

## PART C – Decision under Appeal

The decision under appeal is the Ministry of Social Development and Social Innovation (the ministry) reconsideration decision dated October 5, 2015, which found that the appellant did not meet three of the five statutory requirements of Section 2 of the *Employment and Assistance for Persons with Disabilities Act* for designation as a person with disabilities (PWD). The ministry found that the appellant met the age requirement and that her impairment is likely to continue for at least two years. However, the ministry was not satisfied that the evidence establishes that:

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

## PART D – Relevant Legislation

*Employment and Assistance for Persons with Disabilities Act* (EAPWDA), Section 2

*Employment and Assistance for Persons with Disabilities Regulation* (EAPWDR), Section 2

## PART E – Summary of Facts

The evidence before the ministry at the time of the reconsideration decision included the Persons With Disabilities (PWD) Application comprised of the applicant information and self-report dated May 1, 2015, a physician report (PR) dated May 10, 2015 and an assessor report (AR) dated May 8, 2015 and both completed by a general practitioner who has known the appellant for over 5 years.

The evidence also included the appellant's Request for Reconsideration dated September 17, 2015.

### ***Diagnoses***

In the PR, the appellant was diagnosed by the general practitioner with sciatica on the right and anxiety disorder, with no dates of onset provided. In the AR, the general practitioner described the appellant's impairments that impact her ability to manage daily living activities as: "...sciatica impacting mobility."

### ***Physical Impairment***

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

- In terms of health history, the appellant has had sciatica "...for a long time and had to stop working. She has chronic pain and decreased mobility as a result. She is awaiting neurosurgeon."
- The appellant does not require an aid for her impairment.
- For functional skills, the appellant can walk 2 to 4 blocks unaided, climb 5 or more steps unaided, lift 2 to 7 kg (5 to 15 lbs) and remain seated less than an hour.
- The appellant is independent with walking indoors and standing (note: "limited to 20 minutes"), takes significantly longer with walking outdoors, and requires periodic assistance from another person with climbing stairs and carrying and holding. There are no notes provided regarding the frequency that assistance is required. The appellant requires continuous assistance from another person with lifting. The general practitioner noted: "all due to sciatica and back pain."
- In the section of the AR relating to assistance provided through the use of assistive devices, the general practitioner did not identify any of the listed items.

In her self-report, the appellant wrote:

- She has sciatica on her right side along with 3 herniated discs and degenerative disc disease.
- She has constant pain throughout her lower back and down her right leg to her toes.
- Some days, she cannot get up, stand or do activities on her own.
- Some days, she can move pretty well on her own.
- Bending and lifting are extremely limited. Not being able to lift 15 lbs. is horrible.
- Standing and sitting for short periods of time are manageable. Lying down is the most comfortable position.

In her Request for Reconsideration, the appellant wrote:

- She has seen a neurosurgeon who told her that she has ligament tearing in her back muscles that cause the sciatica and this damage does not ever heal.
- She will have this disability for life.

### ***Mental Impairment***

In the PR and AR, the general practitioner reported:

- Regarding health history, the appellant "...has anxiety disorder and depressed mood partially

as a result of this [i.e. chronic pain].”

- The appellant has no difficulties with communication.
- The appellant has significant deficits in her cognitive and emotional functioning in the areas of memory and emotional disturbance. The general practitioner did not provide further comment.
- The appellant has a good ability to communicate with speaking, reading, writing, and hearing.
- For the section of the AR assessing impacts to cognitive and emotional functioning, the general practitioner indicated a major impact in the area of emotion and moderate impacts in bodily functions and motivation. There are minimal or no impacts in the remaining 11 areas of functioning. The general practitioner wrote that “...patient has anxiety and depression; this is exacerbated by her sciatica and the physical and financial impact.”
- For the section of the AR assessing impacts to social functioning, the general practitioner reported that the appellant is independent in all 5 areas, specifically: making appropriate social decisions, developing and maintaining relationships, interacting appropriately with others, dealing appropriately with unexpected demands and securing assistance from others.
- The appellant has good functioning in both her immediate and extended social networks.

