

Employment  
and Assistance  
Appeal Tribunal

Tribunal Decision

APPEAL

2015-00511

PART A – Panel Information

On, 2015-12-16 a hearing was held, pursuant to Part 3 of the *Employment and Assistance Act*  
DATE (YYYY MM DD)

to hear the appeal of Katharina Siemens

GA

FILE NUMBER

NAME OF APPELLANT (PLEASE PRINT)

Written hearing  
ADDRESS

PART B – Persons in Attendance at the Hearing

PANEL CHAIR

Margaret Koren

MINISTRY REPRESENTATIVE

Written hearing

PANEL MEMBER

Richard Roberts

APPELLANT

Written hearing

PANEL MEMBER

Marcus Hadley

APPELLANT'S REPRESENTATIVE

Witnesses

FOR APPELLANT

FOR MINISTRY

FOR APPELLANT

FOR MINISTRY

Other

FOR APPELLANT

FOR MINISTRY

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## PART C – Decision under Appeal

The decision under appeal is the Ministry of Social Development and Social Innovation (“Ministry”) reconsideration decision dated September 24, 2015 in which the Ministry found that the Appellant was not eligible for designation as a Person With Disabilities (“PWD”) because she did not meet all of the requirements for PWD designation in section 2(2) of the *Employment and Assistance for Persons with Disabilities Act* (“EAPWDA”). The minister was satisfied that the Appellant has reached 18 years of age and that her impairment is likely to continue for at least two years. However, based on the information provided in the PWD Designation Application (“PWD application”) and Request for Reconsideration, the minister was not satisfied that:

- The Appellant has a severe mental or physical impairment; and
- The impairment, in the opinion of a prescribed professional, directly and significantly restricts her ability to perform daily living activities (“DLA”) either continuously or periodically for extended periods; and
- As a result of these restrictions, the Appellant requires help to perform those activities through an assistive device, the significant help or supervision of another person, or the services of an assistance animal.

## 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 reconsideration consisted of the following:

1. A PWD application comprised of the Applicant Information and a self-report completed by the Appellant on February 23, 2015, as well as a Physician Report (“PR”) and an Assessor Report (“AR”) both dated April 6, 2015 and both completed by the Appellant’s family physician. The Appellant has been her patient for 15 years and has seen her 2-10 times in the past 12 months. The physician obtained the information for the AR from an office interview with the Appellant, consult files/charts, and an advocate (support worker) who provided some notes.
2. A Request for Reconsideration signed by the Appellant on August 10, 2015 with attached submissions from an advocate dated September 14, 2015. The advocate outlined the Appellant’s argument for the reconsideration (to be addressed by the panel in *Part F – Reasons*) and provided copies of the PWD legislation and BC Supreme Court decision *Hudson v. British Columbia*, 2009 BSCS 1461. Attached as well were three pages from the AR, *Part B Mental or Physical Impairment* and *Part C Daily Living Activities* (“the reconsideration AR”) with additional comments initialed by the physician.

The PWD application included the following information, with the physician’s additional comments from the reconsideration AR highlighted in bold font:

### Diagnoses:

- In the PR, the physician did not fill in the Diagnoses section but check marked the diagnostic codes for rheumatoid arthritis and osteoarthritis. She indicated under *Health History* that the Appellant is in an “acute flare” of rheumatoid arthritis and also has “carpal tunnel symptoms and some osteoarthritis.” She has started treatment with a rheumatologist and it is hard to know whether her arthritis will go into remission. Medication will be required long term.
- In the AR, the physician wrote that “acute new diagnosis rheumatoid arthritis” is the mental or physical impairment that impacts (the Appellant’s) ability to manage DLA.
- In her self-report, the Appellant stated that she was diagnosed with a “fast progressive” rheumatoid arthritis. After giving birth to her baby, she noticed severe pain and stiffness in both hands and she also has sore feet, shoulders and elbows.

### Functional Skills

#### PR

- The physician check marked that the Appellant is able to walk 1-2 blocks unaided on a flat surface with the comment “significant foot pain”; climb 2-5 steps unaided; lift 5-15 lbs. with the comments “with difficulty, hands very painful, hard to grasp or lift”; and remain seated for 1-2 hours. The physician checked that there are no difficulties with communication.

