APPEAL #

PART C – Decision under Appeal

The Ministry of Social Development and Social Innovation (the ministry) reconsideration decision dated 4 May 2015 determined that the appellant did not meet 3 of the 5 statutory requirements of section 2 of the Employment and Assistance for Persons with Disabilities Act (EAPWDA) for designation as a person with disabilities (PWD). The ministry found that the appellant met the age requirement and that her impairment was likely to continue for at least 2 years. However, the ministry was not satisfied that

- the appellant had a severe mental or physical impairment and
- the appellant's mental or physical impairment, in the opinion of a prescribed professional, directly and significantly restricted her daily living activities (DLA) either continuously or periodically for extended periods and
- as a result of those restrictions, in the opinion of a prescribed professional, the appellant required help 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

At the hearing the ministry requested that an observer be allowed to attend the hearing for training purposes and with the appellant's consent, the observer did attend the hearing.

The following evidence was before the ministry at the time of reconsideration:

- The appellant is a single person receiving Employment and Assistance benefits.
- A 3 page PWD Application – Applicant Information dated 1 February 2015, signed by the appellant and a witness indicating she has epilepsy that has ruined her life as she is in constant fear of having a seizure in a public place or a vehicle. She has insomnia and is more prone for having a seizure when she has not had enough sleep. As a result she is very anxious and depressed. Her DLA are constantly affected by her illness and she has memory dissociation and disconnects from herself. When she has a seizure, she loses consciousness for about 10 minutes and this compounds her memory loss and depression. She felt that it has affected her whole life growing up like an outcast and she never had a normal life and it will continue affecting her future as well, in particular her chances of having a child with this same condition. She also indicated that she felt her medications had made her condition worse. She constantly depends on others to support her and cannot have a home of her own, having to couch surf with others so that they can be there if she has a seizure.
- A 8 page Physician Report (PR) dated 6 February 2015 completed and signed by the appellant's physician, a general practitioner (GP) indicated the following:
  - Specific diagnosis: Primary generalized epilepsy with onset in 2005.
  - Health history: The appellant began having seizures at 9 years of age that became generalized at 15 and they have been more frequent in the previous 2 years, 1 to 2 seizures monthly. She was let go of 2 jobs because of seizures.
  - No medication or treatments interfere with the appellant's ability to perform daily activities.
  - The appellant does not require any prostheses or aids for her impairment.
  - The impairment was likely to continue for 2 years or more from that date and the GP explained that it was a chronic illness and that general compliance with medications may minimize the illness.
  - In terms of functional skills, the GP indicated that the appellant could walk 4+ blocks unaided, she could climb 5+ steps unaided, she was limited to lifting no more than 2 kg, she had no limitation to remain seated and had no difficulties with communication.
  - In terms of significant deficits with cognitive and emotional functions, the GP identified none.
  - In terms of DLA, the GP did not answer the question as to whether the impairment directly restricted the appellant's ability to perform DLA but he did mention that in all her DLA, there were periodic restrictions to the exception of social functioning where there was no restriction. He explained "periodic" as being restricted "during seizures and for a day after as she would be incapable of doing any [DLA]". He had no comment on the degree of restriction but in terms of assistance needed for her DLA, he indicated "during the day when a seizure occurs, she needs assistance from friend or family in all aspects of her [DLA]."
  - In terms of general additional comments, the GP indicated that the appellant was consulting with a new adult neurologist to determine changes to her medications and that EEGs confirmed the diagnosis.