In her self-report, the appellant wrote that:

- She has bad anxiety and depression that stems from her physical problems and “...obviously not working you have major money issues and stressful situations.”

#### ***Daily Living Activities (DLA)***

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

- The appellant has been prescribed narcotic pain medications that interfere with her ability to perform DLA. The general practitioner reported that the anticipated duration is “until definitive surgery or permanent if that’s not possible.”
- The appellant is independently able to perform every task of two listed DLA, namely: paying rent and bills and managing medications.
- For personal care, she is independent with grooming and feeding self/regulating diet, while requiring periodic assistance from another person with dressing (“socks, shoes”), bathing, toileting, and transfers in/out of bed and on/off of chair. No comments are provided regarding the frequency of assistance required with these tasks.
- For basic housekeeping, the appellant requires periodic assistance with laundry and continuous assistance with basic housekeeping. The notes provided are not legible.
- With respect to shopping, the appellant is independent with reading prices and labels, making appropriate choices and paying for purchases, and requires periodic assistance for going to and from stores and continuous assistance for carrying purchases home. No comments are provided regarding the frequency of assistance required with these tasks.
- Regarding meals, the appellant is independent with meal planning and food preparation and safe storage of food but requires periodic assistance with cooking. The notes provided are not legible.
- For transportation, the appellant is independent with using transit schedules and arranging transportation and requires periodic assistance with getting in and out of a vehicle and continuous assistance with using public transit. No comments are provided regarding the frequency of assistance required with these tasks.

In her self-report, the appellant wrote:

- Most days she cannot do everything on her own, such as put on her socks/shoes. She is

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- constantly asking her room-mates and family for help.
  - She cannot lift groceries or a laundry hamper with clothes.

***Need for Help***

In the AR, the general practitioner indicated that the help required for DLA is provided by family and friends. In the section of the AR relating to assistance provided through the use of assistive devices, the general practitioner did not identify any of the listed items.

***Additional Information***

In her Notice of Appeal dated October 16, 2015, the appellant expressed her disagreement with the ministry's reconsideration decision and the appellant wrote that:

- Her injury is debilitating. She cannot sit for more than 30 minutes, or she cannot stand after.
- She cannot walk or be on her feet long, or she cannot move at all later in the day.
- She cannot pick up anything without assistance.
- Some days she cannot use the toilet or shower by herself.
- Driving, walking, taking the bus is out of the question, so someone drives her places.
- There is no possible way she can live like this and work.
- She is in constant pain and only narcotic medications help, which she despises taking and when she does take them, she is mentally disabled.

At the hearing, the appellant provided the following additional documents:

- 1) Letter dated July 4, 2015 in which a neurosurgeon reported that the appellant presented with low back and right leg pain that has reached a plateau. Examination showed significant mechanical component and he did not find any clinically localizing nerve root conduction defect. The CT scan and MRI scan showed degenerative change at the L5-S1 level with associated disc bulge and foraminal stenosis on both sides. Clinically the S-1 nerve root is functioning well and the L-5 nerve root is functioning normally. This is primarily ligament related mechanical low back pain. The treatment is conservative as surgery does not help mechanical low back pain. He prescribed physiotherapy, primarily core exercises. She will have to try to get her weight down to get the mechanical low back pain improved first before she can return back to the work force; and,
- 2) First page of a Diagnostic Report from an exam dated November 2, 2014 indicting degenerative changes predominantly at L5-S1.

At the hearing, the appellant stated that:

- She has degenerative disc disease and torn ligaments in her back. She also has two bulging discs which have become inflamed and causes sciatica on her right side with pain through her lower back and buttocks and down through her leg to her toes.
- Her lower back also has spasms where she has to lie down and relax to get relief from the pain. She also experiences shooting pain in her leg which can become numb and "tingly" down to her toes. The severity of the spasms depends on her activity level. Bending, lifting and walking too fast are bad for the spasms.
- She can lift about 10 lbs.
- She wakes up several times each night to adjust her position or apply heat for relief from the pain. She never gets a restful sleep. She is regularly in pain.
- She can walk for about 20 minutes and then she needs a break. She can sit for about half an hour but she does not sit comfortably.

