

PART C – Decision under Appeal

The decision under appeal is the Ministry of Social Development and Social Innovation (“Ministry”) reconsideration decision dated November 26, 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 legislative criteria in Section 2(2) of the *Employment and Assistance for Persons with Disabilities Act* (“EAPWDA”). The Ministry was satisfied that the Appellant has reached eighteen 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 with the 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 Request for Reconsideration signed by the Appellant on November 20, 2015 in which she provided a submission with the following information:

- She has a lot of pain on the right side of her body, from her neck, shoulder, hand and hip, to her leg.
- The pain affects her walking and activities to the point that she is unable to do simple chores or her daily routine despite going to physiotherapy and massage therapy. A relative comes over to do the chores.
- Regarding the checklist in the PWD application, she cannot walk two blocks or twenty metres without assistance or taking breaks. She can only climb one stair with assistance. With her right hand she cannot lift even fifty [illegible] but with her left hand she could maybe lift one pound.
- In January 2015, she attended a training program but could not do the course because her hand couldn't handle the writing and her body couldn't handle the stress and her health has been worse since then.

The Appellant attached two medical reports as follows:

(a) A letter from her family physician dated November 18, 2015 (“reconsideration medical report”).

The physician confirmed that the Appellant is suffering from “severe form of osteoarthritis and polymyalgia affecting her lower back and major joints.” He stated that she is also suffering from depression; her conditions “severely interfere with daily activities” and are “severe, chronic and most likely will continue indefinitely.”

(b) A Progress Report from her Registered Massage Therapist (“RMT report”), assessment date, August 12, 2015. The RMT indicated the Appellant has weakness and pain in her right shoulder, neck, arm, hip and leg due to a motor vehicle accident. He check marked “Yes” for Clinical Concerns and listed therapeutic treatments. Under Additional Comments, he wrote, *Patient’s condition has improved over course of treatment and quality of life is higher. However, patient still continues to experience ongoing pain and reduced range of motion in right arm and hip, as well as reduced grip strength in right hand. Patient is able to manage their pain more successfully but exertion and stress currently increases symptoms.*

2. A PWD application comprised of the Applicant Information and self-report completed by the Appellant on November 21, 2014, and a Physician Report (“PR”) and Assessor Report (“AR”), both dated November 18, 2014 and both completed by the Appellant’s family physician. In the PR, the physician indicated the Appellant has been his patient for 10 years and he has seen her two to ten times in the past twelve months. In the AR, the physician indicated that he completed the form by way of an in office interview and file/chart information.

The PWD application included the following information:

Diagnoses

In the PR, the Appellant was diagnosed with chronic back and neck pain, onset 2001; depression, onset 2010; and obstructive sleep apnea, onset 2008.

Physical or Mental Impairment

In the PR, under *Health History*, the physician wrote “involved in 4 accidents over the last 13 years, developed shoulder, back, neck, hip pain, chronic daily affecting mobility, developed depression.”

Self-report

The Appellant reported that she has been struggling with back and neck pain since she had two car accidents. She has been in physiotherapy and massage therapy and purchased many different exercise devices to control her back, shoulder, neck, and hip pain. However, she had another car accident and all her pains and discomforts came back again and she had to take more massage and was walking for two hours twice a week to maintain work and do her DLA. The accident and injuries caused depression and she was not able to carry out her work activities properly and could not be as active as she used to be. She was diagnosed with sleep apnea and prescribed a device for that. She had another car accident last year and since then the right side of her body (neck, shoulder, back, hip, and knee) is not working properly. She cannot work on the computer for longer than three minutes and her ear, neck, hand, hip, and leg are hurting. She feels dizzy when she stands up and has been going to physiotherapy.

Functional Skills

PR

The physician reported the following functional limitations:

- The Appellant can walk two to four blocks unaided on a flat surface with the comment, “back pain”;
- Climb two to five steps unaided with the comment, “feels pain”;
- Lift five to fifteen pounds with the comment, “back pain”;
- Remain seated for less than one hour with the comment, [illegible];
- Has difficulties with communication: cause is “cognitive” with the comment, “memory lapses”;
- Has “significant deficits” with cognitive and emotional function in the areas of Memory, Emotional Disturbance, Motivation, and Attention/sustained concentration with the comment “due to depression”.
- *Additional Comments*: “Having physical and mental conditions interfering with ADL’s”.

