PART C – Decision under Appeal

The decision under appeal is the Ministry of Social Development and Social Innovation (the ministry) reconsideration decision dated July 16, 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 Persons With Disabilities (PWD) Application comprised of the applicant information and typed self-report dated March 19, 2015, and a physician report (PR) and an assessor report (AR) both dated March 13, 2015 and both completed by the same general practitioner who has known the appellant since April 2005, or for over 10 years.

The evidence also included the following documents:

1) Letter dated January 21, 2015 from the general practitioner 'To Whom It May Concern;'
2) Letter dated February 11, 2015 from a neurosurgeon to the general practitioner;
3) Report dated March 16, 2015 for MRI scans of the cervical and lumbar spine and a CT scan of the lumbar spine;
4) The appellant's Request for Reconsideration dated June 2, 2015, attached to which is a submission prepared by an advocate on behalf of the appellant and attaching a self-report letter dated July 14, 2015 from the appellant 'To Whom It May Concern.' ("self-report #2")

Diagnoses

In the PR dated March 13, 2015, the general practitioner listed as diagnoses: degenerative disc disease- cervical spine, with an onset in September 2012 and lower back pain with an onset in July of 2014. There is no diagnosis of a mental health condition. In the AR, the general practitioner did not describe the appellant's impairments that impact her ability to manage daily living activities.

Physical Impairment

In the PR and AR, the general practitioner reported that:

- Regarding health history, to refer to the attached reports.
- The appellant does not require an aid to compensate for her impairment.
- Regarding the degree and course of impairment, the "pain clinic treatments (physiotherapy/injections) may improve her to the point that she could return to work."
- For functional skills, the appellant can walk 2 to 4 blocks unaided, climb 5 or more steps, lift 2 to 7 kg. (5 to 15 lbs.), and remain seated less than 1 hour.
- The appellant is not restricted with mobility inside the home and has continuous restrictions to mobility outside the home. No comments are added about the degree of restriction.
- In the additional comments, noted that the appellant "has had neck pain since at least 2012", that she worked until August 2014 and she had to stop working due to back and neck pain and she is "unable to return to work due to pain." The appellant has had a CT scan and MRI of her back and neck, she has seen a neurosurgeon and is waiting for an appointment at the pain clinic for assessment and treatment (physiotherapy, possibly injections) and "she may improve with treatment to the point that she can work again in the future."
- The appellant is independent with walking indoors and requires periodic assistance from another person with walking outdoors, climbing stairs, and standing. The appellant requires continuous assistance with lifting and carrying and holding, with a comment added: "back and neck pain limit ability to stand/ sit/ lifting/ carry."
- In the section of the AR relating to assistance provided through the use of assistive devices, the general practitioner did not identify any of the listed items as being applicable to the appellant.

In her self-report, the appellant wrote:

- She has consistent pain from her neck all the way down into her legs and night time is the most difficult; she gets about 7 hours of broken sleep and she gets up to take pain killers.

In her self-report #2, the appellant wrote:

- She struggles daily with her physical impairments.
- Although she can walk 2 to 4 blocks, it takes her significantly longer to do so. It takes 10 to 15 minutes to walk around a single block. She must rest and lie down for an hour after and she also experiences significant pain the following day due to the walking.
- She cannot stand still for longer than 5 minutes. She holds on for support after standing 5 minutes.
- Although she can walk 5 steps independently, she must sit down and rest afterwards due to pain.
- She can only lift 5 lbs. due to pain.
- She cannot sit longer than 30 minutes due to lower back pain. She cannot sit still and must keep shifting due to pain.

