



## PART C – Decision under Appeal

The decision under appeal is the Ministry of Social Development and Social Innovation (the ministry) Reconsideration Decision dated December 23, 2015 which found that the appellant did not meet all of the 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 she has an impairment that is likely to continue for at least two years. However, the ministry was not satisfied that the evidence established that:

- the appellant has a severe mental or physical 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:

1. The appellant's Persons With Disabilities ("PWD") Application comprised of:
  - The Applicant Information and Self-report completed by the appellant and dated April 30, 2015 but indicated as being "re-done" on December 10, 2015 ("SR");
  - The Physician Report ("PR") and Assessor Report ("AR"), both dated August 4, 2015 and prepared by the appellant's general practitioner ("GP") of 1 year and who treated the appellant 11 or more times in the 12 months prior to completing the PR and AR;
2. A copy of the PR revised by the GP and dated December 6, 2015 ("PR #2");
3. A copy of the AR revised by the GP and dated December 6, 2015 ("AR #2");
4. A fresh Assessor Report prepared by a Registered Social Worker ("RSW") and dated December 9, 2015 ("AR #3");
5. The appellant's Request for Reconsideration dated December 5, 2015 ("RFR"); and
6. Two pages of written submissions prepared by the appellant's spouse ("Spouse Submissions").

### ***Admissibility of Additional Evidence***

#### ***Oral Evidence***

The appellant gave oral evidence at the hearing. She described her current physical and mental condition and the manner in which each impair her enjoyment of life and ability to perform DLA. She further described the help she receives with DLA from a family member and the various documents that were submitted to the ministry along with her RFR. On review of the evidence, the panel notes that none of the appellant's oral evidence was "new evidence" but rather, it specifically related to and referred to the documents that were before the ministry at reconsideration. The panel therefore finds that the appellant's oral evidence is admissible as it is in support of the information and records that were before the minister when the decision being appealed was made pursuant to section 22(4)(b) of the Employment and Assistance Act.

#### ***Diagnoses***

In PR #1, the appellant is diagnosed by the GP with the following:

1. Back pain;
2. Anxiety;
3. Major depression;
4. Fibromyalgia, and
5. Irritable bowel syndrome ("IBS").

The GP has indicated the date of onset for all of these diagnosed conditions as 2014 and has added the comment "back pain is related to underlying osteoarthritis and scoliosis as well as previous trauma."

In PR #2, the diagnoses are unchanged other than the addition of "osteoarthritis hands and back" with a 2014 date of onset.

#### ***Physical Impairment***

In the SR, the appellant writes that she has severe IBS which, in conjunction with severe depression, leaves her unable to function. She describes experiencing severe pain and exhausting fatigue which lasts most of the day without relief. She experiences abdominal pain and cramps, severe bloating, severe constipation and diarrhea which have caused her to be hospitalized. Further, the appellant describes the side effects of her pain medication which include blurred vision, headaches, lightheadedness, dizzy spells and shaky hands which have left her unable to drive. She writes that she has difficulty getting out of bed in the morning and that she showers very little anymore. She has let her housework go and experiences headaches, digestive issues, chronic pain and she very rarely leaves her home.

In the PR the GP comments that the appellant's back pain is related to underlying osteoarthritis and scoliosis as well as previous trauma. He continues that her IBS is severe and progressive and limits her food choices, her fibromyalgia is chronically symptomatic and resistant to treatment and her back pain is related to scoliosis and degenerative changes

The GP continues, commenting that the appellant is suffering from fibromyalgia and IBS which have been resistant to treatment and that her back problems are likely to progress. Functionally, the GP notes that the appellant can walk more than 4 blocks and climb more than 5 steps unaided and that she has no limitations lifting or remaining seated.

Lastly, the GP writes that the appellant continues to suffer greatly despite various therapies and modalities. The GP adds his opinion that he believes that the appellant is seriously physically impaired and that her prognosis is poor.

