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 10 May 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 ministry did not attend the hearing. After confirming that the ministry was notified of the hearing, the hearing proceeded in accordance with section 86(b) of the Employment and Assistance Regulation.

The evidence before the ministry at reconsideration consisted of the following:

1. The appellant's PWD Designation Application dated 28 August 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), who has known the appellant for 6 months and seen her 2-10 times over that period.
   - An Assessor Report (AR) dated 20 August 2015, completed by a health authority social worker (SW), who had seen the appellant once and who relied on an office interview and medical reports that were dated but provide history of medical conditions to first diagnosis.
2. The appellant's signed Request for Reconsideration dated 13 April 2016. The ministry also had before it at reconsideration a letter from the SW dated 27 April 2016 (see below).

In the PR, the GP lists the following diagnoses related to the appellant's impairment: rheumatoid arthritis (onset Jan 1981), and osteoporosis, confirmed recently with a second opinion (onset 2003).

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. [Panel note: in the AR, the SW provided extensive commentary; in summarizing, the panel will provide the gist of the commentary, shown in parentheses.]

Severity/health history

Physical impairment

PR:
Under Health History, the GP writes:

> [The appellant] was diagnosed with rheumatoid arthritis in 1981. She has had multiple drug therapies, but currently not on any disease modifying drugs. Her main symptoms are multiple joint morning stiffness. She has varying pain in her joints – especially her knee, wrists and elbow. She has osteoporosis with previous compression fractures of her lumbar and thoracic spines. Has chronic back pain."

Under Degree and Course of Impairment the GP indicates that the impairment is likely to continue for two or more years, commenting "Likely life-long. Rheumatoid arthritis currently quiescent."

Under Additional Comments, the GP writes: "[The appellant] likes to keep active but is limited by her disease… She has a falls risk and previous osteoporotic spinal fractures."

As to functional skills, the GP reports that the appellant can walk 2 to 4 blocks unaided, can climb

5+ steps unaided, can lift 5 to 15 lbs., and can remain seated for less than 1 hour. The GP comments: “Mobility is restricted due to slow speed.”

The GP indicates that the appellant has not been prescribed any medication that interferes with her ability to perform DLA.

AR:
The SW describes the appellant’s impairment as follows: “.“[The appellant] was diagnosed in 1981 with rheumatoid arthritis. Further diagnosis of polyarthritis involving: wrist (bilateral), feet (bilateral), right knee and right hip… also severe neck pain. Sjogren’s Syndrome.”

Mental impairment

PR:
Under Health History, the GP writes: ”She currently has an improving reactive depression secondary to her husband's death.”

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

The GP indicates that the appellant has no significant deficits with cognitive and emotional function. The GP comments: “Reactive low mood – treated with antidepressants.”

AR:
The SW describes the appellant’s mental impairment as follows: “[The appellant] struggles to keep depression from taking hold. History of flare-ups and remissions.”

The SW assesses the appellant's ability to communicate as good for reading and writing and satisfactory for speaking and hearing (tinnitus).

The SW provides a 3 page supplement to the AR setting out her assessments of the impacts of the appellant's mental impairment on daily functioning, as follows:

Major impacts:
- Emotion: (feels depressed, grieving for loss of husband; anxious over matters that she cannot control, making her impatient and uncertain).
- Motor: (movement curtailed, at times significantly, when there are flare-ups with arthritis; can become easily agitated, with tension around changes to her medical condition).

Moderate to major impacts:
- Bodily functions: (careful with diet because she has ”slower bowel function;” takes medications to help with sleep but still has difficulty sleeping.)
- Attention/concentration: (variable: difficulty with staying focused in conversation and tasks due to constantly “reading” the impact of medical condition on a daily basis.)
- Motivation; (variable; motivation lost when there is a flare-up; maintaining the balance between gauging what she can do and living within these limits is emotionally draining).

Moderate impacts:

- Consciousness: (sometimes confused through the day, often enough to be disconcerting).
- Memory: (depends on the extent that her attention/concentration are also impacted at any given time).
- Other emotional: (wants to move from where she is living with a friend and have an independent lifestyle; this cannot be accomplished without PWD designation; if unsuccessful there will be considerable emotional distress.

