

PART C – Decision under Appeal

The decision under appeal is the Ministry of Social Development and Social Innovation (the ministry) reconsideration decision dated February 2, 2016, 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 dated July 9, 2015, a physician report (PR) dated July 24, 2015 completed by a general practitioner who has known the appellant for one year and an assessor report (AR) dated July 14, 2015 and completed by a social worker who has known the appellant for 2 weeks.

The evidence also included the following documents:

- 1) Letter dated December 6, 2015 from a psychological counselor;
- 2) Questionnaire dated January 15, 2016 completed by a different physician from the general practitioner who completed the PR, with an attached completed page 11 of the PR; and,
- 3) Request for Reconsideration dated January 5, 2016.

Diagnoses

In the PR, the appellant was diagnosed by the general practitioner with mood disorder and anxiety, endometriosis with chronic pelvic pain, back pain with radiation and migraine headaches, with no dates of onset provided. In the AR, the social worker described the appellant's impairments that impact her ability to manage daily living activities as: "...mood is low, she experiences bad back pain and migraine headaches every two days, she takes medication that makes her drowsy, but her headaches never stop completely, she also has endometriosis with chronic pelvic pain."

Physical Impairment

In the PR, the general practitioner reported that:

- In terms of health history, "All of [the appellant's] individual medical conditions are moderately severe, but the combination of them, along with social stressors, significantly impair her ability [to] function fully in her daily life."
- The appellant's endometriosis "is reasonably well controlled" with medication; however, she is awaiting surgery with her gynecologist for cyst removal, "which should hopefully improve this symptom."
- Regarding her back pain, after attempted physiotherapy, "her therapist noted that despite a full course of treatment, she had persistent severe symptoms of lower leg radiculopathy and lower back spasms" and they are "awaiting consultation from a physiatrist for other treatment options."
- With respect to migraine headaches, they "respond to abortive therapy" with medication; however, when she has them and takes the medication, "she must stay in a quiet, dark room and sleep until the headache resolves."
- There is no assessment as to whether the appellant requires any prostheses or aid for her impairment.
- Regarding the degree and course of impairment, all of the appellant's conditions are noted as "chronic with relapsing and remitting episodes. She has responded poorly to most usual treatments, so has a poor prognosis for completely resolving her issues."
- For functional skills, the appellant can walk 4 or more blocks unaided, climb 5 or more steps unaided, lift 2 to 7 kg (5 to 15 lbs) and remain seated less than one hour.
- The appellant has no restrictions with mobility inside the home and has periodic restrictions with mobility outside the home, described as "can walk for about 15 minutes before needing to stop and rest due to pain and fatigue due to mood disorder. During extreme episodes of back pain, avoids leaving the house altogether."

-
- Regarding the degree of restriction, “each condition is moderate; however, the combination of mood and back pain are severe. This is periodic in nature; however, the episodes can last for months at a time.”
 - In the additional comments, the appellant, with her husband, is a full-time caregiver for their child with significant medical needs and frequent appointments.

In the AR, the social worker reported that:

- The appellant is independently able to perform all areas of mobility and physical ability, specifically walking indoors and walking outdoors, climbing stairs, standing, lifting, and carrying and holding. The social worker noted that: “After 15 minutes of walking she gets back pain” and she can “only walk up 10 to 15 stairs before back pain” and she can “stand for 15 minutes then back pain” and she “can only lift 3 to 4 kg.”
- 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 the Questionnaire dated January 15, 2016, asked whether the appellant has a severe physical impairment or a severe mental impairment, or both, when considering the impact of all of her medical conditions on her daily life, the physician referred to symptoms relating to a mental impairment and wrote: “has moderate/severe impairment.”

Mental Impairment

In the PR, the general practitioner reported:

- Regarding health history, “...her low mood has been managed mostly through attenuation of external stressors (daughter’s medical condition), social support, and we are awaiting response to referral for counseling and a trial of SSRI.”
- The appellant has no difficulties with communication.
- The appellant has significant deficits in her cognitive and emotional functioning in the areas of emotional disturbance, motivation, and attention or sustained concentration. The general practitioner wrote: “due to her low mood, she isolates herself and avoids voluntary interaction with others, even with family or friends. Occasionally has episodes of disassociation. Has trouble focusing, finds her mind is ‘all over the place’ while trying to learn English. States she has ‘no desires, I just follow what others tell me.’”
- The appellant is continuously restricted with social functioning, with a note: “avoids most social interaction, has trouble with conversations due to dissociative episodes.”