In PR #2, the GP has revised his opinion regarding the appellant's functional capacity. Her ability to walk has been reduced from four or more blocks to less than one. Similarly, her ability to climb stairs has been reduced from five or more to two to five steps. The appellant's ability to lift has decreased from "unlimited" to under 5 lbs and her ability to sit has been decreased from "unlimited" to less than 1 hour.

In the AR, the GP indicates that the appellant is independent walking indoors and standing but requires periodic assistance from family while walking outdoors or climbing stairs and that she needs periodic assistance lifting, carrying and holding. The GP adds the comment that the appellant is limited by back pain and that she is severely affected by multiple physical and psychological conditions which collectively limit her function significantly. He adds that medical therapies have had minimal effect.

The GP did not make any revisions in respect of the appellant's physical impairment in AR #2.

In AR #3, the RSW writes that the appellant's physical conditions include osteoarthritis, fibromyalgia and IBS. He adds that the appellant is independent walking indoors but takes significantly longer doing so ("5x longer"). The RSW continues that the appellant requires continuous assistance walking outdoors, lifting, carrying and holding with the comment that her daughter supports her. The appellant is described as taking significantly longer and using an assistive device while climbing stairs ("uses handrail, 4 steps max (In Pain)) and while standing ("leans on counter, 10-15 min max"). The RSW adds the comment that climbing stairs takes five times longer and that she has major difficulty lifting pots and pans or any object over 5lbs. The RSW describes the appellant's physical impairments as "severe and prolonged."

In the RFR, the appellant writes that she has experienced significant changes to her osteoarthritis in the previous 5 months. She continues that until 5 months prior to completing the RFR she was able to cope with her osteoarthritis as it was not at the forefront of her health issues as she also experienced severe IBS, fibromyalgia, depression and anxiety but that the osteoarthritis is the most painful and debilitating condition as it impacts every aspect of her life including her ability to be independent. She experiences stiffness and pain in her neck, lower back and hips which affects her ability to move, bend, stand and walk. She describes her

hands, fingers and feet as “the worst” continuing that putting pressure on her fingers causes her great pain and that she experiences constant breaking of blood vessels in her fingers, cramping in her hands and dropping items and that pushing, pulling, lifting and grasping have become impossible as she experiences pain, tenderness, stiffness and loss of flexibility. She does not sleep well because she constantly changes positions and takes pain medication to help her sleep. During the day she takes different medications for pain and inflammation.

In the Spouse Submissions, the appellant’s spouse writes that prior to receiving help in their household from another family member, the appellant was largely responsible for the day to day household chores but that on many days she can no longer do so. The author writes that it is not uncommon for the appellant not to eat, that she experiences bloating and swelling, that she complains of her entire body aching and that she is unable to perform many normal physical tasks. The appellant is described as being in constant pain.

### ***Mental Impairment***

As noted previously, the appellant has stated in the SR that she experiences depression which, in conjunction with her IBS, leaves her unable to function. She experiences feelings of anxiety, emptiness and despair which engulf her day to day life causing feelings of helplessness and worthlessness that are intense and unrelentless with no relief. She adds that she has difficulty concentrating, remembering things and making decisions as well as increased anxiety.

In the PR, the GP notes that the appellant experiences major mood disorder and chronic anxiety which are difficult to control and chronically symptomatic. He adds that this leaves her very tired and with very low self-esteem and ambition. The GP confirms that the appellant has significant deficits with cognitive and emotional function in the areas of emotional disturbance, motivation and attention or sustained concentration. He adds the comment that the appellant’s anxiety affects concentration and short term memory while depression causes chronic fatigue, low energy and lack of motivation. The GP adds the comment that he believes that the appellant is severely mentally impaired and that her prognosis is poor.