Minimal impacts:
- Impulse control.
- Insight and judgment.
- Executive.
- Language
- Other neurological/neuropsychological problems.

Ability to perform DLA

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

In commenting on periodic restrictions, the GP states: "Hurts/difficult to comb hair. Cannot vacuum house. Has fall risk – trips easily."

The GP provides additional comments regarding the degree of restriction: "Mobility is restricted due to slow speed, stiffness and pain."

AR:
The SW reports that the appellant lives with friends.

Regarding mobility and physical ability, the SW assesses the appellant as follows:
- Walking indoors: independent.
- Walking outdoors: uses assistive device (cane) and takes significantly longer than typical (more than 2 blocks pain intensifies).
- Climbing stairs: takes significantly longer than typical (about stair #9, fatigue and pain become intense).
- Lifting and carrying and holding: continuous assistance from another person or unable and uses an assistive device (4 lbs. max; uses a wrist splint).

The SW comments that standing in the kitchen is limited to 15-20 minutes. The appellant also reports that she is susceptible to barometric pressure changes

The SW assesses the assistance required for managing DLA as follows:
Personal care:
- Dressing – takes significantly longer than typical (seats to dress).
- Grooming – continuous assistance from another person or unable and take significantly

longer than typical (hair once/week; assistance for nails).

- Bathing – uses an assistive device and takes significantly longer than typical (uses shower chair; 2x longer).
- Toileting – uses an assistive device and takes significantly longer than typical (uses grab bar).
- Feeding self – continuous assistance from another person or unable (cannot cut firm veggies without help).
- Regulate diet – Independent
- Transfers in/out of bed – takes significantly longer than typical (requires 20 – 30 minutes of stretches before getting out of bed)
- Transfers on/ off chair – take significantly longer than typical (pushes off with right hand, waits to ensure she can stand independently).

Basic housekeeping:

- Laundry – continuous assistance from another person or unable (landlady does laundry for her; cannot lift or transfer).
- Basic housekeeping – continuous assistance from another person or unable (cannot vacuum; very hard to make beds – needs assistance).

Shopping:

- Going to and from stores – continuous assistance from another person or unable (goes with landlady every other day).
- Reading prices and labels – independent.
- Making appropriate choices and paying for purchases – independent and uses assistive device (asks for help to get items from above shoulder height, uses scooter in larger stores).
- Carrying purchase home -- continuous assistance from another person or unable (needs help to pack items; landlady assists).

Meals:

- Meal planning – independent.
- Food preparation – continuous assistance from another person or unable (insufficient strength to open cans and jars; needs help)
- Cooking – periodic assistance from another person required.
- Safe storage of food – Independent and takes significantly longer than typical.

Pay rent and bills:

- Banking – continuous assistance from another person or unable (gets ride to bank).
- Budgeting – independent.
- Pay rent and bills – independent.

Medications:

- Filling/refilling prescriptions – continuous assistance from another person or unable (gets ride from landlady).
- Taking as directed and safe handling and storage – independent.

Transportation:

- Getting in/out of vehicle – uses assistive device and takes significantly longer than typical (uses hand grip to ease out of car seat).
- Using public transit and using transit schedules and arranging transportation – independent (does not use buses – conscious of lack of bus-stop benches).

With respect to social functioning, the SW assesses the appellant as requiring continuous support/supervision for making appropriate social decisions (appellant was homeless for period of years), developing and maintaining relationships (2 friends; close with landlady and recognizes relationships can be strained by dependency), interacting appropriately with others, dealing appropriately with unexpected demands (leaves her feeling vulnerable) and securing assistance from others (has only landlady to ask for help on a regular basis).

The SW assesses the impact of the appellant's impairment on her immediate social networks as very disruptive functioning with her immediate social network (withdrawn, doesn't socialize, only social connection is her landlady) and with her extended social network (major social isolation, no outside activities or groups).

