

PART C – Decision under Appeal

The decision under appeal is the Ministry of Social Development and Social Innovation (the “ministry”) reconsideration decision of June 25, 2015, which found that the appellant did not meet three of five 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 in the opinion of a medical practitioner the appellant’s impairment is likely to continue for at least two years. However, the ministry was not satisfied that:

- the evidence establishes that the appellant has a severe physical or mental impairment;
- the appellant’s daily living activities (“DLA”) are, in the opinion of a prescribed professional, directly and significantly restricted either continuously or periodically for extended periods; and that
- as a result of those restrictions, the appellant requires the significant help or supervision of another person, an assistive device, or the services of an assistance animal.

PART D – Relevant Legislation

EAPWDA, section 2

Employment and Assistance for Persons with Disabilities Regulation (“EAPWDR”), section 2

PART E – Summary of Facts

The information before the ministry at the time of reconsideration included the following:

- The appellant's PWD application form consisting of the appellant's self-report form dated December 18, 2014 ("SR"), a physician's report ("PR") completed by the appellant's general practitioner (the "physician") on December 18, 2014, and an assessor's report ("AR") completed by a chiropractor on December 30, 2014
- The appellant's Request for Reconsideration dated May 29, 2015 requesting a ten day extension as she was waiting for additional information from her chiropractor
- Note from the appellant, undated, regarding her functional limitations (the "Note")
- Email from the appellant's husband dated May 31, 2015 regarding his observations of the appellant's disabilities

Diagnoses

- In the PR the physician (who had known the appellant for 18 months and seen her 11 or more times in the past 12 months) reports that the appellant has been diagnosed with fibromyalgia (onset 1995), chronic fatigue syndrome (onset 1990), arthritis (onset 1979), traumatic brain injury (onset 2007) and asthma (onset 1970) but that these diagnoses were made by other physicians and he is unable to confirm them.
- In the AR, the chiropractor indicates that he has known the appellant since March 2008 as she is a patient with his office and that he saw the appellant once in the last year. The chiropractor reports that the appellant's physical or mental impairments that impact her ability to manage DLA are: degenerative arthritis disc disease in the cervical, thoracic and lumbar spine. The chiropractor also reports that the patient states that she has aphasia and amnesia. In the Additional Information section of the AR the chiropractor states that the appellant has degenerative disc disease accompanied by severe arthritic changes in her cervical, thoracic and lumbar spine.

Physical Impairment

- In the Health History portion of the PR the physician commented that the appellant has fibromyalgia with chronic pain in her entire body on resting or activity, with loss of stamina and power. The physician comments that the appellant has arthritis with chronic pain in all major joints, moderate severity, affecting her lower back as well. The physician also comments that the appellant has traumatic brain injury with subjective reports of aphasia and amnesia.
- In terms of physical functioning the physician reported in the PR that the appellant can walk 2 to 4 blocks unaided, can climb 5+ steps unaided, can lift 5 to 15 pounds and that her ability to remain seated was unknown.
- In the AR the chiropractor reported that the appellant independently manages walking indoors and standing, requires periodic assistance with walking outdoors and lifting and continuous assistance with climbing stairs and carrying and holding.

In the SR the appellant reported that she suffers from fibromyalgia, chronic fatigue syndrome, arthritis, and degenerative disc disease. She also states that she has moderately severe hearing loss from an injury in 1978 for which she has hearing aids. The appellant reports that she has a great

deal of pain that interferes with most of her DLA. She also reports that she suffers from irritable bowel syndrome.

In the Note the appellant states that she wears knee supports otherwise she would not be able to walk more than 1 block, is about to start physiotherapy and if that does not result in improvement she may require a mobility scooter. She reports that she is not safe to live alone in a place not designed for a disabled person but she cannot qualify for housing assistance unless she obtains PWD designation.

The appellant's husband's email indicates that he met the appellant in November 2010 and has had ample opportunity to observe her daily struggles and that she has debilitating pain from many different sources (fibromyalgia, arthritis, irritable bowel syndrome, tendonitis, degenerative disc disease) which are major factors in the limiting of her ability to perform physical tasks on a daily basis. He states that she does not have all of the debilitating symptoms every day but she does have an amalgam of any number of them on a daily basis and not a day goes by where she is not negatively impacted by one or more of them. He states that she suffers from chronic fatigue syndrome and has constant pain that saps her strength and stamina.

