PART C – Decision under Appeal

The decision under appeal is the Ministry of Social Development and Social Innovation (the "ministry") reconsideration decision of February 18, 2015, which found that the appellant did not meet three of five statutory requirements of section 2 of the *Employment and Assistance for Persons With Disabilities Act* ("EAPWDA") for designation as a person with disabilities ("PWD"). The ministry found that the appellant met the age requirement, and that in the opinion of a medical practitioner the appellant's impairment is likely to continue for at least two years. However, the ministry was not satisfied that:

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

PART D – Relevant Legislation

EAPWDA, section 2
Employment and Assistance for Persons with Disabilities Regulation ("EAPWDR"), section 2

PART E – Summary of Facts

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

1. The appellant's *PWD Application* consisting of:
   - the appellant's self-report ("SR") completed by the appellant and dated July 7, 2015.
   - a physician's report ("PR") completed by the appellant's general practitioner (GP) and dated March 14, 2015 which indicates that he has known the appellant since birth and that he has seen the appellant 2 to 10 times in the past 12 months.
   - an assessor's report ("AR") completed by a Registered Nurse (RN) and dated July 2, 2015 which indicates that she has known the appellant for one week and that she has seen the appellant once in the past 12 months.
2. A consultation report from an orthopaedic surgeon concerning the appellant dated July 5, 2012.
3. A CT scan report of the appellant's lumbar spine (non contrast) dated September 20, 2012.
4. A cervical spine X-ray of the appellant dated April 29, 2014.
5. An MRI report of the appellant's cervical spine (non enhanced) dated October 28, 2014.
6. A letter from the appellant's GP dated November 16, 2015.
7. The appellant's *Request for Reconsideration* signed and dated November 12, 2015 that was accompanied by a six page (undated) statement from the appellant's legal advocate. The statement goes to argument and is reviewed in Part F.

The appellant's *Notice of Appeal* was dated February 24, 2015 in which she states that the reason for her appeal is "*Because I don't think that it's fair they are saying stuff that my doctor didn't write down?"*

The panel will first summarize the evidence from the PR and AR and the GP's letter of November 16, 2015 relating to the PWD criteria at issue.

Diagnoses

• In the PR the appellant's GP diagnosed her with cervical degenerative disc disease (onset 2012) and arthritis (onset 2008).

Severity of Impairment:

Physical Impairment

• In the SR the appellant indicates that when she wakes in the morning her hand will be swollen and a couple of hours will pass before she is able to use it. When the swelling goes down she experiences "pins and needles" in her arm. Some days she is unable to get out of bed. She is unable to wring out a face cloth to wash her face and cannot do up buttons on a shirt or pants. She feels as though there is no circulation to her arm. She tries to do household duties but lately has been finding that hard to do. She is only able to do a little at a time. She went to a physiotherapist for six weeks but did not find it helpful. She also experiences back pain and although she doesn't want to get up she makes herself do so in order to avoid seizing up. She has been dropping things lately. She is unable to get a good sleep and is only able to sleep for a few hours at a time. She wonders if the cold weather contributes to her problem in doing up buttons and waking with her arm being "frozen cold."

• In the PR the GP noted that the cervical disc disease led to the onset of neck pain, weakness and numbness of the left hand. Consequently, the appellant is unable to properly lift and carry. She has some problems with personal care and house work and has chronic daily neurologic pain. She has

arthritis in her hands and the joints of her feet which makes walking and standing limited. Her situation is worsened by her back pain. In describing the appellant's functional skills, the GP did not indicate how far the appellant can walk unaided, but did indicate that the appellant can climb 5+ stairs unaided, can lift 5 – 15 pounds, and can remain seated for less than one hour. The GP states "(*The appellant) finds herself in a difficult predicament. She has significant arthritis in her lumbar spine, feet and hands. She now has cervical disc disease with radiculopathy of her left arm. … her grip strength and left hand coordination is reduced. She cannot afford any therapy and is not misusing medications.""*

• In the AR the RN indicated that the appellant requires periodic assistance walking indoors ("*3x slower, often stumble, falls, 3/7 on couch"*) and outdoors ("*1/2 block, stops to rest++"),* climbing stairs ("*5 max., stops x 2, pulls up with railing*") and standing ("*leans on something always"*) and requires continuous assistance lifting ("*under 5 lbs, right hand only, cannot bend to lift*") and carrying & holding("*needs help with groceries* ++"). The RN states "*Severe unrelenting pain in neck 6/10 always, 8/10 with sitting or weather changes. Left arm numb for 8 months, very swollen in arm – cannot use for hours and then (?) limited. Right leg pain (increased) 6 weeks ago, agonizing, leg goes numb . . . severe pain, (decreased) mobility*." and *"(The appellant) is chronically and unrelentingly in pain. Her day to day life is greatly affected by pain and reduced mobility."*