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- When she takes the narcotic pain medication, she can stand, sit, shower, etc. about 65% of the time. If the spasms are severe or she if she does not take the medication, she needs help with everything.
  - She was recently confined to bed for about a month and a half. Some days will be okay and then she will be in bed for a period. She is worried about getting into the working world since she may work 3 weeks and then she would need to take 2 weeks off.
  - Her room-mate does most of the housework for her. She only wipes the counters when she can. While she can do the laundry, her room-mate has to carry the basket of clothes for her. She does not cook often because she can only do about 10 minutes of preparation and she cannot stand to cook.
  - The notes in the AR are hers and she cannot remember what she wrote in the comments that are illegible.
  - She has also been severely depressed and has anxiety. She expects the loss of memory is a side effect of her medication.
  - When she goes swimming, it helps her back but she cannot afford physiotherapy. She has lost over 50 lbs. since June 2015, as this was one of the doctor's recommendations.
  - She had a work place injury about 8 years ago and about 2 years ago she was having problems and approached WCB.
  - The neurosurgeon has stated, as set out in his letter, that there is not much that can be done to help.
  - She takes her medication every day.

At the hearing, the appellant's room-mate stated that:

- When the appellant's condition is bad, he helps her out by preparing meals and doing the chores that she cannot do. A couple of times she has been really bad where she could not get up off the floor and she could not move. They called an ambulance and she was not able to move for about 3 to 4 weeks.
- In a typical week, he does not help her that often. He works out of town and he has not had to help her out of the couch for a long time.
- About once a week he will help the appellant finish what she has started.

The ministry relied on its reconsideration decision, as summarized at the hearing. The ministry emphasized that employability is not a criteria for the PWD designation but being restricted from employment is relevant to the granting of a Person with Persistent Multiple Barriers to employment (PPMB) status.

#### ***Admissibility of Additional Information***

The ministry did not object to the admissibility of the additional letter and page from the Diagnostic Report. The panel considered the letter and page as information that corroborates the appellant's previous testimony respecting the neurosurgeon's opinion of her condition as diagnosed in the PWD application, which was before the ministry at reconsideration. Therefore, the panel admitted this additional information as being in support of information and records that were before the ministry at the time of the reconsideration, in accordance with Section 22(4)(b) of the *Employment and Assistance Act*.

## PART F – Reasons for Panel Decision

The issue on the appeal is whether the ministry's reconsideration decision, which found that the appellant is not eligible for designation as a person with disabilities (PWD), was reasonably supported by the evidence or was a reasonable application of the applicable enactment in the circumstances of the appellant. The ministry found that the appellant does not have a severe mental or physical impairment and that her daily living activities (DLA) are not, in the opinion of a prescribed professional, directly and significantly restricted either continuously or periodically for extended periods and that, as a result of those restrictions, it could not be determined that the appellant requires the significant help or supervision of another person, the use of an assistive device, or the services of an assistance animal to perform DLA.

The criteria for being designated as a PWD are set out in Section 2 of the EAPWDA as follows:

### **Persons with disabilities**

2 (1) In this section:

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

"**daily living activity**" has the prescribed meaning;

"**prescribed professional**" has the prescribed meaning.

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

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

(b) in the opinion of a prescribed professional

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

(A) continuously, or

(B) periodically for extended periods, and

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

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

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

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

(i) an assistive device,

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

(iii) the services of an assistance animal.

(4) The minister may rescind a designation under subsection (2).

Section 2(1) of the EAPWDR defines DLA for a person who has a severe physical or mental impairment as follows:

### **Definitions for Act**

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

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

(i) prepare own meals;

(ii) manage personal finances;



- (iii) shop for personal needs;
  - (iv) use public or personal transportation facilities;
  - (v) perform housework to maintain the person's place of residence in acceptable sanitary condition;
  - (vi) move about indoors and outdoors;
  - (vii) perform personal hygiene and self care;
  - (viii) manage personal medication, and
- (b) in relation to a person who has a severe mental impairment, includes the following activities:
- (i) make decisions about personal activities, care or finances;
  - (ii) relate to, communicate or interact with others effectively.

