

PART C – Decision under Appeal

The decision under appeal is the Ministry of Social Development and Social Innovation (the ministry) reconsideration decision dated February 13, 2015, which found that the appellant did not meet three of the five statutory requirements of Section 2 of the *Employment and Assistance for Persons with Disabilities Act* for designation as a person with disabilities (PWD). The ministry found that the appellant met the age requirement and that her impairment is likely to continue for at least two years. However, the ministry was not satisfied that the evidence establishes that:

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

PART D – Relevant Legislation

Employment and Assistance for Persons with Disabilities Act (EAPWDA), Section 2

Employment and Assistance for Persons with Disabilities Regulation (EAPWDR), Section 2

PART E – Summary of Facts

Neither the appellant nor the ministry attended the hearing. After confirming that the appellant and the ministry were both notified, the hearing proceeded under Section 86(b) of the *Employment and Assistance Regulation*.

The evidence before the ministry at the time of the reconsideration decision included the Persons With Disabilities (PWD) Application comprised of the applicant information dated July 10, 2014, a physician report (PR) dated September 20, 2014 and completed by a general practitioner who has known the appellant for 2 years and an assessor report (AR) dated October 14, 2014 and completed by a registered nurse who has known the appellant for 5 years.

The evidence also included typed pages as part of the appellant's self-report dated July 10, 2014 and the appellant's Request for Reconsideration dated January 15, 2015.

Diagnoses

In the PR, the appellant was diagnosed by the general practitioner with major depression and anxiety disorder with onset in 2011, hypertension with onset in 2011 and abdominal pain NYD [not yet determined] with an onset in 2013. In the AR, the registered nurse described the appellant's impairments that impact her ability to manage daily living activities as: "insomnia leading to higher levels of anxiety throughout day. Struggling to maintain routine for [young grandchild] under care of psychiatrist, socially withdrawing."

Physical Impairment

In the PR, the general practitioner reported that:

- Regarding health history, the appellant has "recurrent abdominal pain. Possibly from Irritable Bowel Syndrome. Has had surgery for adhesions in 2012."
- The appellant does not require an aid for her impairment.
- For functional skills, the appellant can walk 1 to 2 blocks unaided, climb 5 or more steps, lift 7 to 16 kg. (15 to 35 lbs.), and remain seated 1 to 2 hours.
- The appellant is not restricted with mobility inside and outside the home.
- In the additional comments, noted that: "Recurrent abdominal pain affects her periodically and this is debilitating. Has been to the ER [department] several times for abdominal pain."

In the AR, the registered nurse indicated that:

- The appellant is independent with walking indoors and outdoors and standing, although standing takes her significantly longer than typical. The appellant also takes longer climbing stairs and uses an assistive device, and with lifting and carrying and holding. The nurse commented that the appellant has a history of bowel resection surgery December 2012. She is unable to return to normal level of physical ability since the surgery. The nurse also commented "uses shopping cart when shopping as unable to carry more than 5 to 7 lbs. weight."
- In the section of the AR relating to assistance provided through the use of assistive devices, the nurse did not identify any of the listed items and marked the section "N/A", or not applicable to the appellant.

In her self-report, including the additional pages dated July 10, 2014, the appellant wrote:

- She suffers from problems with her left lung after pneumonia and pleurisy, high blood

pressure, hernia and recurring bowel obstruction.

- She cannot stand for long periods of time due to blood pressure issues.
- She uses puffers to help her breathing.
- It is difficult for her to go up and down stairs either indoors or outdoors, or to bend to pick things off the floor.

Mental Impairment

In the PR, the general practitioner reported:

- In terms of health history, the appellant's "major depression results in low motivational levels. Poor concentration. Sense of hopelessness. Social isolation. Impacts the applicant 7 days a week. Makes daily living a challenge."
- The appellant has cognitive difficulties with communication and the general practitioner wrote: "poor comprehension and executive functions due to mood changes."
- The appellant has significant deficits in her cognitive and emotional functioning in the areas of consciousness, executive, language, memory, emotional disturbance, motivation, impulse control, motor activity, and attention or sustained concentration. No further comments are provided by the general practitioner.
- She is restricted in social functioning on a continuous basis, with the comment: "depression causes her to isolate, decreased communication, avoids crowds."
- Regarding the degree of restriction, noted: "severe restriction when depression is worse."
- In the additional comments, that the appellant's "motivation level is extremely poor. Major depression and anxiety greatly affect her ADL [activities of daily living]."