In the letter dated February 11, 2015, the neurosurgeon wrote that:

- On physical examination of the appellant, "…motor strength and bulk is normal. Cervical range of motion is normal except extension is limited to 45 degrees. Reflexes are grade 2+ in the upper and lower extremities. Hoffman's is positive bilaterally. This is symmetric. Toes are flexor plantar in response with no clonus or spasticity. Tone is normal. Pinprick sensation is normal. Straight leg raising is negative bilaterally. Gait is normal. There are no palpable deformities of the lumbar spine."
- He reviewed the MRI of the cervical and lumbar spine done on October 15, 2014 and the lumbar spine MRI is normal with no areas of stenosis or disc herniation. The MRI of the cervical spine reveals disc degeneration at C5/6 and C6/7 with mild canal stenosis. There is no spinal cord signal change. There may be some mild bilateral foraminal stenosis as well.
- His impression is that the appellant [has] central neck pain. "This is certainly muscular or soft tissue in nature and not related to the disc protrusions and spinal stenosis. There is no evidence of myelopathy or radiculopathy to suggest that the disc protrusions are symptomatic. Standard treatment for her neck pain would be physiotherapy, anti-inflammatories and general neck care."
- "In terms of her low back pain, extending into her buttock and lateral thighs, there is no clinical or MRI evidence that this is radicular in nature. Therefore, surgery is not an option. Physiotherapy in combination with anti-inflammatories and general back care was discussed."
- He "strongly recommended gradual weight loss with low impact aerobic type exercises done on a regular basis. Dietary changes may be helpful." He also "strongly suggested cessation of smoking as smoking will lead to ongoing neck and back pain and further spinal degeneration."

Report dated March 16, 2015 for MRI scans of the cervical and lumbar spine and a CT scan of the lumbar spine, it is reported that:

- For the MR scan of the cervical spine: there is moderately severe degenerative change at C6 and C6-7. A large left disc osteophyte complex is seen at C5-6 with flattening of the cord and narrowing of the central canal. A moderate to large right disc and disc osteophyte complex is seen at C6-7 with flattening of the cord and narrowing of the central canal. No intrinsic cord abnormality.

- For the MRI scan of the lumbar spine: no significant abnormality is seen in the lumbar spine.
- For the CT scan of the lumbar spine: normal study.

Mental Impairment

In the PR and AR, the general practitioner reported:

- The appellant has no difficulties with communication.
- The appellant has no significant deficits in her cognitive and emotional functioning.
- She is not restricted in social functioning.
- The appellant has a good ability to communicate in all areas, specifically with speaking, reading, writing, and hearing.
- For the section of the AR for an applicant with an identified mental impairment or brain injury, the general practitioner wrote "N/A" or not applicable to the appellant. However, the general practitioner also indicated that there is a moderate impact to cognitive and emotional functioning in the area of consciousness (e.g. orientation, alert/drowsy, confusion) and minimal impacts in emotion and attention/concentration. No impact is reported to bodily functions and no assessment to the remaining 10 listed areas of functioning.
- For the section of the AR assessing impacts to social functioning, the general practitioner again indicated that this section is "N/A" or not applicable to the appellant and went on to assess all areas as independent, specifically with: making appropriate social decisions, developing and maintaining relationships, interacting appropriately with others, dealing appropriately with unexpected demands, and securing assistance from others.
- There is no assessment provided of the appellant's functioning in her immediate and extended social networks.
- There is no mention of a mental health condition in the additional comments to the PR or AR.

In her self-report, the appellant wrote that:

- She is starting to suffer depression as she went from being independent and employed to being unemployed with no improvement in her pain and "no light at the end of this tunnel."
- She takes opiates on a daily basis that make her groggy and lethargic and this interferes with her memory and concentration.

In her self-report #2, the appellant wrote:

- Since her application was originally submitted, she has spoken to her doctor about the depression she has been experiencing.
- Her ongoing pain, loss of independence, unemployment and major lifestyle changes caused by her physical conditions have caused her to feel increasingly depressed and hopeless.
- She is worried about becoming a burden to her family and this has a major impact on her daily functioning.