In the AR, the social worker reported that:

- The appellant has a good ability to communicate in all areas, specifically with speaking, reading, writing, and hearing.
- For the section of the AR assessing impacts to cognitive and emotional functioning, the social worker indicated a major impact in the area bodily functions and emotion, with moderate impacts in attention/concentration and motivation. There are minimal or no impacts in the remaining 10 areas of functioning, including a minimal impact to memory. The social worker wrote that the appellant worries about her special needs daughter, she is grieving the loss of dreams for her daughter and the death of another family member, and worrying about the safety of a family member. She has nightmares and, when she does manage to sleep, she does not wake up feeling energized or well-rested.
- For the section of the AR assessing impacts to social functioning, the social worker reported

[]

that the appellant is independent in all 4 areas that were assessed, specifically: making appropriate social decisions, interacting appropriately with others, dealing appropriately with unexpected demands and securing assistance from others. There was no assessment for her ability to develop and maintain relationships and no further explanation or description provided.

- The appellant has good functioning in her immediate social network and marginal functioning in her extended social networks, described as “does not go out often except to go to doctor’s appointments and to do shopping with her husband.”

In the Questionnaire dated January 15, 2016, asked whether the appellant has a severe physical impairment or a severe mental impairment, or both, when considering the impact of all of her medical conditions on her daily life, the physician wrote: “Has moderate/severe impairment. Poor concentration, severe anxiety, low mood, lack of motivation.”

In the letter dated December 6, 2015, a psychological counselor wrote that:

- The appellant has participated in 12 sessions of therapy to date.
- The appellant has been suffering from depression and taking prescribed anti-depressant medication.
- The appellant has been having difficulty managing her depressive symptoms such as excessive crying and fatigue.
- A number of coping strategies have been discussed.

Daily Living Activities (DLA)

In the PR, the general practitioner indicated that:

- The appellant has been prescribed medication for her migraines that interfere with her ability to perform DLA as they cause sedation. The anticipated duration is “life long as needed.”
- The appellant is not restricted with a number of listed DLA, specifically: personal self care, meal preparation, management of medications, and part of her mobility (inside the home).
- The appellant is continuously restricted with the DLA of basic housework, daily shopping, management of finances, and social functioning. The general practitioner wrote that the appellant “has a dependent personality, so has never given herself the opportunity to manage money or finances. Housework is restricted due to low motivation and needing frequent breaks to rest due to back pain- daughter and husband help. Shopping is done along with husband, who helps with money and carrying things.”
- The appellant is periodically restricted with part of her mobility (outside the home) and with the DLA use of transportation.
- In the additional comments to the PR, the appellant “notes that her ability to functionally complete her ADL’s is directly related to the severity of the episodes of her back pain or her low mood.”

In the AR, the social worker reported that:

- The appellant is independently able to move about indoors and outdoors.
- For the personal care DLA, she is independent with the tasks of toileting, regulate diet, and transfers in/out of bed and on/off of chair. She requires periodic assistance from another person with the tasks of dressing, grooming, and feeding self (note: “requires emotional support from husband”), and she requires periodic assistance and takes significantly longer than typical with bathing (“sits for shower and then stands up at the end” and it takes her 30 to

45 minutes longer).

