

PART C – Decision under Appeal

The decision under appeal is the reconsideration decision of the Ministry of Social Development and Social Innovation (the ministry) dated 24 March 2016 that denied the appellant designation as a person with disabilities (PWD). The ministry determined that the appellant did not meet all of the required criteria for PWD designation set out in the *Employment and Assistance for Persons with Disabilities Act*, section 2. Specifically, the ministry determined that the information provided did not establish that the appellant has a severe mental or physical impairment that in the opinion of a prescribed professional

(i) directly and significantly restricts her ability to perform daily living activities (DLA) either continuously or periodically for extended periods; and,

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

The ministry determined that the appellant satisfied the other 2 criteria: she has reached 18 years of age and her impairment in the opinion of a medical practitioner is likely to continue for at least 2 years.

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 reconsideration consisted of the following:

1. The appellant's PWD Designation Application dated 18 September 2015. The Application contained:
 - A Self Report (SR) completed by the appellant.
 - A Physician Report (PR) dated 18 September 2015, completed by the appellant's general practitioner (GP) specializing in chronic pain, who has seen her 2-10 times over the past year
 - An Assessor Report (AR) dated 20 August 2015, completed by a social worker (SW) at a chronic pain clinic, who has known the appellant for 4 months and seen her 2-10 times in that period.
2. The appellant's signed Request for Reconsideration dated 25 February 2016.
3. A submission in support of the Request for Reconsideration, prepared by an advocate on behalf of the appellant dated March 24, 2016.

In the PR, the GP lists the following diagnoses related to the appellant's impairment (onset unspecified): fibromyalgia, neuropathic pain in finger from fracture, major depressive disorder.

The panel will first summarize the evidence from the PR and the AR relating to the appellant's impairments as it relates to the PWD criteria at issue in this appeal.

Severity/health history

Physical impairment

PR:

Under Health History, the GP writes: "Chronic myofascial pain. Several surgeries to help relieve pain have been unsuccessful. Previously taking opioids for pain however has been able to stop using."

Under Degree and Course of Impairment the GP indicates that the impairment is likely to continue for two or more years, commenting "Fibromyalgia tends to be chronic."

As to functional skills, the GP reports that the appellant can walk 1 to 2 blocks unaided, can climb 5+ steps unaided, can lift 5 to 15 lbs., and can remain seated for less than 1 hour ("pain and numbing hip from prolonged sitting").

The GP indicates that the appellant has not been prescribed any medication that interferes with her ability to perform DLA. The GP also indicates that the appellant does not require any prosthesis or device to compensate for her impairment.

AR:

The SW describes the appellant's impairment as follows: "Hip pain & finger chronic pain that has become worse since a fall of couple years ago."

Mental impairment

PR:

Under Health History, the GP writes: "Seems to have dependent personality [and] relies on others to help her cope when pain severe. Was working until finger injury 2 yrs. ago."

The GP assesses the appellant as having no difficulties with communications.

The GP indicates that the appellant has significant deficits with cognitive and emotional function in the area emotional disturbance, commenting: "No anti-depressants due to side effects. Sees counselor."

AR:

The SW describes the appellant's mental impairment as follows: "[The appellant] states that she has struggled [with] anxiety and depression."

The SW assesses the appellant's ability to communicate as good for speaking, reading and writing and poor for hearing (commenting: "40% loss in left ear").

Regarding cognitive and emotional functioning, the SW indicates that the appellant's mental impairment restricts or impacts her functioning as follows:

- Major impact – none.
- Moderate impact – bodily functions, consciousness and attention/concentration.
- Minimal impact – emotion, impulse control, executive, memory, and motivation.
- No impact – insight and judgment, motor activity, language, psychotic symptoms, other neuropsychological problems, and other emotional or mental problems.

The SW comments: "Forgetful, 'foggy brain' believes fibro fog. Trouble [with] sleep and motivation getting out of bed. Difficulty managing emotions, difficulty coping [with] stress."

Ability to perform DLA

PR:

The GP indicates that the appellant's impairment directly restricts her ability to perform DLA.

