

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 31 August 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 [no day] March 2016. The Application contained:
 - A Self Report (SR) completed by the appellant.
 - A Physician Report (PR) dated 01 April 2016, completed by the appellant's general practitioner (GP), who has known the appellant for 5 years and seen her 2-10 times over the past year.
 - An Assessor Report (AR) dated 08 April 2016, completed by a social worker (SW) who has known the appellant for 2 weeks and seen her once.
2. The appellant's Request for Reconsideration submitted on 30 August 2016, attached to which are the following:
 - A second Self Report (SR2), undated.
 - A letter from the appellant's GP dated 19 August 2016.
 - A submission by the appellant's advocate, undated (reconsideration submission).
 - A letter of support from the appellant's roommate dated 25 August 2016.

In the PR, the GP diagnoses the medical condition related to the appellant's impairment as Raynaud's Disease (onset approx. 2005).

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

Severity/health history

Physical impairment

PR:

Under Health History, the GP writes: "Daily living chores causes severe pain. Coming into contact with any cold objects exacerbates an already painful condition, which causes [illegible] pains."

Under Degree and Course of Impairment the GP indicates that the impairment is likely to continue for two or more years, commenting, "Chronic pain and discomfort affecting quality of life as well as daily living."

As to functional skills, the GP reports that the appellant can walk 2 - 4 blocks unaided, can climb 5+ steps unaided, is limited to lifting 5 to 15 lbs., and there is no limitation to remaining seated.

The GP indicates that the appellant has not been prescribed medication and/or treatments that interfere with her ability to perform DLA, commenting, "Awaiting further investigation. Stress test negative."

GP's Letter:

In the letter, the GP writes:

"[The appellant] has severe Raynaud disease. [She] can walk 4 blocks in ideal weather conditions, but is limited in cold conditions and thus hampering her and doing housework

and shopping.

Frequent affection of her condition during summer resulting in hot clammy hands and in winter she experiences cold fingers multiple times a day.”

AR:

Regarding mobility and physical ability, the SW assesses the appellant as follows (comments in parenthesis):

- Walking indoors – periodic assistance from another person required (cannot walk on bare feet at all).
- Walking outdoors – continuous assistance from another person or unable (from Sept – April can only stay outdoors for 10-15 min).
- Climbing stairs – Independent.
- Standing – periodic assistance from another person required (faints frequently, 10-15 min. standing only).
- Lifting – independent.
- Carrying and holding – periodic assistance from another person (poor circulation makes this very difficult).

The SW comments: “When the weather is cold or wet (Sept – April) hands & feet become white, cold and more difficult to manipulate. This can take 10 – 45 minutes to recover from.”

In providing additional comments, the SW writes: “Raynaud’s Syndrome is very limiting for this woman. She cannot do activities she enjoys such as walking outdoors in cool weather or taking her grandchildren to the park. It makes many activities of daily living very challenging.”

Mental impairment

PR:

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.

AR:

The SW assesses the appellant's ability to communicate as good for speaking, reading, and hearing, and poor for writing, explaining: “Hands get very cold & white when trying to use a pen or keyboard. This happens multiple times/day. Can take 10 – 45 min to recover to be able to write again.”

Regarding cognitive and emotional functioning, the SW indicates that the appellant's mental impairment has the following impacts:

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

The SW comments: "Bodily functions – Difficult to hold or prepare cold foods. Cannot touch cold water. Difficult to sleep if hands or feet get cold."

Ability to perform DLA

PR:

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

The GP assesses the appellant as restricted in her ability to perform the following DLA on a continuous basis: personal self care, meal preparation, management of medications, basic housework, daily shopping, mobility inside the home, and mobility outside the home.

The GP assesses the appellant as independent for use of transportation, management of finances, and social functioning.

The GP comments: Can manage but severely limited.

AR:

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

- Personal care – independent for dressing, toileting, transfers in/out of bed, and transfers on/off of chair; periodic assistance from another person required for grooming (must use warm water), bathing (cannot walk on cold ground, or stand in cold shower stall), feeding self/regulating diet (cannot touch cold food for long – when hands cold cannot prepare foods, difficulty opening jars).
- Basic housekeeping – periodic assistance from another person required for laundry (difficult to touch wet clothing), and basic housekeeping (can only use warm H2O).
- Shopping – continuous assistance from another person for unable for going to and from stores, reading prices and labels, paying for purchases and carry purchases home (Avoids if weather is too cold or wet. Cannot carry any cold items. If store is too cold it causes problems. Only shops for 20 min. at the time. Very difficult to hold bags of groceries.); independent for making appropriate choices.
- Meals – continuous assistance from another person or unable for meal planning, food preparation and cooking (Eats simple, easy to prepare foods. Cannot hold cold items, will have difficulty holding utensils if hands are cold. Cannot open jars when hands are cold); independent for safe storage of food.
- Pay rent and bills – independent in all aspects.
- Medications – independent in all aspects.
- Transportation – independent for getting in and out of the vehicle and using transit schedules and arranging transportation; continuous assistance from another person or unable for using public transit (Cannot wait for transit outdoors).

The SW adds: "Due to poor circulation, fainting is an issue. Standing for 10 – 15 min. can be a problem. Fall risk due to fainting."

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; requiring periodic support/supervision for developing and maintaining relationships and

dealing appropriately with unexpected demands (Avoids social situations that might cause hands or feet to get cold, such as walking outdoors or going to the swimming pool).

The SW assesses the impact of the appellant's mental impairment on her immediate social and extended social networks as good functioning.