- For the DLA basic housekeeping, the appellant requires periodic assistance with laundry as “her husband supports her to stay focused” and with basic housekeeping, which also takes her longer than typical, described as “takes 45 minutes longer; husband must help.”
- With respect to the shopping DLA, the appellant is independent with the tasks of reading prices and labels and paying for purchases, and requires periodic assistance for going to and from stores (note: “goes with husband sometimes, or not at all”), making appropriate choices (“relies on husband to help her stay focused”), and for carrying purchases home.
- With respect to the frequency of the assistance required, the social worker wrote: “...some days her mood prevents her from getting out of bed, bathing, cooking, etc. and she depends on her husband’s emotional support to help get her out of bed and get going. When she had migraines, she stays in bed and sleeps and is unable to do anything else.”
- Regarding the meals DLA, the appellant is independent with the task of safe storage of food, and requires period assistance with the tasks of meal planning and food preparation (help from husband), and she requires periodic assistance and takes significantly longer than typical with cooking, described as “take 30 minutes longer; depends on husband.” The social worker noted that the appellant “needs to take breaks when cooking and sometimes sits when cooking because of her back pain.”
- Regarding the “pay rent and bills” DLA, she requires periodic assistance with each task, including banking (note: “does together with husband”) and budgeting.
- For the medication DLA, the appellant is independent with safe handling and storage and requires periodic assistance from another person with filling/refilling prescriptions (note: “mood prevents and husband will go for her”) and taking as directed (“mood prevents her from remembering to take”). The social worker noted that “she depends on alarms to remind her to take her medication.”
- For the DLA transportation, the appellant is independent with getting in and out of a vehicle, and requires periodic assistance with using public transit and using transit schedules and arranging transportation. The social worker noted that “days that her back pain is very bad she needs help from her husband to take public transit.”
- With respect to the frequency of the assistance required, the social worker wrote: “some days” the appellant gets out of bed “but her mood prevents her from being able to do anything and she just sits on the sofa.”
- In the additional information, the social worker wrote that the appellant “tries to cope as best she can, but some days her mood prevents her from being able to complete any tasks and relies on her husband those days.”

In the Questionnaire dated January 15, 2016, the physician wrote that:

- The appellant takes significantly longer than normal to perform many DLA or she puts tasks off “due to her depression.”
- The physician agreed that the appellant’s level of activity is significantly reduced due to her impairment.
- The appellant is continuously significantly restricted in performing DLA by one or more of her medical conditions.
- The physician agreed that overall, the appellant’s impairment significantly restricts her ability to perform a range of DLA continuously or periodically for extended periods.
- In the attached page 11 from the PR, the physician indicated that the appellant is not restricted with the DLA management of finances.

-
- The appellant is continuously restricted with the DLA basic housework and social functioning. The physician wrote that the appellant “often isolates, lack of motivation, poor concentration.”
 - The appellant is periodically restricted with the DLA personal self care, meal preparation, management of medications, daily shopping, mobility inside and outside the home, and use of transportation.
 - Asked to explain the need for periodic assistance and clarified as “how often and how long?”, the physician left this section of the page blank.

Need for Help

In the AR, the social worker indicated that the help required for DLA is provided by family, including an aunt and her husband “for periodic help with ADL’s.” In the section of the AR relating to assistance provided through the use of assistive devices, the social worker did not identify any of the listed items.

In the Questionnaire dated January 15, 2016, asked to confirm that the appellant requires significant help with DLA, the physician wrote “...needs help from community services or family.”

Additional Information

In her Notice of Appeal dated February 12, 2016, the appellant expressed her disagreement with the ministry’s reconsideration decision and attached a letter in which she wrote:

- She has a child that needs constant supervision and, when she realized that her child had this illness, it affected her severely.
- She is suffering from depression and she is taking medication for that and she also has a problem with her back and she is on medication for that as well.
- She is also [not] able to lift anything heavy.
- She needs help when she is shopping, bathing and basic life activities.
- She had an hysterectomy on January 19, 2016 from which she is still recovering.
- It is a big challenge for her to keep up with her daily activities since she is suffering from emotional and physical barriers.
- She does not think her family doctor reflected all her concerns in her original application.

Prior to the hearing, the appellant provided a Written Submission to the Tribunal, prepared by an advocate on the appellant’s behalf.

The ministry relied on its reconsideration decision as the ministry’s submission on the appeal.

Admissibility of Additional Information

The ministry did not raise an objection to the admissibility of the additional letter from the appellant. The panel considered the information in the letter to corroborate the previous information from the general practitioner regarding the appellant’s medical conditions 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*. The panel considered the advocate’s Written Submission as argument on behalf of the appellant.

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:

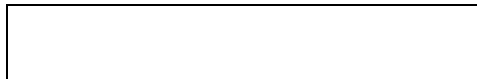
Definitions for Act

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.

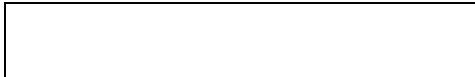
Section 2(2) of the EAPWDR defines prescribed profession as follows:

- (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 the cumulative impacts of the appellant's multiple medical conditions, as evidenced in the narrative provided in the PR, the AR, and the additional Questionnaire. The appellant argued, through her advocate, that the general practitioner wrote that while each condition is moderate, the combination of her mood and back pain are severe. The appellant argued that the social worker wrote that the appellant has migraine headaches every two days, she is often immobilized by chronic back pain, headaches and low mood and some days she is not able to get out of bed and often she does not leave the house.