The GP indicates that the appellant's activity is restricted on a continuous basis for the following DLA: basic housework, daily shopping, and use of transportation. The GP indicates that the appellant is not restricted for the following DLA: personal self care, meal preparation, management of medications, mobility inside the home, mobility outside the home, management of finances and social functioning.

In commenting on how social functioning is impacted, the GP states: "Sometimes cancels social events due to pain."

The GP provides additional comments regarding the degree of restriction: "Stops activities often due to pain."

AR:

The SW reports that the appellant lives with family or friends.

Regarding mobility and physical ability, the SW assesses the appellant as independent for walking indoors, requiring periodic assistance from another person for walking outdoors (“help from another person”) and climbing stairs (“another person, railings”), and taking significantly longer than typical for standing, lifting (“10 lb. limit”) and carrying and holding.

The SW assesses the assistance required for managing DLA as follows (the SW’s comments in parentheses):

- Personal care – independent for toileting, feeding self, regulating diet, and transfers on/of of chair (stiff & and painful); taking significantly longer than typical for dressing (5x as long as previously), grooming and bathing and transfers in/out of bed.
- Basic housekeeping – continuous assistance from another person or unable for laundry (help from daughter or support) and for basic housekeeping (help from roommate).
- Shopping – independent for reading prices and labels, making appropriate choices and paying for purchases; continuous assistance from another person or unable for going to and from stores (go with support person) and carrying purchases home (help from support).
- Meals – independent for meal planning and safe storage of food; continuous assistance from another person or unable for cooking (support from another); takes significantly longer than typical for food preparation (breaks).
- Pay rent and bills – independent for budgeting and paying rent and bills; take significantly longer than typical for banking (some support from daughter).
- Medications – independent in all aspects.
- Transportation – independent for using public transit (don’t use) and using transit schedules and arranging transportation; takes significantly longer than typical for getting in and out of a vehicle (painful, moves slowly).

The SW provides additional comments: “Driving can be very difficult & and painful. This has impacted how far she can drive, travelling 15 min. a time. Only able to sit for 20 min. Moving slowly, gets a lot of support from family & friends.”

With respect to social functioning, the SW assesses the appellant as independent for making appropriate social decisions, interacting appropriately with others, and securing assistance from others. The SW assesses the appellant as requiring periodic support/supervision for ability to develop and maintain relationships (chronic pain, has limited connections) dealing appropriately with unexpected demands (difficult, will miss events due to being overwhelmed) and other (isolated often due to pain).

The SW assesses the impact of the appellant's impairment on her immediate social networks as good functioning (“Not as social,” impacts relationship [with] family, but has + relationships) and on her extended social network as marginal functioning.

In providing additional comments, the SW writes:

“[The appellant] has described suffering from anxiety, in particular social anxiety. She feels uncomfortable in public places. She struggles [with] sleep due to pain. Since meeting [with the appellant] I would say she struggles to manage stressful situations. Her

coping ability is low.”

Help provided/required

PR:

The GP states that the appellant needs assistance with DLA from her mother and daughter for cleaning and shopping.

AR:

The SW indicates that the appellant requires help for DLA from her family, commenting: “daughter and mother provide help in DLA – shopping, laundry, cooking and cleaning.

Self report

In her SR, the appellant writes that after having surgery on her hip five years ago she took a bad fall two years ago. Her pain prevents her from doing day-to-day activities. It takes her twice as long to complete normal household tasks and then she needs a rest. Her daughter comes to help her with household tasks. She can only carry 10 lbs. at a time and it takes her longer.

She writes that she also suffers from anxiety due to constant pain and has a hard time going out or being social. Most of the time she just stays home. Driving for more than 15 min. can be very painful so she only drives short distances. She can only stand or sit for short periods of time before her hips start to hurt. It is difficult to sit longer than 20 min. Due to chronic pain, sleep is very difficult and she only gets 4 hours at a time, making it hard to function. This causes a foggy feeling the next day. It is really hard to plan things with family and friends as 80% of the time she has to cancel due to pain

Request for Reconsideration

In the submission at reconsideration, the appellant, through her advocate, states that:

- Her whole body feels like pressure is being applied to a bruise all the time. She does not want anyone to touch her. Rougher fabrics on her skin make it worse. It feels like she has knives in her shoulders all the time.
- Walking is bad for her hips. Even walking the length of the mall results in significant pain that can last for days, making her want to curl up and go to sleep. She is basically housebound when this happens and this can last three days or more. Because of her significant reaction to walking, she tries to be careful so that she does not get this way. She agrees with the GP that she can only walk one to two blocks
- She can move around inside the home, but she commonly uses walls and furniture to steady herself.
- Her ability to carry things is affected by the type of ground she is dealing with. With uneven ground, her hips are unstable. Her daughter has two steps up to her home and they are brutal for her.
- She could not get along without help from her daughter and mother, who assist all the time

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with grocery shopping, vacuuming and generally keeping up the house, and preparing food. She cannot lift anything heavier than a pot of water. When she is able to help, she is slow, taking up to 50% longer than typical to prepare meals.

- As with many activities, her hips slow her down and she has to sit down periodically. If she does assist with making a meal, that's her last activity of the day because she is completely drained by the pain.
- When she stands her muscles tense up and this affects her ability to walk and do activities such as washing dishes, etc.
- She is much slower than typical getting out of bed. Her best estimate is that it takes her half an hour between waking up and being able to actually get in the bed and move around. Approximately three times a week, she has to take pain medication before she even puts her feet on the ground.
- Difficulties with sleeping at night make everything worse. It is difficult to get up in the morning when she can't sleep at night and the pain makes it difficult to sleep.
- Fibromyalgia tires her out as well. Her best estimate is that it takes her five times longer than typical to get dressed in the morning and just getting dressed tires her out. If she can make it through her shower, she is doing well.
- Getting in and out of the car is slow because she has to take precautions and if she has been in the car for 20 minutes or longer the process is even slower and more painful. If her hips won't bear her weight she has to sit in the car and wait till she is able to stand.
- In conclusion, she finds it difficult to explain how her pain limits everything she does. The pain and limitations she experiences because of her hips colours her whole life.

Notice of Appeal

The appellant's Notice of Appeal is dated 09 April 2016. Under Reasons, she writes: "There was more information needed from [the GP] and [the SW] but since they were on spring break, we could not get the information needed."

The hearing

At the hearing, the appellant stated that her physician had recently told her that in addition to her fibromyalgia she was also diagnosed with myofascial pain syndrome. In addition, she had recently begun trigger-point injection therapy and some yoga in the hope that this would improve her mobility; however she has not yet experienced any improvement, while the trigger-point therapy itself is very painful.

In answer to questions, the appellant explained that she is able to walk about a block before experiencing pain and that she can climb stairs, but she can do neither while carrying anything. With regard to the episodic nature of her condition, the appellant stated that she is in pain about 75% of the time.

The appellant's daughter testified that she helps her mother by doing her laundry and housework for her. Her daughter also does most preparation and cooking and drives her to the store and grocery shopping, as well as to the bank and to medical appointments. Her daughter explained

that she provides this kind of assistance 4-5 days per week. The appellant explained that the doctor who completed the form was not in a position to see this level of assistance provided and therefore did not document it well in her PWD application. She wished she had had her family doctor, whom she has known for years, fill out the form instead.

The ministry stood by its position at reconsideration. The ministry noted that the recent diagnosis of myofascial pain syndrome was not before the ministry at reconsideration.

Admissibility of additional information

While the GP reported in the PR that the appellant suffers from chronic myofascial pain, the panel finds that the information provided by the appellant in her testimony that she had also recently been diagnosed with *myofascial pain syndrome* is different from the diagnoses before the ministry at reconsideration. This additional information, and that relating to her trigger-point injection therapy, is not in support of the information and records before the ministry at reconsideration, as it cannot be said to substantiate or corroborate anything in the Record of the Ministry Decision. Accordingly, the panel does not admit this information as evidence.

The panel finds the balance of the appellant's testimony and that of her daughter is in support of the information before the ministry of reconsideration and therefore admits this information as evidence pursuant to section 22(4)(b) of the *Employment and Assistance Act*.