AR

The physician provided the following information for Abilities:

- *Ability to Communicate*: Speaking and Hearing are good; Reading is poor with the comment, “difficulty with concentrate” (*sic*); and Writing is poor with the comment, “right hand pain”.
- *Mobility and Physical Ability*: Walking indoors and outdoors and Standing are independent with a comment for Standing, “not for long period of time due to back pain.” Climbing stairs takes significantly longer with the comment, “right knee pain”. The Appellant uses an assistive device for Lifting and for Carrying and holding with the comment (for Carrying and holding), “uses shopping cart”.
- *Additional Comments*: “interferes with mobility”.

The physician reported the following impacts for *Cognitive and Emotional Functioning*:

- No impact with regard to three areas: Psychotic symptoms, Other neuropsychological problems, and Other emotional or mental problems;
- Minimal impact with regard to seven areas: Bodily functions, Consciousness, Impulse control, Insight and judgment, Memory, Motor activity, and Language.
- Moderate impact with regard to four areas: Emotion, Attention/concentration, Executive, and Motivation.
- No areas were check marked Major impact.
- Comments: “developed depression, interfering with “ADL’s”.

Daily Living Activities (DLA)

PR

The physician checked *No*, the Appellant has not been prescribed medication/treatment that interferes with her ability to perform DLA.

AR

The physician provided the following information:

- “Right side pain since accident, dizziness” is the mental or physical impairment that impacts (the Appellant’s) ability to manage DLA.

Personal Care, Basic housekeeping, and Shopping

- The Appellant is independent with two out of five areas of Personal care: Dressing and Regulate diet; and four out of five areas of Shopping: Going to and from stores, Reading prices and labels, Making appropriate choices, and Paying for purchases.
- She takes significantly longer than typical in five areas of Personal care and all areas of Basic housekeeping with the comment “able to do but takes longer time”.
- She uses an assistive device for Carrying purchases home with the comment, “has shopping cart”.
- Under *Additional comments*, the physician wrote, “All activity takes longer to perform for patient.”

Meals, Pay rent and bills, Medications, and Transportation

- The Appellant is independent in two out of four areas of Meals: Meal planning, and Safe storage of food. She takes significantly longer with Food preparation and Cooking with the comment, “1-2 hours more”.
- She is independent with all areas of Pay rent and bills, all areas of Medications, and two out of three areas of Transportation: Using public transit and Using transit schedules. She takes significantly longer than typical with Getting in and out of a vehicle.

- No additional comments were provided for these DLA.

Social functioning

- The Appellant requires periodic support with four out of five areas: Appropriate social decisions with the comment, “judgment affected”; Able to develop/maintain relationships with the comment, “isolated”; Interacts appropriately with others with the comment, “poor interpersonal skills”; and Able to deal appropriately with unexpected demands with the comment, “poorly adjusted”.
- The physician checked that the Appellant has marginal functioning in both her immediate and extended social networks.

Additional Information (relevant to the nature/extent of the Appellant’s impairment and its effect on DLA)

- , The physician wrote, “Having mental and physical conditions affecting ADL’s.”

Need for Help

PR

- The physician check marked *yes*, prostheses or aids are required for the Appellant’s impairment with the comment, “back brace”.

AR

- The physician indicated that the Appellant lives alone.
- Under *Support/supervision required* that would help maintain (the Appellant) in the community, the physician wrote, “home support”. No safety issues were identified.
- Under *Assistance provided by other people*, the physician checked that help is provided by family, and indicated a relative who lives in the Appellant’s community “helps her”.
- Under *Assistance provided through the use of assistive devices*, the physician checked Breathing device, and Other: “shopping cart”. He commented, “CPAP machine for obstructive sleep apnea”.
- He checked *no*, the Appellant does not have an assistance animal.

Additional submissions

Subsequent to the reconsideration decision, the Appellant filed her Notice of Appeal, signed on December 7, 2015 in which she outlined her argument. The panel will address the positions of the parties in *Part F - Reasons*.

Following an adjournment that was granted by the Tribunal to accommodate the Appellant’s advocate, the Appellant attended the hearing with the advocate who submitted a one-page questionnaire (“the questionnaire”). There are thirteen questions prepared by the advocate for which the Appellant’s physician provided written responses. The Appellant stated that her doctor filled in the answers on January 13, 2016.