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 not considered indicative of a severe impairment of physical functioning. The ministry wrote that the general practitioner indicated that the appellant's social stressors combine with her medical conditions to impair her ability to function fully in daily life, which suggests that the source of her impairment is in part situational in nature. The ministry wrote that the general practitioner reported functional skills in the high range of functioning and the social worker indicated that the appellant is independent in all aspects of mobility and physical ability.



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, the consulting physician, and the social worker.

In the PR, the general practitioner, who has known the appellant for one year and who is identified as the appellant’s family physician, diagnosed the appellant with endometriosis with chronic pelvic pain, back pain with radiation and migraine headaches. The general practitioner wrote that all of the appellant’s individual medical conditions are “moderately severe”, but the combination of them, along with social stressors, significantly impair her ability to function fully in her daily life. While the general practitioner indicated that the appellant’s ability to function “fully” in her daily life is significantly impaired, the general practitioner also attributed this impairment, at least partially, to social stressors. The general practitioner wrote that the appellant, with her husband, is a full-time caregiver for their child with significant medical needs and frequent appointments. The advocate argued that although the general practitioner indicated each condition is moderate, the combination of the appellant’s mood and back pain are severe; however, Section 2(2) of the EAPWDA requires that the ministry be satisfied that the person has either a severe mental impairment or a severe physical impairment.

In the PR, the general practitioner wrote that the appellant’s endometriosis “is reasonably well controlled” with medication; however, she is awaiting surgery with her gynecologist for cyst removal, “which should hopefully improve this symptom.” In her Notice of Appeal dated February 12, 2016, the appellant wrote that she had a hysterectomy on January 19, 2016, from which she is still recovering. There was no further information provided by the general practitioner, her family physician, regarding the current prognosis. Regarding the appellant’s back pain, there were no medical imaging reports or specialist consultations referred to, other than attempted physiotherapy, to indicate the cause of the back pain and the general practitioner wrote that they are “awaiting consultation from a physiatrist for other treatment options.” There was no further information provided from the appellant’s family physician regarding possible treatment options, although the appellant wrote in her Notice of Appeal that she is taking medication for the problem with her back.

With respect to the appellant’s migraine headaches, the appellant’s family physician wrote that they respond to medication; however, when the appellant has them and takes the medication, “she must stay in a quiet, dark room and sleep until the headache resolves.” In the AR, the social worker described the appellant’s impairments that impact her ability to manage daily living activities as: “...mood is low, she experiences bad back pain and migraine headaches every two days, she takes medication that makes her drowsy, but her headaches never stop completely, she also has endometriosis with chronic pelvic pain.” There is no further information provided by the family physician or the social worker to specify how quickly the appellant’s migraines or back pain are alleviated by medication; however, both agree in the overall assessment that the appellant has a high degree of functioning in her functional skills, and she remains independent with all aspects of mobility and physical ability.

The general practitioner reported in the PR that the appellant can walk 4 or more blocks unaided, climb 5 or more steps unaided, lift 2 to 7 kg (5 to 15 lbs) and remain seated less than one hour. The appellant has no restrictions with mobility inside the home and has periodic restrictions with mobility outside the home, described by the general practitioner as “can walk for about 15 minutes before needing to stop and rest due to pain and fatigue due to mood disorder. During extreme episodes of back pain, avoids leaving the house altogether.” The general practitioner did not define how often the appellant experiences “extreme” episodes of back pain, or how far she can walk in 15 minutes. The social worker reported that the appellant is independently able to perform all areas of mobility and physical ability, specifically walking indoors and walking outdoors, climbing stairs, standing, lifting, and carrying and holding. The narrative provided by the social worker confirms the functional skill limitations indicated by the general practitioner.

Additional information was provided by a consulting physician in the Questionnaire dated January 15, 2016; however, the panel notes that this information does not present a thorough picture and must be viewed in light of the functional skills/physical mobility reported by the appellant’s family physician and the social worker. Asked whether the appellant has a severe physical impairment or a severe mental impairment, or both, when considering the impact of all of her medical conditions on her daily life, the physician referred to symptoms relating to a mental impairment and wrote: “has moderate/severe impairment.”

