

PART C – Decision under Appeal

The decision under appeal is the Ministry of Social Development and Social Innovation (the “ministry”) reconsideration decision of June 24, 2016, which found that the appellant did not meet three of five statutory requirements of section 2 of the *Employment and Assistance for Persons With Disabilities Act* (“EAPWDA”) for designation as a person with disabilities (“PWD”). The ministry found that the appellant met the age requirement and that in the opinion of a medical practitioner the appellant’s 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 that
- as a result of those restrictions, the appellant requires the significant help or supervision of another person, an assistive device, or the services of an assistance animal.

PART D – Relevant Legislation

EAPWDA, section 2

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

PART E – Summary of Facts

The information before the ministry at the time of reconsideration included the following:

- The appellant's PWD application form consisting of the appellant's self-report form dated January 14, 2016 ("SR"), a physician's report dated February 2, 2016 completed by the appellant's general practitioner ("PR") and an assessor's report dated January 20, 2016 ("AR"), completed by the appellant's chiropractor.
- The appellant's Request for Reconsideration ("RFR") form signed and dated June 10, 2016 in which the appellant states that she was unwise to have the chiropractor complete the AR. The appellant states that she only gets chiropractic treatment and that because she has arthritis in her back, and nerve pain caused by spine and spinal/peripheral nerves she thought the chiropractor would provide more information. The appellant states that the chiropractor does not know all of her medical file. She states that she can lift 10 pounds not 15 pounds and it's only if she has to and not on a regular basis. The appellant states that she has ongoing continuous pain and needs help with DLA.
- Letter from the physician, undated, stating that he completed the PR and the chiropractor completed the AR. The physician states that the appellant's disabilities are both physical and mental. He states that he has known the appellant for 15 years and confirms that she has a very significant mental problem, which, combined with her physical condition, results in severe incapacity. The physician states that the appellant is unable to perform DLA in a timely or successful way and remains unable to be employed in any way (the "Physician Letter").
- Workers' Compensation Board of British Columbia ("WCB") Permanent Functional Impairment Evaluation dated November 4, 2003 (the "Evaluation"), indicating that the appellant injured her right shoulder at work on January 11, 1995 and was diagnosed with thoracic outlet syndrome, underwent thoracic outlet surgery and subsequent arthroscopy and acromioplasty of the shoulder. The Evaluation indicates that the appellant tried to return to work in 2001 and managed to do various light nursing jobs but could not get back into the hospital full time.
- Handwritten letter from the appellant regarding her social and educational background, eating disorder, sexual assault, work injury, substance abuse disorder and information about her spinal pain and inability to perform DLA.
- Handwritten letter from the appellant's sister dated June 8, 2016 stating that the appellant sustained a severe work injury and has been left with severe pain in her neck, shoulders and back. The appellant's sister provides information about the appellant's ability to perform DLA indicating that when she is able to walk, she has to stop approximately 10 times in 30 minutes, that it takes her 3-5 times longer than anyone else to do a simple tasks and she is dependent on her family to help her.
- Letter from the appellant's advocate dated June 9, 2016 (the "Advocate Letter") stating that he is a former social worker and alcohol counselor and has known the appellant for five years. He states that the appellant's wait time acromioplasty of her right shoulder impingement has had a profound effect on her day-to-day activities and that she cannot even hold a minimal job.

Diagnoses

- In the PR the physician (who has known the appellant for 15 years and has seen her 11 or more times in the past 12 months, diagnosed the appellant with degenerative disc disease

lumbar spine, thoracic outlet syndrome, right shoulder impingement and chronic pain syndrome.

- For Section B – Mental or Physical Impairment in the AR, the chiropractor states that the appellant's physical or mental impairments that impact her ability to manage DLA are pain in right cervico-thoracic spine, right shoulder as well as chronic/recurrent low back pain, thoracic outlet syndrome and chronic pain syndrome.

