

## PART C – Decision under Appeal

The Ministry of Social Development and Social Innovation (the ministry) reconsideration decision dated 21 January 2016 determined that the appellant did not meet 3 of the 5 statutory requirements of section 2 of the Employment and Assistance for Persons with Disabilities Act (EAPWDA) for designation as a person with disabilities (PWD). The ministry found that the appellant met the age requirement and that her impairment was likely to continue for at least 2 years. However, the ministry was not satisfied that

- the appellant had a severe mental or physical impairment;
- the appellant’s mental or physical impairment, in the opinion of a prescribed professional, directly and significantly restricted daily living activities (DLA) either continuously or periodically for extended periods and
- as a result of those restrictions, in the opinion of a prescribed professional, the appellant required help to perform DLA.

## PART D – Relevant Legislation

EAPWDA, section 2

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

## PART E – Summary of Facts

The following evidence was before the ministry at the time of reconsideration:

A PWD Application, divided in 3 sections: 1 Self Report (SR), 2 Physician Report (PR) and 3 Assessor Report (AR) as follows:

- Section 1 – Applicant Information (SR): the appellant completed this SR and signed the application before a witness on 17 July 2015 and stated:
  - She suffers from back pain that greatly affects her daily life. She explained her medical condition and added that she had been living in constant back pain for her whole life but since this new pain in 2013 it is getting worse and “killing her slowly”. The back pain controls her life and impacts her sleep, laying down, sitting, standing, driving, lifting her young child, bladder control, exercising and working – in short she stated that her life has been turned upside down. As a result she cannot work.
- Section 2 – the PR completed and signed on 17 July 2015 by the appellant’s physician (a general practitioner – the GP) who has known her for a year and seen her 2 to 10 times during the previous 12 months. The GP reported the following:
  - Specific diagnoses: back / pelvic pain (onset November 2013), chronic fatigue syndrome (onset 2014), scoliosis (onset 1996) and depression (onset 2000).
  - Health history: Back / pelvic pain affecting mobility / ability to do jobs; pain affecting DLA; chronic pain causing mood to be lower (depression).
  - The appellant requires prostheses or aids for her impairment: cane or crutches intermittently – for mobility on bad days.
  - The impairment was likely to continue for 2 years or more from that date with the comments that the pain has been ongoing since 2013 and not likely to improve.
  - In terms of functional skills, the GP indicated that the appellant could walk 1 to 2 blocks unaided, she could climb 5+ steps unaided, she can lift 2 to 7 kg, can remain seated 1 to 2 hours and has no difficulties with communication.
  - The appellant has the following significant deficits with cognitive and emotional function: emotional disturbance, motivation and attention or sustained concentration with the comment that the appellant has depression.
  - The GP indicated that the appellant’s impairment directly restricts her ability to perform DLA as follows: *continuously* restricted: basic housework, daily shopping, mobility inside and outside the house; *periodically* restricted: personal self-care and meal preparation; *no restriction*: management of medications, use of transportation, management of finances and social functioning. For “periodic”, the GP explained that sometime the pain is really bad and some days are worse than others. For the degree of restriction, the GP indicated that she is restricted in how much she can do before pain becomes intolerable and for assistance used, the GP indicated she could use home care and used cane or crutches.
  - The GP provided the following additional comments: her pain affects all aspects of the appellant’s life, limits sitting, standing and mobility – she has to take breaks in the day to decrease her pain.
- Section 3 – the AR completed by the same GP dated 29 July 2015 reported the following:

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- The appellant lives alone.
  - In terms of physical or mental impairments that impact DLA, the GP reiterated that because of back / pelvic pain, it limits the appellant's mobility, sitting and standing.
  - The appellant's speaking, reading, writing and hearing abilities are good.
  - In terms of mobility and physical ability, the GP indicated that the appellant was independent for lifting and carrying but uses an assistive device for walking indoors and outdoors (uses cane / crutches occasionally), climbing stairs (uses cane / crutches when pain is bad) and standing (cane / crutches when pain [increases?]) with no other comment.
  - For cognitive and emotional functioning, the GP indicated a major impact for emotion and minimal impact for motivation but no impact on all the other functions (bodily functions, consciousness, impulse control, insight and judgement, attention/concentration, executive, memory, motor activity, language, psychotic symptoms, other neuropsychological problems and other emotional or mental problems) with the additional comment that the appellant has depression from chronic pain.
  - For DLA the GP provided the following assessments, his comments in brackets:
    - *Personal care*: independent in all aspects except for transfers in/out of bed where the appellant uses an assistive device (uses a belt to help get in/out).
    - *Basic housekeeping*: independent for laundry but takes significantly longer for basic housekeeping.
    - *Shopping*: independent for reading prices / labels, making appropriate choices and paying for purchases; takes significantly longer for going to and from stores; uses an assistive device for carrying purchases home (use cart/stroller/wagon). Additional comments: uses a belt to stabilize hips – uses cane / crutches to help with less pain.
    - *Meal planning*: independent in all aspects.
    - *Pay rent and bills*: independent in all aspects.
    - *Medications*: independent in all aspects.
    - *Transportation*: independent for using public transit and using transit schedules & arranging transportation; uses an assistive device for getting in and out of a vehicle (uses a belt).
    - *Social functioning*: this whole section is left blank.
  - Assistance provided by other people: left blank.
  - Assistance provided through the use of assistive devices: cane, crutches and braces. Details: pelvic brace, uses mostly all the time - cane / crutches uses when pain gets too much.
  - The appellant does not use a service animal.
  - Additional information: pelvic / back pain has impeded mobility, standing, ability for work, has trouble carrying groceries, uses a wagon, has trouble getting in/out of bed/chair; has a belt to stabilize pelvic.
  - The assessor's source of information was an office interview with the appellant.

The Appeal Record included an undated, unsigned letter from the appellant, possibly sent along with her application for PWD designation and titled "How has back pain affected my life". In this letter the appellant indicated that she had bladder problems because of back pain and that her child sleeps with her so that she can take care of him. She gets to do one major thing a day including going to the store, pushing a heavy cart, loading and unloading things in a van and then in the house. Her house is a mess as it hurts to constantly bend down and pick up things and if she vacuums or wash the

floors, she can hardly walk the rest of the day. Because of her illness she cannot work and had financial problems but she cannot see herself working, even at a desk job.

With her Request for Reconsideration dated 21 December 2015, the appellant indicated that her clinical symptoms and condition are real and that she is not employable.

She joined a letter from a medical practitioner, specialist in physical medicine and rehabilitation, electromyography (the specialist) who indicated that the appellant has a significant combination of musculoskeletal diagnoses that are impacting her functional ability both in activities of DLA and in work-related duties. She added: "In my opinion she is not competitively employable due to her acuity of the above listed conditions. She is unable to squat, lift, bend, reach, carry heavy loads, push and pull without instability, which prevents further participation."

The appellant also included a 4-page letter, self-report, reiterating what she had said in her application (SR) and added the following:

- She was able to see the specialist with a reference from her GP.
- She stated that her sleep is affected as she can sleep for 3 to 5 hours intervals but hesitates to take sleeping pills because she must care for her 3-year-old child.
- She has problems getting out of bed and must wait ½ hour to one hour before her medication takes effect and she can start her day but by 2 to 4 pm, she wrote that she is a "wreck".
- She explained her day and it happens she cannot walk because her joints have shifted out of place.
- Members of her family visited and helped her with DLA, cleaning, vacuuming and moving things around because they were too heavy for the appellant or too much work to clean. It happens that she cannot stand and crawls to a closet to take her crutches so that she can walk.
- She indicated she has problems with her bladder that might be caused by 3 herniated discs in her lower back.
- She could not travel to see her family at Christmas because of the pain and she decided she was not in a condition to travel by air or any other means of transportation.
- She indicated that she agrees she can walk 2 blocks but she doesn't enjoy those walks and must take it slowly.
- She can also climb more than 5 steps since she has 14 steps in her house and even more at the hospital.
- She can also lift more than 15 lbs since her child weighs over 35 lbs and as a single parent of a 3 year old, she must carry the child if needed but it hurts her and when the child has a tantrum, it causes her even more pain.
- She uses a cane or crutches but not all the time since she often needs to hold her child's hands and push a cart.
- She cannot use painkillers as it makes her drowsy and she is concerned that it is not recommended when you have to take care of a young child.
- She struggles with depression as a result of constant pain and she isolated herself from the rest of the world since she cannot go to dinner parties or visit friends because of her condition.
- She also met a certified orthotist who is fitting the appellant with a pelvic brace and lower lumbar brace as well as put a lift in a new pair of runners to bring her unequal leg length even and a knee brace for stability; the costs of those items could be up to \$1400.