In the AR, the GP indicates that the appellant’s ability to communicate through speaking and hearing are good while her reading and writing are poor due to poor concentration and short term memory. The GP adds that the appellant is primarily affected by anxiety. Further, the GP adds that the appellant’s mental impairment has a major impact on motivation, a moderate impact on emotion, attention/concentration, memory and motor activity and no impact on the balance of the listed areas. The GP comments that the appellant chronic depression and anxiety affect concentration and memory and that at times, the appellant is “psychomotor retarded” while also exhibiting symptoms of social and agoraphobia.

The GP did not provide any updated information or assessments with respect to the appellant’s mental impairment in PR #2 or AR#2.

In AR #3, the RSW notes that the appellant’s mental impairments include depression and anxiety and indicates that the appellant’s ability to speak is good but that her ability to read and write vary from “satisfactory” to “unable” due to difficulty concentrating and cramping thumbs and fingers. The RSW adds that the appellant relies on her daughter for all written communication including the SR.

The RSW continues by setting out the impact that the appellant’s mental impairment has on her daily functioning which includes major impacts on bodily functions (the RSW has highlighted “eating problems, toileting problems, poor hygiene and sleep disturbance”), consciousness (“drowsy”), emotion (“anxiety, depression”), impulse control, insight and judgment (“unsafe behaviour”), attention/concentration (“distractible, unable to maintain concentration, poor short term memory”), executive, memory, motivation (“lack of initiative, loss of interest”), motor activity (“lack of movement, agitation, extreme tension”), language and other emotional or mental health problems described as “easily agitated, difficulty regarding moods, depression and anxiety,

impacts relationship with partner.” In addition to these areas, the RSW has noted that the appellant experiences a moderate impact on other neuropsychological problems (“visual/spatial problems”) and no impact on psychotic symptoms. The RSW adds the comment that the appellant suffers from major sleep disruption, a limited diet due to IBS, toileting issues, weekly vomiting, bloating, cramping and nausea. The RSW concludes by commenting that the appellant’s mental and physical impairments are “severe and prolonged.”

In the RFR, the appellant writes that her osteoarthritis impacts her emotional well-being and that her physical limitations have become detrimental to her self-esteem and self-image and have led to a negative emotional state, anxiety, depression and feelings of helplessness.

In the Spouse Submissions, the appellant’s spouse writes that the appellant’s health issues have severely affected her mental well-being insofar as she becomes frustrated and depressed due to having to cope with living with constant pain and never feeling well.

### ***Daily Living Activities***

In the PR, the GP notes that the appellant has not been prescribed any medication that interferes with her ability to perform DLA. The GP continues by indicating that the appellant is continuously restricted with a number of DLA including basic housework, daily shopping and social functioning but not restricted in meal preparation, management of medications, mobility inside or outside the home, use of transportation or management of finances.

In the AR, the GP comments on the assistance required by the appellant in relation to the impairment that directly restricts her ability to manage her DLA as follows:

- Personal Care: The appellant is independent with all tasks.
- Basic Housekeeping: The appellant requires periodic assistance with laundry and basic housekeeping (“assistance from family”).
- Shopping: The appellant is independent making appropriate choices and paying for purchases but requires periodic assistance going to and from the store, reading prices and labels and carrying purchases home.
- Meals: The appellant is independent with meal planning and safe storage of food but requires periodic assistance with food preparation and cooking (“may not be able to stand for long periods”).
- Paying Rent and Bills: The appellant is independent paying rent and bills but requires periodic assistance with banking and budgeting due to concentration related issues.
- Medications: The appellant is independent with all tasks.
- Transportation: The appellant is independent getting in and out of a vehicle but requires periodic assistance using public transit (“finds public transit uncomfortable for her back”) and using transit schedules and arranging transportation (“may be limited by concentration”).

The GP adds the comment that when the appellant’s anxiety is severe she may not be able to leave her home.