PART F – Reasons for Panel Decision

The issue in this appeal is whether the ministry decision that determined that the appellant did not meet three of the five statutory requirements of Section 2 of the *EAPWDA* for designation as a person with disabilities (PWD) is reasonably supported by the evidence or is a reasonable application of the legislation in the circumstances of the appellant. The ministry found that the appellant met the age requirement and that, in the opinion of a medical practitioner, 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 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 following section of the *EAPWDA* applies to this appeal:

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 to perform daily living activities either

(A) continuously, or

(B) periodically for extended periods, and

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

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

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

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

(i) an assistive device,

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

(iii) the services of an assistance animal.

The following section of the *EAPWDR* applies to this appeal:

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

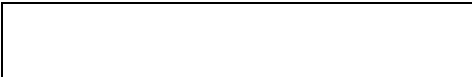
(a) in relation to a person who has a severe physical impairment or a severe mental impairment, means the following activities:

(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.
- (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.

The positions of the parties

The appellant's position

With regard to the severity of the physical impairment, the position of the appellant, as summarized in her reconsideration submission, is that she finds it difficult to explain how her pain limits everything she does. The pain and limitations she experiences because of her hips colours her whole life. As the GP reported in the PR, she suffers from chronic myofascial pain. Several surgeries to help relieve pain have been unsuccessful. She relies on others to help her cope with severe pain. As she testified at the hearing, she is in pain 75% of the time and, as her daughter testified, her daughter provides significant help (by doing the appellant's laundry, housekeeping, and meal preparation and by driving her to stores and the bank) an average of 4-5 days per week. Given the impact of her fibromyalgia and resulting pain on her daily functioning, the appellant submits that it is unreasonable that the ministry determined that a severe physical impairment had not been established.

Regarding mental impairment, the appellant's GP has diagnosed her with major depressive disorder, but she is unable to take antidepressants because of the side effects. In the AR, the appellant's SW indicated how her fibromyalgia has impacted her mental functioning, such as difficulty sleeping, forgetfulness due to "fibro fog", lack of motivation getting out of bed and difficulty managing emotions and coping with stress. Taking all this into account, the appellant submits that it was unreasonable for the ministry to find that she does not have severe mental impairment.

As to her ability to perform DLA, her mobility is limited to being able to walk only one block, and that

only as long as she is not carrying anything. Her SW has also assessed her as requiring continuous assistance from another person for basic housekeeping, including laundry, for shopping in terms of going to and from stores and carrying purchases home, and for cooking. For these tasks, she relies on her daughter doing these tasks for her 4-5 days per week. The appellant submits that this information clearly establishes that her fibromyalgia and resulting chronic pain directly and significantly restricts her ability to perform DLA on a continuous basis.

The appellant submits that this information also clearly establishes that she requires significant help from another person, mainly her daughter, to perform these DLA.

The ministry's position

The position of the ministry, as set out in the reconsideration decision, is that due to the inconsistencies between the information provided by the appellant's GP and her SW, it is difficult to develop a clear and coherent picture of the degree of her impairments, how they impact her ability to perform DLA, and the assistance she requires as a result.

Regarding the severity of physical impairment, the ministry reviewed the GP's comments ("Chronic myofascial pain. Several surgeries to help relieve pain have been unsuccessful... relies on others to help her cope with when pain severe.") and noted that the GP does not describe the activities with which she relies on others to help her cope, or the frequency/duration of the periods during which her pain is severe. The ministry also reviewed the GP's assessments that the appellant can walk 1 to 2 blocks and climb 5+ stairs unaided and lift 5 to 15 lbs. and concluded that these limitations are not considered indicative of a severe impairment of physical functioning. The ministry also noted that the GP does not describe how much less than one hour the appellant was able to remain seated. Considering also the assessments provided by the SW regarding mobility and physical ability, and the lack of detail provided regarding the frequency and duration of periodic assistance from another person required for walking indoors and climbing stairs and how much longer than typical it takes for standing, lifting and carrying and holding, the ministry found it difficult to establish a severe impairment of physical functioning based on the GP's and SW's assessments.