Daily Living Activities (DLA)

In the PR and AR, the general practitioner indicated that:

- The appellant has been prescribed medications that interfere with her ability to perform DLA, specifically "pain medications for her neck and back pain make her sleepy/ can't drive." The anticipated duration is "as needed for pain; possibly indefinitely."
- The appellant is not restricted in several listed DLA, specifically: personal self care, meal preparation, management of medications, mobility inside the home, management of finances and social functioning.

- The appellant is restricted on a continuous basis with the DLA of basic housework, daily shopping, mobility outside the home, and use of transportation. The general practitioner did not provide further information about the degree of restriction.
- In the PR, in response to a request to describe the assistance the appellant needs with DLA, the general practitioner wrote that the appellant: “gets help from her mom (who she lives with) for housework, shopping, driving.”
- The appellant is independently able to perform every task of several listed DLA, namely: personal care (dressing, grooming, bathing, toileting, feeding self, and transfers in/out of bed and on/off chair), the DLA meals (meal planning, food preparation, cooking and safe storage of food), the DLA pay rent and bills (including banking and budgeting), and the DLA medications (filling/refilling prescriptions, taking as directed and safe handling and storage).
- The appellant requires periodic assistance with all tasks of the DLA transportation, specifically with getting in and out of a vehicle, using public transit, using transit schedules and arranging transportation.
- The appellant requires continuous assistance with the DLA basic housekeeping, including laundry and with the task of carrying purchases home when shopping, while remaining independent with the tasks of going to and from stores, reading prices and labels, making appropriate choices and paying for purchases. The general practitioner wrote: “she is unable to lift/ carry/ bend for basic housework and shopping due to neck and back pain.”
- In the additional comments, that: “driving can be painful (especially lower back). Household chores/ vacuuming, dishes, laundry, are painful because of neck and back pain. She needs help carrying/ lifting groceries.”

In her self-report, the appellant wrote:

- She cannot afford some prescribed medications and she cannot take other medication that interferes with her ability to drive because she is the only responsible relative of 4 children who need her for emergencies.
- Daily activities such as housework or even cooking can cause severe pain. She needs to sit down every few minutes. For the most part, her mother does the housework.
- Standing in line or having to sit for too long also causes pain.
- Driving can be difficult as the use of the clutch tends to hurt after a while. She worries about how she will stop her car if her “back goes out while driving” and she asks a friend to drive her.
- Grocery shopping can be an ordeal since if she gets more than one bag of groceries or a case of water, she needs help carrying it to her car.

In her self-report #2, the appellant wrote:

- She experiences significant sleep interruptions due to back pain. Interrupted sleep and opiate use have major impacts on her daily functioning in terms of drowsiness, memory and attention/ concentration.
- Her use of transportation is continuously restricted. She feels she must choose between driving and taking pain killers. She cannot stand on public transit and she is unable to carry items from the bus to her home. She requires periodic assistance meeting transportation needs.
- Due to physical lifting and carrying limitations, she requires continuous assistance from another person for laundry, basic housekeeping, and carrying purchases home.
- She requires periodic assistance shopping as she cannot stand in line for long periods.
- She is continuously restricted in meal preparation abilities as she is unable to stand to chop

and needs to take breaks. She cannot lift anything heavy such as pots or dishes. Since it now takes her 4 times longer to prepare a meal, she often does not cook. She requires continuous assistance with food preparation and cooking.
- She cannot get in and out of a bath or clean the tub so she only showers. She must sit to put on socks and shoes. It takes her significantly longer to dress and "getting ready" takes her twice as long as it used to.

In the letter dated January 21, 2015, the general practitioner wrote that the appellant has been unable to work due to medical reasons since August 10, 2014 and will not be able to return to work for the foreseeable future.