While both the general practitioner and the social worker referred to periodic experience of migraines and back pain, the appellant’s endometriosis being noted in the PR to be “reasonably well controlled” with medication and there was no further information from the general practitioner regarding the impact of the appellant’s recent surgery, both medical professionals assessed the appellant with independent mobility and physical functioning and did not indicate how often, and the specific ways, her functioning is diminished from this overall assessment during any exacerbations in her condition. Given the level of independent physical functioning reported by the general practitioner and the social worker, 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 cumulative impacts of the appellant’s multiple medical conditions, as evidenced in the narrative provided in the PR, the AR, and the additional Questionnaire. The appellant argued, through her advocate’s written submission, that the general practitioner wrote that while each condition is moderate, the combination of her mood and back pain are severe. The appellant argued that the social worker wrote that the appellant’s bodily functions and emotion have major impacts on her daily functioning and the health care providers have indicated an ongoing need for counseling.

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’s narrative suggests that severity of the appellant’s impairment is in part situational in nature and may therefore lessen in the future, and that the social worker reported that the majority of the areas of cognitive and emotional functioning have minimal to no impact on daily living, there are no difficulties with communication or with social functioning, and is more in keeping with a moderate degree of impairment of mental functioning.

Panel Decision

The general practitioner diagnosed the appellant with mood disorder and anxiety and wrote that the appellant's "...low mood has been managed mostly through attenuation of external stressors (daughter's medical condition), social support, and we are awaiting response to referral for counseling and a trial of SSRI." In the letter dated December 6, 2015, a psychological counselor wrote that the appellant has participated in 12 sessions of therapy to date and that she is taking prescribed anti-depressant medication. The counselor wrote that the appellant has been having difficulty managing her depressive symptoms, such as excessive crying and fatigue, and they have discussed a number of coping strategies. There is no further information provided by the counselor or the family physician regarding the effectiveness of the medications to alleviate the appellant's symptoms.

The general practitioner reported that the appellant has significant deficits in her cognitive and emotional functioning in the areas of emotional disturbance, motivation, and attention or sustained concentration and wrote: "due to her low mood, she isolates herself and avoids voluntary interaction with others, even with family or friends. Occasionally has episodes of disassociation. Has trouble focusing, finds her mind is 'all over the place' while trying to learn English. States she has 'no desires, I just follow what others tell me.'" In assessing the impacts to daily functioning, however, the social worker indicated in the AR that there are major impacts to cognitive and emotional functioning in bodily functions and emotion, with moderate impacts in attention/concentration and motivation. She assessed minimal or no impacts in the remaining 10 areas of functioning, including a minimal impact to memory. Additional information was provided in the Questionnaire dated January 15, 2016, in which the physician wrote that the appellant "has moderate/severe impairment. Poor concentration, severe anxiety, low mood, lack of motivation."

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 significantly restricted in either. Regarding the decision making DLA, the general practitioner reported in the AR that the appellant independently manages some decision-making components of DLA, specifically: personal care (regulate diet), an aspect of shopping (paying for purchases), an aspect of meals (safe storage of food), an aspect of medications (safe handling and storage). For those aspects of the decision making DLA for which the social worker reported that the appellant requires periodic assistance, the extent of the assistance required as a result of her mood disorder and anxiety is not clear. In particular, periodic assistance is required for making appropriate choices when shopping ("relies on husband to help her stay focused") and taking medications as directed ("mood prevents her from remembering to take"); however, the social worker has not indicated a major impact on daily functioning but rather assessed moderate impacts to attention/concentration and motivation and only minimal impact to memory. The social worker also reported the need for periodic assistance from the appellant's husband with meal planning and an aspect of transportation but does not provide any further description to determine the frequency or the nature of the assistance. Also, the social worker indicated the need for periodic assistance with budgeting and paying rent and bills and wrote that the appellant "does together with husband" while the general practitioner wrote in the PR that the appellant "has a dependent personality, so has never given herself the opportunity to manage money or finances," suggesting that this assistance is not related to an impairment. As well, the social worker reported in the AR that the appellant independently makes appropriate social decisions.