  - The appellant had been his patient for 3 years and he had seen her 2 to 10 times during the previous 12 months.
- An 11 page Assessor Report (AR) dated 10 March 2015, completed and signed by the appellant's neurologist, a specialist in the field of treating epilepsy, indicated the following:
  - The appellant lived with family, friends or caregiver but provided no specific comment.
  - The appellant's "anxiety, not fully controlled – Grand Mal (GM) seizures".
  - The appellant's ability to communicate is good in all aspects of speaking, reading, writing and hearing.
  - In terms of mobility and physical ability, she was independent in all aspects.
  - In terms of cognitive and emotional functioning, her mental impairment impacted her daily functioning as follows:
    - major impact – all areas including consciousness (in case of seizure), emotion (i.e. seizure), impulse control (i.e. seizure), insight and judgment (in case of seizure), attention/concentration (in case of seizure or post seizure), executive, memory, motivation, motor activity, language, psychotic symptoms (anxiety), other neuropsychological problems and other emotional or mental problems.
    - No impact on bodily functions.
    - The assessor commented that the appellant has "primary generalized epilepsy. She has several grand mal seizures per month with post-ictal impairment for 1-2 days. She also has migraine headaches after seizure. She has anxiety due to above."
  - The appellant is independent in most of her DLA with a note that she is able to do them if and when she does not have seizures. The other DLA where the appellant needs assistance are as follows:
    - paying rent and bills where she needs periodic assistance from another person;
    - filling / refilling prescriptions where she needs continuous assistance from another person or unable with a note that the appellant's mother helps;
    - using public transit, using transit schedules and arranging transportation where she needs periodic assistance from another person with the comment that she is very anxious about possible seizures when in public as she had a seizure at a bus stop;
    - appropriate social decisions, able to develop and maintain relationships, able to deal appropriately with unexpected demands and able to secure assistance from others where she needs periodic support / supervision but there is no comment.
  - The appellant has marginal functioning in terms of immediate social network (with a comment that she has difficult interactions with 2 family members) and extended social network.
  - In terms of what support, supervision would be required which would help maintain the appellant in the community, the neurologist indicated "Family or friends help".
  - In terms of assistance provided by other people, the neurologist indicated family and friends.
  - No assistance provided through the use of assistive devices or assistance animals was required.
  - The neurologist commented that the appellant had primary generalized seizure disorder and that they were adjusting her medications to reduce seizure frequency. She had seizures in public, which makes her anxious and was not able to drive at the time.
  - The sources of information used by the neurologist were:
    - Office interview with appellant;

    - File/chart information;
    - Family: mother.
  - This was the first contact the neurologist had with the appellant and she had seen her only once.
- Two one-page reports from a paediatric neurologist as follows:
  - A report dated 22 August 2014 indicated that the appellant has difficulties remembering taking her medications twice daily and has taken upon herself to take a larger dose once a day, in the morning. The appellant has also been quite conscientious about maintaining her sleep hygiene and denied drug use for many months. At the time she was 2 months seizure free. She was booked to start a degree at a nearby college. The paediatric neurologist indicated that the appellant needed to be a minimum of 6 months seizure-free and compliant on medications before she would be eligible to drive.
  - A second report dated 28 October 2014 by the same paediatric neurologist indicated that the appellant's situation had not improved. She had a generalized tonic-clonic seizure on the first day at a new job and lost that job for that reason and when she got a new job, she was not even able to finish her first day at work because the employer found out that she had a tendency to seizures. The paediatric neurologist also reported multiple issues with conflict between the appellant and her parents and with taking her medications. The appellant was still taking her medications only once daily and occasionally forgot to take them. The paediatric neurologist wrote: "[the appellant] will need to come up with a way to remember her doses. It is clear that she is losing out because of her incomplete seizure control, having already lost 2 jobs. In addition, [her medications] functions as a mood stabilizer and the fact that she has cut down on her [medications] may contribute to her increasing mood difficulties."

In her Notice of Appeal dated 2 June 2015 and signed by the appellant she stated that she had 3 seizures during the previous 4 weeks. She stated she had a seizure in a public place 3 weeks before and she hurt herself and that no one was with her at that time.

At the hearing the ministry relied on the facts in the reconsideration decision.

The appellant's mother testified that the appellant started experiencing behaviour problems at an early age, as young as 3 years, in kindergarten and that the problems increased when she started going to school, problems that were compounded by the fact that the family moved several times within the country and abroad. She testified that the family did not get the needed support from the employer when the appellant was young and during her school years and that the appellant often suffered from abuse and bullying because of her condition. The appellant started having "petite seizures" at a young age and she often fell asleep in school or simply dropped things. These actions were interpreted as "disruptive". She started being referred to neurologists and put on medications that had significant side effects, i.e. nausea and stomach pains. At age 14 her seizures increased and were increasingly difficult to control and the neurologist had to change and adjust her medications. Around that time, the appellant suffered her first GM seizure and the teacher who was conversant with the symptoms of epilepsy was able to determine that the seizure had lasted 8 ½ minutes.