• In the orthopaedic surgeon consultation report it states (in part) "*Following no particular injury, (the appellant) complains that she has pain, swelling, and 'burning' of the right foot since late last summer. . . . I have not received the dermatologist's report but on present inspection would venture that there is no particular dermatologic disorder, but merely a mechanical excessive local pressure. . . . On further examination, she has an irritable back and nerve root tension signs on the right side. The dorsiflexors of her right toes are even a little bit weak and she does have diminished sensation in the right L5 root. . . . While I think she does have mechanical foot disorders, these would seem to be no worse on one side than on the other and would not, of themselves, account for her unilateral foot pain. I think this is neurogenic."*

• The CT scan of the appellant's lumbar spine concludes with the following "Impression": "*Mild degenerative disk disease and no evidence of significant nerve root impingement, spinal stenosis, or disk herniation."*

• The appellant's cervical spine X-ray reports (in part) "*Marked disc narrowing at C5-6, C6-7, and C7-T1 with anterior and posterior osteophytosis. Oblique views demonstrate moderate to severe foraminal stenosis on the left side at C5-6 and to a lesser extent at C5-6 on the right side, and C6-7*. It concludes with the following "Impression": "*Degenerative change*."

• The MRI of the appellant's cervical spine reports (in part) the following "Findings": "*The cerebellar tonsils measure . . .which is upper limits of normal. Cervical spondylosis is present. Degenerative disc disease is mild at C2-3 to C4-5 inclusive, severe at C5-6 and C6-7, and moderate at C7-T1. The facet osteoarthritis ranges from mild to severe and is greatest involving the right C4-5 facet The disc osteophyte complex and facet hypertrophy results in:*

- *at the C2-3 level, mild left neural foraminal narrowing.*
- *at the C3-4 level, mild left neural foraminal narrowing.*
- *at the C4-5 level, facet osteoarthritis has resulted in minimal anterolisthesis of C4 on C5 as well, and there is moderate to severe right and mild left neural foraminal narrowing.*
- *at the C5-6 level, mild central canal stenosis with minimal cord flattening and effacement of CSF surrounding the cord as well as severe left and moderate to severe right neural foraminal narrowing.*
- *at the C6-7 level, moderate bilateral neural foramina narrowing and minimal central canal stenosis.*

- *at the C7-T1 level, severe left and mild right neural foraminal narrowing. . . . The facet osteoarthritis has resulted in minimal anterior subluxation of C7 on T1.*

The MRI report concludes with the following "Impression": *Cervical spondylosis resulting in multilevel neural foraminl and central canal stenosis as described."*

• The letter from the appellant's GP dated November 16, 2015 confirms the following diagnoses for the appellant:

cervical degenerative disc disease
radiculopathy in both arms
arthritis lumbar spine
osteoarthritis in both hands and feet

The GP states that these impairments are both permanent and severe and will continue for more than two years.

Mental impairment

• In the PR the GP indicates that the appellant has no difficulties with communication but lists the following significant deficits with cognitive and emotional function: emotional disturbance and attention or sustained concentration. He comments "*Significant emotional distress due to inability to work and pain. Financial stress.*" and "*She now has become depressed and anxious about this situation."*