Mental Impairment

- In the PR the physician reports that the appellant suffered a traumatic brain injury in 2007 although other physicians made the diagnoses so he is unable to confirm them. He reports that the appellant has subjective reports of aphasia and amnesia.
- In the PR the physician did not complete either box to indicate whether the appellant has difficulties with communication other than a lack of fluency in English but then checked the box indicating that cognitive difficulties are the cause of the communication difficulties. The physician comments that he has not experienced this but the appellant reports that she sometimes has aphasia and amnesia symptoms.
- In the PR the physician indicated that the appellant has significant deficits in three of twelve categories of cognitive and emotional function being executive, memory, and attention. The physician comments that these symptoms are "...reported by patient once again, with no objective findings".
- In the AR the chiropractor indicates that the appellant's ability to communicate with speaking is poor or maybe satisfactory at times, and that her hearing is satisfactory noting that she has hearing aids. The chiropractor did not provide any information regarding the appellant's ability to communicate with reading or writing.
- For question 4 of section B, Mental or Physical Impairment, the chiropractor indicates that the appellant's mental impairment has major impact to memory, moderate impact to bodily functions, attention/concentration, executive, language and other neuropsychological symptoms. The chiropractor indicates that there is minimal impact to consciousness and motor activity and no impact on emotion, impulse control, insight and judgment, motivation, psychotic symptoms, or other emotional or mental problems.

In the SR the appellant reports that she has serious short-term memory problems from a motor vehicle accident in 2007. In the Note the appellant states that she has trouble paying the bills and budgeting if her husband does not remind her.

In his email the appellant's husband states that the appellant has a number of cognitive limitations that impact her ability to perform her daily activities including paying bills, making appointments, failure to remember prior commitments and memory issues in general like struggling for words, names and often gets frustrated by her inability to recall something which reduces her to tears. He also states that she has a problem proactively communicating her health issues with others such as her doctor, which concerns him as it is the assessment of the doctors that is at least in part the basis for any determination regarding her PWD application.

DLA

- In the PR the physician indicated that the appellant has not been prescribed medication or treatment that interferes with her ability to perform DLA.
- In the PR the physician reported that the appellant is directly restricted with 7 of the 9 DLA of *personal self care, meal preparation, basic housework, daily shopping, mobility inside the home, mobility outside the home, and use of transportation*. He reports that she is not restricted with management of medications or management of finances.
- In describing the degree of restriction, the physician indicates that the appellant has continuous restrictions with basic housework, daily shopping, mobility inside and outside the home and use of transportation and periodic restrictions with personal self care, meal preparation and management of medications. With respect to periodic restrictions, the physician explains that the appellant reports pain and fatigue leading to periodic episodes. He further comments that the restrictions are severe some days but better on others as is the nature of her disease.
- In the AR the chiropractor indicated that the appellant independently manages grooming, toileting, reading prices and labels, making appropriate choices, paying for purchases, meal planning, safe storage of food, budgeting, paying rent and bills, filling/refilling prescriptions, taking medications as directed, safe handling and storage of medications and using transit schedules. The chiropractor reports that the appellant requires periodic assistance with dressing, bathing, feeding self, regulating diet, transfers (in/out of bed), transfers (on/off of chair), laundry, basic housekeeping, going to and from stores, food preparation, cooking, banking, getting in and out of a vehicle and using public transit. He also indicates that she requires continuous assistance with carrying purchases home. The chiropractor does not provide any additional comments.
- In the PR the physician indicates that the appellant's social functioning is restricted periodically, explaining that the appellant reports amnesia. In the AR the chiropractor indicates that the appellant is independent with appropriate social decisions and securing assistance from others but requires periodic support/supervision with developing and maintaining relationships, interacting appropriately with others, and dealing appropriately with unexpected demands. The chiropractor also indicates that the appellant has marginal functioning with respect to her immediate and extended social networks.