With respect to social functioning, the GP indicates that the appellant is independent when making appropriate social decisions, developing and maintaining relationships and securing assistance from others but requires periodic support and/or supervision interacting appropriately with others (“has some social phobia”) and dealing appropriately with unexpected demands (“cannot tolerate stressful situations”). The appellant has marginal functioning with her immediate and extended social networks.

In PR #2, the GP has added that the appellant uses some opioid back pain medication which can cause drowsiness and that she experiences some antidepressant related dizziness and blurred vision and that the

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duration of this medication is “long term as needed.” The GP has also added that the appellant is continuously restricted with meal preparation and management of medications in addition to those listed in the PR. The GP has commented in PR#2 that the appellant experiences moderate to severe restriction in mobility and ability to lift more quickly and that she cannot open pill bottles or carry pans.

The GP has made no changes to the DLA section of AR #2.

In AR#3, the RSW comments on the assistance required by the appellant in relation to the impairment that directly restricts her ability to manage her DLA as follows:

- Personal Care: The appellant is independent but takes significantly longer toileting (“2x longer”), feeding herself and regulating her diet, transfers in and out of bed (“45 minutes each morning”) and transfers on and off of a chair (“2-3 times longer”). The appellant requires continuous assistance with dressing (“3 times longer”), grooming and bathing (“unable to bathe”).
- Basic Housekeeping: The appellant requires continuous assistance with all tasks.
- Shopping: The appellant requires continuous assistance with all tasks, relying on her husband and daughter.
- Meals: The appellant requires continuous assistance with all tasks, receiving support from her husband and daughter.
- Paying Rent and Bills: The appellant is independent with all tasks.
- Medications: The appellant is independent with all tasks other than filling and refilling prescriptions for which she requires periodic assistance in the form of reminders and support.
- Transportation: The appellant is independent getting in and out of a vehicle but requires continuous assistance using public transit (“avoids due to anxiety”) and using transit schedules and arranging transportation (“does not use”).

As concerns social functioning, the RSW indicates that the appellant requires periodic support and/or supervision interacting appropriately with others but that she otherwise requires continuous support/supervision making appropriate social decisions (“avoids making social decisions”), developing and maintaining relationships (“avoids social contact”), dealing appropriately with unexpected demands (“breakdowns during unexpected circumstances”) and securing assistance from others (“difficulty asking for help”).

Lastly, the RSW notes that the appellant experiences very disrupted functioning with her immediate social network (“major withdrawn”) and with her extended social network (“major social isolation”). The RSW adds that the appellant has gone from being an outgoing personality to being isolated in her home due to depression and anxiety.

### ***Need for Help***

In the PR, the GP notes that the appellant does not require any prostheses or aids for her impairment. In the AR, the GP indicates that the appellant receives periodic help from family members. In PR#2 the GP writes that the appellant receives help from family with shopping, household chores, cooking and accessing medications. The GP has not commented further or otherwise changed his opinion in AR#2 on the help needed by the appellant.

In AR #3, the RSW comments that the appellant relies on her daughter for assistance with all written communication and with lifting, carrying and holding and that she relies on her husband and daughter for assistance with shopping and meals and that she further relies on neighbours and a community independent living association for support. The SW suggests that self-help and community support groups may be an asset and that assistance from a nurse with dressing and assistance in the home with cooking, cleaning, housework

and driving would be of benefit to the appellant.

## **Evidence On Appeal**

### **Appellant's Evidence At Hearing**

The appellant stated at the hearing that her condition has become progressively worse particularly over the last 5 months. She feels that she is becoming more depressed and does not have a life and that she now has rheumatoid arthritis. She is in constant pain and is having a difficult time coping. She cannot drive due to the side effects of her medication and virtually everything is a problem including sitting, standing and lying down. The appellant stated that she has lost her appetite and is no longer the happy, bubbly person she used to be. She said that she needs help with most tasks now. She felt that the GP did not provide a fair assessment of her condition in the PR and AR.