Help required

PR:
The GP indicates that the appellant does not require any prosthesis or device to compensate for her impairment.

The GP comments: "Walking cane. Needs support at home, currently has friend who cooks, cleaning, combing hair."

AR:
The SW states that the appellant " has the support of her friend/landlady where she stays. It is doubtful that she would [could] manage life on her own without support yet this remains her personal goal."

The SW indicates that the appellant routinely uses a cane (for walking outdoors), a scooter (in large stores), and a splint for her wrists as (bilateral).

Self report
In describing her disability, the appellant writes that in 1981 she was diagnosed with rheumatoid arthritis and treated with various medications. In 2004 she was diagnosed with rheumatoid arthritis with overlap Sjorgren's syndrome. Given her antibody profile, she has inflammatory polyarthritis and secondary degenerative arthritis, and rheumatoid arthritis overlapping with SLE (Systemic lupus erythematosus).

In describing how her disability affects her life, the appellant writes that her inflammatory polyarthritis results in swelling and aching joints, often accompanied by muscle stiffness. Her right side is much more troublesome than the left side. Persistent fatigue requires her to slow down – she has learned that she can work with the computer only for less than 30 minutes. She needs to stay active to keep her joints and muscles flexible.

As part of living with arthritis, she is aware of the complexities of the health issues for weight, hypertension and depression. She keeps good, healthy life choices, staying active to maintain a healthy weight and lower the burden on her aching joints. Regular exercise helps her recover from flare-ups. She copes with signs and symptoms with her experiences. She knows over-loading activities and changing weather patterns will trigger flares. She minimizes the impact to help her recover as quickly as possible. Rest and increased medications help to decrease the inflammation. She uses splints to immobilize her wrists. She tries to keep her healthy spirit. She tries to manage her fatigue through alternating her activities with periods of rest through the day, planning things ahead and preparing meals in advance. She is aware that she can stand 20 minutes at most.

Her chronic sinuous inflammation triggers her face and goes into her head, causing headaches. Joint problems in her neck involve chronic muscle strain and cause sensitivity in skull and so-called referred pain, with constant tinnitus.

She maintains a good, healthy diet and balances sugar level and exercise to maintain her well being.

Request for Reconsideration

In his letter at reconsideration, the SW states that:

- When the appellant recently visited his office, she was using a cane for ambulation. She presented with extended soft tissue injuries to her legs as a result of a fall a week before.
- The appellant made it clear that she uses a cane all the time and that excessive walking (2 blocks) results in her being incapacitated for three days following. Walking 1 block results in tolerable discomfort but two blocks is what she reports to be beyond her capability
- The appellant had recently moved to a building, a residence not under government regulation, and occupies a bedroom and shares the other rooms with other residents, all of whom have a disability or infirmity of some nature. The environment is supportive from a daily living perspective
- The appellant reinforced that she can only lift and carry 4 lbs. in her free hand, the other hand holding the cane.
- She seldom showers, and it appears that her falls risk is escalated to the point where she is fearful of sustaining her stance in the shower. This issue has reached serious proportions and could result in social isolation. The appellant indicated that she does not have the strength in her right arm to raise it to her head to wash her hair – she lifts her the right elbow with her left hand and pushes up so that she can scrub her scalp.
- Regarding her overall mood, the appellant stated that it is only recently that she has become aware of her marked sadness that she described as having been pervasive all her life, as a result of abuse as a child and feeling that she had no choice but to suppress the incidents.
- The appellant has support for DLA such as cooking and cleaning where she lives, as there are a number of residents that can trade efforts by doing tasks they are capable of. Assistance now ranges from cooking and cleaning and to changing linens. She

takes more responsibility with cooking (taking her time) and allows the other more physically challenging activities such as washing floors, bathrooms and linen changes to be done by others. Social functioning has therefore improved but only because of circumstances.

Notice of Appeal

The appellant's Notice of Appeal is dated 17 May 2016. Under Reasons for Appeal, the appellant writes "Clarification and documentation."