- The physician check marked that the Appellant has significant deficits in the following areas of *Cognitive and Emotional Function* with the comments, “she reports decreased mood re diagnosis and pain. Decreased motivation re pain on using hands”.
  - Emotional disturbance (depression/anxiety)
  - Motivation
  - ‘Other” with the comment, “fatigue increases with meds and treatment for illness and joint pain”.
- Under Additional Comments, the physician wrote, “Hand, shoulder, ankles, feet are worst. Moves slower. Dexterity is decreased. Mood/energy is decreased re pain. Meds are nauseating. Takes longer to dress/ do chores, etc. Single mother of a baby. Needs help re getting and carrying groceries, moving any heavier objects.”

#### AR

- For *Ability to Communicate*, the physician check marked “good” for Speaking, Reading (comment, “ability ok but needs visual acuity checked re decreased acuity with meds”), and Hearing. For Writing, the physician checked “satisfactory” with the explanation, “slow and decreased re hand pain”.
- For *Mobility and Physical Ability*, the physician checked that the Appellant takes significantly longer than typical with Walking indoors and outdoors, Climbing stairs, and Standing (comment, “she reports significant foot/ankle/knee pain”). The Appellant requires continuous assistance with Lifting and periodic assistance with Carrying and holding. The physician commented, “ADL take longer re pain and stiffness, fatigue. Needs help any heavy chores or lifting, **can’t lift anything heavy without help, needs help with lifting on a daily basis, is unable to work because of pain and loss of dexterity and mobility.**”
- Under *Cognitive and Emotional Functioning*, the physician checked “No impact” for 5 out of 14 areas. Impacts in nine areas were indicated as follows:
  - A minimal impact was reported for Bodily functions, Consciousness, Insight and judgment, Attention/concentration, Executive, and Motor activity.
  - A moderate impact was reported for Emotion, and Memory.
  - A major Impact was reported for Motivation.
  - Under Comments the physician wrote, “Pain/stiffness/physical limitation leads to decreased mood, decreased focus and concentration, increased distraction. Pain affects sleep.”

#### Self-report

- The Appellant wrote that she has severe pain in her hands after doing any kind of work, especially cleaning or holding a vacuum hose. Daily work is getting harder and she needs more help with things she used to do by herself.

#### Daily Living Activities (DLA):

#### PR

- The physician check marked “yes”, the Appellant has been prescribed medication/treatment that

interferes with her ability to perform DLA with the explanation, “nausea from meds, long term duration (of medication) re suppression of RhA.”

AR

- For Personal Care, the physician indicated that the Appellant is independent in four out of eight areas: Toileting, Feeding Self, Regulate diet, and Transfers on/off of chair. The Appellant takes significantly longer with Dressing, Grooming, and Bathing with the comment “twice as long re hand pain”. She also takes significantly longer with Transfers in/out of bed with the comment, “stiff and sore”.
- For Basic housekeeping, the Appellant is restricted in both areas: Laundry takes significantly longer with the comment, “takes longer/ needs some help”; and for Basic housekeeping, she requires continuous assistance from another person with the comment, “needs help”.
- For Shopping, the physician checked that the Appellant is independent in two out of five areas: Reading prices/labels, and Making appropriate choices. She requires continuous assistance with Going to and from stores with the comment, “daughter and others help.” She also needs periodic assistance with Paying for purchases and continuous assistance with Carrying purchases home (which also takes significantly longer) with the comments, “visual acuity is (question mark) decreased, needs assessment, hard to read labels, **need help always to carry groceries**”
- Under Additional comments, the physician wrote, “fatigue and pain, limited lifting and carrying re hand pain **from her rheumatoid arthritis.**”
- For Meals, the Appellant is reported as independent in two out of four areas: Meal planning, and Safe storage of food. She takes significantly longer with Food preparation with the comment, “needs assistance at times, stiff sore hands, **hard on daily basis to prepare food**”. She requires periodic assistance with cooking.
- For Pay rent and bills, the Appellant is independent in two out of three areas: Budgeting, and Pay Rent and Bills with the comment, “unless she has to go somewhere to pay bills then needs help, financial stress increases it **or too sore to work**”. For Banking, the Appellant requires periodic assistance with the comment, “can’t stand in bank long **but can deal with finances**”.
- For Medications, the Appellant is reported as independent in two out of three areas: Taking as directed, and Safe handling and storage. She requires periodic assistance with Filling/refilling prescriptions with the comment, “needs them delivered”.
- For Transportation, the Appellant is independent in one of three areas: Using transit schedules/arranging transportation. She takes significantly longer with Getting in and out of a vehicle (with the comment, “need to pull up on door handle”), and also with Using public transit.
- Under Additional comments, the physician wrote:
  - “hard to chop and prep food when hands are sore”.
  - ADL’s 3-4 times longer (**deleted**), the extent and duration of periodic assistance” (**deleted**) and replaced with: “**She finds all daily activities take twice as long re hand pain. She is having significant side effects from her medications.**”

