

PART C – Decision under Appeal

The decision under appeal is the Ministry of Social Development and Social Innovation (the ministry) reconsideration decision dated August 11, 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

The evidence before the ministry at the time of the reconsideration decision included the Person With Disabilities (PWD) Application comprised of the applicant information dated April 7, 2015, with no self-report completed by the appellant, a physician report (PR) dated March 30, 2015 completed by a general practitioner who has known the appellant for 2 years, and an assessor report (AR) dated April 13, 2015 completed by a registered physiotherapist who has known the appellant since March 2009, or for approximately 6 years.

The evidence also included the appellant's Request for Reconsideration dated June 23, 2015.

Diagnoses

In the PR, the appellant was diagnosed by the general practitioner asthma and morbid obesity, both with an onset in 2000, and osteoarthritis with an onset in 2008. In the AR, asked to describe the impairments that impact the appellant's ability to manage daily living activities, the physiotherapist wrote "obese, pain in ankles and both feet- difficulty with standing and walking; shortness of breath because of asthma."

Physical Impairment

In the PR, the general practitioner reported that:

- Regarding health history, the appellant has "significant shortness of breath secondary to asthma and pain in both ankles and feet. This impairs her ability to stand and walk. She is also morbidly obese and that increases her difficulty with walking, standing, and carrying her house (sic) and daily activities. She has chronic left shoulder calcific tendonitis and osteoarthritis impairs her ability to perform daily living activities with lifting or working above shoulder level."
- The appellant requires an aid for her impairment described as "custom orthotics."
- Regarding the degree and course of impairment, the appellant "may benefit from weight loss or bariatric surgery to lose weight which will benefit her asthma symptoms and reduce pain in her ankles and feet."
- For functional skills, the appellant can walk 1 to 2 blocks unaided, she can climb 5 or more steps, lift 2 to 7 kg. (5 to 15 lbs.), and she has no limitation with how long she can remain seated.
- The appellant is not restricted with mobility inside the home and is periodically restricted with mobility outside the home. Regarding periodic restrictions, "activities restricted when her joint pain is worse with flaring of osteoarthritis. Her ability to walk becomes also affected when asthma is worse."
- Regarding the degree of restriction, the appellant is "unable to walk for more than one block when ankle and foot pain are worse due to osteoarthritis" and "also unable to do repetitive movement or work above shoulder level when her left shoulder tendonitis is worse due to pain."
- In the additional comments: "patient was evaluated by rheumatologist few years ago regarding her arthritis. She was diagnosed with osteoarthritis in multiple joints and tendonitis. She now flares on and off depending on her activity level. Her morbid obesity makes her prognosis worse. She has difficulty walking or standing for more than 10 minutes or one block and unable to lift more than 10 lbs. at a time or repetitively. Patient's asthma interferes with her breathing on and off with exacerbation and especially with walking."

In the AR, the physiotherapist indicated that:

- The appellant is independent with walking indoors and with standing and takes significantly longer than typical with walking outdoors (note: “1 block takes about 10 minutes”) and with climbing stairs. The appellant requires periodic assistance from another person with lifting and with carrying and holding. The physiotherapist did not add an explanation or any comments.
- In the section of the AR relating to assistance provided through the use of assistive devices, the physiotherapist identified a cane and wrote “she uses a cane only when her knee pain increases.”
- In the additional comments: “her daughters help her whenever she needs it. She has shortness of breath with minimal activity. Both feet, ankles and knees become painful when standing or walking. Osteoarthritis and shoulder calcific tendonitis impairs lifting and carrying plus specific shoulder movements.”

In her Request for Reconsideration, the appellant wrote:

- The doctor diagnosed asthma, osteoarthritis and morbid obesity and confirmed that she has significant shortness of breath and pain in both ankles and feet and morbid obesity which impair her ability to stand and walk.
- She also has chronic left shoulder calcific tendonitis and osteoarthritis impairs her ability to perform daily living activities, with no lifting or washing above shoulder level.
- She needs custom orthotics.
- Walking is restricted to 1 to 2 blocks and lifting to 2 to 7 kg.
- The doctor thought it important to mention her osteoarthritis, morbid obesity and severe asthma greatly interfere with mobility and lifting. She needs periodic assistance with lifting, carrying and holding.
- She uses a cane when her pain increases.