Information submitted before the hearing

1. Blood test results dated 11 June 2016.

2. Letter from the appellant's [former] landlady dated 29 May 2016. She writes:
   "[The appellant] shares the main floor with me. I do all the floor cleaning, bathroom cleaning, compost and garbage removal. [The appellant] has trouble with these movements. She does her own cooking and light housekeeping duties like dishwashing…. She uses a cane to help her walk. I help her shop with my car at times."

3. Letter from the appellant's friend, who writes that she has taken the appellant shopping for groceries, etc., as she has problems with her mobility. She has problems getting in and out of the vehicle and carrying her items to her domicile.

4. Bone Mineral Density Scan dated 21 September 2015: Absolute fracture risk category: High. The 10-year fracture risk is 20%.

5. Clarification of the PR ("GP's clarification"), dated 01 June 2016. Before completing this report, he had met the appellant 22 times, with an average duration of 10 minutes. The GP states that the appellant's diagnoses of rheumatoid arthritis and osteoporosis restrict her mobility, physical ability and mental functioning in the following ways:
   - Unable to walk more than one block without discomfort and need for rest.
   - Unable to safely lift more than approximately 2 lbs. on a regular basis.
   - Must use a cane when outside the home to support walking and standing
   - Due to weak joints, sometimes uses wrist supports to avoid putting weight on wrists when leaving on cane.
   - Suffers ongoing depression that requires counselling and psychotherapy.
   - Requires regular daily assistance with shopping, and cleaning and daily mobility from friends and companions since she cannot healthfully perform these activities herself.
   - Sjorgen's syndrome 1998 + SLE - relapsing recurring.

6. Pain chart [undated], showing pain levels on a scale of 0 to 10. Pain in feet/ankles 8-10; in knee 7 (left) and 10 (right); wrist 9; upper body 6-9.

7. Consultation report dated 09 June 2016 prepared by a rheumatology specialist. The report was headed
   "THIS CONSULT WAS NOT PREPARED FOR USE IN A MEDICAL LEGAL OR

DISABILITY PROCEEDING."

8. Medical imaging report dated 10 June 2016 of x-rays of bilateral feet, bilateral hands and cervical spine.

9. Submission by the appellant's advocate received by the Tribunal on 28 June 2016. The submission reviews the evidence and goes to argument (see Part F, Reasons for Panel Decision, below).

The hearing

At the hearing, the appellant's advocate submitted a letter from another occupant of the appellant's residence. He writes:

> "We both share the sitting room and kitchen area. [The appellant] sometimes has difficulty with doing certain tasks and so I help or others assist when available.
> I assist her with carrying heavy items as well as taking items out of the cabinet due to her inability to get these things done herself."

The appellant's advocate spoke to her submission. In particular the advocate addressed the differences between the assessments provided in the PR and in the AR. When the PR was completed by the GP, he had met the appellant six times, for a period of 10 minutes on each visit. By contrast, the SW had spent over two hours meeting with the appellant in completing the AR. The differences can also be explained taking into account the appellant's language and cultural tendencies when self-reporting, with the appellant answering questions according to her particular understanding of the question. For example, when the GP asked her how far she could walk, the appellant responded that she could walk 2 to 4 blocks but did not volunteer the information that between every block she needs to rest or that this exercise would cause her body to seize up for days – she answered optimistically and did not share with the GP that she did not actually remember walking that far in the recent past.

The balance of the advocate's presentation went to argument as she reviewed the restrictions in the appellant's ability to perform DLA and the resulting help required (see Part F, Reasons for Panel Decision, below).

The appellant described how her overall health had deteriorated in the recent past and how she was now receiving proper attention, testing and treatment for her various conditions. She was optimistic that with this attention her health would improve.

Admissibility of additional information

At the hearing, the appellants advocate stated that she was not seeking to have admitted as evidence documents #1, #7 and #8 above. The appellant had requested an adjournment of a previously scheduled hearing pending a visit to the doctor and referral to a specialist, and the advocate had submitted these documents to demonstrate that the appellant had followed through with these appointments.

The panel accepts the advocate's submission as argument.