In the SR the appellant stated that her pain interferes with most of her DLA as she has difficulty dressing herself, feeding herself, and turning on the taps or shower is difficult and sometimes impossible. She states that some days she cannot open the refrigerator door and that she has to leave the bedroom and bathroom doors open in case she cannot open them. She states that she had to replace all of her stoneware dishes with plastic ones and had to buy lighter gauge steel pots and pans, which are lighter for her to lift and use. The appellant states that she lives alone and because of her difficulties she will sometimes miss or have to reschedule appointments. The

appellant states that cooking, cleaning, and doing laundry are very difficult for her to do without assistance due to pain and fatigue. She further states that travel by bus or handidart are difficulty because of her fibromyalgia.

In the appellant's Note she states that she has trouble paying bills and budgeting if her husband does not remind her, she cannot walk to buy groceries so she needs the bus pass that a PWD designation would provide.

In his email the appellant's husband indicates that he has known the appellant for five years and has observed her physical and cognitive impairments that impact her DLA on a daily basis, including her ability to walk, lift items, open items and doors, dress herself, groom herself, pay bills make appointments, remember prior commitments and that she has memory issues with struggling to remember words and names. He states that her level of pain effects her ability to stand up, walk, open doors, turn on a faucet, sleep, walk up stairs, lift items, click a mouse, dress herself, feed herself, ride in a vehicle, do the dishes, laundry, check the mail, clean the apartment, or otherwise leave the apartment to attend to shopping or take care of other outside chores.

Help

- In the PR the physician reports that the appellant does not require any prosthesis or aids for her impairment. With respect to DLA the physician reports that the appellant gets assistance from her spouse with all activities.
- In the AR the chiropractor indicates that the appellant requires assistance from family and uses a knee brace. The appellant does not have an assistance animal.

In the Note the appellant states that it is not safe for her to live alone.

In his email, the appellant's husband states that the primary thing he helps the appellant with is getting up as it is often a problem for her and there have been times when if he had not been there to help she may have fallen and potentially hurt herself. He also states that she often needs him to help her with things such as opening a jar, a door, the fridge, turning on a faucet, making her something to eat, helping her dress or undress, helping her remember important commitments, help up or down stairs, helping her move a cramped leg or arm that makes it so she cannot get up.

Additional information provided

In her Notice of Appeal the appellant states that her memory problems qualify as a severe mental impairment and that her disability affects her ability to perform DLA.

At the hearing the appellant provided oral evidence indicating that her biggest problem is her physical pain, that her pain and limitations are variable and that she spends most of her days seated. The appellant stated that she does not think that she was clear enough in describing her symptom to the physician and that the physician did not report her limitations accurately. The appellant stated that the physician erred in the PR in that he says that she has not been prescribed any medication that interferes with her ability to perform DLA because she takes two medications, one of which negatively effects her mood and energy and ability to think clearly. She states that he also erred in stating that she does not require any aids for her impairment because she wears a knee brace every day or she cannot leave her home. She also states that the PR is incorrect with respect to her lifting limitations

and it should say that she is limited to lifting items that weigh less than 5 lbs. The appellant stated that although she is married she has lived alone since October and her husband helps when he is there.

The appellant stated that the physician who completed the PR is fairly new and has sent her to a rheumatologist but that she only saw the specialist once.

The appellant's husband provided information indicating that since October 2014 he has been out of the country three weeks each month but returns home to stay with the appellant one week each month and helps her as much as he can while he is there with all DLA. The appellant's husband stated that the appellant has difficulty with physical tasks but also has cognitive impairment and he has to remind her about paying bills, budgeting and appointments. He stated that the appellant is not good about communicating her difficulties to her doctor, completing forms, remembering names, or remembering issues. He stated that the appellant sees her physician on a good day but on hard days she cannot leave her home so she reschedules the appointment. He states that there is a discrepancy between the PR and what the appellant can actually do at home and in her life.

The appellant and her husband both stated that they recognize that the PR and AR have errors and that they likely made some mistakes in not providing all the information needed to the appellant's physician. The appellant and her husband stated that the appellant is now seeing a new physician and they are looking to complete new PWD forms.