Mental Impairment

In the PR, the general practitioner reported :

- The appellant has no difficulties with communication.
- The appellant has no significant deficits in her cognitive and emotional functioning.

In the AR, the physiotherapist indicated:

- The appellant has a good ability to communicate in all areas, specifically: speaking, reading, writing and hearing.
- For the section of the AR assessing impacts to cognitive and emotional functioning for an applicant with an identified mental impairment or brain injury, the physiotherapist marked this section as “N/A”, or not applicable to the appellant.
- For the section of the AR assessing impacts to social functioning, the physiotherapist did not complete the assessment.

Daily Living Activities (DLA)

In the PR, the general practitioner indicated that:

- The appellant has not been prescribed any medications and/or treatments that interfere with her ability to perform DLA.
- The appellant is not restricted with the DLA of personal self care, management of medications, mobility inside the home, management of finances, and social functioning.

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- The appellant is restricted on a periodic basis with the DLA meal preparation, basic housework, daily shopping, mobility outside the home, and use of transportation. The physiotherapist wrote: “above activities restricted when her joint pain is worse with flaring of osteoarthritis. Her ability to walk becomes also affected when asthma is worse.”
 - Regarding the degree of restriction, the appellant is “unable to walk for more than one block when ankle and foot pain are worse due to osteoarthritis” and “also unable to do repetitive movement or work above shoulder level when her left shoulder tendonitis is worse due to pain.”

In the AR, the physiotherapist reported that:

- The appellant is independently able to perform every task of several listed DLA, namely: finances (banking, budgeting, paying rent and bills), medications (filling/refilling prescriptions, taking as directed and safe handling and storage), and transportation (getting in and out of a vehicle, using public transit, using transit schedules and arranging transportation), with a note that the appellant “is slow getting into and out of a car.”
- The appellant is independently able to perform most tasks of the DLA personal care (dressing, grooming, toileting, feeding self, and transfers in/out of bed and on/off chair), meals (meal planning, food preparation and safe storage of food), and requires periodic assistance from another person with bathing, described as “sometimes her daughter to help her if her knees become painful” and transfers in/out of bed are done “slowly.”
- The appellant also requires periodic assistance from another person with some of the tasks of the DLA meals, specifically food preparation and cooking, with no explanation provided, and she remains independent with meal planning and safe storage of food.
- The appellant requires continuous assistance from another person with basic housekeeping (note: “her daughters help her with household duties”), while remaining independent with laundry.
- The appellant requires continuous assistance with the physical tasks of the DLA shopping, specifically with going to and from stores (“her daughter assists her with grocery shopping”) and carrying purchases home (“her daughter carries the purchases”), while being independent with reading prices and labels, making appropriate choices and paying for purchases.

In her Request for Reconsideration, the appellant wrote:

- She is restricted in meal prep, housework, shopping, mobility outside the home, and transportation.
- She needs periodic assistance with food preparation and cooking and continuous help with basic housekeeping.
- She uses a cane when her pain increases.

Need for Help

Asked to describe the assistance the appellant needs with DLA, the general practitioner wrote in the PR that the appellant’s “husband and children help with some activities of daily living, as possible.” In the AR, the physiotherapist reported that the help required for DLA is provided by family and the physiotherapist wrote: “her daughters [ages specified] help her when she needs it.” In the section of the AR relating to assistance provided through the use of assistive devices, the physiotherapist wrote: “she uses a cane only when her knee pain increases.” In her Request for Reconsideration, the appellant wrote that her husband and children help with DLA and she uses a cane when her pain increases.

Additional Information

In her Notice of Appeal dated August 14, 2015, the appellant expressed her disagreement with the ministry's reconsideration decision and wrote that she is being honest and she needs help. She is overweight and in pain. Most of the time she asks a neighbor or a friend to assist her in her day-to-day tasks. She cannot walk far. She wears special shoes. She cannot drive alone most of the time because she gets dizzy. She cannot lift heavy [items], she cannot bend down. She has problems with her shoulders, sinus issues, and asthma.