At age 17 the appellant started having GM seizures once per month and they increased to twice per month at age 18, increasing also her level of anxiety since she was terrified of having seizures in public places. During a seizure this year she fell and fractured 2 teeth and during another one, she had bruises on her arm and face and in May she had a seizure in a public place and was transferred to the hospital. Earlier this year, because of her age, the appellant had to transfer from a paediatric neurologist to an adult neurologist who she saw for the first time in March 2015. In May 2015, she had 2 GM seizures and 4 in June and she suffers from petite mal seizures every day. The appellant now takes three types of medications, 2 to try and control her seizures and the third an anti-depressant but she still suffers from significant side effects and her sleep patterns remains disturbed. The appellant saw the neurologist the week prior to the hearing but she was very disturbed by family problems and had a seizure after having taken a new medication. She is monitored by her neurologist since her medications still need monitoring and adjustment.

The appellant's mother also stated that she was terrified that the appellant would hurt herself when she had a seizure and that she was constantly there when she would take a bath because on one previous seizure she had fallen and struck her head and she was afraid she could have another seizure, fall and drown. She testified that the appellant constantly needed someone to be there in case she had a seizure and gave the example of the stove oven being found on and when she entered the kitchen, smoke was coming from the oven and if no one had been home the house could have burned down.

The appellant stated that her anxiety has increased because her seizures happen more often and she is afraid of hurting herself when she falls and when she awakens from a seizure she does not know where she is, who she is and who are the people on site even if they are family members. She finally testified that for each seizure she was incapacitated for 1 to 2 days following the day of the seizure and before she could resume doing her daily activities.

The panel determined that the additional oral evidence given by the mother further explains the appellant's medical condition, supports the comments and observations made by her GP and the neurologist (assessor) contained in the PWD application. The panel finds this information is in support of the information and record that was before the ministry at the time the reconsideration decision was made and therefore is admissible as evidence under Section 22(4) of the Employment and Assistance Act.

PART F – Reasons for Panel Decision

The issue in this appeal is whether the ministry's decision to deny the appellant designation as a PWD was reasonably supported by the evidence or was a reasonable application of the applicable enactment in the circumstances of the appellant. In particular, was the ministry reasonable in determining that the appellant does not have a severe physical or mental impairment, and that in the opinion of a prescribed professional the appellant's impairments do not directly and significantly restrict her from performing DLA either continuously or periodically for extended periods, and that as a result of those restrictions the appellant does not require help to perform DLA.

The criteria for being designated as a person with disabilities are set out in s. 2 of the EAPWDA and s. 2 of the EAPWDR. Section 2 of the EAPWDA states:

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;
"health professional" repealed
"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 of the EAPWDR provides further clarification:
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.

(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.

The ministry acknowledged that the appellant meets 2 of the legislated criteria for PWD designation in that she is at least 18 years of age and that her impairment is likely to continue for at least 2 years.

Severity of impairment:

The legislation clearly provides that the determination of severity of impairment is at the discretion of the minister, taking into account all of the evidence including that of the appellant. However, the legislation is also clear that the fundamental basis for the analysis is the evidence from a prescribed professional respecting the nature of the impairment and its impact on daily functioning.

A diagnosis of a serious medical condition or conditions does not in itself determine PWD eligibility or establish a severe impairment. While the legislation does not define "impairment", in the PWD application "impairment" is defined as a "loss or abnormality of psychological, anatomical or physiological structure or functioning causing a restriction in the ability to function independently, effectively, appropriately or for a reasonable duration." While this is not a legislative definition, and is therefore not binding on the panel, in the panel's opinion, it reflects the legislative intent and provides an appropriate analytical framework for the assessor in assessing the degree of impairment resulting from a medical condition.

As well, the appellant indicated that she could not secure employment because of her medical condition. The panel notes that employment is not a criterion for a PWD designation and does not have any bearing on determining the severity of the impairment and is not part of DLA.