The panel does not admit as evidence the appellant's pain chart (completed by the appellant at the advocate's suggestion), as there was no information before the ministry at reconsideration regarding the intensity of the appellant's pain.

The panel finds the information contained the remaining documents submitted before the hearing, the letter from the other occupant of the appellant's residence submitted at the hearing, and the testimony of the appellant at the hearing is in support of the information and records before the ministry at reconsideration. In particular, the information provided in the GP's clarification tends to substantiate information provided by the SW in the AR and his letter at reconsideration. The panel 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 ministry's position

The position of the ministry, as set out in the reconsideration decision, is that due to inconsistencies between the information provided in the PR and the AR, it is difficult to develop a clear and coherent picture of the degree of the appellant's impairment, impacts on her ability to perform DLA, and the assistance required as a result. The ministry finds the PWD application to be problematic as the AR was completed by the SW who had met the appellant for the first time when completing the AR. Referring to the instructions page of the AR, the ministry states that the AR is intended to be completed by a prescribed professional having a history of contact and recent experience with the applicant and is to be based on knowledge of the applicant, observations, clinical data and experience. The PR was completed by the GP, who states that he has known the appellant for six months and has seen her 2 to 10 times in that period. As a result the ministry is inclined to place more emphasis on the assessments provided by the GP.

With regard to the severity of physical impairment, the ministry reviewed the information provided by both the GP and the SW regarding functional skills and mobility and physical ability, and related narratives, and noted several discrepancies between the assessments reported by the GP in the PR and by the SW in the AR and in his letter at reconsideration– e.g. that the GP reports that the appellant can walk 2 to 4 blocks unaided while SW reports that the appellant can walk 1 block with discomfort, and uses a cane; and that the GP assesses the appellant able to lift 5 to 15 pounds while the SW reports that she can lift 4 pounds with one hand. Based on the assessments provided, and

giving more emphasis on the information provided by the GP, the ministry acknowledged that although the appellant is limited with regard to her physical functioning, a severe impairment of physical functioning has not been established.

As to the severity of mental impairment, the ministry noted that under health history the GP had written that the appellant currently has an improving reactive depression secondary to her husband's death, suggesting to the Ministry that the appellant's depression is situational in nature and may lessen in the future. The ministry also noted that the GP had reported no difficulties with communication and no significant deficits with cognitive and emotional functioning. The ministry also reviewed the assessments provided by the SW in the AR including major impacts to cognitive and emotional functioning in 4 areas, moderate to major impacts in 2 areas and moderate impacts in three areas. The SW also assessed the appellant as requiring continuous support/supervision in all listed areas of social functioning and very disruptive functioning with both her immediate and extended social networks. However, for the reasons described above, the ministry placed greater emphasis on the assessments provided by the GP in the PR and determined that a severe impairment of mental functioning has not been established.

Respecting the appellant's ability to perform DLA, the ministry noted several discrepancies between the assessments provided by the GP in the PR and by the SW in the AR. In particular the SW indicates restrictions in the areas of shopping, meals, paying rent/bills, medications and use of transportation while in the PR the GP indicated that the appellant is not restricted for those DLA. Further, while the SW has assessed the appellant as taking significantly longer than typical for several tasks, he has not provided any information as to how much longer it takes to perform these tasks. In addition, while the SW has described the need for assistive devices such as a shower chair, toilet grab bar, and scooter in large stores, the need for such devices was not described in the PR. The ministry also noted that in his letter at reconsideration, the SW's description of the appellant's new residence suggests the residents help one another without the provision of assistance from professional care aides. Placing greater emphasis on the assessments provided by the GP in the PR, the ministry found that there was not enough evidence to establish that the appellant's impairment significantly restricts her ability to perform DLA either continuously or periodically for extended periods.