In the AR, the registered nurse indicated:

- The appellant has a good ability to communicate with speaking, reading, and writing, and a poor ability with hearing described as "20% hearing loss in both ears."
- For the section of the AR assessing impacts to cognitive and emotional functioning, the nurse indicated a major impact in the area of emotion and moderate impacts in consciousness and motivation, with no comments added by the nurse. The remaining areas of functioning are assessed as having no impact or minimal impacts.
- For the section of the AR assessing impacts to social functioning, the nurse reported that the appellant is independent in all areas, specifically: making appropriate social decisions, developing and maintaining relationships, interacting appropriately with others, dealing appropriately with unexpected demands, and securing assistance from others.
- The appellant has good functioning in her immediate social networks, with a note that the appellant is dealing with daily stress of the guardianship of her [young grandchild], regaining custody of another grandchild and supporting the children's mother who has lost custody of both children. The appellant has marginal functioning in her extended social networks, with a note that the appellant prioritizes the care of her [young grandchild] and therefore has minimal social network/activity.
- In the additional comments, noted that: "over the last 6 years, [the appellant] has been struggling with increasing anxiety and depression. This has been significantly exacerbated by various medical issues including hypertension, pneumonia and bowel surgery. [The appellant] has been fighting to keep her grandchildren with her after they were apprehended... This is proving to be a slow and financially difficult process, and this is all negatively impacting her mental health."

In her self-report, the appellant wrote that:

- She suffers from depression/ anxiety, causing her sleep pattern to be sporadic. Sometimes she sleeps too much and other times she does not sleep at all.
- She has difficulty socializing without becoming anxious.

Daily Living Activities (DLA)

In the PR, the general practitioner indicated that:

- The appellant has not been prescribed any medication and/or treatments that interfere with her ability to perform DLA.
- The appellant is not restricted in several listed DLA, specifically: management of medications, mobility inside and outside the home, use of transportation, and management of finances.
- The appellant is restricted on a periodic basis with the DLA of personal self care, meal preparation, and basic housework. The general practitioner explained that “at times of severe depression, patient’s ADLs are all affected.”
- The appellant is restricted on a continuous basis with daily shopping and social functioning. For social functioning, the general practitioner explained that “depression causes her to isolate, decreased communication, avoids crowds.” Regarding the degree of restriction, the general practitioner wrote that there is “severe restriction when depression is worse.”

In the AR, the registered nurse reported that:

- The appellant is independently able to perform every task of several listed DLA, namely: walking indoors and outdoors, personal care (dressing, grooming, bathing, toileting, feeding self, and transfers in/out of bed and on/off chair), and transportation (getting in and out of a vehicle, using public transit, using transit schedules and arranging transportation).
- The appellant requires periodic assistance with basic housekeeping with no comment added by the nurse. The appellant requires periodic assistance with the tasks of meal planning, food preparation and cooking for the DLA meals, while remaining independent with the task of safe storage of food. Additional comments provided by the nurse practitioner with respect to all restricted tasks are that the appellant “eats daily at the local homeless shelter. Lunch and dinner.” The appellant requires periodic assistance with the tasks of filling/refilling prescriptions for the DLA medications, while being independent with safe handling and storage. There is no comment provided by the nurse.
- The appellant requires continuous assistance with laundry as part of the basic housekeeping DLA and with going to and from stores and carrying purchases home for the shopping DLA. The nurse reported that the appellant remains independent with the tasks of reading prices and labels, making appropriate choices and paying for purchases when shopping and wrote: “always shops with family member to help with carrying groceries; also needs family support looking at grocery ingredients for potential allergens.” The appellant requires continuous assistance with paying the rent and bills DLA (including banking and budgeting), and the nurse wrote “on welfare” beside the banking task.

In her self-report, the appellant wrote:

- She is unable to stand for long periods of time due to blood pressure issues so she does not prepare her own meals. She goes to a community service agency to eat.
- She does some light housework but she is a neat person so her house does not get exceedingly dirty. Her landlord does her laundry.
- She is able to get a couple of things at the grocery store but she is unable to do a large

grocery shop.

- When she has stomach pains/bowel obstruction, she is unable to eat and she is unable to do any DLA.
- She is unable to take the bus if there are a lot of people due to anxiety.
- Her disability makes it difficult for her to prepare and eat meals, keep her home clean (including laundry), shopping for personal needs, moving about indoors and outdoors, and using public or personal transportation.