- For *Social Functioning*, the physician checked the following:
  - The Appellant is independent in two out of five areas: Appropriate social decisions, and Able to develop/maintain relationships.
  - She requires periodic support for:
    - Interacts appropriately with others with the comment, “speaks English well but doesn’t always understand all the social cues.”
    - Able to deal appropriately with unexpected demands with the comment, “support group re RhA and single mom would be helpful”, and
    - Able to secure assistance from others with the comment, “She has some community support but not always available.”
  - The Appellant has good functioning in her immediate social network, and marginal functioning in her extended social networks with the comments, “reserved, private lady, immigrant”, English is her second language.

#### Self-report

- The Appellant indicated that cleaning, holding a vacuum, and daily work are difficult due to pain and soreness.

#### Need for Help:

#### PR

- The physician checked “no” regarding any prostheses or aids required for the Appellant’s impairment but added the comments: “will need disabled parking pass, and help re lifting, etc.,, shower chair, shower grab rail, and wrist braces left and right”.

#### AR

- The Appellant lives alone and with family/friends.
- For *Social Functioning*, in order to help maintain the Appellant in the community, the physician wrote, “Social or Support Worker would be helpful. Support group as mentioned. Some counselling support.”
- Under *Assistance provided by other people*, the physician checked that help is provided by family, friends, and community service agencies. The physician indicated that the Appellant’s daughter and the father of her baby provide help but it is limited by their health conditions. The Appellant also has “some friend support”.
- Under *What assistance would be necessary if help is required but there is none available*, the physician wrote, “has some assistance lha social worker, optometry apt. re acuity and check retina with RhA treatment.”
- Under *Assistance provided through the use of assistive devices*, the physician checked “Splints” with the comment, “wrists”, and wrote that the Appellant uses “shower rail/chair/grab bar (tub), left and right wrist braces.” The Appellant does not have an assistance animal.

**3.** A Chart Summary indicating consults with the following specialists: a rheumatologist in January and February 2015 for rheumatoid arthritis; and a neurologist in January 2015 for carpal tunnel.

4. Two letters from the rheumatologist, dated January 8 and February 23, 2015 indicating that the Appellant started to have joint pain in her hands six months post-partum. She has numbness that worsens at night but she has no nocturnal awakening from the hand pain. Her wrists, elbows, shoulders, knees, and ankles are normal and she has mild pain in her right PIP joint. Her slightly elevated rheumatoid factor, and hand x-ray suggest early erosive seropositive rheumatoid arthritis. The Appellant is aware that it is a chronic disease, that treatment should not be delayed, and that aggressive stress management is important early on. The Appellant has been started on medications with side effects that include nausea, headaches, and ocular symptoms. Bilateral carpal tunnel is also most likely and the Appellant is prescribed a night brace to be worn for 6-8 weeks.

5. A letter from a neurologist dated January 12, 2015 with attached *Nerve Conduction Studies – Motor Summary Table*. The Appellant described intermittent nocturnal numbness, tingling, and aching discomfort as high as her shoulder. Hanging her arms down or changing positions provides relief and she “really does not have daytime symptoms”. There is no neurologic deficit and the nerve conduction tests reveal mild carpal tunnel syndrome. She was advised to lose weight, wear braces every night, and try stretching exercises as bedtime.

#### *Additional submissions*

With the consent of both parties, the appeal proceeded by way of a written hearing pursuant to section 22(3)(b) of the *Employment and Assistance Act*. In an email to the Tribunal of November 30, 2015, the Ministry stated that its submission for the appeal will be the reconsideration summary.

