

## PART C – Decision under Appeal

The decision under appeal is the Ministry of Social Development and Social Innovation (the ministry) Reconsideration Decision dated April 14, 2015 which found that the appellant did not meet all of 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 ministry did not attend the hearing. The panel received confirmation from the Tribunal that the ministry had been notified of the date, time and location of the hearing. Accordingly, under s. 86(b) of the *Employment and Assistance Regulation*, the panel heard the appeal in the ministry's absence.

The evidence before the ministry at the time of the Reconsideration Decision included:

1. The appellant's PWD Application comprised of:

- The Applicant Information and Self-report ("SR") dated December 29, 2014 and prepared by the appellant; and
- The Physician Report ("PR") and Assessor Report ("AR"), both dated December 22, 2014 and both prepared by the appellant's general practitioner ("the GP") of seven years.

2. The appellant's Request for Reconsideration ("RFR") dated March 11, 2015 to which is attached the following:

- Written submissions dated March 31, 2015 and prepared by an Advocate ("the Advocate Submissions");
- A letter dated March 17, 2015 prepared by the appellant's GP ("the GP Letter");
- Written submissions dated March 30, 2015 and prepared by the appellant ("the Appellant Submissions")

### Admissibility of Additional Evidence

#### Documents

On June 9, 2015 the appellant submitted a new PWD application which she sought to have admitted as evidence in her appeal. The new application consisted of the following:

- The Applicant Information and Self-report not completed ("the new SR") dated June 1, 2015 and prepared by the appellant; and
- The Physician Report ("the new PR") and Assessor Report ("the new AR"), both dated May 25, 2015 and both prepared by the GP.

This document had not been submitted to the ministry previously. It will be referred to hereafter as "the new Application."

The appellant's advocate submits that the new Application should be admitted in its entirety as evidence in this appeal on the basis that it does not raise a new diagnosis but rather it is in support of the evidence found in the original PWD application. The panel notes that the new Application is consistent with the original PWD Application insofar as both document the appellant's diagnosis of Multiple Sclerosis ("MS") and the panel notes the GP's comments in the original application that the appellant's MS is progressive in nature. The panel further notes that in the new Application the GP comments "Her symptoms is (sic) progressively getting worse."

However, in comparing the two PWD applications, the panel notes that in neither does the GP diagnose the appellant with a mental condition. Further, in the original application he does not indicate that the appellant suffers from any deficits with cognitive and emotional function but in the new Application, the appellant is described as suffering from a number of deficits with cognitive and emotional function with moderate impacts in many aspects.

While the panel finds that the evidence of the appellant's physical impairment in the new Application supports and corroborates the MS diagnosis in the original, the panel finds that with no diagnosis by the GP of a mental

impairment or condition in the original PWD application, the evidence of deficits or impairment of cognitive and emotional function and their daily impact on the appellant in the new Application is not supportive or corroborative of the evidence in the original but rather, it is new evidence that was not before the ministry at the time of reconsideration.

Considering the evidence as set out above, the panel finds as follows:

1. The evidence in the new Application that refers to the appellant's physical condition and impairments is 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").
2. The evidence in the new Application that relates to the appellant's mental impairment is inadmissible as written testimony as it is not 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*.

### **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, the Advocate Submissions and the Appellant 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, who also appeared as legal advocate for the appellant, included her own observations of the appellant as well as the impairments related to her by the appellant in the course of their discussions. 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 and the new PR, the appellant is diagnosed by the GP with MS and right eye vision loss with the date of onset as July 2014. In the GP Letter, the GP writes that the appellant was diagnosed with optic neuritis and "diagnosis that fits in with Multiple Sclerosis" as well as Hidradenitis Suppurativa which has caused constant skin infections and periodic pain.

### **Physical Impairment**

In the GP Letter, the appellant is described as experiencing severe vision loss in her right eye and some vision loss in her left eye which is permanent, skin infections and periodic pain secondary to Hidradenitis Suppurativa.