Need for Help

In the PR, in response to a request to describe the assistance the appellant needs with DLA, the general practitioner wrote: “needs help from friends and family with organization in the house, shopping, transport.” In the AR, the nurse indicated that the help required for DLA is provided by family and community service agencies, with a note that the appellant “eats daily at local homeless shelter, family members help with housework, shopping.” In the section of the AR relating to assistance provided through the use of assistive devices, the nurse did not identify any of the listed items and indicated that the section is not applicable to the appellant.

In her self-report, the appellant wrote that she gets or needs help from community agencies, her landlord, family members and health professionals.

Additional Information

In her Notice of Appeal dated February 18, 2015, the appellant expressed her disagreement with the ministry’s reconsideration decision and the appellant wrote that:

- As her doctor admits that she suffers from major depression, anxiety disorder, hypertension, etc. He was properly (sic) treating her, nor did he refer her to a psychiatrist and now she is left to seek help on her own.
- She is on medication for high blood pressure.
- The application booklet stated that having an advocate’s assistance would be acceptable and she feels that the ministry disregarded both what the advocate and the public health nurse reported on her behalf.

The ministry provided no additional information other than the reconsideration decision.

Admissibility of Additional Information

The panel considered the additional information in the Notice of Appeal as information that corroborates the extent of the appellant’s impairment as diagnosed in the PWD application, which was before the ministry at reconsideration. Therefore, the panel admitted this additional information as being in support of information and records that were before the ministry at the time of the reconsideration, in accordance with Section 22(4)(b) of the *Employment and Assistance Act*.

PART F – Reasons for Panel Decision

The issue on the appeal is whether the ministry's reconsideration decision, which found that the appellant is not eligible for designation as a person with disabilities (PWD), was reasonably supported by the evidence or was a reasonable application of the applicable enactment in the circumstances of the appellant. The ministry found that the appellant does not have a severe mental or physical impairment and that her daily living activities (DLA) are not, in the opinion of a prescribed professional, directly and significantly restricted either continuously or periodically for extended periods and that, as a result of those restrictions, it could not be determined that the appellant requires the significant help or supervision of another person, the use of an assistive device, or the services of an assistance animal to perform DLA.

The criteria for being designated as a PWD are set out in Section 2 of the EAPWDA as follows:

Persons with disabilities

2 (1) In this section:

"**assistive device**" means a device designed to enable a person to perform a daily living activity that, because of a severe mental or physical impairment, the person is unable to perform;

"**daily living activity**" has the prescribed meaning;

"**prescribed professional**" has the prescribed meaning.

(2) The minister may designate a person who has reached 18 years of age as a person with disabilities for the purposes of this Act if the minister is satisfied that the person has a severe mental or physical impairment that

(a) in the opinion of a medical practitioner is likely to continue for at least 2 years, and

(b) in the opinion of a prescribed professional

(i) directly and significantly restricts the person's ability to perform daily living activities either

(A) continuously, or

(B) periodically for extended periods, and

(ii) as a result of those restrictions, the person requires help to perform those activities.

(3) For the purposes of subsection (2),

(a) a person who has a severe mental impairment includes a person with a mental disorder, and

(b) a person requires help in relation to a daily living activity if, in order to perform it, the person requires

(i) an assistive device,

(ii) the significant help or supervision of another person, or

(iii) the services of an assistance animal.

(4) The minister may rescind a designation under subsection (2).

Section 2(1) of the EAPWDR defines DLA for a person who has a severe physical or mental impairment as follows:

Definitions for Act

2 (1) For the purposes of the Act and this regulation, "**daily living activities**" ,

(a) in relation to a person who has a severe physical impairment or a severe mental impairment, means the following activities:

(i) prepare own meals;

(ii) manage personal finances;

- (iii) shop for personal needs;
 - (iv) use public or personal transportation facilities;
 - (v) perform housework to maintain the person's place of residence in acceptable sanitary condition;
 - (vi) move about indoors and outdoors;
 - (vii) perform personal hygiene and self care;
 - (viii) manage personal medication, and
- (b) in relation to a person who has a severe mental impairment, includes the following activities:
- (i) make decisions about personal activities, care or finances;
 - (ii) relate to, communicate or interact with others effectively.

