records being admitted as evidence in this appeal. On review of these records, the panel finds that they corroborate the appellant's prior diagnosis of chronic osteomyelitis and mood disorder and therefore are in support of the evidence of the appellant's physical and mental impairment as set out in the PWD Application. The panel therefore finds that the Medical Records are admissible as written testimony in support of the information and records that were before the minister when the decision being appealed was made pursuant to section 22(4)(b) of the *Employment and Assistance Act* ("EAA").

Oral Evidence

The appellant and a witness gave oral evidence at the hearing. The evidence of the appellant was consistent with that in the original PWD Application and the RFR Submissions. Therefore, the panel is satisfied that the appellant's oral evidence is admissible as oral testimony in support of the information and records that were

before the minister when the decision being appealed was made pursuant to section 22(4)(b) of the *EAA*.

The evidence of the witness, the SW who prepared the AR, included her own observations of the appellant as well as the impairments related to her by the appellant in the course of their discussions as well as during the preparation of the AR. The panel finds that the oral evidence of the witness of her personal observations of the appellant are admissible as oral testimony in support of the information and records that were before the minister when the decision being appealed was made pursuant to section 22(4)(b) of the *EAA*.

Diagnoses

In the PR, the appellant is diagnosed by the GP with the following conditions:

1. Chronic pain in right lower leg and ankle due to leg length discrepancy – date of onset 1992
2. Remote chronic osteomyelitis – no date of onset given
3. Depression – date of onset 2011
4. Anxiety with mood disorder – date of onset 2011
5. Unspecified substance-related disorder in remission since May 2014 – date of onset 1997

In the AR, the RN lists the appellant's impairments as osteomyelitis as a child with longstanding chronic pain, depression, eating disorder issues, shooting pain in hands and arms (querying for fibromyalgia), leg length difference (right is longer) with hip issues as a result, a brain injury and a level 1 concussion resulting from a slip and fall in 2012.

The Medical Records generally reflect the GP's diagnosis of chronic osteomyelitis involving the appellant's right tibia with associated pain in her right hip, ankle and foot. The Medical Records also document the appellant's diagnosed mood disorder.

Physical Impairment

In the RFR Submissions, the appellant comments that her pain on most days on a scale of one to ten is an eight with other days being between six and eight with the help of pain pills. She describes this pain as "all day every day" and that it is chronic, extreme and deep and sometimes makes her cry. The appellant that she has lived with pain all of her life and she recounted having multiple surgeries as a child on both legs causing her right leg to be longer than the left resulting in her legs, knees, spine, hips and ankles being in pain with every step. The appellant notes that she uses crutches when she has really bad days. She states that she can only walk every other day and if she does more than that she will be bed ridden for a few days after.

Further, the appellant comments that she slipped and fell and hurt her brain. She describes her brain has having "shook in 4 ways plus whiplash" and that she hit the top of her spine leaving her bedridden for 3 months. She describes ongoing symptoms from the fall including headaches, neck pain, ear sensitivity to sound, pain in her spine when walking, standing or laying a certain way, blurry vision on some days, lost hearing on some days and nerve damage to the back of her skull. The appellant summarizes her condition including chronic osteomyelitis, knee surgery, slip and fall brain damage, tissue damage, fibromyalgia, arthritis, joint damage, spine pain, joint gout and chronic pain on mass levels.

In the SR, the appellant writes that as a young girl she was back and forth to hospital until she was 18 years of age for treatment of osteomyelitis. She writes that she has difficulty going up and down stairs and that she has trouble walking in the morning due to pain and stiffness in her lower leg. She states that she has a permanent limp as one leg is longer than the other as a result of surgery.

In the PR, the GP indicates that the appellant has chronic osteomyelitis as a child along with surgeries with the result that her right leg is 1cm longer than the left along with pronated flat feet with the result that she can be

on her feet a maximum of 2-4 hours. The appellant is described as 5'6" tall and weighing 200lbs. The GP comments that her impairment will continue if unmanaged and that she currently suffers from chronic pain due to leg length discrepancy and the strain that it places on her legs to compensate. The appellant is described as being able to walk more than 4 blocks and climb more than 5 steps unaided but that both result in pain. The appellant is able to lift 15-35 lbs and she has no limitation sitting in a comfortable chair. Additional comments describe the appellant as experiencing pain with walking and time spent on her feet which may improve over time with the use of an orthotic, a brace and physiotherapy. Further, the appellant's leg length discrepancy is noted as possibly not resolving completely but that the associated pain may lessen.