Section 2(2) of the EAPWDR defines prescribed profession as follows:

- (2) For the purposes of the Act, "**prescribed professional**" means a person who is
- (a) authorized under an enactment to practise the profession of
    - (i) medical practitioner,
    - (ii) registered psychologist,
    - (iii) registered nurse or registered psychiatric nurse,
    - (iv) occupational therapist,
    - (v) physical therapist,
    - (vi) social worker,
    - (vii) chiropractor, or
    - (viii) nurse practitioner, or
  - (b) acting in the course of the person's employment as a school psychologist by
    - (i) an authority, as that term is defined in section 1 (1) of the Independent School Act, or
    - (ii) a board or a francophone education authority, as those terms are defined in section 1 (1) of the School Act,if qualifications in psychology are a condition of such employment.

### **Severe Physical Impairment**

The appellant's position is that a severe physical impairment is established by pain from bulging discs in her back that is causing sciatica on her right side. The appellant argued that she has seen a neurosurgeon who told her that she also has ligament tearing in her back muscles contributing to the sciatica and this damage does not ever heal and he does not recommend surgery.

The ministry's position, as set out in the reconsideration decision, is that there is insufficient evidence to establish that the appellant has a severe physical impairment and the functional skills limitations described by the general practitioner are more in keeping with a moderate degree of physical impairment.

### ***Panel Decision***

A diagnosis of a serious medical condition does not in itself determine PWD eligibility or establish a "severe" impairment. An "impairment" is a medical condition that results in restrictions to a person's ability to function independently or effectively.

To assess the severity of an impairment, the ministry must consider both the nature of the impairment

and the extent of its impact on daily functioning as evidenced by functional skill limitations and the degree to which the ability to perform DLA is restricted. In making its determination the ministry must consider all the relevant evidence, including that of the appellant. However, the legislation is clear that the fundamental basis for the analysis is the evidence from a prescribed professional – in this case, the appellant’s general practitioner.

In the PR, the general practitioner diagnosed the appellant with sciatica on the right side which she has had “...for a long time and had to stop working. She has chronic pain and decreased mobility as a result. She is awaiting neurosurgeon.” In the letter from the neurosurgeon dated July 4, 2015, he reported that the appellant’s condition is primarily ligament related mechanical low back pain and the treatment is conservative as surgery does not help mechanical low back pain. He prescribed physiotherapy, primarily core exercises. In the PR, the general practitioner reported that the appellant does not require an aid for her impairment and she can walk 2 to 4 blocks unaided, climb 5 or more steps unaided, lift 5 to 15 lbs. and remain seated less than an hour. At the hearing, the appellant stated that she can only lift up to 10 lbs., she can walk for about 20 minutes and then she needs a break, and she can sit for about half an hour but she does not sit comfortably.

The general practitioner reported in the AR that the appellant is independent with walking indoors and standing “limited to 20 minutes,” takes significantly longer with walking outdoors, and requires periodic assistance from another person with climbing stairs and carrying and holding. The general practitioner did not provide notes regarding how much longer than typical it takes the appellant with walking outdoors or regarding the frequency that assistance is required with climbing stairs and carrying and holding. In her self-report, the appellant wrote that some days she cannot get up, stand or do activities on her own, and some days she is pretty good on her own. At the hearing, the appellant estimated that about 65% of the time she is able to do most activities but if the spasms in her back are severe or she if she does not take the medication, she needs help with everything. The appellant stated that the severity of the spasms depends on her activity level and bending, lifting and walking too fast are bad for the spasms. The general practitioner indicated that the appellant requires continuous assistance from another person with lifting which, according to the functional skills limitations, would be for weights in excess of 15 lbs. The general practitioner noted: “all due to sciatica and back pain.”

Given the absence of a information from the medical practitioner regarding the frequency of exacerbations to the appellant’s pain due to sciatica and her associated need for assistance, as well as the evidence of the appellant’s independent physical functioning most of the time, the panel finds that the ministry reasonably determined that there is not sufficient evidence to establish that the appellant has a severe physical impairment under Section 2(2) of the EAPWDA.