Section 2(2) of the EAPWDR defines prescribed profession as follows:

- (2) For the purposes of the Act, "**prescribed professional**" means a person who is
- (a) authorized under an enactment to practise the profession of
 - (i) medical practitioner,
 - (ii) registered psychologist,
 - (iii) registered nurse or registered psychiatric nurse,
 - (iv) occupational therapist,
 - (v) physical therapist,
 - (vi) social worker,
 - (vii) chiropractor, or
 - (viii) nurse practitioner, or
 - (b) acting in the course of the person's employment as a school psychologist by
 - (i) an authority, as that term is defined in section 1 (1) of the Independent School Act, or
 - (ii) a board or a francophone education authority, as those terms are defined in section 1 (1) of the School Act,
 if qualifications in psychology are a condition of such employment.

Severe Physical Impairment

The appellant's position is that a severe physical impairment is established by impacts from hypertension and abdominal pain. The appellant wrote in her Notice of Appeal that she is on medication for high blood pressure. In her self-report, the appellant wrote that she also suffers from problems with her left lung after pneumonia and pleurisy, hernia and recurring bowel obstruction. The appellant argued in her Notice of Appeal that the application booklet stated that having an advocate's assistance would be acceptable and she feels that the ministry disregarded both what the advocate and the public health nurse reported on her behalf.

The ministry's position, as set out in the reconsideration decision, is that while the information provided by the prescribed professionals indicates that the appellant experiences some difficulties with activities requiring mobility and physical ability, particularly lifting, carrying and holding, the appellant's overall level of physical functioning speaks to a moderate rather than a severe level of 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, the ministry must consider both the nature of the impairment and the extent of its impact on daily functioning as evidenced by functional skill limitations and the degree to which the ability to perform DLA is restricted. In making its determination the ministry must consider all the relevant evidence, including that of the appellant. However, the legislation is clear that the fundamental basis for the analysis is the evidence from a prescribed professional – in this case, the appellant's general practitioner and the registered nurse.

In the PR, the general practitioner, who has known the appellant for 2 years, diagnosed the appellant with hypertension with onset in 2011 and abdominal pain not yet determined with an onset in 2013. The general practitioner wrote that the appellant has "recurrent abdominal pain; possibly from Irritable Bowel Syndrome" and this "affects her periodically and this is debilitating; has been to the ER several times for abdominal pain." In her self-report, the appellant wrote that she also suffers from problems with her left lung after pneumonia and pleurisy and she uses puffers to help her breathing, although these issues were not described by the medical professionals. The panel notes that the reports included in the PWD application were completed almost one year prior to the hearing, there were no additional medical reports submitted on the appeal, and the appellant did not attend the hearing to provide an update or elaboration of her condition.

The general practitioner reported that the appellant can walk 1 to 2 blocks unaided, climb 5 or more steps, lift 15 to 35 lbs., and remain seated 1 to 2 hours. The appellant does not require an aid for her impairment and she is not restricted with mobility inside and outside the home. The registered nurse who has known the appellant for 5 years reported in the AR that the appellant is independent with walking indoors and outdoors and standing, although standing takes her significantly longer than typical. In her self-report, the appellant explained that she cannot stand for long periods of time due to blood pressure issues and it is difficult for her to go up and down stairs or to bend to pick things off the floor. The nurse indicated that the appellant takes longer climbing stairs although she does not describe how much longer it takes the appellant. The nurse reported that the appellant uses an assistive device to climb stairs that has not been described and, in the section of the AR relating to assistance provided through the use of assistive devices, the nurse did not identify any of the listed items as applicable to the appellant. The nurse reported in the AR that the appellant takes longer with lifting and carrying and holding and commented that the appellant "uses shopping cart when shopping as unable to carry more than 5 to 7 lbs. weight." The panel notes that the information from the nurse regarding lifting is not consistent with the information from the general practitioner that the appellant can lift 15 to 35 lbs., and no explanation is provided by the nurse for this discrepancy.

The nurse commented that the appellant has a history of bowel resection surgery in December 2012 and she has been unable to return to normal level of physical ability since the surgery; however, the panel finds that the ministry reasonably determined that the available evidence does not establish that the appellant's level of physical functioning is significantly restricted. As well, as discussed in more detail in these reasons for decision under the heading "Restrictions in the Ability to Perform DLA", the limitations to the appellant's physical functioning have not translated into significant restrictions to her ability to manage DLA. Given the unexplained inconsistency regarding lifting and the lack of an assessment of significant impacts to the appellant's physical functioning, the panel finds that the ministry reasonably determined that there is not sufficient evidence to establish that the appellant has a severe physical impairment under Section 2(2) of the EAPWDA.