At the hearing, the appellant stated:

- She has more than one problem in her body. First, she was born with one problem with her foot. She cannot step on it, or only on part of it. When she discovered this, she was advised to use an arch support and special shoes for that.
- The other problem is with her knees. She cannot stand for long. She has a relatively big body and this puts more pressure on her knees.
- Her feet get swollen when she stands for 10 to 30 minutes or so. When her feet are swollen, she has to use a walking stick and her daughter has to help her get around at home. The side of her feet feel like they are filling with water and it takes a long time for the swelling to go down. It is about 2 times per week that her daughter has to help her and she has to use the cane. Sometimes it is more than 2 times and she has to let her daughter help her.
- She cannot climb stairs like a regular person. She only climbs the stairs one at a time.
- Also, her left shoulder is very painful and causes headaches for her. She cannot use her left hand because she is left-handed. She cannot sleep on her left side. This causes dizziness for her. She takes pain relievers for pain and dizziness.
- About a week ago, she had an X-Ray of her neck to see if something was causing the problem. The X-Ray showed that her neck is out of place due to a birth defect. There are two bones which press on a nerve. The X-Ray report is with her doctor and she does not have a copy. She has been referred to another doctor to have an MRI to make sure they know what is happening.
- She has had two surgeries to her hand. One on her left hand in her country of origin and another on her right hand in Canada. The surgeries were for carpal tunnel syndrome.
- After her surgeries, she could not lift even 1 kg. since it was too heavy to lift.
- She experiences dizziness a lot and she has to sleep. This happens about 3 or 4 times per month. She cannot do anything but stay on the sofa and relax. It feels as if the blood is pumping into her head and her eyes hurt and she cannot open them.
- When she goes shopping, she has to have her children go with her to keep an eye on her and she cannot carry heavy things. Sometimes her daughter does the shopping for her.
- She cannot take a bath by herself. Her daughter has to help her because of the dizziness.
- She also has asthma and whenever there is a change in the weather she has difficulty breathing. She uses two different puffers.
- She has problems with her sinuses and this hurts her eyes.
- She also has anxiety and restlessness and it wakes her up too many times at night. She takes sleeping pills and medication for anxiety since her husband left the family in March of 2015.
- Her movement is restricted by joint pain "a lot." If she stands in front of the sink for a few minutes, it starts to hurt. She has joint pain 2 or 3 times per week. She takes pain relievers every day. When no one is around to do a chore, she tries to do it and has to stop because of the pain. She takes a pain reliever and then waits for it to take effect.

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- She has been taking too many pain reliever pills and now she has to take pills for her stomach. She has had problems with her stomach for about 7 years and takes medications
 - She often keeps her feet up so the swelling will stay down.
 - She has low iron. Her doctor gave her some medications but after 3 months it did not work so he increased the dose. She takes medication 2 times per day.
 - When she takes the medications, 80% of the dizziness and 80% of the pain is reduced but as soon as the medication wears off, it is back.
 - About 4 months ago she had to go to emergency at the hospital because of migraines and they gave her pain relievers. They did an imaging test and found out that there is a spot in her head and that she was born with it.

At the hearing, the appellant's representative, her daughter, stated:

- She is the oldest child and she pretty much does everything because of her mother's dizziness.
- The appellant (her mother) uses 3 or 4 pillows when she is sleeping to help with her breath, anxiety and pain.
- She does the cleaning at home.
- Her mother cannot drive so their neighbor will go with her for shopping and help her carry heavy bags.
- Her mother does not leave the house much and just stays at home.
- She is limited in how much she can help now that she is returning for her post-secondary education.
- When the PR was completed, the doctor did not ask questions about what happens at home and only spent 10 or 15 minutes with them. Her mother goes to see the doctor about 15 to 20 times in the year.

The ministry relied on the reconsideration decision, as summarized at the hearing.

Admissibility of Additional Information

The ministry did not raise an objection to the oral testimony on behalf of the appellant or to the information in her Notice of Appeal. The panel considered most of the oral testimony on behalf of the appellant as an elaboration of the impact of the appellant's medical conditions raised and considered at reconsideration. The panel admits this information as being in support of information and records that were before the ministry at the time of reconsideration, in accordance with Section 22(4)(b) of the *Employment and Assistance Act*. The panel did not admit the information regarding the appellant's dizziness, anxiety, low iron, carpal tunnel syndrome, or stomach issues as this was not information before the ministry at reconsideration and does not tend to corroborate the information at reconsideration.