Physical Impairment

- In the Health History portion of the PR, the physician states that the appellant has severe chronic pain syndrome caused by a combination of problems including thoracic outlet syndrome, right shoulder impingement and degenerative disc disease in her lumbar spine. The physician indicates that her condition originated from a work related injury many years ago and her problems significantly interfere with her mobility and impact on how long she can sit/stand. The physician indicates that this affects her walking and she is unable to use her right arm because of her shoulder problem.
- In terms of physical functioning the physician reported in the PR that the appellant can walk 1 to 2 blocks unaided, can climb 5+ steps unaided, can lift 5 to 15 pounds and can remain seated less than 1 hour.
- In the AR the chiropractor reports that the appellant is independent with walking indoors, walking outdoors, climbing stairs and standing but takes significantly longer with lifting and carrying and holding due to moderate pain in her right shoulder, upper back and lower back.
- The Physician Letter states that the appellant has severe incapacity.
- In the SR the appellant states that she has chronic neck, shoulder and back pain caused by a work injury in 1995 and was later diagnosed with thoracic outlet syndrome and right shoulder impingement, which has left her in constant pain with increased activity. She had her right rib removed as her AC joint was separated and did severe damage to her brachial plexus causing permanent nerve damage to her upper extremities. She also had an acromioplasty on her right shoulder. The appellant states that she has severe arthritis in her spinal column and hypersensitive skeletal muscles. She states that her neck always has a burning pain and nothing takes the pain away. The appellant also states that she has a sleep disorder.

Mental Impairment

- In the PR the physician did not provide a diagnosis of a mental impairment but under functional skills the physician indicates that the appellant has significant deficits with cognitive and emotional function in the area of emotional disturbance. The physician comments that the appellant has moderate depression because of her prolonged problems.
- In the AR the chiropractor indicates that the appellant's ability to communicate with speaking, reading, writing and hearing are good. The chiropractor indicates that the appellant's mental impairment impacts her cognitive and emotional functioning in the areas of emotion (moderate impact) and motivation (minimal impact). The chiropractor indicates that the appellant's mental impairment has no impact to the appellant's cognitive and emotional functioning in the areas of bodily functions, consciousness, impulse control, insight and judgment, attention/concentration, executive, memory, motor activity, language, psychotic symptoms, other neuropsychological problems or other emotional problems. The chiropractor indicates that the appellant has been diagnosed with clinical depression.

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- In the SR the appellant states that she has a sleep disorder and suffers from mild to moderate depression.
 - The Physician Letter indicates that the appellant's disabilities are both physical and mental indicating that she has a very significant mental problem.
 - The Advocate Letter states that the appellant significant emotional difficulties due to her past history of sexual assault and heavy drinking, often experiencing suicidal thoughts with several attempts.

DLA

- In the PR, the physician indicates that the appellant is not restricted with personal self care, meal preparation management of finances or social functioning but is continuously restricted with respect to basic housework, daily shopping, mobility inside the home, mobility outside the home and use of transportation. The physician comments that the restriction is because of severe pain, noting that the appellant can only do physical work for a short while and needs to rest.
- In the AR, the chiropractor indicates that the appellant is independent with all noted DLA except laundry, basic housekeeping and getting in and out of vehicle, indicating that it takes significantly longer than typical for these three aspects of DLA. With respect to getting in and out of a vehicle the chiropractor indicates that it can be difficult when the appellant is experiencing flare-ups of low back pain.
- In the Physician Letter, the physician indicates that the appellant's severe impairment makes her unable to perform DLA. The Advocate Letter states that the appellant's right shoulder impingement and nerve problems have a profound effect on her day-to-day activities.
- The letter from the appellant's sister states that the appellant can only do very light housekeeping such as dishes and dusting, she cannot vacuum and takes 3-5 times longer than anyone else to do a simple task. She states that the appellant is very limited when she tries to do things that most people can do effortlessly. Anything that requires repetitive movement results in flare-up of pain that incapacitates her for the next few days to a week. She states that the appellant avoids things that she is unable to do, that her short-term memory has been affected over time, and that although she tries to maintain her independence but feels useless and frustrated.

Help

- In the PR the physician reports that the appellant does not have any prosthesis or aids for her impairment but requires help from another person.
- In the AR the chiropractor indicates that the appellant receives help from family and friends and that she needs assistance with "...*basic housekeeping, cleaning, laundry, yard work, etc*". The appellant does not use assistive devices or have an assistance animal.
- The appellant's sister states that the appellant depends on her family to help her, particularly from her and her daughter.