In the Appellant Submissions, she writes that she woke up on June 22, 2014 and had no sight in her right eye and that on the following Monday, her vision in her left eye started to become blurry. After several tests, the appellant was advised by a physician that she had permanent bilateral optic neurosis in both eyes. After further testing in October 2014, the appellant was diagnosed with MS. As a result of being unable to perform her duties as a home care worker she lost her job. She is not able to drive at night and cannot lift or bend as it leaves her in pain for days. The appellant writes that she experiences dizziness, weakness, numbness and tingling in her arms, hands and legs and chronic muscle pain throughout her body leaving her unable to care for herself. She writes that she needs someone to walk with her even if just for a couple of blocks due to her risk of falling due to dizziness, lack of balance and chronic pain. The appellant adds that she suffers from Hidradenitis Suppurativa which makes everything more difficult and is very painful.

In the SR, the appellant writes that since her MS diagnosis, her health has diminished. She notes that she has permanent damage to her right eye, identified as bilateral optic neurosis by a specialist, as well as some damage to her left eye. The appellant writes that she has a tendency to walk into things and fall and that she has days where she has no energy and all of her muscles ache. She adds that her dizziness comes on without warning which confines her to her home leaving her feeling frustrated and useless. She says that her condition has made her activities of DLA difficult. The appellant did not complete the new SR.

In the PR, the GP describes the appellant's health history. He writes that the appellant has almost complete vision loss in her right eye which is permanent and as good as it will be and that while she had some vision loss in the left eye that was better. The GP goes on to write that the appellant has dizziness "on and off" and that this continues to affect her DLA. The appellant is noted as unable to drive after dark and that with her dizziness coming and going, she is unable to work as she does not know when her symptoms will come on. The GP adds that the appellant's condition is progressive.

In the new PR, the GP writes that the appellant's symptoms are getting worse and starting to affect DLA. The appellant is described as having almost complete loss of vision in her right eye and some loss of vision in the left eye as well as generalized weakness, aches and pains all over, poor balance and dizziness with symptoms being worse on some days resulting in her staying home and being unable to do daily chores and instead relying on friends for assistance.

With respect to the appellant's functional skills, the evidence as between the PR and the new PR is as follows (GP comments are in quotations as applicable):

*Walking Unaided on a Flat Surface*

Original: 4+ blocks ("if she does not get dizzy; gets dizzy sometimes")      New: Less than 1 block ("due to poor balance and dizziness")

*Climbing Stairs Unaided*

Original: 5+ steps ("if not dizzy")      New: 2 to 5 steps ("Dizziness")

*Limitations in Lifting*

Original: No limitations      New: Under 2kg ("Arms hurt if lifting more than that")

*Length of time remaining seated*

Original: No limitation      New: 1 to 2 hours ("Getting pain in back and legs when sitting too long")

*Difficulties with Communication*

Original: No      New: Yes - Cognitive

In the AR, the GP reports that the appellant lives alone, that her ability to communicate through speaking, writing, reading and hearing are all good and that she is independent in all aspects of mobility and physical ability including walking indoors and outdoors, climbing stairs, standing, lifting, carrying and holding with the added comment "unless dizziness. Happens periodically. Unpredictable."

In the new AR, the GP comments that the appellant finds it difficult to focus on tasks and that she often has difficulty expressing herself and putting sentences together. He indicates that the appellant's ability to hear is good but that her speaking, reading and writing are all poor with the added comment that "At times difficult to communicate or put sentences together. Decreased vision due to MS. Some confusion reading sentences."

With respect to the appellant's mobility and physical ability, the GP indicates that the appellant now requires periodic assistance from another person for all aspects and comments that "on bad days she needs assistance

with all of the above.” Additionally, the GP adds in the new AR that the appellant’s MS symptoms are progressively getting worse, that physical work causes her to have pain all over for days after and that as a result of her poor vision, reading is very hard and she walks into things.

### ***Mental Impairment***

In the SR, the appellant writes that her dizziness confines her to her home which makes her feel frustrated and useless. As noted above, the appellant did not complete the new SR.

In the PR, the GP does not diagnose the appellant with a mental disorder or condition and indicates that the appellant experiences no significant deficits with cognitive and emotional function. In the AR, the GP further indicates no impacts on the appellant’s cognitive and emotional functioning.

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

In the PR, the GP comments that the appellant experiences dizziness “on and off” and that this continues to affect her daily activities. He wrote that the appellant cannot do regular work as “she does not know when symptoms will come one.” He indicates that the appellant has not been prescribed any medication and/or treatments that interfere with her ability to perform DLA.