In terms of the severity of mental impairment, the ministry reviewed the assessments provided in the PR and AR, noting that the GP had identified a significant deficit with cognitive and emotional functioning in the area of emotional disturbance while the SW has not identified any major impacts of the appellant's mental impairment on daily functioning, while assessing moderate or minimal impacts in areas not identified as cognitive and emotional deficits by the GP. The ministry also referred to the GP's assessment that the appellant is not restricted with social functioning; noting the GP's comment "Sometimes cancels social events due to pain" does not establish restrictions with social functioning. The ministry also reviewed the assessments provided by the SW in the AR regarding help required for some aspects of social functioning and concluded that, while acknowledging that the appellant currently experiences limitations to her cognitive and emotional functioning due to depression and chronic pain, based on the assessments provided by the GP, the SW and in her SR, a severe impairment of mental functioning has not been established.

As to the direct and significant restrictions in the appellant's ability to perform DLA, the ministry reviewed the assessments provided by the GP and the SW and noted several inconsistencies: for example, the GP reported that the appellant was not restricted with personal self-care, meal

preparation and management of finances, while the SW assessed the appellant as either taking significantly longer than typical or requiring continuous assistance from another person for some of the tasks for these DLA. Further, where the SW does assess the appellant in taking significantly longer than typical, the SW does not describe how much longer than typical. The ministry concluded that it is therefore difficult to establish significant restrictions to DLA based on the SW's assessments.

With respect to the help required criterion, the position of the ministry is that as it has not been established that DLA are significantly restricted, it cannot be determined that significant help is required.

Panel decision

Severity of impairment

A diagnosis of a serious medical condition does not in itself determine PWD eligibility. Under the legislation, eligibility for PWD hinges on an "impairment" and its severity. An "impairment" is more than a diagnosed medical condition. An impairment is a medical condition that results in restrictions to a person's ability to function independently, appropriately, effectively or for a reasonable duration.

To assess the severity of impairment one must consider 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. The legislation makes it clear that the determination of severity is at the discretion of the minister, taking into account all of the evidence. However, the legislation is also clear that the fundamental basis for the analysis is the evidence from a medical practitioner and a prescribed professional – in this case, the appellant's GP and the SW.

The legislation requires that for PWD designation, the minister must be "satisfied" that the person has a severe mental or physical impairment. For the minister to be "satisfied" that the person's impairment is severe, the panel considers it reasonable for the ministry to expect that the information provided presents a clear and complete picture of the nature and extent of the impacts of the person's medical conditions on daily functioning.

Physical impairment

In the PR, under Health History, where the physician is asked to indicate the severity of the applicant's impairment, the GP, who is a specialist in chronic pain, wrote: "Chronic myofascial pain. Several surgeries to help relieve pain have been unsuccessful. Previously taking opioids for pain however has been able to stop using. Seems to have dependent personality [and] relies on others to help her cope when pain severe." To the panel, it is unclear whether the appellant's reliance on others to help her cope is a result of her "dependent personality" or is a direct result of severe pain. In addition, as the ministry noted, the GP does not describe the activities with which she relies on others to help her cope, or the frequency/duration of the periods during which her pain is severe. Further, no information is provided as the intensity of pain, both when it is severe and when otherwise.

The GP assesses the appellant as being able to walk 1 to 2 blocks and climb 5+ stairs unaided, and lift 5 to 15 lbs. By comparison, when reporting on restrictions to perform DLA, the GP indicates that the appellant is not restricted for mobility inside and outside the home. Given the level of physical

functioning reported by the GP, the panel finds that the ministry was reasonable in considering these assessments as not indicative of a severe impairment of physical functioning, particularly in light of the conflicting assessment of her ability to perform the mobility DLA. See also below under “Direct and significant restrictions in the ability to perform DLA” regarding the SW’s assessments of mobility and physical ability.

Based on the above considerations, the panel finds that the ministry was reasonable in determining that a severe physical impairment has not been established.

Mental impairment

The GP has diagnosed the appellant with major depressive disorder, indicating that she has a significant deficit with cognitive and emotional function in the area of emotional disturbance. The GP also indicated that the appellant has no difficulties with communications and is not restricted with social functioning. As the ministry noted, the SW has not identified any major impacts of the appellant's mental impairment on daily functioning, while assessing moderate or minimal impacts in areas not identified as cognitive and emotional deficits by the GP. The SW also did not described any support/supervision required as a result of her mental impairment that would help to maintain her in the community. Considering these assessments, the panel finds the Ministry was reasonable in determining that a severe mental impairment has not been established.