Additional information provided

In her Notice of Appeal the appellant states that she disagrees with the ministry's reconsideration decision because she has severe chronic pain that is disabling.

Prior to the hearing the appellant provided a submission (the "Submission") containing a letter from

the physician dated July 15, 2016 indicating that the appellant is currently unable to work.

The Submission also included a letter from the chiropractor dated July 4, 2016 (the “Chiropractor’s Letter”) stating that he has been treating the appellant since September 24 2012 for chronic pain in her right cervico-thoracic spine, right cervical spine, right shoulder and bilateral lumbar spine. He indicates that her injuries originated from a workplace injury that occurred on January 11, 1995 when she was employed as a registered nurse. She underwent two surgeries in 1998/1999, an acromioplasty for right shoulder impingement syndrome and a right first rib resection for the treatment of thoracic outlet syndrome. The chiropractor indicates that he completed the AR to the best of his ability and that while he understands she has been diagnosed with chronic pain and clinical depression he is not qualified to make any assessment or prognosis regarding her mental health. The chiropractor states that with respect to the AR the appellant would experience significant difficulty with lifting, carrying and holding, laundry, basic housekeeping, as well as getting in and out of a vehicle.

The chiropractor indicates that he checked the box “takes significantly longer than typical” for these items, but what is considered typical is highly variable depending on the individual and their physical limitation. The only way to “describe how much longer” would be to actually time her as she performs each task, and then compare it to “typical”, but he has no idea what the standard of “typical” is given this form. The chiropractor states that it would take her significantly longer than a person who does not suffer from such conditions due to the moderate pain it would cause her. He states that her physical condition and pain is chronic, long standing and will not improve over time. He also states that it will slowly worsen and become increasingly debilitating making it more and more difficult to find and maintain gainful employment.

At the hearing the appellant provided oral evidence stating that she has severe neck, shoulder and back pain, was diagnosed with thoracic outlet syndrome and underwent surgery resulting in severe, chronic pain that is triggered by every movement. The appellant states that she lives in a fifth wheel and even though the living space is not large, she cannot vacuum and has to take numerous breaks with any physical activity and that her hands and fingers go numb. She states that while she can climb steps it is very difficult and just the two steps into her fifth wheel wear her down. She states that she requires help from her mother, sister and daughter with housecleaning and grocery shopping and that she does not have any social life. She also takes four different medications to help with mood stabilization, pain and sleep. She stated that on a scale of zero to 10 with 10 being the worst pain, her base line is 6.5 and increases depending on the activity. The appellant states that in completing the AR the chiropractor did not ask about the impacts of her impairment to her DLA and that he does not know her as well as her physician. She states that she can lift 10 pounds maximum causing increased pain down her low back to her knees and it will take her two days to recover. The appellant states that she gets help from her mother, sister and daughter with shopping and cleaning. Once in a while her son provides assistance too. When she goes shopping she only purchases small amounts at a time to minimize lifting, carrying and holding. She can only walk on a flat, soft surface – walking on concrete or in a grocery store causes more pain.

At the hearing the appellant provided a letter from the British Columbia Nurses’ Union dated October 6, 2005 with a copy of the WCB decision dated July 11, 2005 (WCB Information), 7 pages, indicating that her claim was accepted for a right neck and shoulder injury that occurred on January 11, 1995 and the appellant was in receipt of a 5.1% disability award in relation to that injury. The WCB

decision indicates that the appellant applied to re-open her claim in relation to a low back injury but that application was denied as being unrelated to a work injury.

At the hearing, the advocate stated that the refusal to grant PWD designation should be overturned, and that the information clearly demonstrates that the appellant is significantly disabled and limited with her mobility.

At the hearing the appellant's mother stated that she helps her daughter by taking her to the doctor, grocery shopping (heavier items such as flour, sugar), and getting to and from appointments. She helps her with laundry once per week and helps provide emotional support.