Regarding the help required criterion, as it is not been established that DLA are significantly restricted, the ministry found that it cannot be determined that significant help is required

The appellant's position

In her submission, and at the hearing, the appellant's advocate disputed the emphasis placed by the ministry on the information provided by the GP in the PR over the information provided by the SW in the AR. The advocate cited *Hudson* (2009 BCSC 1461) and argued that that decision held that:

I. Either the medical practitioner or the assessor confirms that a person severe impairment directly and significantly restricts their ability to perform daily living activities; or

II. The medical practitioner and the assessor's evidence when read together, confirm that the person has a severe impairment that directly and significantly restrict their ability to perform daily living activities.

The advocate also referred to section 2(2)(a) of the EAPWDR where the different eligible categories

of prescribed professionals are listed, noting that both a medical practitioner and a social worker were included on the list, with none given precedence over another. The advocate argued that there is no statutory matrix for reading the PR and AR discreetly and there is no statutory requirement for confirmation from both the doctor and the assessor.

Regarding the severity of physical impairment, the advocate noted that the SW in his letter at reconsideration reported that the appellant can walk 1 block, and that distance only with the use of a cane. This assessment was confirmed by the GP in his clarification on appeal. The advocate also noted that the appellant can lift only 2 - 4 lbs., again as reported by the SW in his letter and confirmed by the GP in his clarification. Further, the evidence shows that the appellant cannot independently lift her right arm above her head and needs to support the elbow with her left hand to do anything above her shoulder height with her right hand. Given these restrictions, the advocate submits that the evidence clearly demonstrates that the appellant has a severe physical impairment.

At the hearing, the appellant's advocate stated that, while the appellant suffers from depression, this is secondary to her physical condition and the loss of her husband. Accordingly, the appellant is not arguing that she has a severe mental impairment.

With regard to the appellant's ability to perform DLA, the advocate reviewed the assessments provided by the SW in the AR, as updated by his letter at reconsideration, and the assessments provided by the GP in his clarification on appeal, and argued that the evidence clearly demonstrates that the appellant's ability to perform DLA is significantly restricted on a continuous basis.

As to help required, the appellant submits that the GP's clarification on appeal that "Requires regular daily assistance with shopping, and cleaning and daily mobility from friends and companions since she cannot healthfully perform these activities herself." as well as his confirmation that the appellant requires the use of a cane when walking outdoors, demonstrates that as a result of her severe physical impairment she requires significant help to perform DLA.

Panel decision

Weight of evidence

In considering the issue raised by the ministry regarding the emphasis to placed on the information provided by the GP relative to that of the SW, the panel notes the following:

- There is no provision in the legislation requiring the prescribed professional to have had a history of contact with the PWD designation applicant before completing the AR.
- The SW completed the AR in great detail, with much narrative and commentary.
- The ministry had before it at reconsideration a letter from the SW setting out his observations at the second visit from the appellant and providing an update of the her changed circumstances.
- In the GP's clarification on appeal, the GP essentially confirmed the thrust of assessments provided by the SW in the AR and in his letter on appeal.

Taking all this into account, the panel finds the ministry was not reasonable in placing greater emphasis on the GP's assessments relative to those provided by the SW.

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, the GP diagnosed the appellant with rheumatoid arthritis and osteoporosis, commenting: "She has varying pain in her joints – especially her knee, wrists and elbow." In terms of the impact of these medical conditions on physical functioning, while the GP in the PR assessed the appellant as being able to walk 2 to 4 blocks unaided and lift 5 to 15lbs, he also noted that the appellant uses a walking cane and commented that "mobility is restricted due to slow speed, stiffness and pain." In his letter at reconsideration SW reported that the appellant is able to walk one block, and only with the use of a cane. This latter assessment was confirmed by the GP in his statement on appeal. In the AR, the SW reported that the appellant could lift 4 lbs. maximum, and the GP in his clarification on appeal the maximum weight at 2 lbs. in the AR the SW noted "to abduct right arm must lift right elbow with left hand." In the PR, the GP comments: "fall risk – trips easily." The panel understands this to mean both that the appellant is prone to falling and there is a high risk of bone fracture if she does fall due to her osteoporosis.

Regarding other impacts of the appellant's medical conditions on daily functioning, see below under Direct and significant restrictions in the ability to perform DLA.