The Appellant filed the following documents on appeal:

1. Her Notice of Appeal signed on September 29, 2015 in which she stated that she goes through pain all day, plus fatigue. Her mobility is restricted and she requires continuous assistance with three DLA and periodic assistance with three DLA.
2. The advocate’s submission, dated November 19 2015 that outlines the Appellant’s argument (which the panel will address in *Part F - Reasons*), and states that the Appellant has “low mood” in addition to carpal tunnel and arthritis.
3. A letter from the rheumatologist, dated October 26, 2050 [sic] with addendum dated November 2, 2015. The rheumatologist confirmed the Appellant’s diagnoses as seropositive rheumatoid arthritis and bilateral carpal tunnel syndrome. She listed the Appellant’s medications and vitamins, and stated that the Appellant is tolerating the medication well (including a steroid injection) and “feels well regarding her joints”. The pain is worse when she is lying on her side and she also has pain when she walks. She will stay on her current treatment (to be reviewed in January).

#### *Admissibility*

The panel finds that the appeal submissions are admissible as evidence in support of the reconsideration record because they corroborate the Appellant’s health conditions and symptoms, treatment course, restrictions to DLA and need for assistance as set out in the PWD reports and the rheumatologist’s earlier letters which were before the minister at the reconsideration. The panel therefore admits the appeal submissions under section 22(4)(b) of the *Employment and Assistance Act* as evidence in support of the information and records that were before the minister at the time the decision being appealed was made. The panel further accepts the advocate’s submission as argument in support of the Appellant’s position at the reconsideration.

## PART F – Reasons for Panel Decision

The issue in this appeal is whether the Ministry's reconsideration decision of September 24, 2015, which found that the Appellant is not eligible for PWD designation, was reasonably supported by the evidence or was a reasonable application of the applicable enactment in the circumstances of the Appellant. Based on the information provided in the PWD application, the minister was not satisfied that the following criteria in EAPWDA section 2(2) were met: the Appellant has a severe physical or mental impairment; and the impairment, in the opinion of a prescribed professional, directly and significantly restricts her ability to perform DLA either continuously or periodically for extended periods; and, as a result of these restrictions, she requires help to perform those activities.

The eligibility criteria for PWD designation are set out in section 2(2) of the EAPWDA as follows:

- (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.

The “daily living activities” referred to in EAPWDA section 2(2)(b) are defined in section 2 of the EAPWDR 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.



### ***Severe mental or physical impairment***

The diagnosis of a serious medical condition does not in itself determine PWD eligibility or provide evidence of a severe impairment. To satisfy the requirements in section 2(2) of the EAPWDA, evidence of how, and the extent to which, a medical condition restricts daily functioning must be considered. This includes the evidence of the Appellant and from a prescribed professional regarding the nature of the impairment and its impact on the Appellant's ability to manage the DLA listed in section 2(1) of the EAPWDR. However, subsection 2(2)(b) of the EAPWDA clearly sets out that the fundamental basis for the analysis of restrictions is the evidence from a prescribed professional - in this case, the Appellant's physician.

#### *Severe mental impairment*

Appellant's position: The advocate described the Appellant's "low mood" (appeal submission) but did not argue that the Appellant has a severe mental impairment. The Appellant's PWD application focuses on a physical as opposed to mental impairment.

Ministry's position: The Ministry noted that the physician has not diagnosed or described a mental disorder or brain injury. However, the Ministry will still consider any identified impacts in *Cognitive and Emotional Functioning* and *Social Functioning* (in the AR) as supporting the information in the PR (section D – Functional Skills) regarding any significant deficits with cognitive and emotional function. While the physician noted significant deficits with Emotional Disturbance and Motivation and increased fatigue due to pain and medication side effects, the Ministry argued that the information indicates a moderate as opposed to severe impairment of mental functioning. The Ministry noted that aside from a major impact on Motivation (as reported in the AR) the physician marked the majority of impacts with *Cognitive and Emotional Functioning* as moderate, minimal, or no impact.

Regarding impacts to *Social Functioning*, the Ministry argued that the physician's assessments do not establish a severe mental impairment. The Ministry noted that the frequency and duration of the periodic support required for Appropriate social interactions, Dealing with unexpected demands, and Securing assistance from others was not described. The Ministry argued that the Appellant's "marginal functioning with extended social networks", as identified by the physician in the AR, is attributable to personality traits and a language barrier, rather than a mental impairment or brain injury.