In response to questions, the appellant stated that her condition as set out in the PR and AR has changed considerably in the past 5 months. She stated that she has had further medical testing which have revealed her to be suffering from rheumatoid arthritis and that she has begun increasing her pain medication in addition to the muscle relaxant and anti-inflammatory medication she takes. The appellant stated that she has suicidal thoughts secondary to her depression as she feels that there is no light at the end of the tunnel. As a result, the GP increased the appellant's anti-depressant medication 6 months ago but she reduced it on her own due to the side effects. The appellant confirmed that she does not use any aids for mobility but that rather if she stands for any period of time she leans against things or shifts legs.

The appellant responded to questions relating to the revisions to the PR and AR and the AR prepared by the RSW. She stated that she asked the GP to review and revise the PR and AR due to the progressive nature of her condition and the deterioration she was experiencing. She stated that the GP suggested to her that she see the RSW for the purpose of having a new AR completed which resulted in AR#3 being prepared. The appellant stated that PR#2, AR#2 and AR#3 were all submitted to the ministry along with her RFR.

The appellant stated that she is currently taking medications for depression and has in the past received mental health counselling with limited benefit. She has recently seen a specialist concerning her IBS and she is scheduled to receive further diagnostic testing in the near future.

### **Ministry's Evidence At Hearing**

At the hearing, the ministry indicated that it would rely on the Reconsideration Decision. No further oral submissions were provided.

In response to questions, the ministry was unable to say why the Reconsideration Decision did not refer to PR#2, AR#2 or AR#3.

## 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 PWD under section 2 of the *EAPWDA*, 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 met the age requirement and that she has an impairment that 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 mental or physical impairment;
- the appellant's 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.

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)(a) 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.

### **Positions of the Parties**

At the hearing, the appellant argued that she met each of the legislative requirements for designation as a PWD.

In her Notice of Appeal dated January 12, 2016 the appellant writes that she disagrees with the Reconsideration Decision because her physical and mental well-being has declined dramatically. She adds further evidence of her physical and mental impairment which has been set out above.

The ministry takes the position as set out in the Reconsideration Decision that the appellant is ineligible for designation as a Person With Disabilities.

### **Severity of impairment**

Section 2(2)(a) of the *EAPWDA* provides that when addressing the issue of a severe physical or mental impairment in the context of a person applying for a PWD designation, that person must be found to have a severe physical or mental impairment that, in the opinion of a medical practitioner, is likely to continue for at least 2 years.

A diagnosis of a serious medical condition or conditions 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 one must consider the nature of the impairment and the extent of its impact on daily functioning. 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 prescribed professionals – in this case, the GP and the RSW.

### **Severity of mental impairment**

At the hearing the appellant argued that her depression and anxiety constitute a severe mental impairment and that the evidence as a whole supports such a finding.

The ministry takes the position as set out in the Reconsideration Decision that the evidence does not support a

finding that the appellant suffers from a severe mental impairment.

*Panel Decision*

The GP has indicated in the PR that the appellant suffers from major depression, a mood disorder and chronic anxiety. The latter two conditions are described in the PR as “difficult to control” and “chronically symptomatic.” The appellant is described as suffering from significant deficits with cognitive and emotional function in emotional disturbance, motivation and attention or sustained concentration. In the AR the GP has indicated that the appellant’s mental impairment has a major impact on her motivation and a moderate impact on her emotion, attention/concentration, memory and motor activity.

The appellant submitted a new AR prepared by the RSW which documented the deterioration of her mental health. AR#3 indicates that the appellant’s mental impairment has a major impact on all but one of the listed daily functions and the RSW describes the appellant’s mental impairment as severe and prolonged.

At the hearing, the ministry was unable to answer why it did not consider AR#3 at the time the Reconsideration Decision was completed. The panel accepts the appellant’s evidence that she forwarded this information to the ministry along with her RFR and the panel finds that AR#3 is relevant as to the issue of whether the appellant suffers from a severe mental impairment. By failing to consider this evidence, the panel finds that the ministry was not reasonable in its determination that the evidence did not support a finding that the appellant suffers from a severe mental impairment as provided by section 2(2) of the *EAPWDA*.