• In the AR the RN assesses as "satisfactory" the appellant's ability in speaking ("*doesn't want to talk at time*s"), writing and hearing, and "poor" in reading ("*cannot hold book or retain what she reads*"). In terms of *Cognitive and Emotional Functioning* the RN indicates "no impact" for impulse control, insight and judgement, language, psychotic symptoms, and other emotional or mental problems: "moderate impact" for motor activity ("*deceased goal oriented activity – on couch* ++") and other neuropsychological problems ("*poor visual spatial judgement – curbs, doorways*"); and "major impact" for bodily functions ("*2 meals/day at most, cannot prepare, no interest, decreased appetite, poor hygiene, pain interferes ++. Sleeps 2-3 hours max, then up*"), consciousness ("*naps in day, drowsy, confused at times*"), emotion ("*depressed – mood 3/10, suicidal ideation. Poor social contact, anxious with people is severe*") attention/concentration ("*poor – evident in interview – poor following of questions, gets 'lost'* "), executive ("*memory poor, follow-up poor, no energy, no interest*"), memory ("*new information doesn't stick, many repeats*") and motivation ("*poor*"). She indicates that the appellant requires periodic support/supervision in the following areas of social functioning: appropriate social decisions (incl. avoiding situations dangerous to self or others, good social judgement); able to develop and maintain relationships; interacts appropriately with others (e.g. understands and responds to social cues, problem solves in social context); able to secure assistance from others ("*too proud at times*"). She indicates that the appellant requires continuous supervision/support in regard to: able to deal appropriately with unexpected demands ("*leaves, someone else has to deal with it*"). In addition she indicates that the appellant has "marginal functioning" in her relationship with her immediate social networks and comments "*not comfortable with many people – alone, isolated sees her friend who helps only*." She indicates that the appellant has "very disrupted functioning" in her relationship with extended social networks. The RN also provides the following comments regarding the appellant: "*depression, would rather not be here*" and " . . . *she is very depressed* . . ."

• The letter from the appellant's GP dated November 16, 2015 confirms a diagnosis of depression and anxiety. The GP states that these impairments are both permanent and severe and will continue for more than two years.

Restrictions in performing DLA

• As noted previously, in the SR the appellant states that she is unable to wring out a washcloth or do up buttons on a shirt or pants. She tries to do household duties but has been finding this hard to do lately and is only able to do a little at a time.

• In the PR the GP provides the following comments as part of the appellant's health history: "*Some problems with personal care and house work."* He confirms that the appellant has not been prescribed medication and/or treatments that interfere with her ability to perform daily living activities. The GP lists the following DLAs as continuously restricted: personal self care, meal preparation, basic housework and daily shopping. He also listed mobility outside the home and social functioning as activities which are restricted but he did not indicate whether either is periodically restricted or continuously restricted. He adds the following note: "*Difficulty washing her hair due to (left) arm symptoms*." With regard to social functioning the GP comments: "*Depressed and anxious re circumstances. Socially isolated with little support from family*." In response to the degree of restriction he comments "*Currently restriction*." He adds the following additional comment: "*She has difficulties with ADLs and needs some help*. "The GP listed the following DLAs as not restricted: management of medications, mobility inside the home, use of transportation and management of finances.

• In the AR the RN has noted that the appellant requires periodic assistance from another person with the following ADLs: dressing, feeding self, regulating diet, transfers (in/out of bed), transfers (on/off chair), laundry, making appropriate choices, paying for purchases, cooking, getting in and out of a vehicle. In addition, she notes that the appellant requires continuous assistance from another person with the following ADLs: grooming, bathing, basic housekeeping, carrying purchases home, food preparation, budgeting and using public transport. The appellant is independent in regard to the following ADLs: toileting, going to and from stores, reading prices and labels, meal planning, safe storage of food, banking, paying rent and bills, filling/refilling prescriptions, taking (medications) as directed, and safe handling and storage (of medications). In regard to social functioning, the RN indicates that the appellant requires periodic support/supervision for the following: appropriate social decisions (incl. avoiding situations dangerous to self or others, good social judgement), able to develop and maintain relationships, interacts appropriately with others (e.g. understands and responds to social cues; problem solves in social context), and able to secure assistance from others. She also indicates that the appellant requires continuous support/supervision for being able to deal appropriately with unexpected demands.

Help required/provided

• In the PR the GP indicates that the appellant does not require any prostheses or aids for her impairment. The GP made the following comment in response to the question "What assistance does your patient need with Daily Living Activities*?: "Needs help from friends/neighbor to carry groceries, help with cleaning."*

• In the AR the RN notes that the appellant receives assistance from (a) friend and comments *"Girlfriend washes hair for her*." The RN does not indicate any equipment or devices that the appellant routinely uses to compensate for her impairment, and confirms that the appellant does not have an assistance animal.

At the hearing, the appellant reported that she can barely walk, has arthritis in her hands & feet, back pain and can't feel her arm. The appellant indicated that she can't wring out a wash cloth, can't fold laundry, can't make her bed and is unable to work ("sent home from (last) job"). When asked how much help she receives from others the appellant replied that she got no help from others except for

assistance from a girlfriend “once in a while.”

The ministry relied upon the information presented in the *Reconsideration Decision*.