The GP indicates in the PR that the appellant’s impairment restricts her ability to perform DLA. Specifically, the appellant is continuously restricted with basic housework due to her vision as well as mobility inside and outside the home. The appellant is restricted in her use of transportation but it is not indicated as being either periodic or continuous in nature. The appellant is described by the GP as not restricted with personal self care, meal preparation, management of medications, daily shopping, management of finances or social functioning. The GP adds the comment that the appellant’s vision causes her to walk into things and that she has to be very careful. He adds the further comment that the appellant’s dizziness causes her not to be able to do some DLA including cleaning, cooking and self care.

In the Appellant Submissions she wrote that she cannot do many things without help from friends and neighbours, things like bathing, going to the toilet, general housekeeping, cooking, grocery shopping (carrying out of store and into house), laundry, shoveling snow in the winter, mowing grass, and walking her dogs.

In the new PR, the GP comments that the appellant’s symptoms are getting worse and starting to affect DLA. He writes that on days where her symptoms cause her to stay at home, she cannot do daily chores and her dizziness affects her daily activities.

In the new PR, the GP notes that the appellant is periodically restricted with personal care, meal preparation, basic housework, daily shopping, mobility inside and outside the home, use of transportation and social functioning. The appellant is not restricted with management of medications and finances. The GP comments that sometimes someone has to assist the appellant getting in and out of the tub due to muscle aches and pains “worse some days”.

In the AR, the GP notes that the appellant is independent in all aspects of personal care although dressing takes significantly longer due to dizziness and vision. The appellant is also noted as independent with basic housekeeping but that laundry and housekeeping take significantly longer due to dizziness and that “these days not able to do any of these.” The appellant is noted as independent with all tasks of shopping, meals, paying rent and bills, medications, transportation and social functioning.

The new AR reflects a number of changes to the GP’s opinion of the appellant’s ability to perform DLA as follows:

- In the area of Personal Care, the appellant is independent feeding herself and regulating her diet but requires periodic assistance with dressing, grooming, bathing and toileting. The appellant is noted as taking significantly longer with transfers in and out of bed and on and off of a chair. The GP adds the comment that transfers in and out of bed take a lot longer on "bad days."
- In the area of Basic Housekeeping, the appellant requires periodic assistance with laundry and basic housekeeping.
- With Shopping, the appellant is independent reading prices and labels, making appropriate choices and paying for purchases but requires periodic assistance going to and from stores and continuous assistance carrying purchases home. The GP commented that the appellant often needs help from friends to do these tasks.
- For tasks related to Meals, the GP has noted the appellant as being independent with meal planning and safe storage of food but as requiring periodic assistance with food preparation and cooking.
- For Paying Rent and Bills and tasks relating to her medications, the appellant is independent in all respects.
- The appellant requires periodic assistance getting in and out of a vehicle, using public transit where available and using transit schedules and arranging transportation.

The GP has added the comments in the new AR that the appellant needs help from friends with her DLA and that she needs more and more help as time goes on.

With respect to social functioning, the GP indicates in the new AR that the appellant is independent making appropriate social decisions, developing and maintaining relationships, interacting appropriately with and securing assistance from others but requires periodic support/supervision in dealing appropriately with unexpected demands. The appellant is assessed in the new AR as having good functioning with her immediate and extended social networks.

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

In the Appellant Submissions, the appellant writes that she cannot do many things without help from friends and neighbours. She lives alone and it is very difficult to do anything by herself. In the PR, the GP wrote that the appellant did not require an assistive device. In the new PR, the GP again notes that the appellant does not require an assistive device and he comments that the appellant gets help from friends for many of her DLA and that neighbours clean her house, vacuum, mow her lawn and walk her dog. In the AR, the GP indicates that the appellant receives help from friends and that she requires assistance with housecleaning, travelling and transport. In the new AR, the GP comments that the appellant gets someone to help her with most activities and that she needs more and more help as time goes on.

### ***Appellant's Evidence At Hearing***

The appellant stated that on June 22, 2014 she experienced pain and loss of vision in her right eye. Her vision became blurry in her left eye on the following Monday. After testing, she was advised that she may have MS. She then went through more testing and in October 2014 a diagnosis of MS was confirmed. Prior to this, the appellant worked as a care aide. As she was losing her sight, she was unable to drive and had to go on medical disability. When she first completed the PWD application, she was certain that her MS would not affect her but then she began noticing changes. The appellant finds that she gets quite dizzy at times and that she has a hard time focusing, particularly with her left eye. She has difficulty walking particularly on rainy, grey days. Routine tasks such as lifting or cleaning the house will result in pain the next day which takes 1-3 days to return to normal. She has someone who walks her dogs as she is unable to do that. On some days she wakes up and feels ok but on other days she has a hard time getting out of bed. She experiences nausea, dizzy spells and tingling in her extremities. It is difficult experiencing the impact on her independence. She has a hard time remembering things and has to write down reminders. She feels as though she is not the same person anymore. She continues to have tests done and medical treatment. She is waiting to learn

about why she is losing sensation in her right arm.