#### *Panel's decision*

The panel finds that the Ministry reasonably determined that a severe mental impairment was not established by the information provided. The panel also finds that the Ministry reasonably concluded that the evidence indicates a moderate (not severe) level of mental impairment. In the PR, the physician indicated "low mood", "she reports decreased mood re diagnosis and pain". In the PR, the physician also noted decreased motivation "re pain on using hands" and decreased energy as well. However, as noted by the Ministry, the physician did not diagnose any mental disorder and the evidence is that the Appellant's decreased motivation and energy is due to pain and medications rather than a severe mental impairment.

Similarly in the AR, the physician commented that all impacts for Cognitive and Emotional Functioning are due to “pain/stiffness/physical limitation” and there is no diagnosis of a psychiatric or brain disorder. While the physician indicated that the Appellant requires periodic support in three of five areas of *Social Functioning* and that she has marginal functioning with her extended social networks, the physician described the Appellant as “reserved” and “private” and indicated that she may miss some social cues due to English - second language. As noted by the Ministry, the frequency and duration of periodic support was not specified, and also, the recommendation for a support worker, support groups, and “some counselling support” are not indicative of the “significant help” required under the EAPWDA subsection 2(3)(b). Based on this analysis, the panel finds that the Ministry reasonably determined that the criterion of severe mental impairment in EAPWDA section 2(2) was not met.

### *Severe physical impairment*

Appellant’s position: In the reconsideration submission, the advocate argued that the physician’s check marks indicating a range of function for walking, climbing steps, lifting, and remaining seated, do not mean the Appellant functions at the high end of that range. For example, checking that the Appellant can walk one to two blocks does not necessarily mean that she can walk two blocks. The advocate added that if the Appellant walks two blocks, it doubles the amount of pain she experiences. In the appeal submission, the advocate highlighted the physician’s information for walking and lifting: “significant foot pain” and “hands very painful”. The advocate submitted that the Appellant can only lift 5-7 lbs. but the physician had to tick the 5-15 lbs. box as that is the option on the form.

Regarding stairs, the advocate argued that even though a hand railing is not considered an assistive device in the EAPWDR, it does aid a person up the stairs. She submitted that income assistance recipients may have no other choice than to use their surroundings as aids because they often cannot afford medical devices.

Regarding the need for assistance and restrictions to DLA, the advocate argued that the physician’s additional comments in the reconsideration AR confirm a severe impairment because the Appellant is in need of periodic assistance “on a daily basis”, has a loss of dexterity and mobility due to pain, and in accordance with the *Hudson* decision, she has periodic limitations together with ongoing medical conditions. The advocate argued that the physician’s information indicates a significant restriction because nine DLA in the AR are identified as taking “significantly longer and not just longer”, and the Appellant needs continuous or periodic assistance with these DLA.

Ministry’s position: The Ministry was not satisfied that the information provided in the PWD application (including the Appellant’s self-report) and reconsideration submissions establish a severe impairment of physical functioning. The Ministry provided the following arguments:

- In the reconsideration AR, the physician provided no additional information with regard to the Appellant’s limitations as reported in the PR, and she specifically did not indicate that the Appellant can lift only 5-7 lbs. (within the 5-15 lbs. range).
- The use of stair rails, counters, etc. is not considered an assistive device and the physician did not indicate the Appellant requires a device for lifting.
- An activity taking significantly longer than typical, without additional details, does not establish that the activity is significantly restricted. In the PR, the physician did not describe how much longer than typical the Appellant takes with walking, climbing stairs, and standing.

- Despite experiencing pain, the Appellant is independently able to walk, climb steps, lift, and remain seated and this is indicative of a moderate as opposed to a severe physical impairment. The physician did not describe (in the PR) how much slower than typical the Appellant moves and to what degree her dexterity has decreased.
- The physician did not describe the frequency and duration of the assistance required with carrying and holding, or how much longer DLA take due to pain/stiffness/fatigue, or which activities take longer.
- The Appellant's employability or ability to work is not taken into consideration for assessment of PWD.

#### *Panel's decision*

The panel finds that the Ministry reasonably determined that a severe physical impairment is not established by the information provided. The panel also finds that the Ministry reasonably concluded that the evidence indicates a moderate (not severe) level of physical impairment. The Ministry noted that the Appellant's rheumatoid arthritis is in an "acute flare up". This suggests varying degrees of severity and although the Appellant has chronic arthritis and remission is unknown, her specialists report that she is actively taking treatment and responding well to it and that most of her symptoms occur at night, especially the carpal tunnel for which the neurologist stated that she "really does not have daytime symptoms". The rheumatologist indicated early rheumatoid arthritis and the neurologist described the Appellant's carpal tunnel as "mild" with a short course of treatment (night brace for 6-8 weeks).