Need for Help

In the PR, in response to a request to describe the assistance the appellant needs with DLA, the general practitioner wrote that the appellant: "gets help from her mom (who she lives with) for housework, shopping, driving." In the AR, the general practitioner indicated that the help required for DLA is provided by family, with a note that the appellant's "mom/ kids help her." In the section of the AR relating to assistance provided through the use of assistive devices, the general practitioner did not identify any of the listed items as applicable to the appellant.

Additional Information

In her Notice of Appeal dated July 21, 2015, the appellant expressed her disagreement with the ministry's reconsideration decision and the appellant wrote that she believes her impairments are severe and the ministry's decision was unreasonable and she should qualify for PWD.

Prior to the hearing, the appellant provided a copy of the self-report #2, which has been signed by the general practitioner on July 23, 2015 with the statement that he has "reviewed the proceeding (sic) "self-report" and confirm the information is an accurate portrayal of [the appellant's] impairments and functional skills" ("the endorsed self-report").

The Hearing

The advocate provided a written submission on behalf of the appellant, which went to argument (See Part F, Reasons for Panel Decision, below).

The appellant stated that:
- She initially tried to complete the PWD application on her own, without any help.
- The general practitioner is also the family doctor for her mother and her grandmother and, with the stigma associated with mental health diagnoses, she had been reluctant to talk to the general practitioner about her depression.
- When the general practitioner signed her self-report, she had started to talk to the general practitioner about her depression.
- Previously, when she lived with her mother, she had her own bedroom and washroom and was expected to keep them clean. She was expected to buy her own groceries and prepare her own meals. She no longer lives with her mother.
- She has been to the pain clinic and is currently waiting to hear further from the tests that were conducted. She is not sure what treatments will be recommended.

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

Admissibility of Additional Information

Appellant's position

The endorsed self-report is identical to the appellant's previous self-report dated July 14, 2015 with the exception of the added statement which the general practitioner signed and dated July 23, 2015. The appellant's general practitioner was away on holidays and that is the reason that this information was not available at reconsideration and the general practitioner had limited time to be able to write a whole new letter. The general practitioner subsequently had an opportunity to review the appellant's self-report and was prepared to sign the endorsement, which is being put forth as her medical opinion. The endorsed self-report provides detail that was not within the general practitioner's original assessment and the extent of information that is contradictory to the original assessment is limited. The Tribunal guidelines regarding admissibility of evidence, as posted on the website, cite the example of a doctor's note provided to verify the appellant's testimony regarding the need for help with DLA, as set out in the record of the ministry decision, as being in support of the information and records and corroborating the information before the ministry at reconsideration and, therefore, being admissible. In the same way, the endorsed self-report is the general practitioner's note verifying the appellant's information regarding her restrictions and her need for assistance with DLA and meets the test in Section 22(4) of the *Employment and Assistance Act*.

Ministry's position

The ministry did not object to the admissibility of the endorsed self-report provided on the appeal, except with respect to the information about depression since there was no diagnosis or information in support of a diagnosis of depression before the ministry at reconsideration.

Panel's determination

The panel considered the endorsed self-report signed by the appellant general practitioner on July 23, 2015 as information that tends to corroborate the extent of the appellant's impairment as diagnosed in the PWD application, which was before the ministry at reconsideration. Although the ministry pointed out that there was no diagnosis of depression before the ministry at reconsideration, the appellant wrote in her self-report included with the PWD application that she is "starting to suffer depression" and, therefore, the issue of a mental impairment was before the ministry at reconsideration.

The panel considered that the general practitioner signed a statement that the appellant's self-report had been reviewed and the general practitioner confirmed the information "is an accurate portrayal" of the appellant's impairments and functional skills, or it is consistent with what the general practitioner knows of the appellant. While the appellant stated in her self-report that she believes she is starting to experience depression, the signature of the general practitioner is not the same as a clinical diagnosis of depression but, rather, confirmation of the appellant's belief. For those portions of the self-report that are not consistent with the general practitioner's initial assessments, the panel finds that there was no explanation offered by the general practitioner for why the assessment had changed from the time of the initial reports in March 2015. 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,* and will put more weight on the initial assessments by the general practitioner in any areas of inconsistency.