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:

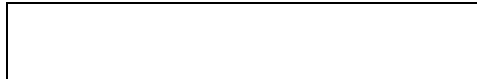
Definitions for Act

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 her asthma, morbid obesity, and osteoarthritis. In her Request for Reconsideration, the appellant wrote that her doctor confirmed that she has significant shortness of breath and pain in both ankles and feet and morbid obesity which impair her ability to stand and walk. The appellant argued that she also has chronic left shoulder calcific tendonitis and osteoarthritis impairs her ability to perform daily living activities, with no lifting or washing above shoulder level. The appellant argued that her walking is restricted to 1 to 2 blocks and lifting to 2 to 7 kg., and she needs periodic assistance with lifting, carrying and holding. The appellant argued that she needs custom orthotics and uses a cane when her pain increases.

The ministry's position is that there is not sufficient information from the general practitioner and the physiotherapist to confirm that the appellant has a severe physical impairment. The ministry wrote that it acknowledges that the appellant experiences greater limitations during "flare-ups" when her symptoms are exacerbated; however the ministry argued that 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.

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 general practitioner and the physiotherapist.

In the PR, the general practitioner diagnosed the appellant with asthma and morbid obesity, both with an onset in 2000, and osteoarthritis with an onset in 2008. The general practitioner reported that the appellant has “significant shortness of breath secondary to asthma and pain in both ankles and feet. This impairs her ability to stand and walk. She is also morbidly obese and that increases her difficulty with walking, standing, and carrying her house and daily activities. She has chronic left shoulder calcific tendonitis and osteoarthritis impairs her ability to perform daily living activities with lifting or working above shoulder level.” Regarding the degree and course of impairment, the general practitioner wrote that the appellant “may benefit from weight loss or bariatric surgery to lose weight which will benefit her asthma symptoms and reduce pain in her ankles and feet.” These treatment options were not discussed by the appellant or her daughter at the hearing.

The general practitioner reported that the appellant is not restricted with mobility inside the home and is periodically restricted with mobility outside the home “when her joint pain is worse with flaring of osteoarthritis; her ability to walk becomes also affected when asthma is worse.” The general practitioner reported regarding the degree of restriction, that the appellant is “unable to walk for more than one block when ankle and foot pain are worse due to osteoarthritis” and “also unable to do repetitive movement or work above shoulder level when her left shoulder tendonitis is worse due to pain.” In assessing the appellant’s function skills, the general practitioner reported that the appellant can walk 1 to 2 blocks unaided, she can climb 5 or more steps, lift 5 to 15 lbs., and she has no limitation with how long she can remain seated. The appellant requires an aid for her impairment described as “custom orthotics. In the additional comments to the PR, the general practitioner wrote that the appellant “was evaluated by rheumatologist few years ago regarding her arthritis. She was diagnosed with osteoarthritis in multiple joints and tendonitis. She now flares on and off depending on her activity level. Her morbid obesity makes her prognosis worse. She has difficulty walking or standing for more than 10 minutes or one block and unable to lift more than 10 lbs. at a time or repetitively. Patient’s asthma interferes with her breathing on and off with exacerbation and especially with walking.” The general practitioner did not provide an indication in the PR of how often the appellant’s joint pain, ankle and foot pain, left shoulder tendonitis or asthma are “worse.”

In the AR, the physiotherapist indicated that the appellant is independent with walking indoors and with standing and takes significantly longer than typical with walking outdoors and with climbing stairs. The physiotherapist noted further that “1 block takes about 10 minutes.” Although the physiotherapist reported that the appellant requires periodic assistance from another person with lifting and with carrying and holding, the physiotherapist did not provide further comments to indicate how often or how long the assistance is required. In the section of the AR relating to assistance provided through the use of assistive devices, the physiotherapist identified a cane and wrote “she

uses a cane only when her knee pain increases,” but the physiotherapist did not report how often or for how long the appellant’s knee pain is increased. In the additional comments to the AR, the physiotherapist added that the appellant “has shortness of breath with minimal activity. Both feet, ankles and knees become painful when standing or walking. Osteoarthritis and shoulder calcific tendonitis impairs lifting and carrying plus specific shoulder movements.”