Admissibility of New Information

The ministry did not object to the admissibility of the oral testimony.

The panel has admitted the appellant and her husband's oral testimony and information in her Notice of Appeal as it is evidence in support of information and records that were before the ministry at the time of reconsideration, in accordance with section 22(4) of the *Employment and Assistance Act*. In particular, the new information substantiates the information at reconsideration respecting the appellant's impairments, ability to perform DLA, and help needed.

PART F – Reasons for Panel Decision

The issue on 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 relevant legislation is as follows:

EAPWDA:

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.

EAPWDR section 2(1):

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.

Severe Physical Impairment

The appellant's position is that as she has fibromyalgia, chronic fatigue syndrome, arthritis, degenerative disc disease, memory loss, amnesia and requires knee supports, and has been on PPMB from 1993 to 2011 with her health continuing to get worse, so it is fairly obvious that her disability is most likely to be permanent. The appellant's position is that the information provided by the physician, chiropractor, herself and her husband confirm that her physical impairment is severe.

The appellant stated that the physician erred in the PR in that he says that she has not been prescribed any medication that interferes with her ability to perform DLA because she takes two medications, one of which negatively effects her mood and energy and ability to think clearly. She states that he also erred in stating that she does not require any aids for her impairment because she wears a knee brace every day or she cannot leave her home. She also states that the PR is incorrect with respect to her lifting limitations and it should say that she is limited to less than 5 lbs.

The ministry's position, as set out in its reconsideration decision, is that the information provided demonstrates that the appellant experiences limitations to her physical functioning due to fibromyalgia, arthritis and chronic fatigue syndrome but that the assessment indicates a moderate rather than a severe physical impairment.

Panel Decision:

A diagnosis of a serious medical condition does not in itself determine PWD eligibility or establish a severe impairment. An "impairment" is a medical condition that results in restrictions to a person's ability to function independently or effectively.

To assess the severity of an impairment one must consider the nature of the impairment and the extent of its impact on daily functioning as evidenced by functional skill limitations and the degree to which performing DLA is restricted. The legislation makes it clear that the determination of severity is at the discretion of the minister, taking into account all of the evidence. However, the legislation is also clear that the fundamental basis for the analysis is the evidence from a prescribed professional – in this case, the appellant's physician.

The physician indicates that the appellant's restriction is moderate and varies to severe as is the nature of her condition. The panel finds that the evidence establishes that the appellant's physical functional skills as described by the physician in the PR indicate only moderate limitations as he notes that she can walk 2 to 4 blocks unaided, can climb 5+ stairs unaided, can lift 5 to 15 pounds and her ability to remain seated is unknown. In addition, the AR indicates that the appellant is independent with walking indoors and standing, and requires periodic assistance with walking outdoors and lifting. There are inconsistencies between the PR and AR in that the physician states that the appellant can climb 5+ stairs unaided but the chiropractor indicates that the appellant requires continuous assistance with this task so it is very difficult to reconcile these differences. The information indicates that the appellant's symptoms are variable and she confirms that she wears a knee brace in order to walk but that she is able to walk the reported distances but not every day.

The panel has concluded that while the appellant's functioning is impacted by her physical impairments, the ministry reasonably determined that the evidence falls short of establishing that she has a severe physical impairment as contemplated by the legislation.

Severe Mental Impairment

The appellant's position is that her memory problems are a severe impairment and that she has difficulty with memory, focus, concentrating, remembering appointments and communicating her difficulties. The appellant's position is that the medications she takes for her physical conditions make her tired, unable to focus and negatively impact her mood. The appellant stated that her biggest problems are her physical impairments but the appellant's husband's information is that the appellant's mental impairments are also significant.

The ministry's position is that there is not enough information to establish a severe mental impairment. In particular the ministry states that although the physician notes that the appellant encounters significant deficits with her cognitive and emotional function in the areas of executive, memory and attention, he comments that these are subjective reports from the appellant with no objective findings. The ministry also notes that the physician states that although the appellant reports aphasia and anemia sometimes, he (the physician) has not experienced that.