The panel admitted the appellant’s testimony at the hearing as it clarified and confirmed information available to the ministry at the time of reconsideration and was therefore considered to be in support of that information as per section 22(4) of the EAA.

PART F – Reasons for Panel Decision

The issue in this appeal is whether the ministry's decision to deny the appellant designation as a PWD was reasonably supported by the evidence or was a reasonable application of the applicable enactment in the circumstances of the appellant. In particular, was the ministry reasonable in determining that the appellant does not have a severe physical or mental impairment, and that in the opinion of a prescribed professional the appellant's impairments do not directly and significantly restrict her from performing DLA either continuously or periodically for extended periods, and that as a result of those restrictions the appellant does not require help to perform DLA.

The relevant legislation is as follows:

EAPWDA:

2 (1) In this section:

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

"daily living activity" has the prescribed meaning;

"prescribed professional" has the prescribed meaning.

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

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

(b) in the opinion of a prescribed professional

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

(A) continuously, or

(B) periodically for extended periods, and

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

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

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

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

(i) an assistive device,

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

(iii) the services of an assistance animal.

EAPWDR section 2(1):

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

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

(i) prepare own meals;

(ii) manage personal finances;

(iii) shop for personal needs;

(iv) use public or personal transportation facilities;

(v) perform housework to maintain the person's place of residence in acceptable sanitary condition;

(vi) move about indoors and outdoors;

(vii) perform personal hygiene and self care;

(viii) manage personal medication, and

(b) in relation to a person who has a severe mental impairment, includes the following activities:

(i) make decisions about personal activities, care or finances;

(ii) relate to, communicate or interact with others effectively.

(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 she can barely walk, has arthritis in her hands and feet as well as severe back pain. Additionally, she has no feeling in her left arm. She is unable to wring out a washcloth, cannot fold laundry or make her bed. She reported that she has been using a cane since the RN who completed the assessor report suggested that she do so.

The ministry argues that there is not enough evidence to establish a severe physical impairment. The

ministry indicated that it gave greater weight to the evidence presented by the appellant's GP (in the PR and the doctor's letter of November 16, 2015) than the evidence presented by the RN (in the AR) because the GP has known the appellant for 20 years and has seen her 2-10 times in the past 12 months whereas the RN has only known the appellant for one week and has seen her only once.

The ministry notes that in the PR the GP has not indicated how far the appellant can walk unaided, but has indicated that the appellant can climb 5+ steps unaided, can lift 5-15 pounds and can remain seated for less than 1 hour. The ministry concludes that the GP's physical assessment of the appellant is not considered indicative of a severe impairment of physical functioning. The ministry also notes several contradictions between the evidence presented in the PR and that presented in the AR. Specifically, the ministry notes that the AR indicates that the appellant requires periodic assistance from another person with climbing stairs but the PR reports that the appellant can climb 5+ stairs unaided. In addition, the AR reports that the appellant is able to lift less than 5 pounds whereas the PR reports that the appellant is able to lift 5-15 pounds. Finally, the AR reports that the appellant requires a cane whereas the PR reports that the appellant does not require any prostheses or aids for her impairment.

The ministry argues that the evidence provided by the GP does not describe the frequency, duration, or nature of the assistance of another person that the appellant requires with mobility outside the home. The ministry also argues that the GP has not described how the appellant's reduced grip strength and left hand coordination affect (her) mobility, physical ability, or functional skills. Insofar as the evidence presented in the AR, the ministry argues that it does not describe the frequency/duration of the periodic assistance from another person with walking indoors, walking outdoors, climbing stairs, and standing. The ministry also argues that the AR does not describe the nature or severity of the appellant's reduced mobility. The ministry concludes that the evidence presented in the PR (together with the GP's letter of November 16, 2015) the AR and the SR, a severe impairment of the appellant's physical functioning has not been established.

Panel Decision

The GP reported that the appellant's medical challenges result in her being unable to work, but the panel notes that a medical barrier to the appellant's ability to engage in paid employment is not a legislated criterion for severity of impairment.

At the hearing, the ministry acknowledged that the appellant has a serious medical condition. Nonetheless, the panel notes that the diagnosis of a serious medical condition or a medical professional's statement that a condition or an impairment is severe does not in itself establish a severe impairment for the purposes of satisfying the criteria for PWD designation.