Admissibility of New Information

The ministry did not object to the information in the Notice of Appeal, the WCB Information, the Chiropractor's Letter or any of the oral evidence from the appellant, her advocate or her mother. The panel has admitted the new information, as it is evidence in support of information and records that were before the ministry at the time of reconsideration, in accordance with section 22(4) of the *Employment and Assistance Act*. In particular, the oral evidence of the appellant, advocate and her mother corroborates the information at reconsideration respecting the appellant's impairment, her ability to perform DLA, and help needed. The WCB Information corroborates the information at reconsideration regarding the appellant's prior work injury and reports of low back pain and the information contained in the Evaluation Letter. The new information contained in the Chiropractor's Letter corroborates the information at reconsideration as it relates to the appellant's condition and provides clarification of the information provided by the chiropractor in the AR.

At the hearing, the ministry representative stated that reconsideration decision is made based mainly on the PR and AR and that the chiropractor did not provide sufficient information regarding how the appellant's DLA were impacted. The ministry representative stated that the appellant's description of her restrictions is certainly not typical and the letter from the chiropractor has now explained that it takes significantly longer for the appellant to perform DLA of laundry, basic housekeeping and getting in and out of a vehicle. The ministry representative confirmed that the physician indicates that all DLA are affected by severe and continuous pain and that she has difficulty explaining the denial. The ministry representative stated that if the reconsideration officer had been provided with the Chiropractor's Letter, a different decision would likely have been made.

PART F – Reasons for Panel Decision

The issue on this appeal is whether the ministry's decision to deny the appellant designation as a PWD was reasonably supported by the evidence or was a reasonable application of the applicable enactment in the circumstances of the appellant. In particular, was the ministry reasonable in determining that the appellant does not have a severe physical or mental impairment, and that in the opinion of a prescribed professional the appellant's impairments do not directly and significantly restrict her from performing DLA either continuously or periodically for extended periods, and that as a result of those restrictions the appellant does not require help to perform DLA?

The relevant legislation is as follows:

EAPWDA:

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.

EAPWDR section 2(1):

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.

Severe Physical Impairment

The ministry's position, as set out in its reconsideration decision, is that the information provided is not evidence of a severe physical impairment. The ministry's position is that the functional limitations reported by the physician demonstrate that the appellant experiences limitations to her physical functioning due to back and shoulder pain but that the assessments provided by the physician and chiropractor speak to a moderate rather than a severe physical impairment. At the hearing however, the ministry representative stated that given the new information in the Chiropractor's Letter, the reconsideration officer would likely have made a different decision as the new information provides clarification regarding the severity of the appellant's impairment.

The appellant's evidence is that she has severe and continuous pain in her neck, shoulder and back and that the information provided by her physician confirms that she meets the criteria required for PWD designation. In particular, the appellant argues that the physician has, in several places in the PR, confirmed that her pain is severe and continuous, not moderate. The appellant states that she does not agree with her physician's indication that she can lift 5 to 15 pounds; rather she can lift up to 10 pounds maximum but even that causes increased pain down her low back to her knees and takes her two days to recover.

The appellant's position is that the physician's evidence in the PR should be preferred over the chiropractor's evidence in the AR as her physician knows her better, and the chiropractor did not ask questions about the impact to her DLA when completing the AR. The appellant's position is that the information in the Chiropractor's Letter provides the further explanation necessary to support her position and should be considered with the information in the PR and the AR.

The appellant's position is that the information provided by the advocate and her mother further confirms her ongoing pain and functional limitations.

The advocate states that the refusal to grant the appellant PWD designation should be overturned and that the ministry appears to be "cherry-picking" pieces of information to support the denial.

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 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 performing 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 prescribed professional.

The physician indicates that the appellant has been diagnosed with degenerative disc disease lumbar spine, thoracic outlet syndrome, right shoulder impingement and chronic pain syndrome. The functional limitations in the PR indicate that the appellant can walk 1 to 2 blocks unaided on a flat surface, can climb 5+ steps, can lift 5 to 15 pounds and can remain seated less than 1 hour. In the Health History portion of the PR the physician confirms that the appellant's impairment is severe, caused by a constellation of problems and the physician and in section E – DLA, the physician indicates that the appellant's DLA of basic housework, daily shopping, mobility inside and outside the home, use of transportation are all continuously restricted, noting that her restrictions are because of severe pain and that she can only do physical work for a short while then needs to rest. The AR indicates that the appellant is independent with walking indoors and outdoors, climbing stairs and standing but takes significantly longer than typical with lifting and carrying and holding due to moderate pain in her right shoulder, upper back and lower back. Although the chiropractor in the AR indicates moderate pain, the physician clearly indicates that the appellant has severe pain and the panel finds that the physician's evidence should be given greater weight, given that he has known and treated the appellant much longer than the chiropractor.