Severe Mental Impairment

The appellant's position is that a severe mental impairment is established by the evidence of the major depression and anxiety. In her Notice of Appeal, the appellant argued that her doctor admits that she suffers from major depression and anxiety disorder, he was properly (sic) treating her, nor did he refer her to a psychiatrist and now she is left to seek help on her own. The appellant argued in her Notice of Appeal that the application booklet stated that having an advocate's assistance would be acceptable and she feels that the ministry disregarded both what the advocate and the public health nurse reported on her behalf.

The ministry's position, as set out in the reconsideration decision, is that there is insufficient evidence to establish that the appellant has a severe mental impairment. The ministry acknowledged that the appellant's cognitive and emotional functioning has been adversely impacted by her struggle to maintain guardianship of her grandchildren; however, the ministry wrote that the information provided by the prescribed professionals speaks to a moderate rather than to a severe impairment. The ministry pointed out that there are discrepancies between the assessment provided by the medical practitioner and the assessor, which make it difficult to obtain a clear and coherent picture of the appellant's mental functioning. The ministry wrote that more weight was placed on the assessment by the registered nurse of the appellant's cognitive, emotional and social functioning as she had more contact with the appellant, particularly on a day-to-day basis.

Panel Decision

The general practitioner diagnosed the appellant with major depression and anxiety disorder with onset in 2011 and wrote in the PR that the appellant's "major depression results in low motivational levels; poor concentration; sense of hopelessness; social isolation; impacts the applicant 7 days a week; makes daily living a challenge." The general practitioner reported that the appellant has significant deficits in her cognitive and emotional functioning in the areas of consciousness, executive, language, memory, emotional disturbance, motivation, impulse control, motor activity, and attention or sustained concentration. The general practitioner wrote in the additional comments to the PR that the appellant's "motivation level is extremely poor." While the general practitioner indicated that there are significant deficits in a number of areas of cognitive and emotional functioning, no further comments are provided by the general practitioner and the nurse indicated in the AR that there is a major impact only in the area of emotion. The nurse reported moderate impacts in consciousness and motivation, with no descriptive or explanatory comments added, and the remaining areas of functioning are assessed as having no impact or minimal impacts. In her self-report, the appellant wrote that she suffers from depression/anxiety, causing her sleep pattern to be sporadic and sometimes she sleeps too much and other times she does not sleep at all.

With respect to the two DLA that are specific to mental impairment – make decisions about personal activities, care or finances (decision making), and relate to, communicate or interact with others effectively (social functioning), the evidence does not establish that the appellant is significantly restricted in either. Regarding the decision making DLA, the nurse reported in the AR that the appellant independently manages decision-making components of the DLA personal care (regulate diet), shopping (making appropriate choices, paying for purchases), meals (safe storage of food), medications (safe handling and storage), and transportation (using transit schedules and arranging transportation). While the nurse reported that the appellant requires periodic assistance from another person with meal planning, the explanation of "eats daily at the local homeless shelter; lunch and dinner" does not explain how the need for assistance is related to her mental impairment. Likewise, there is no explanation provided by the nurse for the appellant's need for periodic assistance with

taking her medications as directed. The panel finds that the ministry reasonably determined that the lack of narrative and further description made it difficult to conclude both that the need for periodic assistance is tied to the appellant's mental impairment and is required for extended periods of time. The ministry concluded that the explanation provided by the nurse for the need for continuous assistance for banking as "on welfare" also applied to the tasks of budgeting and paying rent and bills, and while the panel finds that the nurse did not clearly relate this explanation to all the tasks, there is no other explanation provided by the nurse. Further, the nurse reported that the appellant independently makes appropriate social decisions.