The questionnaire contains the following information:

- The maximum weight that the Appellant can lift repeatedly is five pounds.
- The Appellant's pain is significantly severe as to restrict her DLA "3 times a day".
- She can climb "probably one step" unaided. The physician did not provide an answer regarding how often the restriction is that severe.
- She can remain seated on average for "30 minutes".
- When restricted with walking, the Appellant "stops after 1 block". The physician did not provide an answer regarding how often the restriction is that severe.
- "Yes", the moderate and minimal impacts in the Appellant's Cognitive and Emotional Functioning, "all of the impacts together" create a severe impact on daily functioning.
- The Appellant's conditions have worsened "some" since the PWD application was completed in November 2014.
- The Appellant takes "significantly longer" for her personal care DLA and housekeeping tasks.
- The physician stated "I am unable to respond to this question" regarding what percentage of the time the Appellant is unable to do basic housekeeping tasks without assistance.
- The Appellant is unable to do her daily shopping tasks without assistance "once a week" (her relative helps).
- "Yes", there are times when the Appellant needs someone to do her daily cooking tasks.
- Regarding how often the Appellant needs support for social functioning, the physician wrote, "I am not clear what you asked".

Admissibility

The Ministry had no objections to the admission of the questionnaire at the hearing and the panel finds that the information is admissible because it substantiates the evidence of the Appellant's physician in the PWD application, providing further detail about the impacts and restrictions related to the Appellant's medical conditions. The panel therefore admits the questionnaire 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.

Oral testimony

The Advocate summarized the Appellant's argument on appeal, with elaboration by the Appellant. The Ministry reviewed the reconsideration decision and summarized the Ministry's argument. The panel will address the arguments in the next section, *Part F - Reasons*.

PART F – Reasons for Panel Decision

The issue in this appeal is whether the Ministry's reconsideration decision of November 26, 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 Ministry was not satisfied that the following criteria in EAPWDA section 2(2) were met: 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 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:

Definitions for Act

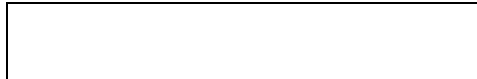
2 (1) In this section:

"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;

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 from 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, section 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 family physician and her massage therapist.

Appellant's position

In her appeal submission, the Appellant submitted that the Ministry did not base the decision "on the facts that my conditions are severe, chronic, and most likely will continue indefinitely" as reported by her doctor who said that her conditions "severely" interfere with her daily activities. At the hearing, the advocate argued that the Ministry decision is not reasonably supported by the newer evidence, i.e., the physician's additional information (the reconsideration medical report from November 2015) which should be given more weight as it was provided a year after he completed the PWD medical reports.

The advocate submitted that the questionnaire further confirms that the Appellant's conditions are severe, and looking at the "totality of the evidence", the doctor's information confirms a severe impairment. The advocate argued that for functions and abilities which have a time or weight range, the Ministry should look at the lower end of the range because "being able to lift five pounds is different from lifting fifteen pounds". The advocate argued that any ambiguity about the Appellant's functional abilities is resolved in the questionnaire.

Regarding a mental impairment, the advocate argued that where the physician check marked "moderate" (AR under *Cognitive and Emotional Functioning*), it does not mean that the Appellant's overall condition is moderate, but rather there is a moderate impact on specific activities. The advocate further argued that requiring "periodic support" with social functioning means that the Appellant's function is directly and significantly restricted.

Ministry's position

Severe mental impairment: The Ministry acknowledged that the Appellant is currently experiencing limitations to her cognitive and emotional functioning due to depression but argued that the physician's information in conjunction with the Appellant's self-reports do not establish a severe impairment. The Ministry made the following points in support of its position:

- In the PR under *Health history*, the physician did not describe limitations/restrictions to cognitive/emotional or social functioning.

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- In the PR under *Functional skills*, although the Appellant was reported as having significant deficits with Communication due to “memory lapses”, the physician did not indicate whether the deficits in *Cognitive and Emotional functioning* “due to depression” (Emotional disturbance, Motivation, Attention/concentration, and Memory) are significant.
 - Further, in the AR under functions (*Physical or mental impairment*), the physician indicated no major impacts to cognitive/ emotional functioning and most of the impacts were noted as minimal while four areas were described as having moderate impacts. The Ministry argued that it is difficult to establish a severe impairment on the basis of this information.
 - In the PR and AR under *Additional Comments/ Additional information*, the physician did not describe limitations or restrictions to cognitive/emotional or social functioning, or describe the DLA in which the Appellant’s depression interferes “or the nature in which your depression interferes with DLA.”
 - Regarding *Social functioning*, the Ministry argued that the physician did not describe in the AR, the frequency/duration of the periodic support required with Making appropriate social decisions, Develop/maintain relationships, Interact appropriately with others, and Deal appropriately with unexpected demands.
 - Further, although the Appellant was reported to have marginal functioning in her social networks, no safety concerns with regard to social functioning were identified.