In the AR, the SW reports that the appellant lives alone and that she requires periodic assistance with walking indoors and outdoors, climbing stairs and standing. These tasks are described as taking significantly longer than typical with the added comment that the appellant can only walk a few blocks before she has trouble bending her leg and begins limping. The appellant is described as staying home on "bad days" and that she finds it too painful to walk some mornings. The SW comments further that the appellant has started physiotherapy, that climbing and descending stairs is very painful, that the appellant can stand for a maximum of 30 minutes and that she was advised by the GP not to lift and carry more than 25 lbs.

In the Record Package #1, a clinical note from a physiotherapist dated July 8, 2014 notes the appellant reporting that her right foot is too painful to weight bear when walking down stairs which creates a limp. A further entry prepared by the RI and dated July 15, 2014 reports the appellant as experiencing continuing worsening pain in her right foot and leg and limitation of activities.

Mental Impairment

In the RFR submissions, the appellant indicates that she takes antidepressants but would prefer not to take them. She writes that her depression caused her to gain weight and that she is scared about not knowing what will happen in her life.

In the SR, the appellant writes that she battles severe depression for which she takes medication.

In the PR, the GP indicates that the appellant experiences significant deficits with cognitive and emotional function in the area of emotional disturbance with the added comment "mood disorder with element of depression active."

In the AR, the SW notes that the appellant's ability to speak is good, that her writing is satisfactory and that her reading and hearing are poor. The SW further indicates that the appellant experiences impacts on daily functioning in a number of areas as follows:

- Major impact on bodily functions with "eating problems" and "sleep disturbance" both circled.
- Moderate impacts on emotion ("depression" circled), insight and judgment, attention/concentration, memory, motivation and other emotional or mental problems.
- Minimal impacts on consciousness, impulse control, executive, language and other neuropsychological problems; and
- No impact on psychotic symptoms.

The SW comments further in the AR that the appellant takes medication for her "brain to heal" and for migraine headaches, that she experiences insomnia and depression and that she is suicidal which is contributed to by leg and pain issues. The SW notes that the appellant is self-conscious about a scar on her leg, her weight and her limp while she walks and the SW refers to the "impacts of brain injury".

In Record Package #1, a clinical entry dated July 15, 2014 prepared by the RI indicates that the appellant's mood disorder is somewhat controlled with medication but that the appellant does have exacerbations and

there is a suggestion that she increase her medication dosage.

Daily Living Activities (DLA)

In the PR, the GP indicates that the appellant requires continuous assistance with basic housekeeping and daily shopping but that she requires no assistance with personal self care, meal preparation, management of medications, mobility inside and outside the home, use of transportation or management of finances. The GP comments that the appellant needs help carrying laundry and cleaning and that she can do some but not all. The GP comments further that the appellant needs help with grocery shopping as walking around the store is too painful.

In the AR, the SW describes the assistance that the appellant requires with her DLA.

For tasks of Personal Care, the appellant is independent dressing and grooming but both take significantly longer than typical as she has to sit down to get ready due to leg pain. This also contributes to the appellant's depression and anxiety and affects her motivation. The appellant requires periodic assistance from another person with bathing and transfers in and out of bed and on and off of a chair, all of which take significantly longer than typical and on some days the appellant requires the use of crutches to stand.

For tasks of Basic Housekeeping, the appellant requires periodic assistance with laundry and basic housekeeping and both take significantly longer. On bad days, the appellant requires help and can't do very physical things.

For tasks of Shopping, the appellant is independent reading prices and labels, making appropriate choices and paying for purchases but requires continuous assistance going to and from stores and carrying purchases home with both taking significantly longer than typical. The appellant requires a ride to and from stores due to leg pain.

For tasks of Meals, the appellant is independent in meal planning and safe storage of food but requires periodic assistance with food preparation and cooking with both taking significantly longer than typical. The appellant can prepare food on some days but cannot if she is in pain. On bad days it is very difficult.

The appellant is independent in all aspects of Paying Rent and Bills and Medications.

The appellant requires periodic assistance getting in and out of a vehicle which takes significantly longer and she does not take transit due to financial constraints.

With respect to the appellant's social functioning, she is described in the AR as being independent while making appropriate social decisions, developing and maintaining relationships and interacting appropriately with others but she requires periodic support or supervision dealing appropriately with unexpected demands due to anxiety and depression and she also requires similar support while securing assistance from others. The appellant is described as having marginal functioning in her immediate and extended social networks.