The ministry states that although the AR indicates that the appellant's cognitive and emotional functioning impact her daily functioning with one major impact to memory, five moderate impacts in the areas of bodily functions, attention/concentration, executive, language and other neuropsychological problems, there is minimal impact to consciousness and motor activity and no impacts in the remaining areas. The ministry also notes that the assessor indicates that the appellant's level of ability with speaking is poor or maybe satisfactory at times, hearing is satisfactory (hearing aids) but does not indicate her level of ability in reading and writing.

The ministry also notes that while the assessor notes that the appellant requires periodic support/supervision in her ability to develop and maintain relationships, interacting appropriately with others and dealing appropriately with unexpected demands, he does not include a description of the degree and duration of support/supervision required.

Panel Decision:

The panel notes that although the physician diagnosis traumatic brain injury with date of onset being 2007, he qualifies that diagnosis to say that it was made by another physician and he is unable to confirm it. While the ministry refers to the physician's comments as indicating that the appellant reports aphasia and anemia, the panel find that is an error as the physician indicates that the appellant reports aphasia and amnesia but that he has not experienced this. The physician indicates that the appellant has significant deficits with cognitive and emotional function in the areas of executive, memory and attention but qualifies this by saying that these are subjective reports with no objective findings. Given the physician's qualifying statements and no explanation of why he could not obtain copies of the prior physicians' records confirming the diagnosis of traumatic brain injury the panel finds that the information provided does not present a clear picture of the appellant's diagnosis or functional limitations.

Although the assessor indicates that the appellant's ability to communicate with speaking is poor or maybe satisfactory at times, he notes that her hearing is satisfactory (with hearing aids) and does not comment on her ability to communicate with reading and writing. He states that the mental impairment impacting her ability to manage DLA is that she states that she has aphasia and amnesia but for cognitive and emotional functioning the assessor indicates that there is only a major impact to one area being memory and moderate impact to 5 areas, being bodily functions, attention/concentration, executive, language, and other neuropsychological problems. The assessor reports that there is no impact to emotion, impulse control, insight and judgment, motivation, psychotic symptoms or other emotional or mental problems, and minimal impact to consciousness and motor activity.

At the hearing the appellant stated that her physical problems are more severe than her mental impairment; although she does report difficulties with memory, focus and concentration and her husband states that her cognitive difficulties are more severe than she communicates. However, as the fundamental basis for the analysis is the evidence from a prescribed professional, the panel finds that the ministry was reasonable in determining that the information provided in the PR and AR is not sufficient to demonstrate that the appellant has a severe mental impairment.

Significant Restrictions to DLA

The appellant's position is that the evidence establishes that she has significant restrictions to DLA, particularly mobility (standing, climbing stairs, walking) and limitations with lifting and carrying. The appellant's position is that her impairments cause her a lot of physical pain and make all DLA hard. She states that it is unsafe to live alone and she needs help with personal tasks, cooking, opening jars, getting up and down, getting groceries, housework and that sometimes turning on the taps can be impossible.

The ministry's position is that while it acknowledges that the appellant has certain limitations resulting from fibromyalgia, chronic fatigue and arthritis, the frequency and duration of these periods are not described in order to determine if they represent a significant restriction to the appellant's overall level of functioning. The ministry finds that the assessments are indicative of a moderate level of restriction and that they do not establish that a severe impairment significantly restricts DLA continuously or periodically for extended periods.

Panel Decision:

The legislation – s. 2(2)(b)(i) of the EAPWDA – requires that in the opinion of a prescribed professional, a severe mental or physical impairment directly and significantly restricts the appellant's ability to perform DLA either continuously or periodically for extended periods. The term "directly" means that there must be a causal link between the severe impairment and the restriction. The direct restriction must also be significant. Finally, there is a component related to time or duration. The direct and significant restriction may be either continuous or periodic. If it is periodic it must be for extended periods. Inherently, any analysis of periodicity must also include consideration of the frequency. All other things being equal, a restriction that only arises once a year is less likely to be significant than one, which occurs several times a week. Accordingly, in circumstances where the evidence indicates that a restriction arises periodically, it is appropriate for the ministry to require evidence of the duration and frequency of the restriction in order to be "satisfied" that this legislative criterion is met.