**Severity of physical impairment**

The appellant takes the position that her physical conditions and their impact on her functional capacity support a finding that she has a severe physical impairment.

The ministry takes the position as set out in the Reconsideration Decision that based on the information provided it cannot determine that she has a severe physical impairment.

*Panel Decision*

The PR was prepared by the appellant’s GP in August 2015. In it, he describes the appellant as experiencing back pain, fibromyalgia and IBS. These conditions are described as severe, prolonged, chronic and resistant to treatment. The GP describes the appellant’s functional capacity as including an ability to walk four or more blocks and climb five or more steps unaided while enjoying no limitations lifting or remaining seated.

The appellant’s evidence is that in the months following the preparation of the PR, her overall health deteriorated and that she returned to the GP in December for the purpose of having the PR and the AR revised. In PR#2, the GP added the diagnosis of osteoarthritis. He further revised the appellant’s functional ability, indicating that her ability to walk had been reduced to less than 1 block, that her ability to climb stairs had been reduced to between 2 and 5 steps, that her ability to lift was limited to under 5lbs and she was only able to sit for less than 1 hour. The panel finds this evidence to be consistent with the appellant’s oral evidence.

As noted previously in this decision, the appellant’s oral evidence was that she was advised by the GP that she should see the SW to have the AR revised and she did that. In AR#3, the RSW notes that the appellant requires continuous assistance walking outdoors, lifting, carrying and holding. He describes the appellant’s physical impairment as severe and prolonged.

As noted above, at the hearing the ministry was unable to answer why it did not consider PR#2 or AR#3 at the time the Reconsideration Decision was completed. The panel accepts the appellant’s evidence that she

forwarded this information to the ministry along with her RFR and the panel finds that both PR#2 and AR#3 are relevant as to the issue of whether the appellant suffers from a severe physical impairment. Both of these documents are consistent with the appellant's evidence that subsequent to August 2015, her physical health deteriorated to the point that she felt it necessary to have that documented by the GP who prepared the PR. By failing to consider this evidence, the panel finds that the ministry was not reasonable in its determination that the evidence did not support a finding that the appellant suffers from a severe physical impairment as provided by section 2(2) of the *EAPWDA*.

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

The appellant argues that the evidence supports a finding that she is significantly restricted in her ability to perform tasks of DLA.

The ministry's position is that it has not been established by the evidence of a prescribed professional that the appellant's ability to perform DLA has been directly and significantly restricted by his physical or mental impairments either continuously or periodically for extended periods as required by section 2(2) of the *EAPWDA*.

#### *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 his or her DLA, continuously or periodically for extended periods. In the present case, while the appellant has provided evidence in the SR, the Spouse Submissions and at the hearing of the challenges that she faces with DLA, the legislation is clear that to satisfy the criteria the evidence must come from a prescribed professional. In the present case, this evidence has been provided by two prescribed professionals - the GP and the RSW.

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 DLA, if any, are significantly restricted by the appellant's impairments, either continuously or periodically for extended periods. Employability is not a listed criterion in the legislation and as such is not a consideration in the determination of whether an applicant's DLA are restricted by a severe impairment.

In the PR, the appellant's GP has indicated that the appellant requires continuous assistance with basic housework and daily shopping but is otherwise independent with all of the other listed DLA. In the AR, the GP indicates that the appellant requires periodic assistance with laundry, basic housekeeping, going to and from stores, reading prices and labels, carrying purchases home, food preparation, cooking, banking, budgeting and using public transit but otherwise she is independent with DLA. The appellant is described in the AR as having marginal functioning with her immediate and extended social networks and her social functioning is restricted insofar as she requires periodic supervision/support while interacting appropriately with others and when dealing with unexpected demands.