The assessments of the appellant's physical condition outlined in the SR and AR, as well as the cervical spine x-ray (April 29, 2014), the MRI of the cervical spine (October 28, 2014), the CT scan (September 20, 2012) and the orthopaedic surgeon consultation (July 5, 2012) all report serious medical conditions. Nonetheless, the panel recognizes that the ministry gave greater weight to the evidence presented by the GP than the RN and the other medical reports because of the GP's longer and greater knowledge of the appellant and her condition. Since the appellant has been a patient of the GP for 20 years, the panel considers that this was a reasonable decision by the ministry.

The panel notes that the GP did not indicate how far the appellant can walk unaided but did confirm

that the appellant can climb 5+ steps unaided, and can lift 5-15 pounds. The panel also notes the contradictions in the assessments of the appellant's physical abilities between the PR and the AR. Specifically, the differences noted by the ministry insofar as the appellant's ability to climb stairs and the need for a cane. In both cases the RN reported that the appellant had greater restrictions than did the GP. Once again, the panel concluded that the ministry's determination that the GP's opinion should be given greater weight was a reasonable conclusion.

Accordingly, the panel concludes that the ministry reasonably determined that there was not enough evidence to establish a severe physical impairment.

Severe Mental Impairment

The appellant advanced no argument with respect to a severe mental impairment. She did indicate that some days she can't even get out of bed but offered no explanation as to the reasons.

The *Reconsideration Decision* noted that the GP reported that the appellant has significant deficits with cognitive and emotional functioning in the areas of emotional disturbance and attention/concentration. Nonetheless, the *Reconsideration Decision* argues that the GP does not describe the nature of these deficits insofar as the area of attention/concentration. The ministry also noted that the GP reported that the appellant is restricted with social functioning but did not indicate whether this restriction is periodic or continuous. In addition, the GP commented that the appellant is depressed and anxious but does not indicate the severity of the depression/anxiety.

The ministry also notes discrepancies between the evidence provided by the PR and the AR. Specifically:

1. The AR reports that the appellant has poor reading ability and cannot retain what she reads but the PR reports that the appellant does not have deficits in the cognitive/emotional functions of language and memory;
2. The AR reports that the appellant has major impacts to the cognitive/emotional functioning in the areas of consciousness, executive, memory and motivation whereas the PR reports that the appellant does not have significant deficits in these areas;
3. The AR reports that the appellant has moderate impacts to cognitive/emotional functioning in the area of motor activity whereas the PR reports that the appellant does not have a significant deficit in this area;
4. The AR reports that the appellant has poor visual spatial judgement whereas the PR does not report a significant deficit for visual spatial judgement.

The ministry concludes that greater evidence should be placed on the GP's assessments contained in the PR than in the RN's assessments contained in the AR because of the GP's greater knowledge of the appellant.

The ministry notes that insofar as the appellant's social functioning is concerned, the AR does not describe the frequency/duration of the periodic support/supervision required by the appellant in making appropriate social decisions, being able to develop/maintain relationships, interacting appropriately with others, and being able to secure assistance from others. The ministry also notes that although the AR indicates that the appellant requires periodic support/supervision in four areas of social functioning she does not describe the support/supervision that would help the appellant to maintain herself in the community. Further, although the AR indicates that the appellant has very

disrupted functioning with her extended social network, she does not describe safety issues with regard to social functioning. Finally, the ministry notes that the GP's letter of November 16, 2015 does not describe the nature of the appellant's restriction with social functioning nor does it describe the frequency, duration or nature of the assistance of another person required by the appellant insofar as social functioning is concerned.

Panel Decision

The panel notes that the appellant has not argued that she has a severe mental impairment. The panel also recognizes that the PR reports that the appellant has no difficulties with communication and that the AR reports that the appellant's ability to communicate is satisfactory in regard to speaking, writing and hearing.

Nonetheless, the panel notes that the PR reports that the appellant has significant deficits with the following areas of cognitive and emotional function: emotional disturbance and attention or sustained concentration. Additionally, the AR reports that the appellant has major impacts on seven areas of cognitive and emotional function and moderate impact on two areas of cognitive and emotional function

Moreover, the PR reports that the appellant experiences "Significant emotional distress due to inability to work and pain. Financial distress." as well as "Depressed and anxious re circumstances." and "She now has become depressed and anxious about this situation." Similarly, the AR reports the following: "depressed – mood 3/10, suicidal ideation" as well as "(attention/concentration) poor – evident in interview – poor following of questions, gets "lost"." and " . . . she is very depressed . . ." Additionally, the GP's letter of November 16, 2015 reports that the appellant suffers from the mental impairment of depression and anxiety and that this impairment is both permanent and severe.