The panel considered the advocate's written submission as argument on behalf of the appellant.

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 the pain in her lower back and from degenerative disc disease in her cervical spine. The advocate argued that it appears the ministry took the absence of evidence from the appellant about her efforts to heal herself as relevant to whether her impairment was severe and the appellant was not fairly given an opportunity to defend herself on this ground. The advocate argued further that the ministry did not properly consider the appellant's self-report of her functional skills, which have been clarified in the endorsed self-report to include an ability to walk 2 to 4 blocks but it takes her significantly longer, to climb 5 or more steps but she has to rest afterwards, to lift only 5 lbs. and remain seated for no longer than 30 minutes. The advocate argued that since the finding of "severity" is in the discretion of the ministry and is not a term defined in the legislation, if there is any doubt or ambiguity arising from the language of the legislation it ought to be resolved in favour of the appellant and with a benevolent purpose in mind, pursuant to Section 8 of the *Interpretation Act* and the court decisions in *Hudson v EAAT,* 2009 BCSC 1461 and *Villani v. Canada (AG*), 2001 FCA 248.

The ministry's position is that there is insufficient evidence to establish that the appellant has a severe physical impairment. The ministry argued that the appellant's long-time general practitioner initially reported functional skills of an ability to walk 2 to 4 blocks unaided, climb 5 or more steps unaided, lift

5 to 15 lbs. and to remain seated for less than an hour which, when considered along with the results of the MRI and CT scan of the appellant's neck and back as interpreted by the neurosurgeon, do not indicate a severe 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 medical practitioner – in this case, the appellant's general practitioner.

In the PR, the general practitioner diagnosed the appellant with pain in her lower back, which had an onset in July of 2014 and from degenerative disc disease in her cervical spine, with an onset of September 2012. The panel notes that the general practitioner has known the appellant for over 10 years and when asked to indicate the severity of the medical conditions relevant to the appellant's impairment in the health history section of the PR, the general practitioner referred to the additional comments in section "F" and to the attached reports. The panel finds that it is reasonable to place considerable weight on the additional comments because the general practitioner emphasized them and they are in the general practitioner's own handwriting. The general practitioner wrote that the appellant "has had neck pain since at least 2012", that she worked until August 2014 and she had to stop working due to back and neck pain and she is "unable to return to work due to pain." The appellant has had a CT scan and MRI of her back and neck, she has seen a neurosurgeon and is waiting for an appointment at the pain clinic for assessment and treatment (physiotherapy, possibly injections) and "she may improve with treatment to the point that she can work again in the future." As the advocate pointed out, the ministry was satisfied that the general practitioner had confirmed the appellant's impairment is likely to continue for 2 years or more but the general practitioner wrote again, regarding the degree and course of the appellant's impairment, that the "pain clinic treatments (physiotherapy/injections) may improve her to the point that she could return to work." At the hearing, the appellant stated that she has been to the pain clinic, she is currently waiting to hear further from the tests that were conducted, and she is not sure what treatments will be recommended.

Regarding the reports emphasized by the general practitioner in the PR, the neurosurgeon reviewed the MRI and CT scans and wrote in his February 11, 2015 letter that the lumbar spine MRI is normal with no areas of stenosis or disc herniation while the MRI of the cervical spine reveals disc degeneration at C5/6 and C6/7 with mild canal stenosis. The neurosurgeon, who is a specialist in this area, wrote that there is no spinal cord signal change and there may be some mild bilateral foraminal stenosis as well. After conducting a physical examination of the appellant, which was stated to be normal, the neurosurgeon provided an impression that the appellant has central neck pain which "is certainly muscular or soft tissue in nature and not related to the disc protrusions and spinal stenosis" and "there is no evidence of myelopathy or radiculopathy to suggest that the disc protrusions are symptomatic; standard treatment for her neck pain would be physiotherapy, anti-inflammatories and general neck care." The neurosurgeon further wrote in terms of the appellant's low back pain that "there is no clinical or MRI evidence that this is radicular in nature" and