As noted previously in this decision, as the appellant's overall condition and her ability to perform DLA deteriorated in the months following the completion of the PR and AR, she returned to the GP to update him and to request that the PR and AR be revised. In PR#2, the GP added that the appellant was continuously restricted in meal preparation and management of medications, adding that she experienced moderate to severe restriction in mobility and ability to lift or move quickly. The GP further commented that the side effects of opioid medication taken by the appellant interfered with her ability to perform DLA.

No changes were made by the GP to the DLA section in AR#2 because, as suggested by the appellant at the hearing, he advised the appellant to see the RSW for this purpose. In AR#3, the RSW indicates that the appellant requires continuous assistance with dressing, grooming and bathing, laundry and basic

housekeeping, all tasks related to shopping and meals and in using public transit and using transit schedules and arranging transportation. The RSW describes the appellant as experiencing very disrupted functioning in her immediate and extended social networks and as requiring continuous support/supervision in all aspects of social functioning other than interacting appropriately with others for which she requires only periodic support/supervision. The panel notes that the RSW is a prescribed professional as defined by section 2(2)(a)(vi) of the *EAPWDR*.

As noted above, the panel accepts the appellant's evidence that she returned to the GP in December 2015 due to the deterioration of her overall condition and her ability to perform DLA. This deterioration was documented in PR#2, AR#2 and AR#3. These documents were completed by the GP and the SW and submitted to the ministry along with the appellant's RFR. At the hearing, the ministry was unable to explain why they were not considered by the ministry when the Reconsideration Decision was reached. By failing to consider this evidence, the panel finds that the ministry was not reasonable in its determination that the evidence did not support a finding that the evidence was insufficient to establish that the appellant's impairment significantly restricts her ability to perform tasks of DLA either continuously or periodically for extended periods.

### **Help with DLA**

The appellant argues that she requires help with virtually all tasks of DLA with that help coming from family members.

The ministry's position is that because it has not been established that DLA are significantly restricted, it cannot be determined that significant help is required.

### *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. Section 2(3) of the *EAPWDA* provides that a person requires help in relation to a DLA if, in order to perform it, the person requires an assistive device, the significant help or supervision of another person, or the services of an assistance animal. In other words, it is a pre-condition to a person requiring help that there be a finding that a severe impairment directly and significantly restricts a person's ability to manage his or her DLA either continuously or periodically for an extended period.

As noted above, the panel has determined that the ministry was not reasonable in its determination that the evidence did not support a finding that the evidence was insufficient to establish that the appellant's impairment significantly restricts her ability to perform tasks of DLA either continuously or periodically for extended periods. This determination is based on the fact that the ministry failed to consider PR#2, AR#2 or AR#3 when preparing the Reconsideration Decision.

In PR#2, the GP added that the appellant required and received help from family with shopping, household chores, cooking and accessing medication. In AR#3, the RSW indicated that the appellant relied on her daughter and husband for assistance with all tasks of basic housekeeping, shopping and meals and that assistance from a community support group would be an asset to assist the appellant with social functioning. The RSW further recommends home support from a nurse.

The ministry was unable to explain why it did not consider PR#2 or AR#3 when preparing the Reconsideration Decision. Given that evidence and given the panel's finding with respect to DLA as set out above, the panel further finds that the ministry's conclusion that 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*, was not reasonable.

**Conclusion**

The appellant recognized that her condition was deteriorating and took reasonable steps to seek the GP's advice. The PR and AR were revised and a separate AR was prepared by the SW as directed by the GP. This evidence, PR#2, AR#2 and AR#3, was relevant to the issue of the appellant's application for designation as a PWD and the panel finds that the ministry's failure to consider it in the course of preparing the Reconsideration Decision was unreasonable. At the hearing, the ministry was unable to provide any explanation as to why this information was not considered.

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 not a reasonable application of the applicable enactment in the circumstances of the appellant, and therefore rescinds the decision.