Severe physical impairment:

The ministry argued that the appellant could manage independently all of her physical functions and that she did not routinely need any assisting devices or equipment to help compensate for her impairment, there was not enough evidence to confirm a severe physical impairment.

The appellant argued that her medical condition was such that she was physically disabled when she had a seizure.

Panel decision:

The panel notes that the diagnosis of primary generalized epilepsy is a neurological disease and the secondary impairment noted by the neurologist can be categorized as a mental disorder; the medical practitioners do not mention any specific physical illness but there is evidence that when the appellant is debilitated by her seizures she does lose her physical abilities for a short period of time. Shortly after her seizures the evidence shows that she can walk, stand, climb stairs and her physical abilities are restored but she cannot perform any task that include cognitive and emotional functioning, which are in the realm of a mental impairment. Thus, the panel finds that the ministry's decision that determined there was not enough information from the PR and the AR to confirm that she has a severe physical impairment was reasonable.

Severe mental impairment:

The ministry stated that there were inconsistencies between the PR and the AR in terms of the impact of her impairments on her cognitive and emotional functioning. The GP who had known her for 3 years reported no significant deficit while the neurologist who had met her only once indicated major impacts to all except bodily functions in the area of cognitive and emotional functioning and that the impact is episodic in nature. Thus, the ministry found that "there was not enough collaborative information from [the GP] and [the neurologist] to confirm that [the appellant has] a severe mental impairment."

The appellant stated that she had a long history of mental impairment, going back to a young age, which has increased with the years and has impacted her life in a significant manner. She argued she suffers from anxiety at the prospect of having a seizure and the anxiety heightens or gets worse if it would happen in a public place. The appellant argued her seizures have increased and now, in addition to the daily "silent" seizures she has 3 or 4 GM seizures a month. The appellant argues she has lost any prospect of employment and someone must constantly be with her for fear that she has a seizure and will hurt herself.

Panel decision:

While the appellant presented historical evidence of her condition, the panel cannot place much weight on that evidence because it is the evidence of the impairment at the time of reconsideration that must form the basis for this appeal. Likewise, the panel placed less weight on the information provided by the paediatric neurologist because her letters date back to August and October of 2014 and the evidence shows that the appellant's condition has changed since that time.

The paediatric neurologist indicated that in April 2013 the appellant's seizures were well controlled and she was tolerating the medications; however, the most recent evidence confirms the current deterioration of the appellant's condition and is corroborated in many aspects by the AR and by the

PR that indicate “seizures have been more frequent in past 2 years”.

The evidence is that the GP did not indicate in his PR that the appellant had any significant deficits with cognitive and emotional functions – however, in explaining if DLA were restricted, he stated all DLA were restricted periodically and commented “During seizure and for a day after …” and in commenting under “What assistance does your patient need”, he indicated that when the appellant had a seizure, she was incapable of any DLA that day and the day after and that as a result she needed the assistance of friends or family. The neurologist identified a major impact on 13 out of 14 areas of cognitive and emotional functioning when the appellant had a seizure and indicated that she had “several” GM seizures per month with postictal impairments for 1-2 days following the seizure. The postictal state is defined as the altered state of consciousness after an epileptic seizure. It usually lasts between 5 and 30 minutes, but sometimes longer in the case of larger or more severe seizures and is characterized by drowsiness, confusion, nausea, hypertension, headache or migraine and other disorienting symptoms. Additionally, emergence from this period is often accompanied by amnesia or other memory defects. It is during the period that the brain recovers from the trauma of the seizure.

The AR is corroborated by the testimony of the appellant and her mother that when she has a seizure she goes into a state of unconsciousness; that the seizures happen without warning; that she does not know how long they last but when she regains consciousness her memory is impacted - can’t remember how she got to where she is or how long she had been there. The evidence is that after the epileptic episode it will take another 1 or 2 days for her to recover; that during that time she suffers from migraines, nausea and stomach cramps.

The evidence is that the neurologist is the specialist who deals with the appellant’s epilepsy, sleep disturbances, anxiety and controls the appellant’s medication. The panel gives added weight to the opinion of the neurologist because she is a medical specialist in her field and treats people with this disease.