"physiotherapy in combination with anti-inflammatories and general back care was discussed." The neurosurgeon's "strong" recommendations included "low impact aerobic type exercises done on a regular basis," which was judged to be a safe form of physical activity for the appellant in consideration of her diagnosed medical conditions and based on the specialist's physical examination of the appellant and evaluation of the medical reports. The panel finds that the ministry reasonably viewed the balance of the evidence from the general practitioner in light of this report from the specialist that had been emphasized by the general practitioner, along with comments that the appellant should be able to return to work once she has completed the recommended treatments. The appellant was given an opportunity to provide an update regarding her experience with the recommended treatments at reconsideration, in an effort to satisfy the ministry that she has a severe physical impairment, yet no information was provided by her as noted by the ministry. There was no further information from the specialist provided on the appeal.

The general practitioner reported in the PR and the AR that the appellant does not require an aid for her impairment and none of the listed assistive devices are applicable, including mobility aids such as a cane or walker or support items such as a brace. For functional skills, the general practitioner assessed the appellant as able to walk 2 to 4 blocks unaided, climb 5 or more steps, lift 5 to 15 lbs., and remain seated less than 1 hour. The general practitioner indicated that the appellant is not restricted with mobility inside the home and has continuous restrictions to mobility outside the home; however, no comments are added by the general practitioner about the degree of restriction. In the AR, the general practitioner assessed the appellant as independent with walking indoors and as requiring periodic assistance from another person with walking outdoors, climbing stairs, and standing. While the general practitioner has indicated a need for periodic assistance from another person, there is little detail provided from the general practitioner or the appellant regarding the type or amount of assistance provided by another person.

In her self-report, confirmed by the general practitioner, the appellant wrote that she takes significantly longer to walk 2 to 4 blocks unaided, she must rest after she climbs 5 steps independently, she cannot sit longer than 30 minutes due to lower back pain, and she can only lift 5 lbs. due to pain. In the AR, the general practitioner reported that the appellant requires continuous assistance from another person with lifting and carrying and holding, with a comment added: "back and neck pain limit ability to stand/ sit/ lifting/ carry" and no further comment about the assistance required. While the endorsed self-report indicated that the appellant's lifting ability is at the low end of the range of 5 to 15 lbs,, the panel finds that the ministry reasonably determined that, considering the evidence as a whole, there is not sufficient evidence of significant restrictions to the appellant's physical functioning. 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.

While the advocate argued that since the finding of "severity" is in the discretion of the ministry, if there is any ambiguity arising from the language of the legislation it ought to be resolved in favour of the appellant, the onus remains with the appellant to provide sufficient supporting evidence to satisfy the ministry that her impairment, or overall restriction in the ability to function independently or effectively, is "severe." Given the emphasis by both her long-time general practitioner and the neurosurgeon on the importance of pursuing physical therapies, including aerobic exercises, to treat the appellant's condition, as well as lack of details of any significant impacts to the appellant's physical functioning, the panel finds that the ministry reasonably determined that there is insufficient 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 appellant's depression. The advocate argued that the general practitioner has confirmed, in the endorsed self-report, that the appellant is also suffering from symptoms of depression and this qualifies as a medical opinion. The advocate argued that the general practitioner reported that the appellant has been prescribed medications to address her neck and back pain and these interfere with her ability to perform DLA by making her sleepy and unable to drive and this is the undercurrent to how the appellant is restricted with her mental functioning. The advocate argued that, while it is not clear, in the section of the AR dealing with impacts to cognitive and emotional functioning, it seems the general practitioner is reporting the effects of the pain medication by indicating a minimal impact in emotion and attention/concentration and moderate impact in consciousness.