While it is clear from the information in the self-report, PR and AR that the Appellant experiences significant pain, there was no indication that her pain cannot be managed with medications and treatment. Her functional abilities were reported as moderately (not severely) impaired. For example, in the PR, the Appellant can walk 1-2 blocks, climb 2-5 steps, lift 5-15 lbs. and remain seated for 1-2 hours. While the advocate argued that the Appellant is not at the high end of these functions, there is no information from the physician confirming the Appellant is at the low end. In addition, the physician stated in the reconsideration AR that the loss of dexterity and mobility impacts the Appellant's ability to work, and is not with regard to her physical function and DLA as set out in the PWD application. As noted by the Ministry employability is not a criterion for PWD eligibility.

In the reconsideration AR, the physician reported that all daily activities take twice as long due to hand pain; however, continuous assistance is needed for only Housekeeping and Shopping (where lifting is involved). Moreover, as noted by the Ministry for activities requiring periodic assistance, the physician did not detail the frequency and duration of the assistance provided. The panel therefore finds that the Ministry reasonably determined that the criterion of severe physical impairment in EAPWDA section 2(2) was not met.

#### ***Restrictions in the ability to perform DLA:***

Appellant's position: The advocate argued that the physician's information indicates a significant restriction because nine DLA in the AR are identified as taking "significantly longer" and these words, in themselves, describe a significant restriction. In the appeal submission, the advocate notes that the Appellant needs continuous assistance for three activities, periodic assistance for three DLA, and six DLA take significantly longer. Further, the physician reported that the Appellant is having significant side effects from her medications. The advocate submitted that DLA may not always have the same

degree of restriction day to day because the pain every day is not going to be the same. On some days, for example, the Appellant is not doing food preparation and cooking at all, “just resorting to a frozen microwave dinner.”

The advocate argued that the BC Supreme Court decision in *Hudson* requires the PR and AR information to be read in its entirety and in a broad way, and even if a specific box is not ticked on the application form, narrative portions must also be considered to see if eligibility is confirmed elsewhere. The advocate submitted that the decision requires a direct and significant restriction to be established for at least two DLA, and any ambiguity must be resolved in favour of the applicant.

Ministry's position: The Ministry submitted that the assessments provided by the physician do not establish a significant restriction in the Appellant's ability to manage DLA continuously or periodically for extended periods, and that there was not enough evidence to confirm the legislative criteria. The Ministry argued that the physician's amended information in the reconsideration AR, indicating that DLA take twice as long, is accurate as it is more recent. The Ministry argued that “taking twice as long” is not indicative of a significant restriction to DLA. Besides dressing, grooming, and bathing, the Ministry noted that the physician did not indicate which activities take twice as long.

The Ministry further submitted that the physician did not describe the frequency and duration of the periodic assistance the Appellant requires with paying for purchases, cooking, and banking. While acknowledging that the legislation does not specifically require the frequency and duration of restrictions to be explained, such information aids the minister in determining any specific restrictions. The Ministry noted that while the Appellant's medications cause nausea and some visual side effects, she is independent with reading prices/ labels and making appropriate shopping choices and, therefore, a significant restriction is not established.

#### *Panel's decision*

Subsection 2(2)(b)(i) of the EAPWDA requires that the Ministry is satisfied that in the opinion of a prescribed professional an applicant's severe impairment directly and significantly restricts DLA, continuously or periodically for extended periods. In this case, the Appellant's physician is the prescribed professional. DLA are defined in section 2(1) of the EAPWDR and are also listed in the PR, 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.

The information from the prescribed professional, the Appellant's physician, respecting the Appellant's ability to perform DLA does not indicate direct and significant restrictions in at least two DLA as argued by the advocate who counted the different areas of DLA as well as DLA themselves in arriving at a total number of DLA that are restricted. First, the panel notes that although the physician and the rheumatologist indicated specific medication side effects including nausea, and the physician reported that the side effects are significant, there is no explanation of how the side effects restrict the Appellant's ability to perform DLA. While the physician indicated decreased visual acuity for Reading, the Appellant's reading ability was nevertheless marked as “good”, and as noted by the Ministry, she does not need any help with reading prices/labels. The panel finds that the Ministry reasonably gave more weight to the reconsideration AR as it contained the physician's most recent information which is consistent with the neurologist's and the rheumatologist's narrative.