The panel notes that in the PR, the physician indicated that the appellant has not been prescribed medication or treatment that interferes with her ability to perform DLA but the appellant states that she takes two medications, one of which makes her tired, negatively impacts her mood and ability to remember tasks, focus and concentrate.

In the PR the physician reported that the appellant is directly restricted with 7 of the 9 tasks of DLA of *personal self care, meal preparation, basic housework, daily shopping, mobility inside the home, mobility outside the home, and use of transportation*. He reports that she is not restricted with management of medications or management of finances. In describing the degree of restriction, the physician indicates that the appellant has continuous restrictions with basic housework, daily shopping, mobility inside and outside the home and use of transportation and periodic restrictions with personal self care, meal preparation and management of medications. With respect to periodic restrictions, the physician explains that the appellant reports pain and fatigue leading to periodic episodes. He further comments that the restrictions are severe some days but better on others as is the nature of her disease. It is hard to get a clear picture of the appellant's restrictions as the information provided from the physician as the section regarding DLA notes some significant restrictions but this is not consistent with the relatively good physical functional skills reported in section D of the PR, in which the physician notes that the appellant can walk 2 to 4 blocks unaided, climb 5+ steps unaided and lift 5 to 15 pounds.

In the AR the chiropractor indicated that the appellant independently manages grooming, toileting, reading prices and labels, making appropriate choices, paying for purchases, meal planning, safe storage of food, budgeting, paying rent and bills, filling/refilling prescriptions, taking medications as directed, safe handling and storage of medications and using transit schedules. The chiropractor

reports that the appellant requires periodic assistance with dressing, bathing, feeding self, regulating diet, transfers (in/out of bed), transfers (on/off of chair), laundry, basic housekeeping, going to and from stores, food preparation, cooking, banking, getting in and out of a vehicle and using public transit. He also indicates that she requires continuous assistance with carrying purchases home.

However, neither the physician nor chiropractor provides any further information regarding the frequency or duration of support or supervision provided.

In the panel's view, the ministry reasonably determined that the information provided by the physician in the PR and the chiropractor in the AR does not provide enough information to demonstrate that the appellant satisfies the legislative criteria, namely that she has a severe impairment which directly and significantly restricts the appellant's ability to perform DLA either continuously or periodically for extended periods.

Help with DLA

The appellant's position is that she requires significant assistance with DLA and is unsafe to live alone. She wears a knee brace, requires medications, and needs a bus pass. Although she gets some assistance from her husband, he only lives with her one week each month.

The ministry's position is that there is not enough information to establish that DLA are significantly restricted so it cannot be determined that significant help is required from other people. The ministry also states that the appellant does not require the services of an assistance animal.

Panel Decision

A finding that a severe impairment directly and significantly restricts a person's ability to manage DLA either continuously or periodically for an extended period is a precondition to a person requiring "help" as defined by section 2(3)(b) of the EAPWDA. For the reasons provided above, the necessary precondition has not been satisfied in this case.

The physician and chiropractor both report that the appellant requires help from her spouse. The physician does not indicate that she requires any assistive devices but the appellant and her spouse reports that she wears a knee brace every day and the chiropractor states that she wears a knee brace so the panel prefers the assessor's information rather than the physician's in that regard.

In the Note the appellant states that she will be starting physiotherapy but that if her situation does not improve she will likely require a mobility scooter this year but that is not confirmed by either the physician or the chiropractor.

Accordingly, the panel finds that the ministry reasonably concluded that it could not be determined that the appellant requires help with DLA as defined by section 2(3)(b) of the EAPWDA.

Conclusion

The panel acknowledges that the appellant's medical conditions affect her ability to function. However, having reviewed and considered all of the evidence and the relevant legislation, the panel

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finds that the ministry's reconsideration decision finding the appellant ineligible for PWD designation is a reasonable application of the legislation in the circumstances of the appellant. The panel therefore confirms the ministry's decision.