In its original decision the ministry stated “[It] is unclear how often the [appellant] has a seizure as the physician has stated on page ten of the application ‘having one to two seizure monthly’ making it difficult to understand the level of impairment the applicant has with her seizure, therefore making it difficult to determine this as severe”. The ministry reiterated in its reconsideration decision: “[The appellant’s] physician indicates that you have 1-2 seizures a month while your neurologist indicates that you have several grand mal seizures per month.” The evidence does not support the ministry’s rationale as while the GP has stated the appellant has 1 to 2 seizures a month, the neurologist stated that she has *several* GM seizures a month and the appellant stated she has silent seizures daily and has 3 to 4 GM seizures a month.

The ministry argues they do not have enough collaborative information from the GP and the neurologist to confirm that the appellant has a severe mental impairment. The ministry relies on the fact that since the opinion of the GP and the neurologist differ (cognitive and emotional functioning) there is not enough collaborative information to determine the appellant has a severe mental impairment.

The evidence is that in the PWD application under *Mental or Physical Impairment* the neurologist indicates the appellant’s disease (mental impairment) has a major impact on her cognitive and emotional functioning in 13 of 14 areas to be assessed with (the only exception being in the area of bodily function e.g. eating problems, toileting problems, poor hygiene, sleep disturbance). The evidence is both doctor’s state the appellant’s impairment only restricts her ability to perform DLA when she has an epileptic seizure and that her seizures are episodic in nature. The GP states she has 1 to 2 per month, the neurologist states several GM seizures a month and the appellant states she has “silent” seizures daily and 3 to 4 GM seizures a month. Both the GP and the neurologist state that during her seizure and for at least 1 to 2 days after she is incapable of any DLA and suffers with postictal impairment.

In considering the evidence, the panel gives significant weight to the opinion of the neurologist who is considered an expert in the medical field for treating epilepsy and is adjusting the appellant’s medications to reduce the seizure frequency.

Additionally, the AR confirms the appellant’s constant anxiety at the prospect of having a seizure, particularly in public places, but the ministry’s decision referred to the AR where the neurologist mentions anxiety but summarily proceeded stating that it was “unclear as to what [the appellant’s] impairment has on [her] cognitive and emotional functioning as [her] physician of 3 years indicates that [she does] not have any significant deficits while [the appellant’s] neurologist who has met [her] once indicates major impacts in almost all of [her] cognitive and emotional functioning”. The panel finds this argument unreasonable for three reasons:

First, the appellant had to ask her actual neurologist to complete the AR because she had recently reached the age of having to consult an adult neurologist and did not have the choice of continuing with the paediatric neurologist who had seen her for many years and who knew her situation much better.

Second, as stated above, the neurologist is a specialist in the field of epilepsy and while she has not known and treated the appellant for a long period of time, she knew her medical history in order to prepare the AR and to provide the medical services the appellant needs, in particular monitoring her medical condition and adjusting her medications. It is not reasonable to give less credit to the neurologist only because she had known the appellant for a shorter time than the GP who is not a specialist in the field of treating epilepsy and is not, according to the evidence, responsible for adjusting her medications.

Third, while the ministry correctly mentioned that the GP did not report any cognitive and emotional impairment, the evidence shows that when the appellant has a seizure her cognitive and emotional functions are significantly impacted to the point she cannot do any of the DLA – and the GP confirmed that as well in his PR.

Thus, the panel finds it was unreasonable for the ministry to select one question of the PR to determine the lack of collaborative evidence to support a severe mental impairment while disregarding the broader context in which that piece of information was provided and the evidence as a whole from both medical practitioners and from the appellant.

The panel finds there is sufficient evidence (collaborative information) from the PR and the AR regarding the severity of the appellant's mental impairment and finds that the ministry's decision to determine the appellant does not have a severe mental impairment was not reasonable.

Daily living activities:

The ministry argued that there was not enough collaborative evidence between the GP and the neurologist to establish that the appellant's impairments directly and significantly restricted DLA continuously or periodically for extended periods.

The appellant argued that when she had a seizure she was unable to do any DLA for up to 2 days after; that she was exhausted, depressed, suffered from migraine headaches, nausea and upset stomach and often could not even get out of bed.