Need for Help

In the RFR Submissions, the appellant writes that she needs orthotics funding and a brace and that she has crutches for bad days. She says she needs shoes with supports and orthotics, a back brace and a new leg brace. In the SR, the appellant writes that she needs help with DLA.

In the PR, the GP notes that the appellant requires an orthotic left shoe for her leg length discrepancy and a brace for her right ankle. The SW notes that the appellant uses crutches on bad days and that she needs a brace.

Evidence At Hearing

The Appellant

The appellant stated that she suffered her physical injuries as a child, then went to school and worked but now that she is older, it bothers her walking and doing physical activities. The disability she suffers from has caused her to be depressed all of her life. She is always crying and is always in pain. Over the last year, she has been unable to walk and her outlook on life has been the bare minimum. She has tried a number of resources to address her condition including medications, vitamins and other modalities. She experiences pain in her arms and legs and spine and one of her legs is 1.7cm longer than the other. When her heel contacts the ground pain shoots through her body and while walking to the bathroom she has to hold the wall. The appellant described needing help going to the grocery store, shopping and moving things and that standing causes tingling and numbness in her leg. Mentally, the appellant described becoming severely depressed and she can't fathom the idea of not working anymore. Her body is in total pain every day and when she reviewed the Medical Records she became suicidal as she wasn't aware of the extent of her condition as her parents hadn't told her. The appellant stated that she can't do anything and that when she does walk she is in pain for days after. The appellant says that she is limping all the time, that she doesn't have a proper brace or orthotic lift and she can't afford vitamins because of financial difficulties.

In response to questions, the appellant stated that when she gets up in the morning, she can't stand on her feet right away as it takes 15 minutes sitting on the edge of the bed prior to doing so. There are some days that she can't get on her feet at all. After getting out of bed, she showers which takes 90 minutes and if she needs groceries she requires a ride to the grocery store and help from her nieces and nephews including help putting things into the cart and getting them into the house. The appellant helps put items away but she is exhausted once finished. The appellant stated that more than half of the month she can't get out of bed and that she is developing bed sores as a result. If she can't get out of bed she gives money to others to do the shopping. She is still taking medication for depression and sees a psychosocial team which consists of a collection of counsellors.

The Social Worker

The SW who prepared the AR appeared as a witness at the hearing and as support for the appellant. In response to questions, she stated that she is part of a psychosocial, inter-disciplinary team that treats the appellant. She has met with the appellant more than 6 times over the last couple of years. She has observed the appellant struggle with chronic pain and associated depression. Her medical condition as a child was traumatic as she had to travel extensively for treatment and this caused upheaval and a lasting impact on her and her family. The appellant has tried to work over the years at various jobs but has been unable to. She gets support from the clinic in the form of rides to appointments. Recently she has had suicidal ideation and has met with a nurse practitioner in the last couple of weeks. The team is trying to wean her off one medication as it may have contributed to that ideation. She tries to be positive and focus on the positive in her life. For DLA, she tries to do things but there are days where she can't. On days when she has less pain and can do things she'll try to walk and grocery shop but then she pays for it for several days after with pain.

In response to questions, the SW stated that she would have had a chance to look over the PR prior to completing the AR but she does not think she had a chance to discuss it with the GP. The GP knows the appellant and has been working with her longer than the SW. For the appellant's food preparation, there are days when she is not able to function very well so it's not a continuous thing but there are good and bad days.

The Ministry

At the hearing, the ministry referred to and relied upon the Reconsideration Decision and commented that the

appellant's denial was based on not meeting all of the five legislative criteria in the EAPWDA. The appellant did meet the age criteria as she is over 18 and she also met the duration criteria as her impairment exceeded 2 years.

Concerning physical impairment, the GP noted in the AR that the appellant could walk four or more blocks unaided although with resulting pain, climb four or more stairs with resulting pain, lift 15-35lbs and remain seated without limitation. Regarding mental impairment, the GP confirms that the appellant suffers from a mood disorder with elements of depression which are active and that she is being treated with antidepressant medication.

Considering the appellant's DLA, the GP says she is taking no medications that would interfere with DLA and that the appellant is not restricted with 7 tasks of DLA. The GP says in the PR that the appellant needs help carrying laundry and cleaning and can do some but not all.