Regarding the DLA of social functioning, the appellant is assessed by the general practitioner in the PR as being restricted on a continuous basis, with the comment: "depression causes her to isolate, decreased communication, avoids crowds." Regarding the degree of restriction, the general practitioner noted: "severe restriction when depression is worse." The general practitioner did not indicate how often the appellant experiences exacerbations in her depression, although the nurse explained in the AR that "over the last 6 years, [the appellant] has been struggling with increasing anxiety and depression; this has been significantly exacerbated by various medical issues including hypertension, pneumonia and bowel surgery," she has been fighting to keep her grandchildren with her after they were apprehended and "this is all negatively impacting her mental health." Despite these noted situational stressors, the nurse reported that the appellant is independent in all areas of social functioning, including developing and maintaining relationships, interacting appropriately with others, and securing assistance from others. The nurse assessed the appellant with good functioning in her immediate social networks and marginal functioning in her extended social networks, with a note that the appellant prioritizes the care of her [young grandchild] and therefore has minimal social network/activity. In the PR, the general practitioner reported that the appellant has cognitive difficulties with communication and wrote: "poor comprehension and executive functions due to mood changes." In the AR, the registered nurse indicated that the appellant has a good ability to communicate with speaking, reading, and writing, and a poor ability with hearing described as "20% hearing loss in both ears," which is a physical limitation that was not mentioned by the general practitioner.

Given the absence of consistent evidence of impacts to the appellant's cognitive, emotional and social functioning and no description by the general practitioner or a mental health specialist of the nature or frequency of exacerbations to the appellant's depression and anxiety, which have been related by the nurse to situational stressors, the panel finds that the ministry reasonably determined that a severe mental impairment was not established under Section 2(2) of the EAPWDA.

Restrictions in the ability to perform DLA

The appellant's position is that her physical and mental impairments directly and significantly restrict her ability to perform DLA on an ongoing basis to the extent that she requires the significant assistance of another person.

The ministry's position, as set out in the reconsideration decision, is that the information from the prescribed professionals does not establish that impairment significantly restricts DLA either continuously or periodically for extended periods. The ministry wrote that the majority of the listed tasks of DLA are performed independently by the appellant and, for those tasks that require periodic assistance, the nurse has not provided sufficient information to establish that there is a significant restriction in the appellant's ability to perform these activities.

Panel Decision

Section 2(2)(b) of the EAPWDA requires that a prescribed professional provide an opinion that an applicant's severe impairment directly and significantly restricts her DLA, continuously or periodically for extended periods. In this case, the general practitioner and the registered nurse are the prescribed professionals. DLA are defined in Section 2(1) of the EAPWDR and are also listed in the PR and, with additional details, in the AR. Therefore, a prescribed professional completing these forms has the opportunity to indicate which, if any, DLA are significantly restricted by the appellant's impairments either continuously or periodically for extended periods.

In the appellant's circumstances, the general practitioner reported in the PR that the appellant has not been prescribed any medication and/or treatments that interfere with her ability to perform DLA. The general practitioner reported that the appellant is not restricted in several listed DLA, specifically: management of medications, mobility inside and outside the home, use of transportation, and management of finances. In the AR, the nurse also reported that the appellant is independent with walking indoors and outdoors and use of transportation (getting in and out of a vehicle, using public transit, using transit schedules and arranging transportation). Although the appellant wrote in her self-report that she is unable to take the bus if there are a lot of people due to anxiety, and her disability makes it difficult for her to move about indoors and outdoors, this has not been confirmed by either of the prescribed professionals.

The nurse reported that the appellant requires periodic assistance with the tasks of filling/refilling prescriptions for the DLA medications, while being independent with safe handling and storage, and there is no further comment provided. The panel finds that this is one area of inconsistency with the information from the general practitioner that the appellant is not restricted, and the ministry reasonably determined that and there is insufficient information from the nurse to conclude that the periodic assistance for these tasks is required for extended periods of time. The nurse reported that the appellant requires continuous assistance with the paying rent and bills DLA (including banking and budgeting), and wrote "on welfare" beside the banking task. As previously discussed, the panel finds that the nurse did not clearly relate this explanation to all the tasks; however, there is no other explanation provided by the nurse and this tends to indicate that the restriction in this DLA is financial rather than being related to the appellant's physical or mental impairment.