At the hearing, the appellant’s daughter explain that when the PR was completed, the doctor did not ask questions about what happens at home and only spent 10 or 15 minutes with them and this is part of the reason for a lack of detail in the PR. Given the opportunity at the hearing to elaborate on the frequency of exacerbations to her conditions, the appellant stated that her feet get swollen when she stands for 10 to 30 minutes or so and, when her feet are swollen, she has to use a walking stick and her daughter has to help her get around at home. The appellant stated that it is about 2 times per week that her daughter has to help her and she has to use the cane. Sometimes it is more than 2 times. The appellant stated that her movement is restricted by joint pain “a lot,” she estimated that she has joint pain 2 or 3 times per week. She takes pain relievers every day. When no one is around to do a chore, she tries to do it and has to stop because of the pain. She takes a pain reliever and then waits for it to take effect. The appellant stated that when she takes the medications, 80% of the pain is reduced but as soon as the medication wears off, the pain returns. The appellant also stated that she has asthma and, whenever there is a change in the weather, she has difficulty breathing.

The panel finds that the evidence demonstrates that the appellant experiences greater limitations during “flare-ups” when her symptoms from osteoarthritis and asthma are exacerbated; however, the ministry reasonably concluded that the frequency and duration of these periods are not described in sufficient detail by the prescribed professionals and the appellant, or the extent to which the periods of heightened pain or shortness of breath are alleviated by medications, in order to determine if the flare-ups represent a significant restriction to the appellant’s overall level of functioning. Also, 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 do not appear to have translated into significant restrictions to her ability to manage DLA. Given the lack of evidence of significant restrictions 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 did not advance a position that she has a severe mental impairment and a mental health condition was not diagnosed or referred to at reconsideration.

The ministry’s position is that there is insufficient evidence to establish that the appellant has a severe mental impairment. The ministry argued that the general practitioner did not diagnose a mental condition nor does he suggest that the appellant may have a mental condition in the narrative of the PR.

Panel Decision

The general practitioner did not diagnose a mental disorder in the PR and reported that the appellant has no significant deficits in her cognitive and emotional functioning. In the AR, the physiotherapist marked the section for assessing impacts to cognitive and emotional functioning for an applicant with an identified mental impairment or brain injury as not applicable to the appellant and did not complete the assessment for impacts to social functioning.

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Given the lack of a mental health diagnosis and the absence of evidence of impacts to the appellant's cognitive, emotional or social functioning, 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 impairment directly and significantly restricts her ability to perform DLA on an ongoing basis to the extent that she requires the significant assistance of another person, including her daughters, and the use of assistive devices.

The ministry's position is that there is not sufficient information from the prescribed professionals to establish that impairment significantly restricts DLA either continuously or periodically for extended periods. The ministry wrote that the majority of the tasks of DLA listed in the AR are performed independently by the appellant and, for those tasks that require periodic assistance, the physiotherapist has not provided sufficient information to establish that there is a significant restriction in the appellant's ability to perform these activities. The ministry argued that although the appellant requires continuous assistance with basic housekeeping, going to and from stores and carrying purchases home, these tasks are considered in relation to the appellant's function skill limitations of lifting up to 10 lbs., standing for 10 minutes, and walking the length of one block.

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 physiotherapist 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 indicated in the PR that the appellant has not been prescribed any medications and/or treatments that interfere with her ability to perform DLA. The general practitioner reported that the appellant is not restricted with the DLA of personal self care, management of medications, management of finances, social functioning and mobility inside the home, while being restricted on a periodic basis with mobility outside the home. In the AR, the physiotherapist indicated that the appellant is independently able to perform most tasks of the DLA personal care (dressing, grooming, toileting, feeding self, and transfers in/out of bed and on/off chair), but requires periodic assistance from another person with bathing, described as "sometimes her daughter to help her if her knees become painful" and transfers in/out of bed are done "slowly." The physiotherapist has not indicated specifically how often the appellant requires assistance with bathing as it is associated with her knees becoming painful, but the appellant stated at the hearing that her daughter always helps her with bathing as a result of a condition not admissible on the appeal. The physiotherapist also reported that the appellant is independently able to perform every aspect of the DLA medications (filling/refilling prescriptions, taking as directed and safe handling and storage) and the DLA finances (banking, budgeting, paying rent and bills). The physiotherapist did not assess the appellant's social functioning and, regarding moving about indoors and outdoors, the physiotherapist indicated that the appellant is independent with walking indoors and takes significantly longer than typical with walking outdoors, that 1 block takes about 10 minutes.