In response to questions, the ministry stated that functional skills sections are used to establish whether the impairment is severe. In this case, the functional assessments were not sufficient to establish a severe impairment. On the information that has been submitted, all of the information was considered including the PR, AR, SR and Medical Records. The ministry acknowledges a physical limitation but the evidence in this case did not satisfy the legislative criteria. The ministry looked at all of the additional evidence as well.

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 met the age requirement and that she has an impairment that 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.

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.

In her Notice of Appeal, the appellant writes that she feels that she does have a severe mental and physical impairment that restricts her ability to perform DLA. She continues that she requires assistance from other and from medical equipment to do her DLA.

Severity of impairment

Section 2(2)(a) of the *EAPWDA* provides that when addressing the issue of a severe physical or mental impairment in the context of a person applying for a PWD designation, that person must be found to have a severe physical or mental impairment that, in the opinion of a medical practitioner, is likely to continue for at least 2 years.

A diagnosis of a serious medical condition or conditions 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 one must consider the nature of the impairment and the extent of its impact on daily functioning. 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 prescribed professionals – in this case, the GP and the SW.

Severity of mental impairment

The appellant argues that she suffers from a mood disorder, anxiety and depression which is being treated with medication and counseling and that this constitutes a severe mental impairment.

The ministry takes the position that the evidence that was available at reconsideration does not support a finding that the appellant has a severe mental impairment. The ministry further argues that the evidence as to the appellant's limitations is inconsistent as between the PR and the AR. Finally, the ministry argues that there are conditions listed in the AR that are not diagnosed by the GP and that it is unclear whether the impacts described in the AR are attributable to those or to the appellant's diagnosed conditions.

Panel Decision

On review of the PR, the GP has diagnosed the appellant with depression and anxiety "with above mood

disorder.” The GP describes the mood disorder as being treated with medication and “reasonably well controlled” with emotional disturbance being the appellant’s lone significant deficit with cognitive or emotional function.

The SW who prepared the AR describes the appellant as suffering from depression but also notes a history of brain injury and a level 1 concussion resulting from a slip and fall accident in 2012. The panel notes that this injury is not included in the PR. Similar to the GP, the SW notes that the appellant’s mental impairment has caused a moderate impact on her emotion. However, in addition to this the SW indicates that the appellant also experiences a major impact in cognitive and emotional functioning with bodily functions, specifically eating problems and sleep disturbance, as well as additional moderate impacts on insight and judgment, attention/concentration, memory, motivation and other emotional or mental problems and minimal impacts on consciousness, impulse control, executive, language and other neuropsychological problems.

Section 2(1)(b) of the *EAPWDR* prescribes two DLA that are specific to mental impairment – making decisions about personal activities, care or finances (decision making), and relating to, communicating or interacting with others effectively (social functioning).

The GP’s evidence in the PR indicates that the appellant is not restricted with respect to decision making in that she independently manages personal self-care as well as management of medications and finances. In the AR, the SW notes that the appellant is independent with the management of her personal medication (filling/refilling prescriptions/taking as directed/safe handling and storage) and management of personal finances (banking, budgeting and paying rent and bills). With respect to the social functioning DLA, the GP has not provided any information in the PR to indicate that the appellant is affected in any way while the SW has noted that the appellant is independent making appropriate social decisions, developing and maintaining relationships and interacting appropriately with others while requiring periodic support/supervision dealing appropriately with unexpected demands and securing assistance from others.

While the panel acknowledges that the evidence must be considered as a whole, the panel finds that the ministry was reasonable in its determination that there were inconsistencies between the PR and the AR in relation to the appellant’s diagnoses and as to the impact of the appellant’s mental impairment on her daily functioning. Given this conclusion, the panel finds that the ministry was reasonable in its determination that there is insufficient evidence to establish that the appellant has a severe mental impairment under section 2(2) of the *EAPWDA*.

Severity of physical impairment

The appellant argues that she suffers from remote chronic osteomyelitis with secondary right lower leg, ankle and foot pain due to leg length discrepancy which is secondary to her osteomyelitis. She argues that this condition and its impacts constitute a severe physical impairment.

The ministry takes the position that the evidence of the appellant’s physical condition does not support a finding of a severe physical impairment. The ministry further argues that the functional assessments provided by the GP and SW are inconsistent and therefore the evidence of whether the appellant has a severe physical impairment is unclear.