The general practitioner indicated that the appellant is restricted on a periodic basis with the DLA of personal self care, meal preparation, and basic housework. Regarding the degree of restriction, the general practitioner wrote that there is "severe restriction when depression is worse" and "at times of severe depression, patient's ADLs are all affected." As previously discussed, the general practitioner did not indicate how often the appellant experiences exacerbations in her depression. In the AR, the registered nurse reported that the appellant is independently able to perform every task of the personal care DLA and this is another area of inconsistency with the information from the general practitioner. For meal preparation, the nurse reported that the appellant requires periodic assistance with the tasks of meal planning, food preparation and cooking, while remaining independent with the task of safe storage of food, and she "eats daily at the local homeless shelter." In her self-report, the appellant wrote that she goes to a community service agency to eat since she is unable to stand for long periods of time due to blood pressure issues and she does not prepare her own meals. As the general practitioner indicated in the PR that the appellant can remain seated 1 to 2 hours, it was not clear why the appellant could not prepare her meals while seated. The appellant wrote that when she has stomach pains/bowel obstruction, she is unable to eat and she is unable to do any DLA, and the general practitioner reported that "recurrent abdominal pain affects her periodically and this is

debilitating” and the appellant has been to the ER several times for abdominal pain, but there was no other indication of the frequency of the exacerbations in the appellant’s physical condition. The nurse also indicated that the appellant requires periodic assistance with basic housekeeping with no comment added, and the appellant requires continuous assistance with laundry. The appellant wrote in her self-report that she does some light housework but she is a neat person so her house does not get exceedingly dirty and her landlord does her laundry. The panel finds that the ministry reasonably concluded that there is insufficient information provided to show that the need for periodic assistance with the noted tasks is for extended periods of time.

The general practitioner reported in the PR that the appellant is restricted on a continuous basis with daily shopping. In the AR, the nurse also reported that the appellant requires continuous assistance with going to and from stores and carrying purchases home and wrote: “always shops with family member to help with carrying groceries; also needs family support looking at grocery ingredients for potential allergens for [young grandchild].” However, the nurse also reported that the appellant remains independent with the tasks of reading prices and labels, making appropriate choices and paying for purchases when shopping. In her self-report, the appellant wrote that she is able to get a couple of things at the grocery store but she is unable to do a large grocery shop. She wrote that her disability makes it difficult for her to shop for personal needs. As discussed under the severity of mental impairment, with respect to the two DLA that are specific to mental impairment – decision making and social functioning, the available evidence indicates that the appellant is not significantly restricted in either.

The panel finds that the ministry reasonably concluded that there are discrepancies between the assessment provided by the general practitioner and the nurse, which make it difficult to obtain a clear and coherent picture of the appellant’s functioning. The panel also finds that the ministry reasonably determined that there is insufficient information about exacerbations to either the appellant’s mental or physical impairments to conclude that the periodic assistance that is required for some tasks is required for extended periods of time. Therefore, the panel finds that the ministry reasonably concluded that there is not enough evidence from the prescribed professionals to establish that the appellant’s impairment significantly restricts her ability to manage her DLA either continuously or periodically for extended periods, thereby not satisfying the legislative criterion of Section 2(2)(b)(i) of the EAPWDA.

Help to perform DLA

The appellant’s position is that she requires the significant assistance of another person or an assistive device to perform DLA, specifically community agencies, her landlord, family members and health professionals.

The ministry’s position, as set out 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 from other persons or an assistive device.

Panel Decision

Section 2(2)(b)(ii) of the EAPWDA requires that, as a result of direct and significant restrictions in the ability to perform DLA, a person requires help to perform those activities. Help is defined in subsection (3) as the requirement for an assistive device, the significant help or supervision of another person, or the services of an assistance animal in order to perform a DLA.

In the PR, in response to a request to describe the assistance the appellant needs with DLA, the general practitioner wrote: “needs help from friends and family with organization in the house, shopping, transport.” In the AR, the nurse indicated that the help required for DLA is provided by family and community service agencies, with a note that the appellant “eats daily at local homeless shelter, family members help with housework, shopping.” In her self-report, the appellant wrote that she gets or needs help from community agencies, her landlord, family members and health professionals. In the section of the AR relating to assistance provided through the use of assistive devices, the nurse indicated that the section is not applicable to the appellant.

The panel finds that the ministry reasonably determined that as direct and significant restrictions in the appellant’s ability to perform DLA have not been established, it cannot be determined that the appellant requires help to perform DLA as a result of those restrictions, as defined by Section 2(3)(b) of the EAPWDA.

Conclusion

Having reviewed and considered all of the evidence and relevant legislation, the panel finds that the ministry’s reconsideration decision, which determined that the appellant was not eligible for PWD designation under Section 2 of the EAPWDA, was a reasonable application of the applicable enactment in the appellant’s circumstances and therefore confirms the decision.