With her written submissions to the panel dated 26 February 2016, the appellant provided a series of

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documents as well as another document on the day of the hearing. The ministry objected to the admissibility of all these documents provided by the appellant because they were not before the minister at reconsideration and are new evidence. After having analyzed those documents the panel makes the following determination with respect to their admissibility.

The following documents are admitted under s. 22(4) of the Employment and Assistance Act (EAA) as they are in support of the records before the minister at reconsideration, providing more information on the impact of appellant's medical condition and corroborating the evidence that was before the reconsideration officer, in particular the appellant's SR and letters as well as the diagnoses from the GP:

- Exhibit A: 1-page letter dated 19 February 2016 from the appellant's mother and father indicating that they visited her and assisted in a number of housework (vacuuming, cleaning dishes and tidying toys, laundry and other daily chores). They indicated she can do some tasks but has to be careful not to do too much or she will be in more pain. She needs lots of strength to deal with her young child and she used to be very active but this is not anymore possible because of the deterioration of her mobility. They stated that the appellant could not anymore work in her career choice or in any other employment but they hope that she will be able to enter back into the workforce in a couple of years.
- Exhibit B: 1-page letter dated 23 February 2016 from a friend of the appellant confirming her physical decline since her child's birth. He indicated that what people take for granted in a day (DLA) are beyond her capabilities as they tax the limits of her endurance. The appellant needs financial help so she can meet her usual expenses that everyone else take for granted.
- Exhibit C: 1-page letter dated 24 February 2016 from a family support consultant confirming that the appellant wears a brace covering her hips and in a meeting with her, she had to stand, sit and occasionally lay on the floor in order to find a comfortable position for her back.
- Exhibit D: 3-page letter dated 22 February 2016 from a physician member of a physiotherapist corporation (the physiotherapist) provided the following information:
  - The appellant can't perform small tasks for 10-15 minutes without needing 2-3 hours rest.
  - She must take frequent breaks to manage her symptoms appropriately.
  - Her ability to cope with the stresses of daily life, make appropriate decisions in a timely manner and interact with other people is not significantly restricted but moderately affected. DLA are significantly more difficult and add stress but he added, "I am not qualified to discuss how much her physical condition affects her mental state in specific detail."
  - The appellant's level of activity is significantly reduced as she used to be able to work in a difficult job and various recreational activities but now she is unable because of significant pain with small tasks and limiting what she can do.
  - Her DLA are affected daily.
  - He indicated that she was living with family and that without their assistance, routine tasks such as cleaning would take significantly longer than normal.
- Exhibit G 5 – 6: CR Scoliosis AP on 22 April 2014 that found the degree of curvature of the lumbar spine has slightly worsened since November 2013.
- Exhibit G 7 - 8: MR L Spine MRI on 15 November 2013 found a 18 degrees mid lumbar levoscoliosis was present, mild degenerative disc disease is present at L2-3, L4-5 and L5-S1 levels without nerve root compression; mild bilateral facet OA is present at L5-S1 level.

The panel finds that the following documents are not admissible because they provide new

information collected after the reconsideration decision that was not before the minister at reconsideration and, in particular, information that is significantly different and inconsistent with the information at reconsideration as well as providing new diagnoses. There is no doubt that this information is extremely valuable for the appellant but would be more appropriate in the context of a new application for PWD designation since the panel does not have the jurisdiction to re-assess her condition based on new information:

- Exhibit E: 3-page letter dated 25 February 2016 by the appellant's specialist summarizing 2 assessments, one on 8 December 2015 and the second on 17 February 2016. The focus of this letter is to "assist in the assessment of this patient [the appellant] as she applies for [PWD] funding." She explained the appellant's medical condition, from her perspective and specialization, and continues stating that she is familiar with both the physician and the "therapist" [assessor] sections of the PWD form and can contribute to both sections. The highlights are as follows:
  - She expands the diagnoses of the PR by adding arthritis, degenerative disc disease and fibromyalgia.
  - She disagrees with a number of the findings by the GP in the PR and the AR, in particular:
    - That the appellant cannot walk unaided on a flat surface;
    - That she is unable to climb stairs unaided;
    - She cannot lift more than 5 lbs;
    - She cannot stay seated for more than 1 hour;
    - She disagrees with the characterization of the appellant's loss of initiative or interest, stating that she is very motivated to take care of her child but she gets exhausted by those challenges;
    - She disagrees that there is no impact on social functioning;
    - She disagrees that the appellant is independent for lifting, carrying and holding;
    - She indicated that bodily functions have changed since the GP's assessment;
    - The appellant is unable to use public transportation due to standing and sitting intolerances;
    - While the social functioning section of the AR was not completed by the GP, the specialist adds that the appellant is very challenged and not functioning normally in terms of her ability to develop and maintain relationships and she requires support to be effective in the community;
    - She would assess the appellant as marginally functioning in terms of relationships with her immediate and extended social network.
- Exhibit F: 2 letters, the first a 3-page letter dated 8 December 2015 from the specialist to the appellant's GP detailing the appellant's medical condition as of that date, the results of her assessment and recommendations for treatments. The second is a 2-page letter dated 17 February 2016 also directed to the appellant's GP providing a second assessment of the appellant's scoliosis and back pain, a possible neurogenic bladder and her willingness to provide an assessment for the appellant's PWD application based on the form itself.
- Exhibit G 1 to G 4 and G 9: this is a series of medical tests performed on the appellant as follows:
  - NM bone Wbody w EX Views/Spect on 17 December 2015 confirms deterioration in the appellant's lumbar and back condition.
  - CT L/Spine/C on 28 October 2015 that found no significant interval change in a lumbar levoscoliosis and mild multilevel lumbar DDD – no spinal or foraminal stenosis.
  - An undated document showing the spinal/pelvic alignment showing they are both out of normal alignment.

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- At the hearing, the appellant provided a letter dated 26 February 2016 from an orthotist explaining the appellant's condition in terms of lumbar, joint and back pain. The letter confirms the difficulties that the appellant has and that also impact other joints in her wrists, elbows and shoulders. She takes longer to perform DLA. The appellant wears 3 soft lumbosacral belts that need to be replaced and she's trying to deal with her pain with the limited funds available. Her activity will continue to decline due to degenerative changes. She will always require braces as her condition is permanent and progressively degenerative and there are no routine activities for her – it is a continuous series of compensatory movements to carry out normal tasks, those movements being far from normal and will lead to fatigue, pain and further degeneration.

The appellant testified at the hearing that she had not seen the specialist until December 2015 and that she was relieved to have her support. She stated that she uses a cane every day, all day, and crutches at the end of the day when she feels weaker, at least once a week. In terms of the range of pain based on a scale of 1 to 10, she testified that in a good day her pain would be in the 5 to 7 range while in a moderate day it would be around 7 and in a bad day it would be at the high end. She estimated that in a 10 day period, she has 1 good day, 6 moderate days and 3 severe days. She wears a back brace every day, as soon as she gets out of bed.

In terms of her DLA she gets help from her family for shopping, driving, meal preparation (pre-made and/or frozen meals). They carry her laundry for her in the basement and she sits on the floor when waiting for her laundry to be done and they will carry it back up the stairs; without their assistance she wouldn't be able to do it herself. She plans to do one chore per day and it happens that she cannot finish what she planned. They also help her with carrying and lifting her child when they are there and it happens more lately. She uses a series of assistive devices including knee braces, cane, crutches, bath seat, pelvic braces etc. She finds she has excessive and severe pain every day and a small group of family and friends help her, including neighbours who help her from time to time with some chores and bringing her meals. She hired a cleaning person once in awhile but she cannot afford her services anymore. She manages her own finances, she does not use public transportation, and she has no help for personal hygiene and for medications.

The panel determined the appellant's additional oral evidence was admissible as it was in support of the records before the minister at reconsideration, providing more information on the impact of her medical condition on the appellant and corroborating the evidence that was before the reconsideration officer.