While the physician indicated that most activities take the Appellant “twice as long”, the panel finds that the Ministry was reasonable in concluding that this is not a significant restriction as continuous assistance is needed for only Basic housekeeping and two areas of Shopping (Going to and from stores, and Carrying purchases home). The information in the AR indicates the Appellant is independent with her other DLA despite pain and stiffness, and no DLA are described as fully requiring continuous assistance or unable to do them at all. While the advocate argued that DLA may not always have the same degree of restriction day to day, the physician’s information does not explain how often DLA are restricted, except for lifting where the Appellant was reported to need help on a “daily basis”

The physician indicated the Appellant requires periodic assistance with only one area each of Shopping, Cooking, Pay rent and bills, and Medications, and as noted by the Ministry, the frequency and duration of assistance was not described and accordingly there is no clear picture of “direct and significant restrictions in the Appellant’s ability to manage DLA continuously or periodically for extended periods as required under the EAPWDA. Based on the foregoing analysis, the panel finds that the Ministry reasonably determined that a prescribed professional has not confirmed that the Appellant’s impairment directly and significantly restricts her ability to perform DLA as set out in EAPWDA subsection 2(2)(b)(i).

### ***Help to perform DLA***

Appellant’s position: The advocate argued that the physician confirmed the Appellant’s need for aids for her impairment, including continuous help with lifting and carrying purchases, a shower chair and grab rail, and left and right wrist braces. The advocate noted that three areas of *Social Functioning* also require periodic support or supervision and argued that the physician’s recommendation for support groups and some counselling support, provides a description of the type of support required to maintain the Appellant in the community.

Ministry’s position: The Ministry acknowledged that the Appellant requires help with lifting, a shower chair/grab rail, and wrist braces, but noted that a hand rail on the stairs and a disabled parking pass are not considered to be assistive devices. The Ministry argued that although the Appellant relies on family and friends for assistance, it has not been established that DLA are significantly restricted, and therefore it cannot be determined that “significant” help is required.

### ***Panel’s decision***

Subsection 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.

The panel finds that the Ministry reasonably found that it cannot be determined that significant help is required to perform DLA. As set out in the previous section, the panel found that the Ministry reasonably concluded that DLA were not significantly restricted to the extent required by the EAPWDA. The panel also notes that some of the assistance identified by the physician (support groups and a social worker) is for the purpose of helping the Appellant manage her rheumatoid arthritis pain and gain support for her circumstances of social isolation and single motherhood.

Further, the wrist splints were prescribed by the neurologist as a temporary treatment device rather than an assistive device. However, the EAPWDA criterion sets out that the help needed must be for the specific purpose of performing DLA. The panel therefore finds that the Ministry reasonably determined that the requirement for help in EAPWDA subsection 2(2)(b)(ii) was not met.

*Conclusion*

The panel finds that the Ministry reconsideration decision, denying the Appellant PWD designation under section 2 of the EAPWDA, was reasonably supported by the evidence. The panel confirms the reconsideration decision.

### PART G – Order

THE PANEL DECISION IS  UNANIMOUS  BY MAJORITY (Check one)

THE PANEL  CONFIRMS THE MINISTRY DECISION  RESCINDS THE MINISTRY DECISION

If the ministry decision is rescinded, is the panel decision referred back to the Minister for a decision as to amount?  YES  NO

LEGISLATIVE AUTHORITY FOR THE DECISION:

*Employment and Assistance Act*

Section 24(1)(a)  and/or Section 24(1)(b)

and

Section 24(2)(a)  or Section 24(2)(b)

### PART H – Signatures

|                    |                     |
|--------------------|---------------------|
| SIGNATURE OF CHAIR | DATE (YYYY MMM DDD) |
|                    | 2015-12-16          |
| PRINT NAME         |                     |
| Margaret Koren     |                     |

|                     |                     |
|---------------------|---------------------|
| SIGNATURE OF MEMBER | DATE (YYYY MMM DDD) |
| on behalf of        | 2015-12-16          |
| PRINT NAME          |                     |
| Richard Roberts     |                     |
| SIGNATURE OF MEMBER | DATE (YYYY MMM DDD) |
| on behalf of        | 2015-12-16          |
| PRINT NAME          |                     |
| Marcus Hadley       |                     |