Regarding the DLA of social functioning, the appellant is assessed by the general practitioner as

continuously restricted, with a note: "...avoids most social interaction, has trouble with conversations due to dissociative episodes." Despite these comments, the general practitioner reported that the appellant has no difficulties with communication and the social worker assessed the appellant with a good ability to communicate in all areas, specifically with speaking, reading, writing, and hearing. Furthermore, in assessing impacts to social functioning, the social worker reported in the AR that the appellant is independent in all 4 areas that were assessed, specifically: making appropriate social decisions, interacting appropriately with others, dealing appropriately with unexpected demands and securing assistance from others. There was no assessment for the appellant's ability to develop and maintain relationships and no further explanation or description provided. The appellant has good functioning in her immediate social network and marginal functioning in her extended social networks, described as "...does not go out often except to go to doctor's appointments and to do shopping with her husband" and no indication of support or supervision required to maintain her in the community.

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 the combination of her physical and mental conditions severely impairs her so that her ability to perform DLA is significantly restricted to the point that she requires significant help and support from other people. The appellant argued, through her advocate's written submission, that the general practitioner indicated in the PR that she is restricted in 6 out of 10 DLA and that 4 of these are restricted continuously and 2 are restricted periodically. The appellant argued that the physician who provided the additional page 11 from the PR indicated that she is restricted in 9 out of 10 DLA, with 2 DLA restricted continuously and 7 DLA restricted periodically and, therefore, both doctors have indicated that the appellant has ongoing restrictions in a wide range of DLA. The appellant argued that the legislation does not require the frequency and duration of the periodic assistance needed to be explained and the nature of the appellant's medical conditions are such that it is very difficult to quantify the amount of assistance required, due to the variations in depression, back pain, migraines, and pelvic pain. The appellant argued that the doctors have clearly stated that the appellant's medical conditions are chronic with relapsing and remitting episodes, she has responded poorly to treatment, so has a poor prognosis of completely resolving her issues.

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 social worker reported that a majority of the listed tasks of DLA are performed independently or require periodic assistance for which there is insufficient explanation or description to allow the ministry to determine that the assistance is required for extended periods of time. The ministry argued that the information from the physician in the Questionnaire indicated both that the appellant is significantly restricted by her medical conditions continuously and that most of the DLA are restricted periodically, without a description of how often or how long these DLA are restricted.

Panel Decision

Section 2(2) of the EAPWDA requires that a severe impairment directly and significantly restricts the appellant's ability to perform the prescribed DLA either continuously or periodically for extended periods. The term "directly" means that there must be a causal link between the severe impairment and the restriction. The direct restriction must also be significant. Finally, there is a component

related to time or duration. The direct and significant restriction may be either continuous or periodic. If it is periodic it must be for an extended time. Inherently, any analysis of periodicity must also include consideration of the frequency. All other things being equal, a restriction that only arises once a year is less likely to be significant than one which occurs several times a week. Accordingly, in circumstances where the evidence indicates that a restriction arises periodically, it is appropriate for the ministry to require evidence of the duration and frequency of the restriction in order to be “satisfied” that this legislative criterion is met.

In the appellant’s circumstances, the general practitioner reported in the PR that the appellant has been prescribed medication for her migraines that interfere with her ability to perform DLA as they cause sedation. The general practitioner reported that the appellant is not restricted with a number of listed DLA, including personal self care. In the AR, the social worker also indicated that the appellant is independent with many tasks of the personal care DLA, specifically with toileting, regulate diet, and transfers in/out of bed and on/off of chair, but she requires periodic assistance from another person with the tasks of dressing, grooming, and feeding self, and she requires periodic assistance and takes significantly longer than typical with bathing, described as “sits for shower and then stands up at the end” and it takes her 30 to 45 minutes longer. In the PR, the general practitioner reported that the appellant is not restricted with the DLA meals. The social worker indicated that the appellant is independent with the task of safe storage of food, and requires period assistance with the tasks of meal planning and food preparation, and she requires periodic assistance and takes significantly longer than typical with cooking, described as “take 30 minutes longer; depends on husband.”

The general practitioner reported that the appellant is not restricted with the DLA management of medications. In the AR, the social worker assessed the appellant as independent with safe handling and storage and requires periodic assistance from another person with filling/refilling prescriptions and taking as directed. The general practitioner reported that the appellant is not restricted with part of the move about indoors and outdoors DLA, namely inside the home, and the appellant is periodically restricted with mobility outside the home since “during extreme episodes of back pain” she avoids leaving the house. The general practitioner did not indicate how often these episodes occur. In the AR, the social worker reported that the appellant is independently able to move about both indoors and outdoors. With respect to the frequency of the assistance required with DLA, the social worker wrote that “some days” the appellant’s mood “prevents her from getting out of bed, bathing, cooking, etc. and she depends on her husband’s emotional support to help get her out of bed and get going.” The social worker also wrote that “when she had migraines, she stays in bed and sleeps and is unable to do anything else.” The social worker did not explain how often or for how long the appellant’s mood prevents her from performing tasks of DLA, or how long it takes for the rest and medication to alleviate her migraine.