## PART F – Reasons for Panel Decision

The issue under appeal is whether the ministry's determination that the appellant has not met all of the eligibility criteria of section 2 of the EAPWDA for designation as a PWD was either a reasonable application of the legislation or reasonably supported by the evidence. The ministry was not satisfied that:

- the appellant had a severe mental or physical impairment;
- the appellant's mental or physical impairment, in the opinion of a prescribed professional, directly and significantly restricted DLA either continuously or periodically for extended periods and
- as a result of those restrictions, in the opinion of a prescribed professional, the appellant required help to perform DLA.

The ministry determined that the age requirement and that her impairment was likely to continue for at least 2 years had been met.

The criteria for being designated as a person with disabilities are set out in s. 2 of the EAPWDA and s. 2 of the EAPWDR. Section 2 of the EAPWDA states:

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;

"**health professional**" repealed

"**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 of the EAPWDR provides further clarification:

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;



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- (ii) manage personal finances;
  - (iii) shop for personal needs;
  - (iv) use public or personal transportation facilities;
  - (v) perform housework to maintain the person's place of residence in acceptable sanitary condition;
  - (vi) move about indoors and outdoors;
  - (vii) perform personal hygiene and self care;
  - (viii) manage personal medication, and
- (b) in relation to a person who has a severe mental impairment, includes the following activities:
- (i) make decisions about personal activities, care or finances;
  - (ii) relate to, communicate or interact with others effectively.
- (2) For the purposes of the Act, "**prescribed professional**" means a person who is
- (a) authorized under an enactment to practise the profession of
    - (i) medical practitioner,
    - (ii) registered psychologist,
    - (iii) registered nurse or registered psychiatric nurse,
    - (iv) occupational therapist,
    - (v) physical therapist,
    - (vi) social worker,
    - (vii) chiropractor, or
    - (viii) nurse practitioner, or
  - (b) acting in the course of the person's employment as a school psychologist by
    - (i) an authority, as that term is defined in section 1 (1) of the *Independent School Act*, or
    - (ii) a board or a francophone education authority, as those terms are defined in section 1 (1) of the *School Act*, if qualifications in psychology are a condition of such employment.

***Severity of the impairment:***

A diagnosis of a serious medical condition does not in itself determine PWD eligibility or establish a severe impairment. While the legislation does not define "impairment", the ministry's PR and AR forms define "impairment" as a "loss or abnormality of psychological, anatomical or physiological structure or functioning causing a restriction in the ability to function independently, effectively, appropriately or for a reasonable duration." While this is not a legislative definition, and is therefore not binding on the panel, in the panel's opinion, it reflects the legislative intent and provides an appropriate analytical framework for assessing the degree of impairment *resulting from a medical condition*.

The panel notes that the legislation clearly provides that the determination of severity of impairment is at the discretion of the minister, taking into account all of the evidence including that of the appellant. However, the legislation is also clear that the fundamental basis for the analysis is the *evidence from a prescribed professional* respecting the nature of the impairment and its impact on daily functioning. As well, in the material provided by the appellant there were mentions of the appellant's employability (for instance in the specialist's letter of 16 December 2015 and in her SR) but the panel notes that employment is not one of the criteria determining eligibility for a PWD designation.

The panel has the difficult task of analyzing the evidence that was before the reconsideration officer

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and the evidence that it found was in support of that information while acknowledging that since the decision more medical information is now available that sheds much more light on her condition. However, the panel's jurisdiction is limited by s. 24 of the EAA that states:

**24** (1) After holding the hearing required under section 22 (3) [*panels of the tribunal to conduct appeals*], the panel must determine whether the decision being appealed is, as applicable,

(a) reasonably supported by the evidence, or

(b) a reasonable application of the applicable enactment in the circumstances of the person appealing the decision.

(2) For a decision referred to in subsection (1), the panel must

(a) confirm the decision if the panel finds that the decision being appealed is reasonably supported by the evidence or is a reasonable application of the applicable enactment in the circumstances of the person appealing the decision, and

(b) otherwise, rescind the decision, and if the decision of the tribunal cannot be implemented without a further decision as to amount, refer the further decision back to the minister.

In other words, the panel does not have the jurisdiction to re-assess the appellant's eligibility for a PWD designation but is limited to determining, with the information at reconsideration and the additional evidence *in support* of that information, whether the ministry's decision was reasonable.

### ***Severe physical impairment:***

The appellant argued that her medical condition has deteriorated and that its severity is increasing and that with all the difficulties and the pain she has to face every day, her physical impairment is severe. She argued that she is in pain every day and can barely manage the most elementary chore and must spend most of her energy caring for her 3 year old child.