She has had days when it's hard to move things from one hand to another. Her ability to remember and recall things can be difficult. Her ability to explain things can be difficult. She has lost her job and her independence. She has been a very active person up until now but is not anymore. She has experienced falls and she walks into things. She doesn't lift her feet properly and has sensations of tingling and numbness in her legs. She has had to receive help with laundry and vacuuming. A lot of people help her with shopping. She prefers that people drive her although her driver's license has not been cancelled yet as her left eye is still functional. Her concern is with the unknown as she doesn't know what the next stage of the disease will be. Some days she doesn't know how she's going to feel until she gets up.

In response to questions, the appellant stated that how she feels on a given day is unpredictable as it could be affected by lifting something or moving a certain way. Some days she does not have the pain but on other days she is in a lot of pain and she doesn't know exactly why. She says that she tries not to lift heavy things and that travel impacts her vision particularly due to changes in elevation. For personal self-care, the appellant needs help getting in and out of the tub and on and off of the toilet. The appellant stated that she needs help from others with DLA approximately 3 days each week depending on what happens each week.

### ***Witness Evidence***

The appellant's legal advocate gave evidence of her observations of the appellant. She stated that they have met twice in person at her office. In the course of those meetings, she has observed the appellant looking tired and suffering from cuts and bruises on her legs consistent with either running into things or falls and needing assistance carrying a box weighing approximately 3lbs because of balance issues and difficulty seeing in certain lighting. The appellant was granted CPP disability in April 2015.

## 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) under section 2 of the *EAPWDA*, 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.

### **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.

### **Severity of mental impairment**

The appellant takes the position that she suffers from a severe mental impairment.

The ministry's position as set out in the reconsideration decision is that the evidence that was available at reconsideration does not support a finding that the appellant has a severe mental impairment.

### *Panel Decision*

In neither the PR nor the new PR does the GP diagnose the appellant with a mental impairment or condition. Further, in the PR the GP specifically notes that the appellant experiences no significant deficits with cognitive and emotional function and in the AR the GP assesses the appellant as experiencing no impacts on her cognitive and emotional functioning.

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 prescribed professional's evidence in the AR indicates that the appellant is not significantly restricted with respect to decision making and that, according to the GP, the appellant independently manages the decision making aspects of the DLA of personal self-care as well as management of medications and finances. The appellant is noted as being independent in regulating her diet, with the management of her personal medication (filling/refilling prescriptions/taking as directed/safe handling and storage), management of personal finances (banking, budgeting and paying rent and bills) and daily shopping (making appropriate choices).

With respect to social functioning, the GP notes in the AR that the appellant is independent when making appropriate social decisions, developing and maintaining relationships, interacting appropriately with and securing assistance from others and dealing appropriately with unexpected demands. The appellant is further described as having good functioning in immediate and extended social networks.

Given the evidence that was available at reconsideration concerning the extent to which the appellant is independent in areas where her mental impairment could be expected to impact her daily functioning, the panel concludes that the ministry's determination that there is not sufficient evidence to establish that the appellant has a severe mental impairment under section 2(2) of the *EAPWDA* was reasonable.

### **Severity of physical impairment**

The appellant argues that she suffers from MS and that the associated symptoms constitute a severe physical impairment.

The ministry takes the position in the reconsideration decision that the appellant's physical condition does not constitute a severe physical impairment.

#### *Panel Decision*

The PR and the new PR both indicate that that the appellant suffers from MS, a condition that has been described by the GP as progressive in nature. As noted previously, the evidence in the PR and the new PR demonstrate the manner in which the appellant's physical symptoms changed. The GP describes the appellant's condition in the PR as "progressive" and her symptoms in the new PR as "getting worse."