Direct and significant restrictions in the ability to perform DLA

The panel notes that, according to the legislation, the direct and significant restriction in the ability to perform DLA must be a result of a severe impairment, a criterion that has not been established in this appeal. The legislation – section 2(2)(b)(i) of the *EAPWDA* – requires the minister to assess direct and significant restrictions of DLA in consideration of the opinion of a prescribed professional, in this case the appellant’s GP and SW. This does not mean that other evidence should not be factored in as required to provide clarification of the professional evidence, but the legislative language makes it clear that the prescribed professional’s evidence is fundamental to the ministry’s determination as to whether it is “satisfied.”

In the PR, the GP assessed the appellant as restricted for the DLA of basic housework, daily shopping and use of transportation. However he has not provided any narrative that describes the degree of these restrictions. In the AR, the SW assesses the appellant as requiring continuous assistance from another person or unable for the following tasks of 2 of the same DLA: basic housekeeping (laundry and basic housekeeping), and shopping (going to and from stores and carrying purchases home). In providing these assessments, when asked to explain or describe, the SW comments along the line of “help from daughter/roommate/support,” without providing any description of the nature or extent of the help provided or required. For the DLA of use of transportation, the SW assesses the appellant as taking significantly longer than typical for getting in/out of a vehicle, commenting, “Painful, moves slowly,” without indicating how much longer than typical.

The panel also notes inconsistencies between the PR and the AR. For example, while the GP in the PR reported that the appellant was not restricted with the DLA of preparing own meals, the SW in the AR assessed the appellant as requiring continuous assistance or unable for the task of cooking. And

while the GP assessed the appellant as not restricted for mobility inside and outside the home, personal self-care, and management of finances, the SW assessed the appellant as taking significantly longer than typical for some of these DLA tasks. For these tasks where the SW assessed the appellant as taking significantly longer than typical (i.e. the moving about indoors and outdoors tasks of standing, lifting and carrying and holding; the personal care tasks of dressing, grooming, bathing, and transfers in/out of bed; the meals task of food preparation; the pay rent and bills task of banking; and the transportation task of getting in and out of the vehicle), with the exception of dressing (5x longer) the SW has not provided any information as to how much longer than typical it takes for the appellant to manage these tasks.

With respect to the DLA applicable to a person with a mental impairment, the GP assessed the appellant as not restricted for social functioning – i.e. the 2 DLA of making decisions about personal activities, care or finances and relating to, communicating or interacting with others effectively. By comparison, the SW assesses the appellant as requiring the periodic support/supervision of another person for making appropriate social decisions, ability to deal with unexpected demands and other (isolated often due to pain) without providing any description of the degree and duration of the support/supervision required.

Given the level of independence reported by the GP and the SW, (albeit with some aspects of DLA assessed by the SW as taking significantly longer than typical), and the inconsistencies and lack of detail noted above that make it difficult to obtain a clear, consistent and complete picture of the impacts of the appellant's impairments on her ability to perform DLA, the panel finds that the ministry was reasonable in determining that it had not been established that in the opinion of the prescribed professionals the appellant's impairment directly and significantly restricted her ability to perform DLA either continuously or periodically for extended periods.

Help with DLA

Section 2(2)(b)(ii) of the *EAPWDA* requires that, as a result of being directly and significantly restricted in the ability to perform DLA either continuously or periodically for extended periods, a person must also requires help to perform those activities. That is, the establishment of direct and significant restrictions under section 2(2)(b)(i) is a precondition of meeting the need for help criterion. Help is defined in subsection (3) as the requirement for an assistive device, the significant help or supervision of another person, or the services of an assistance animal in order to perform a DLA.

The panel recognizes that the appellant benefits from the help of her daughter, with whom she lives, and from other family members and friends. However, as the ministry reasonably determined that direct and significant restrictions in the appellant's ability to perform DLA have not been established, the panel finds that the ministry reasonably concluded that under section 2(2)(b)(ii) of the *EAPWDA* it cannot be determined that the appellant requires help to perform DLA.

Conclusion

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