Panel’s decision

Regarding a severe mental impairment, the panel finds that the Ministry reasonably determined that the evidence does not provide a clear picture of a severe impairment. While the Appellant developed depression as the result of a series of car accidents that impacted her physical function, in the PR under *Functional Skills*, the only details provided by the physician are that the Appellant has communication difficulties due to “memory lapses”; she has “significant” deficits with four out of twelve areas of cognitive and emotional function “due to depression”, and (*Additional Comments*) her conditions “interfere with ADL’s”. The panel notes that the physician provided no comments regarding the severity of her condition.

Similarly in the AR, the physician provided no detail about the severity of the Appellant’s poor communication skills other than “difficulty to concentrate”. Although he reported that her depression is “interfering with ADL’s”, he indicated no impact or a minimal impact in ten out of fourteen of the listed areas of *Cognitive and Emotional Functioning* and for the four areas with a moderate impact, he did not (as noted by the Ministry) indicate whether these impacts are due to the Appellant’s depression. In fact, there is very little detail in the PWD application to support a finding of a severe mental impairment and the panel finds that the Ministry reasonably determined that the reconsideration medical report also did not confirm a severe impairment. In that report, the only specific information regarding depression is that the Appellant is “also suffering from depression.”

Further, while the Appellant described her physical impairments and symptoms in her self-report and reconsideration submission, she did not focus on her depression and the panel cannot find any information in her submissions to indicate she has a severe mental impairment. Regarding the questionnaire, which the panel admitted as evidence in support of the information that was before the minister for the reconsideration, the panel cannot find any information in it that confirms that the Appellant has a severe mental impairment that significantly restricts her DLA. While the physician indicated “yes”, the minimal and moderate impacts on cognitive/emotional function taken together, do create a “severe impact on daily functioning”, he again provided no detail.

Regarding the advocate's argument that "moderate" impact does not mean that the Appellant's overall condition is moderate and that needing periodic support with DLA (Social functioning) is indicative of a severe impairment, the panel notes that the physician does not tie his comments about the Appellant's social limitations ("judgment affected", "poorly adjusted") or her need for "home support" to depression, and he again provided insufficient detail to confirm that the Appellant's depression is severe.

The panel therefore finds that the Ministry reasonably determined that a severe mental impairment was not established by the information for the reconsideration or the additional information provided on appeal. The panel finds that the Ministry reasonably determined that the criterion under EAPWDA section 2(2) was not met.

Severe physical impairment: The Ministry argued that the information provided shows a moderate rather than severe impairment of physical functioning. The Ministry made the following points in support of its position:

- The RMT report did not describe limitations to walking or other physical functions.
- In the PR, under *Health history*, the physician did not describe the severity or nature of restrictions to mobility.
- In the *Additional comments* sections of the PR and AR, he did not describe limitations or restrictions to mobility or physical activities, or describe the DLA with which the Appellant's conditions interfere.
- In the AR, under functions (*Physical or mental impairment*), the physician did not provide enough detail to establish a severe physical impairment, for example, he did not indicate how long the Appellant is able to stand.
- In the reconsideration medical report, his statements that the conditions are "severe" do not describe the extent of the impact on daily functioning and the degree to which performing DLA is restricted. The Ministry submitted that it looks at these restrictions in conjunction with information about the nature of the impairment. The Ministry argued that not enough detail was provided in the PWD application, reconsideration medical report, and self-reports to establish a severe physical impairment.

At the hearing, the Ministry argued that while it may appear that the adjudicator overlooked the word "severe" as the Appellant's physician uses it in the reconsideration medical report, the word "severe" does not, on its own, provide sufficient information. The Ministry explained that it requires detail regarding severe restrictions to physical functions and DLA to support the finding of a severe impairment. The Ministry submitted that the "totality of the evidence" was considered in reaching the decision that the information provided does not establish a severe physical impairment.

Panel's decision

Regarding a severe physical impairment, the panel finds that the Ministry reasonably determined that the evidence paints a picture of a moderate rather than severe impairment. The Appellant developed pain and restrictions from a series of car accidents and her evidence is that she took physio/massage treatments and did exercises after each accident to improve her condition. While she reports current severe pain and limitations to walking, standing and other functions that restrict her ability to do DLA, her massage therapist reported on November 19, 2015 that while she continues to experience ongoing pain and a reduced range of motion, her condition has improved with treatment.