Panel Decision

In the PR, the appellant’s GP confirms a diagnosis of remote chronic osteomyelitis with chronic pain in her right lower leg and ankle due to leg length discrepancy secondary to osteomyelitis. This is supported by the Medical Records and the comments in the Health History section of the PR. The appellant is described as able to walk 4 or more blocks unaided on a flat surface and climb 5 or more steps unaided but that both result in pain. The appellant is described as being able to lift between 15 and 35lbs and having no limitation

remaining seated in a comfortable chair.

In the AR, the SW describes the appellant as suffering from osteomyelitis with longstanding chronic pain, shooting pain in hands and arms (“querying fibromyalgia”) and leg length difference with hip issues as a result. While the diagnoses are not demonstrably different, the ministry points out that the SW’s assessment of the appellant’s mobility and physical ability varies with that of the GP.

In the AR, the SW assesses the appellant as requiring periodic assistance walking indoors and outdoors, climbing stairs and standing and that each of these tasks takes significantly longer than typical. The panel notes that as set out above, the GP indicates in the PR that the appellant can walk unaided for four or more blocks and climb five or more stairs unaided albeit with both resulting in pain.

The SW also indicates in the AR that the appellant requires continuous assistance from another person or is unable to lift or to carry and hold items. Again, the ministry has noted that the GP has indicated in the PR that the appellant can lift between 15 and 35 lbs.

Given the inconsistent nature of the evidence as to the severity of the appellant’s physical impairment, the panel finds that the ministry was reasonable in its determination that the evidence did not support a finding that the appellant suffers from a severe physical impairment as provided by section 2(2) of the *EAPWDA*.

Restrictions in the ability to perform DLA

The appellant’s position is that her impairments directly and significantly restrict her ability to perform DLA.

The ministry’s position is that it has not been established by the evidence of a prescribed professional that the appellant’s ability to perform DLA has been directly and significantly restricted by her physical or mental impairments either continuously or periodically for extended periods as required by section 2(2) of the *EAPWDA*.

Panel Decision

Section 2(2)(b) of the *EAPWDA* requires that a prescribed professional, in this case the GP and the SW, provide an opinion that an applicant’s severe physical and/or mental impairment directly and significantly restricts his or her DLA, continuously or periodically for extended periods.

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 DLA, if any, are significantly restricted by the appellant’s impairments, either continuously or periodically for extended periods. Employability is not a listed criterion in the legislation and as such is not a consideration in the determination of whether an applicant’s DLA are restricted by a severe impairment.

As noted previously in this decision, in the PR the appellant’s GP has confirmed that the appellant is independent in all tasks of DLA save and except for basic housework and daily shopping for which she requires continuous assistance for each. For housework, the GP notes that the appellant requires help carrying laundry and cleaning and that she can do some but not all and that for shopping, walking around the store is too painful. The GP has not indicated whether the appellant’s social functioning is restricted.

In the AR, the SW indicates that the appellant can independently manage a number of tasks of DLA including dressing, grooming, reading prices and labels, making appropriate choices, paying for purchases, meal planning, safe storage of food, banking, budgeting, paying rent and bills, filling/refilling prescriptions, taking medication as directed and safe handling and storage of medications.

The SW further notes that the appellant requires periodic assistance with transfers in and out of bed and on and off of a chair, laundry, basic housekeeping, food preparation, cooking and getting in and out of a vehicle and that she requires continuous assistance going to and from stores and carrying purchases home.

Looked at as a whole, the evidence of the GP and the SW indicates that the appellant is independent with a number of tasks of DLA, that she requires periodic assistance with some and continuous assistance with others. Given the totality of the evidence however, the panel finds that the ministry reasonably concluded that the evidence is insufficient to demonstrate that the appellant's DLA are significantly restricted either continuously or periodically for extended periods as provided under section 2(2)(b) of the *EAPWDA*.

Help with DLA

The appellant argues that she requires help from others and from assistive devices to perform her 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.

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. Section 2(3) of the *EAPWDA* provides that a person requires help in relation to a DLA if, in order to perform it, the person requires an assistive device, the significant help or supervision of another person, or the services of an assistance animal. In other words, it is a pre-condition to a person requiring help that there be a finding that a severe impairment directly and significantly restricts a person's ability to manage his or her DLA either continuously or periodically for an extended period.

Given the panel's finding that the ministry reasonably determined that direct and significant restrictions in the appellant's ability to perform DLA have not been established, the panel further finds that the ministry's conclusion that 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*, was reasonable.

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 a reasonable application of the applicable enactment in the circumstances of the appellant, and therefore confirms the decision.