The Physician Letter further confirms that the appellant has severe incapacity and is unable to perform DLA in a timely or successful way. The information from the physician is also consistent with the appellant's evidence that on a scale of zero to 10 with ten being the worst pain, her base line level of pain is 6.5 and increases with activities. The Chiropractor's Letter also indicates that the appellant's narrowing of her L4-5 disc space is moderate to severe.

Taking all the evidence into account and considering the ministry representative's statement that had all the new information been before the reconsideration officer at the time of reconsideration a different decision would likely have been made, the panel finds that the ministry was not reasonable in determining that the appellant does not have a severe physical impairment.

Severe Mental Impairment

The ministry's position is that the information provided does not establish that the appellant has a severe mental impairment. The ministry notes that the physician indicates that the appellant has significant deficits with her cognitive and emotional function in the area of emotional disturbance and some moderate depression because of her physical problems. The ministry also notes that the physician indicates that the appellant does not have any difficulties with communication and the chiropractor indicates that the appellant's level of ability with speaking, reading, writing, and hearing is good. The reconsideration decision notes that the physician indicates that the appellant does not have any restrictions with respect to social functioning and the chiropractor indicates that the appellant does not require support/supervision with any aspects of social functioning and that she has good functioning with both her immediate and extended social networks.

The appellant' did not take the position that she has a severe mental impairment although in the SR she states that she has mild to moderate depression. The advocate stated that the appellant had a terrible early life and subsequent drug dependency that has permanently affected her.

Panel Decision

In the diagnosis section of the PR the physician did not diagnose any mental impairment. In the Functional Skills portion of the PR the physician indicates that the appellant has significant deficits with cognitive and emotional function in the areas of emotional disturbance indicating that the appellant has some moderate depression because of her prolonged problems. This is consistent with the appellant's evidence that she has mild to moderate depression. As the evidence does not indicate that the appellant has a severe mental impairment, the panel finds that the ministry's decision that the appellant does not have a severe mental impairment was reasonable.

Significant Restrictions to DLA

The ministry's position, as set out in the reconsideration decision, is that the information provided by the physician and the chiropractor does not establish that a severe impairment significantly restricts DLA continuously or periodically for extended periods. The reconsideration decision notes that the PR indicates that the appellant is continuously restricted with basic housework, daily shopping, mobility inside and outside the home, and use of transportation due to severe pain, and that the appellant can only do physical work for a short while then needs to rest. The reconsideration decision indicates that the AR indicates that the appellant takes significantly longer than typical with laundry, basic housekeeping, and getting in and out of a vehicle but that the chiropractor did not provide information on how much longer than typical it takes the appellant to perform these activities, making it difficult to determine if the time taken represents a significant restriction to the appellant's overall level of functioning.

The ministry representative stated that the appellant's description of her restrictions is certainly not typical and the letter from the chiropractor contained in the Submission provides further information on the appellant's restrictions, confirming that it takes significantly longer for the appellant to perform DLA of laundry, basic housekeeping and getting in and out of a vehicle. The ministry representative confirmed that the physician indicates that all DLA are affected by severe and continuous pain and that she has difficulty explaining the denial. The ministry representative stated that if the reconsideration officer had been provided with the information in the Chiropractor's Letter, a different decision would likely have been made.

The appellant's position is that her severe impairments of chronic pain, thoracic outlet syndrome, right shoulder impingement and nerve damages leave her with constant pain that does not go away and that she has pain with all activity. The appellant lives in a small fifth wheel trailer but that she struggles to complete her DLA, having to rest and take breaks, even with cleaning small areas. The appellant's position is that she cannot carry heavy items and when she shops she has to buy small amounts at one time only unless she has help from her mother. Her position is that although she can walk a few blocks it causes increased pain and she has to take rests so DLA such as grocery shopping with the walking required in the grocery store is very difficult and takes her much longer than typical. Even the two steps into her fifth wheel trailer wears her down. The appellant also states that her ongoing physical pain wears her down and causes lack of motivation.