On review of the appellant's functional skills in the new PR, her ability to walk unaided on a flat surface is less than one block due to poor balance and dizziness and she is able to only climb 2-5 steps unaided. The appellant is noted as being able to lift items under 2kg and that her arms hurt if she lifts more than that. In the new PR the GP remains of the opinion that the appellant requires no prostheses or aids for her impairment.

In the new AR, the GP reports that the appellant requires periodic assistance from another person walking indoors and out, climbing stairs, standing, lifting, carrying and holding but aside from commenting that the assistance is required on "bad days", there is no clear picture of exactly how often that occurs. The evidence given by the appellant at the hearing is that she receives assistance with DLA approximately 3 times per week which is consistent with the evidence in the new AR which provides that for a number of DLA that are of a physical nature, the appellant requires periodic assistance. However, there is no detail provided by the prescribed professional of the periodic assistance required for the appellant's functional skills.

While the PR, AR, new PR and new AR clearly demonstrate that the appellant suffers from MS and that her functional skills have decreased over time, the degree of assistance required by the appellant is periodic in nature. Although she experiences poor vision, periodic dizziness and loss of balance, the evidence indicates that she does not require an aid for her impairment and she retains her driver's license and is further still able to drive during daylight hours. While the panel acknowledges the progressive nature of the appellant's condition, the panel finds that the ministry was reasonable in its determination that the evidence did not support a finding that he 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 and only one or two of the categories of tasks must be significantly restricted. The appellant argued that her ability to work in employment-related duties with any vision have been impacted. The ministry's position as set out in the reconsideration decision 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, provide an opinion that an applicant's severe impairment directly and significantly restricts their 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.

In the PR, the appellant's GP described her as independent with tasks of personal care, meal preparation, management of medications, daily shopping, management of finances and social functioning. The appellant was described as continuously restricted with basic housework due to her vision as well as mobility inside and outside of the home. The appellant was also described as restricted with use of transportation but the degree of the restriction was not noted. In the AR, the appellant was described as independent with all DLA with dressing, laundry and basic housekeeping taking significantly longer due to dizziness and vision impairment.

In the new PR and new AR which provide the most recent opinion of the GP as to the ability of the appellant to perform her DLA, the appellant is described as being periodically restricted with personal self care, meal preparation, basic housework, daily shopping, mobility inside and outside the home, use of transportation and social functioning. However, the GP's comments describing the extent and duration of the periodic assistance required is limited to the appellant requiring assistance getting in and out of the tub due to muscle aches and pains which are worse on some days.

In the new AR, the appellant is described as requiring periodic assistance with a number of tasks including dressing, grooming, bathing and toileting, laundry and basic housekeeping, going to and from stores, food preparation and cooking as well as getting in and out of a vehicle, using public transit and using transit schedules and arranging transportation. For each of these tasks, the extent of periodic assistance is described by the GP as limited to needing help from friends and that her need for help increases with the passing of time. The appellant is assessed as requiring continuous assistance with carrying purchases home while shopping.

Further, the appellant is independent in all aspects of social functioning other than dealing appropriately with unexpected demands for which she requires periodic support and/or supervision. She also has good functioning within her immediate and extended social networks.

While the evidence of the prescribed professional, in this case the GP, demonstrates that the appellant requires periodic assistance with a number of tasks of DLA, the panel observes that section 2(2)(b)(i) of the

*EAPWDA* requires an applicant to demonstrate through the evidence of a prescribed professional that his or her impairment “directly and significantly restricts the person’s ability to perform DLA either continuously or periodically **for extended periods,**...” (emphasis added). As for finding work and/or working, the panel notes that employability is not a criterion in section 2(2) of the *EAPWDA* nor is it listed among the prescribed DLA in section 2 of the *EAPWDR*.

In the present case, while the appellant’s advocate argues that when considering restrictions on DLA only one or two of the categories of tasks be satisfied, the panel finds that the evidence must be viewed as a whole in light of the legislative requirement set out above. Given the lack of evidence from the GP as to the extent and duration of the periodic assistance required by the appellant in completing her DLA the panel finds that there is insufficient evidence to determine whether that assistance is required for extended periods and as such, the 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’s position is that that her impairments affect her DLA to the extent that assistance from others is necessary.

The ministry’s position in the reconsideration decision 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 under section 2 of the *EAPWDA* was reasonably supported by the evidence and a reasonable application of the applicable enactment in the circumstances of the appellant, and therefore confirms the decision.