The general practitioner reported in the PR that the appellant is restricted on a periodic basis with the DLA meal preparation, basic housework, daily shopping, mobility outside the home, and use of transportation. The general practitioner wrote: “above activities restricted when her joint pain is worse with flaring of osteoarthritis. Her ability to walk becomes also affected when asthma is worse.” Regarding the degree of restriction, the general practitioner indicated that the appellant is “unable to walk for more than one block when ankle and foot pain are worse due to osteoarthritis” and “also unable to do repetitive movement or work above shoulder level when her left shoulder tendonitis is worse due to pain.” The general practitioner did not provide specific information about how often the appellant’s osteoarthritis, ankle and foot pain, asthma or shoulder tendonitis flares and is “worse.” At the hearing, the appellant stated that it is about 2 times per week that her daughter has to help her and she has to use the cane and that her movement is restricted by joint pain “a lot,” she estimated that she has joint pain 2 or 3 times per week. However, the appellant also stated that she takes pain relievers every day and when she takes the medications, 80% of the pain is reduced, but as soon as the medication wears off, the pain is back.

In the AR, the physiotherapist reported that the appellant requires periodic assistance from another person with the physical tasks of the DLA meals, specifically food preparation and cooking, with no explanation provided, and the appellant remains independent with meal planning and safe storage of food. The physiotherapist assessed the appellant as requiring continuous assistance from another person with basic housekeeping (note: “her daughters help her with household duties”), while she remains independent with doing the laundry. The physiotherapist indicated that the appellant requires continuous assistance with the physical tasks of the DLA shopping, specifically with going to and from stores (“her daughter assists her with grocery shopping”) and carrying purchases home (“her daughter carries the purchases”), while being independent with reading prices and labels, making appropriate choices and paying for purchases. At the hearing, the appellant stated that when she goes shopping, she has to have her children go with her to keep an eye on her and she cannot carry heavy things. The appellant stated that sometimes her daughter does the shopping for her. The panel finds that the ministry reasonably considered the physical tasks housekeeping and shopping for which the appellant requires continuous assistance as being for the heavier items in excess of 10 lbs., or the longer distances in excess of 1 block unaided. The physiotherapist reported that the appellant is independently able to perform every task of the DLA transportation (getting in and out of a vehicle, using public transit, using transit schedules and arranging transportation), with a note that the appellant “is slow getting into and out of a car.”

The appellant’s daughter stated at the hearing that when the PR was completed, the doctor did not ask questions about what happens at home and only spent 10 or 15 minutes with them. The appellant’s daughter stated that she is the oldest child and she pretty much does everything at home, primarily as a result of a condition that was not admissible on the appeal. However, the panel finds that the ministry reasonably relied on the information provided by the prescribed professionals, namely the general practitioner and the physiotherapist, in the PR and AR as no additional medical reports were provided on the appeal.

The panel finds that the available evidence demonstrates that the appellant manages most of her DLA without assistance and that the ministry reasonably determined that there is insufficient information to allow the ministry to determine that the periodic assistance 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, specifically her daughters, or the use of an assistive device to perform DLA.

The ministry's position is that because it has not been established that DLA are significantly restricted, it cannot be determined that significant help is required from other persons.

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.

Asked to describe the assistance the appellant needs with DLA, the general practitioner wrote in the PR that the appellant's "husband and children help with some activities of daily living, as possible" and the appellant uses custom orthotics as an aid to her impairment. In the AR, the physiotherapist reported that the help required for DLA is provided by family "when she needs it." In the section of the AR relating to assistance provided through the use of assistive devices, the physiotherapist wrote: "she uses a cane only when her knee pain increases." As previously discussed, the panel finds that the frequency of exacerbations in knee pain has not been defined by the prescribed professionals.

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 reasonably supported by the evidence and therefore confirms the decision.