In the PR, the general practitioner reported that the appellant is periodically restricted with the DLA use of transportation, and the social worker assessed the appellant as independent with getting in and out of a vehicle, and requiring periodic assistance with using public transit and using transit schedules and arranging transportation. The social worker noted that “days that her back pain is very bad she needs help from her husband to take public transit.” The social worker did not describe how often the appellant’s back pain is “very bad.” The general practitioner reported that the appellant is continuously restricted with the DLA of basic housework “due to low motivation and needing frequent breaks to rest due to back pain- daughter and husband help,” and the social worker indicated that the appellant requires periodic assistance with laundry as “her husband supports her to stay focused” and with basic housekeeping, which also takes her longer than typical, described as “takes 45

minutes longer; husband must help.” The general practitioner reported that the appellant is continuously restricted with the DLA of daily shopping, noting that “shopping is done along with husband, who helps with money and carrying things,” and the social worker assessed the appellant as independent with the tasks of reading prices and labels and paying for purchases, and requiring periodic assistance for going to and from stores, making appropriate choices, and for carrying purchases home. The social worker reported that the appellant is independent with lifting “3 to 4 kg.” and with carrying and holding, the general practitioner reported in the PR that the appellant can lift 2 to 7 kg. (5 to 15 lbs.), and the appellant wrote in her Notice of Appeal that she cannot lift anything “heavy.” The general practitioner reported that the appellant is continuously restricted with the DLA of management of finances and wrote that the appellant “has a dependent personality, so has never given herself the opportunity to manage money or finances.” The social worker reported that the appellant requires periodic assistance with each task, including banking (note: “does together with husband”) and budgeting. 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 significantly restricted in either.

Where the prescribed professional indicates a continuous restriction, additional information may be required to establish the significance, or “degree,” of the ongoing restrictions to DLA. In the appellant’s case, there is a level of physical and mental functioning that does not establish severe impairment, as previously discussed, and there is little narrative to establish that continuous restrictions are significant, including the need for only periodic assistance reported in the AR, or that periodic restrictions, which appear to be more significant based on narrative of periods of exacerbation of symptoms, are for extended periods. The panel finds that it is appropriate for the ministry to require evidence of the duration and frequency of the restriction in order to be “satisfied” that this legislative criterion is met.

In the additional comments to the PR, the general practitioner wrote that the appellant “notes that her ability to functionally complete her ADL’s is directly related to the severity of the episodes of her back pain or her low mood.” In the AR, the social worker wrote: “some days” the appellant gets out of bed “...but her mood prevents her from being able to do anything and she just sits on the sofa.” In the additional information, the social worker wrote that the appellant “tries to cope as best she can, but some days her mood prevents her from being able to complete any tasks and relies on her husband those days.” The general practitioner wrote regarding the degree of restriction to DLA that the severity of the combination of mood and back pain is periodic in nature; however, the episodes “can last for months at a time,” but did not indicate whether this is an episode or exacerbation of her back pain or mood, or both, how often this occurs, or explain or describe the level of the appellant’s functioning during this time. In the Questionnaire dated January 15, 2016, the physician also identified predominately periodic restrictions to DLA and, asked to explain the need for periodic assistance and clarified as “how often and how long?” the physician left this section of the page blank.

Given the lack of description and explanation regarding how often and how long the appellant experiences exacerbations in her condition and the consequent need for periodic assistance, and the emphasis by the general practitioner on situational social stressors as additional factors, 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 family and counseling through health authority professionals. The appellant argued, through her advocate's written submission, that the health care providers have indicated an ongoing need for counseling and the appellant's dependence on her husband for ongoing help and support with a wide range of DLA due to her mental and physical limitations.

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 social worker indicated that the help required for DLA is provided by family, including an aunt and her husband "for periodic help with ADL's." In the section of the AR relating to assistance provided through the use of assistive devices, the social worker did not identify any of the listed items. In the Questionnaire dated January 15, 2016, asked to confirm that the appellant requires significant help with DLA, the physician wrote "...needs help from community services or family."

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.