Taking into account the above restrictions and their reported impact on physical functioning, including the evidence admitted on appeal, the panel finds that the ministry was unreasonable in determining that a severe physical impairment had not been established.

Mental impairment

In the PR, while the GP comments under health history that the appellant "currently has an improving reactive depression secondary to her husband's death," the GP did not provide a diagnosis of depression or any other mental health condition, nor did he identify any significant deficits in cognitive and emotional function, as a medical condition related to an impairment that would be expected to continue for at least two years. While the SW provides assessments regarding the impact of the

appellant's depression on daily functioning and social functioning, considering the GP's description of the depression and the appellant' position that she is not arguing that she has a severe mental impairment, the panel finds that the ministry was reasonable in determining that a severe mental impairment had 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 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."

The GP has provided general assessments regarding the appellant's need for assistance in performing DLA:

- From the PR: Walking cane. Needs support at home, currently has friend who cooks, cleaning, combing hair." and
- From his clarification on appeal: "Requires regular daily assistance with shopping, and cleaning and daily mobility from friends and companions since she cannot healthfully perform these activities herself."

In his letter at reconsideration, the SW stated that the appellant has support for DLA such as cooking and cleaning where she lives, as there are a number of residents that can trade efforts by doing tasks they are capable of. Assistance now ranges from cooking and cleaning to changing linens. She takes more responsibility with cooking (taking her time) and allows the other more physically challenging activities such as washing floors, bathrooms and linen changes to be done by others.

With regard to more detailed assessments for ability to manage specific DLA, the panel notes the following:

- Moving about indoors and outdoors: as discussed above under severity of the physical impairment, the appellant is restricted to walking 1 block, and that distance only with the use of a cane; further, the risk of falling is a safety issue.
- Shopping for personal needs: the SW assesses the appellant as requiring continuous assistance from another person or unable for going to and from stores, reading prices and labels and carrying purchases home. From the evidence, someone always drives her, goes with her and helps in store.
- Basic housekeeping: the SW assesses the appellant as requiring continuous assistance from another person or unable for laundry and basic housekeeping. From the evidence, while she may help with light housework such as putting dishes in the sink, she relies on others for heavy-duty tasks such as vacuuming, cleaning floors and changing bed linen.
- Personal self-care: the SW assesses the appellant as requiring continuous assistance from another person or unable for grooming (hair and nails) and using an assistive device and taking significantly longer than typical for bathing and toiling. The evidence is that she had grab bars near the toilet and in the shower at her former residence but these are not available

in her current home. The SW described in his letter at reconsideration her reluctance to shower and her difficulties washing her hair.

The SW also assessed restrictions relating to key aspects of other DLA: for the DLA of meals, the SW assessed the appellant as requiring continuous assistance from another person or unable for food preparation, and she requires assistance opening jars and cutting hard vegetables. For the DLA of managing personal finances and managing personal medications, the appellant requires continuous assistance by getting a ride to the bank or pharmacy.

Considering the degree and extent of the restrictions of the appellant's ability to perform DLA, the panel finds that the ministry was unreasonable in determining that, in the opinion of her prescribed professionals, her ability to perform DLA was not directly significantly restricted on a continuous basis.

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 require 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 has found that ministry was not reasonable in determining that the appellant's ability to perform DLA was not directly and significantly restricted in a continuous basis. The evidence is that the appellant requires the use of a cane for mobility outside the home and the use of grab bars in the shower and by the toilet. In addition, she relies on the help of others in her new residence for helping with meal preparation and cooking and heavier duty aspects of cleaning. She also relies on a friend to drive her to stores and accompany her with shopping. Taking all this into account, the panel finds that the ministry was not reasonable in its determination that, as it had not been established that DLA are significantly restricted, it cannot be determined at significant help is required

Conclusion

Having reviewed and considered all of the evidence and relevant legislation, the panel finds that the ministry's reconsideration decision that determined that the appellant was not eligible for PWD designation was not reasonably supported by the evidence. The panel therefore rescinds the ministry's decision in favour of the appellant. The appellant's appeal is thus successful.