### **Severe Mental Impairment**

The appellant’s position is that a severe mental impairment is established by the evidence of her anxiety and depression that, as she wrote in her self-report, stem from her physical problems and “...obviously not working you have major money issues and stressful situations.”

The ministry’s position, as set out in the reconsideration decision, is that there is insufficient evidence to establish that the appellant has a severe mental impairment. The ministry argued that the general practitioner reported that the majority of the areas of cognitive and emotional functioning have minimal to no impact on daily living, and there are no difficulties with communication or with social functioning.



### *Panel Decision*

The general practitioner diagnosed the appellant with anxiety disorder and wrote that she "...has anxiety disorder and depressed mood partially as a result of this [i.e. chronic pain]." The general practitioner reported that the appellant has significant deficits in her cognitive and emotional functioning in the areas of memory and emotional disturbance and, for the section of the AR assessing impacts to daily living, he indicated a major impact in the area of emotion and moderate impacts in bodily functions and motivation. There are minimal or no impacts assessed to the remaining 11 areas of functioning, including memory, and the general practitioner wrote that "...patient has anxiety and depression; this is exacerbated by her sciatica and the physical and financial impact." In her Notice of Appeal, the appellant wrote that she is in constant pain and only narcotic medications help, which she despises taking and when she does take them, she is mentally disabled. At the hearing, the appellant stated that she believes that her problems with memory loss are as a result of her medication.

With respect to the two DLA that are specific to mental impairment – make decisions about personal activities, care or finances (decision making), and relate to, communicate or interact with others effectively (social functioning), the evidence establishes that the appellant is not restricted in either. Regarding the decision making DLA, the general practitioner reported in the AR that the appellant independently manages all decision-making components of DLA, specifically: personal care (regulate diet), shopping (making appropriate choices and paying for purchases), meals (meal planning and safe storage of food), "paying rent and bills" (including budgeting), medications (taking as directed and safe handling and storage), and transportation (using transit schedules and arranging transportation). Further, the general practitioner reported that the appellant independently makes appropriate social decisions.

Regarding the DLA of social functioning, the appellant is assessed by the general practitioner as independent in all areas of social functioning, including developing and maintaining relationships, interacting appropriately with others, and securing assistance from others. The general practitioner assessed the appellant with good functioning in both her immediate and extended social networks. In the PR, the general practitioner reported that the appellant has no difficulties with communication and, in the AR, that the appellant has a good ability to communicate in all areas.

Given the absence of significant impacts to the appellant's cognitive, emotional and social functioning as a result of a severe mental impairment, the panel finds that the ministry reasonably determined that a severe mental impairment was not established under Section 2(2) of the EAPWDA.

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

The appellant's position is that her physical and mental impairments directly and significantly restrict her ability to perform DLA on an ongoing basis to the extent that she requires the significant assistance of another person, specifically her room-mate.

The ministry's position, as set out in the reconsideration decision, is that the information from the prescribed professionals does not establish that impairment significantly restricts DLA either continuously or periodically for extended periods. The ministry wrote that the general practitioner, as the prescribed professional, reported that a majority of the listed tasks of DLA are performed independently by the appellant and the degree of assistance required remains unclear.

*Panel Decision*

Section 2(2)(b) of the EAPWDA requires that a prescribed professional provide an opinion that an applicant's severe impairment directly and significantly restricts her DLA, continuously or periodically for extended periods. In this case, the general practitioner is the prescribed professional. DLA are defined in Section 2(1) of the EAPWDR and are also listed in the PR and, with additional details, in the AR. Therefore, a prescribed professional completing these forms has the opportunity to indicate which, if any, DLA are significantly restricted by the appellant's impairments either continuously or periodically for extended periods.