In the PR, the physician reported that the Appellant can walk, climb stairs, lift, and remain seated to a limited extent, primarily due to pain and that her physical conditions are “interfering with ADL’s”. This is consistent with information in the AR where the physician indicated the Appellant is independent with walking and standing (though she cannot stand for long periods), and she is able to lift, carry and hold with the aid of a shopping cart. Further, she was reported as able to do her physical DLA, “though all activity takes longer to perform for patient.”

In the reconsideration medical report, the physician reported that the Appellant is suffering from “a severe form of osteoarthritis and polymyalgia” that “severely interfere with DLA”; however, as noted by the Ministry, there was no further information about how her physical functions including walking, and lifting are impacted, or how her conditions specifically restrict her DLA. The panel accepts the Ministry’s submission that the word “severe”, as it was used by the Appellant’s physician in the reconsideration medical report, is not sufficient to confirm a severe physical impairment as there is no clear picture of the impairment without greater detail regarding restrictions to function and DLA.

The advocate argued that the questionnaire resolves any ambiguity in favour of the Appellant, and that the Ministry overlooked the “totality of the evidence” indicating a severe physical impairment. While the questionnaire provided some more detail regarding restrictions to physical function (i.e., confirming that the Appellant is at the lower end of the range for climbing stairs, lifting, etc.), there is still no clear picture of a severe physical impairment that significantly restricts her DLA continuously or periodically for extended periods. While the Ministry singled out sections of the PWD medical reports (*Heath history* and *Additional comments* in the PR, for example) as not containing information that confirms a severe impairment, the panel can find no indication that the Ministry overlooked any of the evidence that was available at the reconsideration. The Ministry summarized and assessed the information in the more recent reconsideration medical report, as well as the PR and AR, and noted that it looked at restrictions to function and DLA, in conjunction with information about the nature of the impairment.

The panel therefore finds that the Ministry reasonably determined that a severe physical impairment was not established by the information for the reconsideration or the additional information provided on appeal. The panel finds that the Ministry reasonably determined that the criterion under EAPWDA section 2(2) was not met.

Restrictions in the ability to perform DLA

Appellant’s position

In her reconsideration and appeal submissions, the Appellant argued that her pain affects her walking and daily activities to the point that she is unable to do simple chores. She was unable to continue with a training course because she could not handle writing or stress, and her doctor has confirmed that her conditions “severely” interfere with her daily activities. The Ministry stated that the legislation does not specifically require the doctor to indicate the frequency and duration of the restrictions; however, the Ministry made that its main focus for finding that DLA were not restricted.

At the hearing, the advocate submitted that three DLA, Shopping, Cooking, and Social functioning are directly and significantly restricted. The advocate argued that the Appellant cannot do daily shopping independently as she is unable to lift and carry (except to the minimal degree reported by her doctor in the questionnaire). The advocate noted that it takes the Appellant two to three times longer for food

preparation and cooking and she can only stand for thirty minutes. The advocate noted that the Appellant needs help with both shopping and cooking. The advocate argued that the Appellant's social functioning is directly and significantly restricted because she requires periodic support with social interaction and, therefore, the Appellant's doctor is indicating that her activities are significantly restricted.

Also at the hearing, the Appellant argued that her doctor doesn't live with her to see everything clearly but she tells him what she feels and he sees that she has tension and pain. She does her exercises and her doctor has reported everything to the best of his knowledge. Her physical and her mental health are severely affected and DLA are very hard for her and she really does need help. The advocate added that when the doctor indicated in the questionnaire that he could not answer some questions, no adverse inference should be made as the doctor might simply not know how the Appellant is functioning in every activity.

Ministry's position

The Ministry argued that there was not enough evidence in the physician's reports to establish that the Appellant's impairments significantly restrict DLA either continuously or periodically for extended periods. The Ministry noted that the legislation requires restrictions to be both significant and either continuous, or periodic for extended periods in order to be eligible for PWD designation. The Ministry acknowledged that the legislation does not specifically require the frequency and duration of restrictions to be explained but noted that the Ministry finds such information valuable in determining the significance of the client's restrictions.