Panel decision:

In terms of DLA, the panel notes the PR and the AR are consistent and corroborate each other. Both reports state that when the appellant has a seizure she is incapable of performing any DLA for a day or two. The ministry relied exclusively on the PR that stated those GM seizures happened once or twice per month and did not address the evidence provided by the neurologist that the appellant had *several* GM seizures per month – as mentioned above, *several* means more than two. The panel must note however that the ministry at reconsideration did not have the benefit of the appellant's Notice of Appeal or the evidence at the hearing that the number of seizures had increased during the previous months and the panel finds this evidence is corroborated by the neurologist's report to the effect that those GM seizures already occurred several times a month at the time she completed the AR.

While the AR reported the appellant was independent for the vast majority of her DLA, the panel notes that the report adds that she is independent *only when she does not have a seizure*. Not only are all DLA impacted when the appellant has a seizure and for 1 to 2 days following, she also needs continuous assistance every time when using public transit (as indicated by the AR, she's not authorized to drive) or being driven to public places because of her fear of having a seizure. This is a direct result of her epilepsy and her fear of having a seizure when she is at high risk of hurting herself and needs help from others. The panel finds that those restrictions meet the criterion of *significant restrictions* of s. 2(2)(b)(i) of the EAPWDA since according to the medical evidence (corroborated by the appellant's own evidence) in those circumstances, the appellant is completely and entirely unable to perform any DLA.

The evidence also shows the restrictions are periodic in nature, i.e. they happen up to 3 - 4 times per month for up to 3 days each time. The ministry acknowledges that the appellant is restricted in her ability to manage her DLA but appears to only have considered the GP's opinion (that she has 1 to 2 seizures a month and is impacted for one day after) in determining whether the appellant's impairments directly and significantly restrict her DLA continuously or periodically for extended periods. The neurologist states that she has several seizures a month and has postictal impairment for 1 to 2 days after each seizure. This is difficult as each seizure is different but it is fair to say that with 3 or 4 seizures a month, the appellant's ability to perform DLA would be impaired for 6 to 12 days per month. There is no specific definition of "extended period" in the legislation and a condition that would happen a few times a year is less likely to be significant but when it occurs several times a month, for many days, it becomes significant and for extended periods. Consequently, the panel finds those restrictions are for extended periods.

The panel accepts the appellant's argument, which is supported by her GP and her neurologist, that her epilepsy impairs her directly and significantly for extended periods in performing her DLA. The panel finds the ministry's decision that there is not enough collaborative information that her impairments directly and significantly restrict her DLA continuously or periodically for extended periods was not reasonable.

As a result of those restrictions, help required to perform DLA:

The ministry argued that since DLA are not significantly restricted, it cannot be determined that significant help is required from other persons and that no assistive device is required.

The appellant argued that she needed help from friends and family members to perform her DLA when she is incapacitated as a result of a seizure and when she wants to go to a public place.

Panel decision:

The evidence from both medical practitioners and from the appellant confirms that the appellant periodically needs friends and family's help when she has a seizure since she cannot perform any DLA in those circumstances. The evidence also shows she needs help from another person to use public transit and go to public places or to get home if she has a seizure when she is out in the community. Given the evidence presented, the panel concludes that the ministry's decision determining that the appellant did not establish that she needed the significant help of another person to perform her DLA periodically was unreasonable.

Conclusion:

Based on the above analysis and evidence, the panel comes to the conclusion that:

- The ministry reasonably determined the appellant does not have a severe physical impairment;
- The ministry unreasonably determined that the appellant did not have a severe mental impairment;
- The ministry unreasonably determined that a prescribed professional did not establish that an impairment directly and significantly restricted her ability to perform DLA either continuously or periodically for extended periods and that, as a result of those restrictions she requires help to perform those activities under s. 2(2) of the EAPWDA.

In considering all the evidence and the relevant legislation, the panel finds the ministry's decision finding the appellant ineligible for PWD designation was not reasonably supported by the evidence and was not a reasonable application of the legislation in the circumstances of the appellant and rescinds the decision. Therefore, the ministry's decision is overturned in favour of the appellant.