In the appellant's circumstances, the general practitioner reported in the PR that the appellant has been prescribed narcotic pain medication that interferes with her ability to perform DLA and that the duration of the medication is "permanent" if surgery is not possible. In the AR, the general practitioner described the appellant's impairments that impact her ability to manage DLA as: "...sciatica impacting mobility." The general practitioner also reported that the appellant is independent with walking indoors and that she takes significantly longer walking outdoors, with no further detail of how much longer it takes her. He reported in the PR that the appellant can walk 2 to 4 blocks unaided and that she does not require an aid for her impairment. In the AR, the general practitioner reported that the appellant performs all of the listed tasks of the DLA "pay rent and bills" and "medications" independently. As discussed under the severity of mental impairment, with respect to the two DLA that are specific to mental impairment – decision making and social functioning, the available evidence indicates that the appellant is not restricted in either.

In the AR, the general practitioner reported that the appellant requires continuous assistance from another person with three tasks of DLA, specifically basic housekeeping, carrying purchases home when shopping, and using public transit. At the hearing, the appellant stated that her room-mate does most of the housework for her and she will do what she can. Although she can do the laundry, for example, her room-mate has to carry the basket of clothes for her. While there are several tasks of DLA that the general practitioner indicated the appellant requires periodic assistance from another person, specifically with the personal care DLA (dressing, bathing, toileting, and transfers in/out of bed and on/off a chair), basic housekeeping DLA (laundry), shopping DLA (going to and from stores), meals DLA (cooking) and transportation DLA (getting in and out of a vehicle), there is no further information from the general practitioner about the frequency of the need for assistance to allow the ministry to determine whether the assistance is required for extended periods of time.

At the hearing, the appellant stated that when she takes the narcotic pain medication, she can stand, sit, shower, etc. about 65% of the time. If the spasms are severe or she if she does not take the medication, she needs help with everything. The appellant stated that she does not cook often because she can only do about 10 minutes of preparation and she cannot stand to cook. The appellant's room-mate stated at the hearing that in a typical week, he does not help her that often. He stated that he works out of town and he has not had to help her out of the couch for a long time. He estimated that about once a week he will help the appellant finish what she has started. The appellant stated that some days will be okay and then she will be in bed for a period of time, she was recently confined to bed for about a month and a half, and she is worried about getting into the working world since she may have to take time off. In his July 4, 2015 letter, the neurosurgeon also indicated that the appellant will have to get the mechanical low back pain improved first before she can return back to the work force. The panel notes that, as emphasized by the ministry at the hearing, employability is not a criterion in section 2(2) of the EAPWDA nor is it listed among the prescribed daily living activities in section 2 of the EAPWDR.

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Given the lack of detail regarding the appellant's need for periodic assistance and the emphasis by the appellant and the neurosurgeon on the impact to her employability, the panel finds that the ministry reasonably concluded that there is not enough evidence from the general practitioner, as the prescribed professional, to establish that the appellant's impairment significantly restricts her ability to manage her DLA either continuously or periodically for extended periods, thereby not satisfying the legislative criterion of Section 2(2)(b)(i) of the EAPWDA.

**Help to perform DLA**

The appellant's position is that she requires the significant assistance of another person to perform DLA, specifically her room-mate.

The ministry's position, as set out in the reconsideration decision, is that because it has not been established that DLA are significantly restricted, it cannot be determined that significant help is required from other persons or an assistive device.

*Panel Decision*

Section 2(2)(b)(ii) of the EAPWDA requires that, as a result of direct and significant restrictions in the ability to perform DLA, a person requires help to perform those activities. Help is defined in subsection (3) as the requirement for an assistive device, the significant help or supervision of another person, or the services of an assistance animal in order to perform a DLA.

In the AR, the general practitioner indicated that the help required for DLA is provided by family and friends. In the section of the AR relating to assistance provided through the use of assistive devices, the general practitioner did not identify any of the listed items.

The panel finds that the ministry reasonably determined that as direct and significant restrictions in the appellant's ability to perform DLA have not been established, it cannot be determined that the appellant requires help to perform DLA as a result of those restrictions, as defined by Section 2(3)(b) of the EAPWDA.

**Conclusion**

Having reviewed and considered all of the evidence and relevant legislation, the panel finds that the ministry's reconsideration decision, which determined that the appellant was not eligible for PWD designation under Section 2 of the EAPWDA, was a reasonable application of the applicable enactment in the appellant's circumstances and therefore confirms the decision.