The ministry argued that while the appellant faces functional skills limitations, based on the GP's description, those limitations are more in keeping with a moderate degree of physical impairment and therefore there is not enough information to confirm a *severe* physical impairment.

### ***Panel decision:***

The panel notes that both the medical and the appellant's evidence are to the effect that the appellant faces many difficulties in particular because of the pain she suffers and that seems to be increasing with time. However the impact of her physical impairment is not clear or consistent. The GP indicated that the appellant could walk unaided on a flat surface 1 to 2 blocks and can climb unaided 5+ steps, she is independent walking indoors/outdoors, climbing stairs and standing. However, the appellant's evidence is to the effect that she is increasingly relying on assistive devices to walk and climb stairs and she cannot stand for long. Yet, in her statement with her Request for Reconsideration she admitted she could walk 2 blocks but she does not enjoy the walk; she can also climb more than 5 steps, she wrote, as there are 14 steps in her house and the hospital has lots. The GP stated she could lift up to 7 kg (15 lbs) and the appellant stated that she can carry her child that weighs over 35 lbs – it hurts and she does not enjoy it but she must do it, as she is a single mother.

The specialist in her letter of 16 December 2015 indicated that in her opinion the appellant was not "competitively employable due to her acuity of the ... listed conditions", being "unable to squat, lift,

bend reach, carry heavy loads, push and pull without instability, which prevents further participation.” The panel notes that this letter cannot reasonably be considered as providing *per se* enough information for the ministry to support a severe physical impairment: there is no explanation as to how the listed limitations can affect the appellant’s activities, how often, when and to what extent.

The panel determined that the physiotherapist’s report was admissible even though it was completed on 22 February 2016 because it was in support of the evidence at reconsideration. The physiotherapist indicated that in his opinion the appellant has a severe physical and/or mental impairment because she is not able to perform such minor tasks as tidying up children’s toys for 10 – 15 minutes without needing 2-3 hours rest. This tends to confirm the GP’s comments that the appellant is limited because of pain and has to take breaks in the day to decrease her pain and by itself it is not evidence of a severe physical impairment – it must be read in the context of the PR and the AR.

The panel accepts the appellant’s evidence as being honest in her explanations since she is the one that experiences the pain and suffering resulting from her condition. However, the legislation mandates the opinion of a prescribed professional, a neutral person with applicable training, who can provide an assessment based on his or her professional experience. Given this evidence, the panel finds that the ministry reasonably determined that based on the prescribed professional’s opinion, the appellant’s physical impairment is more in keeping with a moderate degree and that a severe physical impairment was not established.

***Severe mental impairment:***

The appellant argued that because of depression caused by her illness, she suffers from a severe mental impairment that impacts her life at all time.

The ministry argued that while the appellant has some difficulties with cognitive and emotional functioning, there was only one area, emotion, where the impairment had a major impact and motivation had a minimal impact – the other areas having no impact. The ministry argued that there is not enough information to confirm a severe mental impairment.

***Panel decision:***

The GP diagnosed depression as one area of mental disorder and in the PR identified emotional disturbance, motivation and attention or sustained concentration as having a significant deficit, commenting that the appellant has depression. According to the AR, the appellant’s abilities to communicate (speaking, reading, writing and hearing) are all good and in the section “Cognitive and Emotional Functioning”, the GP only identified “emotion” has having a major impact. He identified motivation as minimal impact and all the other areas with no impact, which differs from what he wrote in the PR.

The panel also notes that for DLA that are specific to a mental impairment under s. 2 (1)(b) of the EAPWDR, making decision about personal activities, care or finances and relating to, communicating or interacting with others, the reports do not mention any restriction in terms of decision making and social functioning. In fact, the appellant is independent for reading prices & labels, making

appropriate choices when shopping, paying for purchases, meal planning, paying rent and bills, medications, arranging transportation and the GP provided no information with respect to social functioning and the panel cannot speculate as to why no information was provided.

The physiotherapist addressed those issues stating that the appellant was not significantly restricted but gets stressed because of her physical condition. He concluded stating that he was not qualified to discuss how much her physical condition affects her mental state in specific details. The panel notes that this evidence is consistent with the GP's assessment.