The Ministry made the following points in support of its position:

- In the PR, the physician did not indicate that the Appellant is taking any medications or treatments that interfere with her DLA.
- In the AR, he did not describe how much longer than typical the Appellant takes with the numerous activities that were reported to take significantly longer.
- The physician's statement "able to do but takes longer" suggests that although the Appellant takes longer, she is independent with those DLA (Personal care, Basic housekeeping, and Meals).
- Further, the Ministry does not consider a shopping cart to be an assistive device for performing DLA.
- In the reconsideration medical report, the physician stated that the Appellant's conditions "severely interfere with DLA" but he did not specify which DLA are affected or the severity/nature of how the Appellant's conditions interfere with DLA.

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 panel finds that the Ministry reasonably determined that there was not enough evidence to establish that the Appellant's DLA are directly and significantly restricted. In the PR, the physician commented (*Part F - Additional Comments*) that the Appellant's conditions are "interfering with ADL's" but provided no further detail. Similarly in the AR, under *Cognitive and Emotional Functioning*, the physician commented that the Appellant's depression is "interfering with ADL's" but, as noted by the Ministry, he did not describe the nature of the interference.

Nevertheless, more information was provided further in the AR under *Daily Living Activities* where the physician indicated that the Appellant is largely independent with DLA or "able to do but takes longer". The physician indicated that Food Preparation and Cooking take the Appellant "1-2 hours more" and in the questionnaire he reported that Personal Care and Housekeeping take "significantly longer", and that the Appellant's pain restricts her DLA "3 times per day". Further, she requires help with shopping once a week and also uses a shopping cart for carrying purchases home.

The panel finds that the Ministry reasonably found that that taking one to two hours longer for cooking and being largely independent with DLA does not confirm a direct and significant restriction either continuously or periodically for extended periods. The information in the questionnaire supports that the Appellant's DLA are moderately restricted (for example, needing help with DLA three times per day) and substantiates the Ministry's position that there is not enough evidence of a direct and significant restriction.

While the advocate argued that the Appellant's DLA are directly and significantly restricted because she is unable to lift or carry more than minimal amounts, the physician's information did not detail severe restrictions due to her limitations with lifting and carrying. The physician, rather, made broad statements that "her conditions severely interfere with daily activities" (reconsideration medical report). Examples of how her conditions severely restrict DLA were not provided, yet the legislation requires confirmation of severe restrictions from a prescribed professional.

Regarding those DLA associated with a mental impairment, while the physician indicated in the AR that the Appellant requires periodic support in most areas of *Social Functioning*, there is insufficient detail to indicate that extent of restrictions with social DLA. Further, the Appellant was reported as independent in the DLA of Pay rent and bills and Medications. Contrary to the advocate's argument, requiring periodic support with social functioning does not confirm that the Appellant's depression directly and significantly restricts her DLA either continuously or periodically for extended periods.

The EAPWDA requires the impairment to directly and significantly restrict DLA periodically or for extended periods, and as the Appellant is largely independent with DLA, the panel finds that the Ministry reasonably determined that the criterion in EAPWDA subsection 2(2)(b)(i) has not been met.

Help to perform DLA

Appellant's position

The Appellant indicated that a CPAP device was prescribed for her sleep apnea. She argued that she really does require help with her DLA. The advocate argued that when the doctor indicated that the Appellant uses a shopping cart, it does not mean that she does not need an assistive device, but rather that the shopping cart is the only device she has access to. The Appellant added that she

uses the shopping cart because she cannot afford to purchase formal medical assistive devices. The advocate further argued that the Ministry accepted that the Appellant requires support with DLA and gets that support from a relative.

Ministry's position

The Ministry's position is that although the physician indicated the Appellant uses a back brace and CPAP machine for her impairments and is provided assistance by family, it has not been established that DLA are significantly restricted and therefore it cannot be determined that significant help is required. The Ministry submitted that the shopping cart the Appellant uses for carrying purchases home is not considered to be an assistive device when establishing that help with DLA is required.

Panel 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 notes that a shopping cart does not meet the definition of an "assistive device" in EAPWDA section 2(1), but that the Appellant's back brace and CPAP are assistive devices under the legislation. However, there was no evidence regarding how these devices specifically enable the Appellant to perform a DLA as listed in the legislation.

While the physician noted in the AR that the Appellant gets help from a relative, and needs periodic support for social DLA, the information in the questionnaire did not confirm that significant help is required with significantly restricted DLA or that the Appellant's participation in the community is impacted by not having the "home support" that she requires. Given that the information does not confirm direct and significant restrictions to DLA due to the Appellant's impairments, the panel finds that the Ministry reasonably determined that the criterion for help set out in EAPWDA subsection 2(2)(b)(ii) was not met.

Conclusion

The panel finds that the Ministry's 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.