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 self-reported depression but argued that the general practitioner did not diagnose a mental condition and did not suggest that the appellant might have a mental condition in the narrative to the PR or the AR. The ministry argued that the general practitioner did not assess significant impacts to the appellant's cognitive and emotional functioning.

Panel Decision

The general practitioner did not diagnose the appellant with a mental health condition and, although the appellant stated in her self-report that she believes she is starting to suffer from depression and she takes opiates on a daily basis that make her groggy and lethargic and this interferes with her memory and concentration. As discussed under admissibility, the panel finds that the signature of the general practitioner is not the same as a clinical diagnosis of depression but, rather, confirmation of the appellant's belief. In the PR, the general practitioner reported that the appellant has no significant deficits in her cognitive and emotional functioning. 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 general practitioner wrote that this was not applicable to the appellant. However, the general practitioner also indicated that there is a moderate impact to cognitive and emotional functioning in the area of consciousness (e.g. orientation, alert/drowsy, confusion) and minimal impacts in emotion and attention/concentration. No impact is reported to bodily functions and the general practitioner made no assessment to the remaining 10 listed areas of functioning. Although the advocate argued that this may have been the general practitioner's assessment of the impact from the appellant's medications, which is the undercurrent to her mental impairment, the advocate also acknowledged that this is not clear and the ministry argued that it is also consistent with the general practitioner abandoning the assessment in this section of the AR.

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 restricted in either. Regarding the decision making DLA, the general practitioner 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 (meal planning and safe storage of food), pay rent and bills (including budgeting) and medications (taking as directed and safe handling and storage). While periodic assistance is indicated for using transit schedules and

arranging transportation, the general practitioner did not provide an explanation or description in the AR. In the endorsed self-report, the appellant reiterated that she needs periodic assistance meeting transportation needs and described having to choose between driving and taking pain medication. The general practitioner reported in the AR 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 not being restricted. For the section of the AR assessing impacts to social functioning, the general practitioner again indicated that this section is "N/A" or not applicable to the appellant and went on to assess all areas as independent, including with developing and maintaining relationships, interacting appropriately with others, and securing assistance from others. The general practitioner reported that the appellant has no difficulties with communication.

Given the absence of a definitive mental health diagnosis and the lack of evidence of impacts to the appellant's cognitive, emotional and 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 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 advocate argued that the endorsed self-report clarifies and expands on information contained in the original PWD application and adds additional areas of restriction not previously reported, namely personal self-care and meal preparation, resulting in restrictions in a total of 6 out of 8 DLA as defined in the EAPWDR. The advocate argued that where the general practitioner indicated a need for assistance, whether continuous or periodic, this represents an area of significant restriction.

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 general practitioner has not provided sufficient information to establish that there is a significant restriction in the appellant's ability to perform these activities.

Panel Decision

According to the legislation, the direct and significant restriction in the ability to perform DLA must be a result of a severe impairment, a criterion which has not been established in this appeal. This DLA criterion must also be considered in terms of the preceding legislative language of section 2 of the EAPWDA, which provides that the minister may designate a person as a person with disabilities "if the minister is satisfied that" the criteria are met, including this one. In exercising the discretion conferred by the legislation, it is reasonable that the minister would expect that the opinion of a prescribed professional be substantiated by information from the prescribed professional that would satisfy the minister that there are direct and significant restrictions in the ability to perform DLA, either continuously or periodically for extended periods, by presenting a clear and complete picture of the nature and extent of these restrictions.