Nonetheless, the panel notes that a diagnosis of a serious medical condition does not in itself determine PWD eligibility. Under the legislation, eligibility for PWD hinges on an "impairment" and its severity. An "impairment" is more than a diagnosed medical condition. An impairment is a medical condition that results in restrictions to a person's ability to function independently, appropriately, effectively or for a reasonable duration.

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

The legislation requires that for PWD designation, the minister must be "satisfied" that the person has a severe mental or physical impairment. For the minister to be "satisfied" that the person's impairment is severe, the panel considers it reasonable for the ministry to expect that the information provided presents a clear and complete picture of the nature and extent of the impacts of the person's medical conditions on daily functioning. The panel notes that the ministry has argued that the evidence presented by the GP regarding the appellant's cognitive and emotional functioning is incomplete and is not consistent with the evidence presented in the AR. Accordingly, the ministry argues that a severe impairment of the appellant's mental functioning has not been established. Based upon this

evidence, the panel considers this decision to be reasonable.

Significant Restrictions to DLA

The appellant's position is that she can barely walk, cannot manage basic housekeeping and cannot lift/carry groceries.

The ministry's position is that the evidence is not sufficient to demonstrate that the appellant's impairment significantly restricts her ability to perform DLA either continuously or periodically for extended periods.

Panel Decision

The legislation – s. 2(2)(b)(i) of the EAPWDA – requires the minister to substantially assess direct and significant restrictions of DLA in consideration of the opinion of a prescribed professional, in this case the appellant's GP and RN. This doesn't mean that other evidence shouldn't be factored in as required to provide clarification of the professional evidence, but the legislative language makes it clear that the prescribed professional's opinion is fundamental to the ministry's determination as to whether it is "satisfied".

The legislation requires that a severe impairment directly and significantly restricts the appellant's ability to perform DLA either continuously or periodically for extended periods. The term "directly" means that there must be a causal link between the severe impairment and the restriction. The direct restriction must also be significant. Additionally, there is a component related to time or duration. The direct and significant restriction may be either continuous or periodic. If it is periodic it must be for an extended time.

The panel notes that the PR specifies the following DLAs as continuously restricted: personal self care, meal preparation, basic housework, daily shopping, mobility outside the home and social functioning. The AR notes that the appellant requires assistance from another person for the following DLAs: dressing, grooming, bathing, feeding self, regulating diet, transfers (in/out of bed), transfers (on/off of chair) laundry, basic housekeeping, making appropriate (shopping) choices, paying for purchases, carrying purchases home, food preparation, cooking, budgeting, getting in and out of a vehicle, using public transit and all areas of social functioning. Nonetheless, the panel notes that it has not been established that the appellant has a severe physical or mental impairment. Consequently, it cannot be established that the reported restrictions to DLA are a direct result of a severe impairment.

Accordingly, the panel concludes that the ministry reasonably determined that the evidence is not sufficient to demonstrate that the appellant has an impairment that directly and significantly restricts her ability to perform DLAs either continuously or periodically for extended periods.

Assistance with DLA

The appellant reported at the hearing that she gets help from a girlfriend " . . . once in a while . . ."

The ministry's position is that it has not been established that DLA are significantly restricted and therefore, it cannot be determined that the appellant requires significant help from other persons. The ministry notes that the appellant does not require the services of an assistance animal, as noted in the AR, and the AR lists no assistive devices being used by the appellant (although the AR

indicates that the appellant requires a cane and a raised toilet seat). The PR confirms that the appellant does not require any prostheses or aids for her impairment.

Panel Decision

The panel is satisfied that the information provided by the appellant, the PR (and the GP's letter of November 16, 2015) and the AR does not provide sufficient information to establish that the appellant requires significant help (as required by section 2(3((ii) of the EAPWDA). By her own admission, the appellant receives help only once in a while. Moreover, the AR does not indicate that the appellant requires help but none is available. The panel also noted that no assistive devices are required and the appellant does not require the services of an assistance animal. Accordingly, the panel concludes that the ministry reasonably determined that there was not enough information to confirm that the appellant requires assistance to perform DLAs

Conclusion

The panel acknowledges that the appellant's medical condition affects her ability to function. However, having reviewed and considered all of the evidence and the relevant legislation, the panel finds that the ministry's decision finding the appellant ineligible for PWD designation is a reasonable application of the legislation in the circumstances of the appellant. The panel therefore confirms the ministry's decision.