Panel Decision

The legislation – s. 2(2)(b)(i) of the EAPWDA – requires that the minister be satisfied that in the opinion of a prescribed professional, a severe mental or physical impairment directly and significantly restricts the appellant's ability to perform 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 extended periods. 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 physician, in the PR, indicates that the appellant is not restricted with personal self care, meal preparation, management of medications, management of finances or social functioning, but has continuous restrictions with basic housework, daily shopping, mobility inside and outside the home and use of transportation. The physician comments that her restrictions are because of severe pain and that she can only do physical work for a short while and needs to rest. The AR indicates that the appellant is independent with all aspects of DLA except laundry, basic housekeeping and getting in and out of a vehicle, which takes significantly longer than typical.

Although the chiropractor in the AR did not provide further explanation as to how much longer than typical it takes the appellant to perform DLA of laundry, housekeeping and getting in and out of a vehicle, the information in the AR is consistent with the physician's indication of restrictions noted in the PR and consistent with the appellant's evidence. In addition the Chiropractor's Letter states that he had no idea what the standard of "typical" is on the AR and that what is considered "typical" is very arbitrary and would be highly variable depending on the individual and their physical limitation. The chiropractor explains that it would take the appellant significantly longer to perform her DLA than a person who does not suffer from such conditions. This new information is also consistent with the Physician's Letter that states that the appellant's condition results in severe incapacity and that she is unable to perform DLA in a timely or successful way.

Given the significant degree of restrictions indicated by the physician in the PR and the Physician's

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Letter, combined with all the information from the chiropractor in the AR and the Chiropractor's Letter, and considering the ministry representative statement that had the reconsideration officer had the Chiropractor's Letter a different decision would likely have been made.

The panel finds that the ministry's decision that the evidence is insufficient to show that the appellant's ability to perform her DLA is significantly restricted either continuously or periodically for extended periods as required by EAPWDR section 2(2)(b) was not reasonable.

Help with DLA

The ministry's position as set out in the reconsideration decision is that, as it has not been established that DLA are significantly restricted; therefore, it cannot be determined that significant help is required from other persons. At the hearing the ministry representative stated that if the Chiropractor's Letter had been before the reconsideration officer, a different decision would likely have been made as it provides further information regarding the degree of restrictions and impact to the appellant's ability to perform DLA.

The appellant's position is that she requires help from her mother and daughter each week with laundry, shopping, cleaning and getting to and from appointments and her mother confirmed that the appellant is dependent on them.

Panel Decision

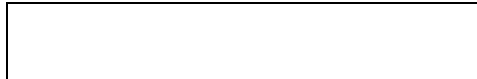
The physician reports that the appellant does not require any prosthesis or aids for her impairment but that she receives help from another person. The AR indicates that the appellant requires help with DLA from family and friends, needing assistance for basic housekeeping, cleaning, laundry and yard work.

The appellant's evidence is that she requires help from her family, particularly with laundry, shopping, cleaning and getting to and from appointments. The appellant's mother states that the appellant is dependent on her and the appellant's sister.

A finding that a severe impairment directly and significantly restricts a person's ability to manage her DLA either continuously or periodically for an extended period is a precondition to a person requiring "help" as defined by section 2(3)(b) of the EAPWDA.

As the panel finds that the ministry was unreasonable in determining that the appellant does not have a severe impairment that directly and significantly restricts her ability to manage her DLA either continuously or periodically for an extended period of time, the necessary precondition is satisfied.

As the panel finds that the evidence of the physician, chiropractor, appellant, and the appellant's mother all confirm that she requires significant help to perform DLA, the panel finds that the ministry's decision that the appellant did not satisfy the legislative criteria of EAPWDA section 2(3)(b) was not reasonable.



Conclusion

Having reviewed and considered all of the evidence and the relevant legislation, and taking into account the ministry representative's statement that if the Chiropractor's Letter had been before the reconsideration officer a different decision would likely have been made, the panel finds that the ministry's decision finding the appellant ineligible for PWD designation is not reasonable based on the evidence and is not a reasonable application of the legislation in the circumstances of the appellant except with respect to the decision that the appellant does not have a severe mental impairment. The panel therefore rescinds the ministry's decision and the appellant is successful in her appeal.