In the appellant's circumstances, the general practitioner reported in the PR that the appellant has been prescribed medication that interfere with her ability to perform DLA in that "pain medications for

her neck and back pain make her sleepy/ can't drive" and she takes them "as needed for pain; possibly indefinitely." Although the appellant wrote in her self-report that she is in consistent pain, the general practitioner assessed the appellant in the PR as not restricted in several listed DLA, specifically: the DLA of personal self-care, the DLA of meal preparation, the DLA of management of medications, the DLA of management of finances and the social functioning DLA. The general practitioner reiterated in the AR that the appellant is independently able to perform every task of several DLA as set out in Section 2(1) of the EAPWDR, namely: the DLA "perform personal hygiene and self care" (dressing, grooming, bathing, toileting, feeding self, and transfers in/out of bed and on/off chair), the DLA "prepare own meals" (meal planning, food preparation, cooking and safe storage of food), the DLA "manage personal finances" (pay rent and bills, banking and budgeting), the DLA "manage personal medication" (filling/refilling prescriptions, taking as directed and safe handling and storage), and all aspects of the DLA "relate to, communicate or interact with others effectively" (social functioning). While the advocate argued that the endorsed self-report adds additional areas of restriction not previously reported, namely personal self-care and meal preparation, as discussed under admissibility, the panel finds that there was no explanation offered by the general practitioner for why the assessment had changed from the time of the initial reports in March 2015. Therefore, the panel finds that the ministry reasonably placed more weight on the initial assessments by the general practitioner in any areas of inconsistency.

In the PR, the general practitioner reported that the appellant is restricted on a continuous basis with the DLA of basic housework, daily shopping, and use of transportation, and did not provide further information about the degree of restriction. In response to a request to describe the assistance the appellant needs with DLA, the general practitioner wrote that the appellant: "gets help from her mom (who she lives with) for housework, shopping, driving." In the AR, the general practitioner reported that the appellant requires continuous assistance with the DLA "perform housework to maintain the person's place of residence in acceptable sanitary condition", including laundry, and with one task of carrying purchases home when shopping, while remaining independent with the 4 other tasks for the DLA "shop for personal needs," specifically: going to and from stores, reading prices and labels, making appropriate choices and paying for purchases. The general practitioner wrote: "she is unable to lift/ carry/ bend for basic housework and shopping due to neck and back pain."

The general practitioner reported that the appellant requires periodic assistance with all tasks of the DLA "use public or personal transportation facilities," specifically with getting in and out of a vehicle, using public transit, using transit schedules and arranging transportation, but did not provide further explanation or description other than in the additional comments, that: "driving can be painful (especially lower back). Household chores/ vacuuming, dishes, laundry, are painful because of neck and back pain. She needs help carrying/ lifting groceries." With respect to the DLA "move about indoors and outdoors", the general practitioner indicated that the appellant is not restricted with mobility indoors and is continuously restricted with mobility outdoors, outside her functional range of 2 to 4 blocks unaided, for which she requires periodic assistance from another person that has not been defined by the general practitioner. Although the advocate argued that the general practitioner confirmed continuous restrictions with mobility outside the home as a separate DLA, this is only one aspect of the "move about indoors and outdoors" DLA.

With respect to the two DLA that are specific to mental impairment – decision making ("make decisions about personal activities, care or finances") and social functioning ("relate to, communicate or interact with others effectively"), the available evidence indicates that the appellant is not restricted in either, as discussed above under the severity of mental impairment.

The panel finds that the ministry reasonably concluded that most of the listed tasks of DLA are performed independently by the appellant with the exception of the DLA basic housekeeping and, for those tasks that require periodic assistance, the general practitioner has not provided sufficient information to establish that the periodic assistance is required for extended periods of time. Therefore, considering that a severe impairment has not been established, the panel finds that the ministry reasonably concluded that there is not enough evidence from the prescribed professional to establish that the appellant's impairment directly and 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 to perform DLA, specifically her family.

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 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 that the appellant: "gets help from her mom (who she lives with) for housework, shopping, driving." In the AR, the general practitioner indicated that the help required for DLA is provided by family, with a note that the appellant's "mom/ kids help her." In the section of the AR relating to assistance provided through the use of assistive devices, the general practitioner did not identify any of the listed items as 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.