Thus, the panel finds the ministry reasonably determined that the information provided did not establish that the appellant had a severe mental impairment.

***Daily living activities:***

The appellant argued that her medical impairments impact most DLA because of the pain she is suffering and impede her ability to do her chores and that she must select one activity per day to make sure that she has a chance to complete it. She argued that without help, there are a number of DLA that would not be accomplished.

The ministry argued that there were many discrepancies between the PR and the AR in terms of DLA and where there is an impact, its frequency, degree and duration are unclear. In general, the ministry argued, the appellant can perform the majority of DLA independently or require little help from others and the information from the prescribed professionals does not establish that impairment significantly restricts DLA either continuously or periodically for extended periods.

***Panel decision:***

At the outset, the panel notes some differences within the GP's reports and with the appellant, the specialist and the physiotherapist. In the PR, the GP indicated periodic restrictions for personal self-care and meal preparation while in the AR he indicated the appellant is independent for all areas of personal care except for transfers in/out of bed (uses a belt) as well as independent for meals with no mention of taking longer or needing periodic assistance. He explained "periodic" by stating that sometimes the pain was really bad, some days worse than others without any indication of how often and how long those periods were.

The GP in the PR mentioned the appellant was *continuously restricted* for basic housework, daily shopping and mobility inside/outside the home, explaining that the appellant is restricted in how much she can do before the pain becomes intolerable. However, in the AR, the GP indicated it was taking her significantly longer to do basic housekeeping (no explanation as to how much longer) but was independent for laundry. In the AR the GP also indicated she was independent for reading prices & labels, making appropriate choices and paying purchases – she takes significantly longer going to and from stores (no mention as to how much longer) and she uses a cart, stroller or wagon to carry purchases home. The panel also notes that while the GP indicated the appellant was continuously restricted for mobility indoor and outdoors in the PR, the GP mentioned in the AR that the appellant used a cane or crutches "occasionally" for walking indoors and outdoors.

The specialist in her letter of 16 December 2015 did not address the appellant's ability to perform any specific DLA but the physiotherapist did mention she was restricted daily but provided little details other than mention that light cleaning requires 2 – 3 hours rest, that the appellant needs to take frequent, extended breaks and without her family's help, "routine tasks such as cleaning would take significantly longer than normal" with no indication as to how often and how much longer it would take.

The appellant's showed a progression of the restrictions she suffers as a result of her illness since her earlier reports, when she indicated she could do her tasks but it was very painful and she needed to rest. She also mentioned that she needed financial assistance in the undated letter that was in the appeal record. In her SR (17 July 2015) she did not mention any specific DLA for which she had difficulties but mentioned that managing her pain included choosing DLA that don't push her too hard to the extent that she is unable to finish the day walking or keeping her in bed the next day; she also mentioned that the back pain controls her life, from sleeping, sitting at a table to eat, driving, lifting her child, bladder control, exercising and working.

The panel notes that at the time of reconsideration the appellant's evidence mentioned help that she needed but the medical evidence did not confirm that and, for instance, the GP left blank the section of the AR on the assistance provided by other people to the appellant.

Considering that a severe impairment has not been established, given the evidence presented the panel finds that the ministry reasonably determined that there was not enough information from a prescribed professional to establish that the appellant's *impairments directly and significantly restrict* DLA continuously or periodically for extended periods.

***As a result of those restrictions, help is required to perform DLA:***

The appellant argued that because of her condition, she requires help with most DLA.

The ministry argued that since DLA are not significantly restricted, it cannot be determined that significant help is required from other persons.

***Panel decision:***

A finding that a severe impairment directly and significantly restricts a person's ability to manage her DLA either continuously or periodically for an extended period is a precondition to a person requiring "help" as defined by section 2(3)(b) of the EAPWDA. For the reasons provided above, that precondition has not been satisfied in this case. Accordingly, the panel finds that the ministry reasonably concluded it could not be determined that the appellant requires help with DLA as defined by section 2(3)(b) of the EAPWDA.

***Conclusion:***

Having reviewed and considered all of the evidence and the relevant legislation, and for the reasons provided above, the panel finds that the ministry's decision that the appellant was not eligible for PWD designation was reasonably supported by the evidence. The panel therefore confirms the



ministry's decision.