Help provided/required

PR:

The GP indicates that the appellant does not require any prostheses or aids to compensate for her impairment.

In commenting on help required for DLA, the GP writes, "Can manage but severely limited."

AR:

The SW indicates that help is provided to the appellant by community service agencies.

The SW does not indicate that the appellant requires any of the listed aids to compensate for her impairment.

GP's letter:

The GP lists the current aids for the appellant's condition: thermal socks, thicksoled shoes, bathtub rubber mat, gloves – latex for housekeeping, woolen for outdoors, foot and hand warmers in winter, sockettes in summer.

Self report

In describing how her Raynaud's Syndrome/phenomena affects her life, she writes that:

- On any given day, her hands are always extremely cold, making it very uncomfortable to touch her own skin, put on underwear and socks. She always runs tap water until water is warm, as cold water makes her fingers icy cold and the cold shivers run through her body.
- Cleaning with a damp cloth turns her fingers white and painful. Clenching hands, such as with vacuuming or sweeping, has the same affect.
- She cannot walk barefoot at home, as toes and soles of feet hurt instantly. Even in socks and slippers her feet hurt multiple times a day. She must step from bathmat directly onto a pre-warmed shower stall floor.
- When chilblains are active, it is painful to wear slippers or shoes and therefore she cannot go out.
- Food preparation is painful – handling cold food, such as cheese, vegetables, refrigerated jars, turns her fingers white before meal is even eaten. She must wear gloves to handle food in the freezer.
- If car door handle is wet her hands whiten and cause pain. With gloves on, scraping the windshield causes agony. She must also wear gloves to drive 8 months of the year.
- She has to wear gloves in supermarkets to push her cart and to handle vegetables, cold and frozen meats, and beverages.
- Many times after being outside for 15 minutes plus, her hands and feet are so cold and frozen she cannot trust her ability to drive and must wait till she is "defrosted" – this can

take to 30 minutes of pins and needles.

- When outdoors, either running errands or for pleasure, she cannot keep her hands from freezing and going white. Gloves help only superficially, maximum 10 minutes, then she has difficulty handling car keys, holding bags, blowing her nose, etc.
- Carrying supermarket bags cuts off circulation to fingers.

She adds that her Raynaud's Syndrome has affected her quality of life because she can no longer take long walks 8 - 9 months/year and she cannot use public swimming pools for exercise as her hands and feet turn white in the cold change rooms and the water is now too cold, exacerbating and speeding the freezing process.

She refers to an attached sheet, not found in the Appeal Record.

Request for Reconsideration

SR2:

In SR2, a 3-page typewritten letter, the appellant writes that she is diagnosed with a severe condition of Raynaud's syndrome – a severe intolerance for cold. It is a circulation problem that mainly affects the hands and feet. She writes that in her GP's letter [not found in the Appeal Record] her physician specifically wrote that there are no treatments or aids that are successful with people that have this condition. She follows her physician's recommendations about ways to prevent flare-ups and how to manage her pain, including wearing gloves when outside the house, covering metal objects with cloth in the house before she touches them and using a padded bathmat to avoid the cold floor. There are no medical devices available to help with her condition, and she does all she can to attempt to provide extra insulation from the cold.

In her letter, the appellant provides argument relating to the original decision. In this context, she describes how her condition affects her daily functioning, summarized by the panel as follows:

- While she can walk 4 blocks in heated mall, this distance outside, especially in a humid environment, would result in immediate and acute discomfort. If she goes out and becomes cold her feet go numb and she is unable to drive herself home and she does not know how much pressure to apply to the gas pedal. This is not just from September to April, as in the warmer months her hands and feet sweat excessively from an overabundance of blood pushed her fingertips and feet, making them extremely sweaty and clammy, making wheel holding and using her feet almost impossible in the summer months.
- When indoors, even in the summer, her feet and hands are always cold. She wears slippers indoors all year round. Carrying and holding are very difficult most of the time as the use of her fingers is severely limited. Meal prep is mostly done by her roommate. Even making a sandwich is very difficult and pain lasts for over an hour. The difficulty is that the cutlery is metal and is cold and the plates feel cold, the vegetables are wet and freeze her hands. She has difficulty opening jars as her muscles do not work when cold.
- In terms of housework, holding a vacuum or wet cloth, doing dishes, and yard work are very difficult. The only reason she is able to "semi-function" is because when she is warm enough she will attempt to do chores or activities that will make life easier when she does have an outbreak. She relies heavily on others to help her function.

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- Because of her financial limitations, she cannot afford someone to come in and do her laundry, make meals or wash her floors. The fact that she cannot afford it does not mean that she does not need it.
 - In addition to the pain she experiences when completing any tasks she also is not able to clench or move her hands and feet. When she has an attack, it is much more than just pain. Not only are her hands and feet in pain, but they are numb, she cannot clench her hands. Her entire body breaks out in shivers and she often has to go to bed under the covers to warm up. The after-effects of an attack are the most painful, as when her body starts to warm up the blood returns to her extremities.
 - Her disability has had a huge impact on her emotional well-being. She cannot go swimming anymore, something she once enjoyed. She is no longer able to enjoy gardening, going for walks with her family or attending a movie. As a result she needs to stay inside and is more isolated. This affects her emotionally. Even touching her grandchild for a hug makes her flinch. She does have help from her roommate, but that is all. Because of her lack of ability to be out and socializing, she does not maintain friendships. She cannot drive to see her friends, go on the ferry to visit her family, go to local events or go to places in nature. Even when she has friends visit her house, if her disability is bad that day, just conversing with them is difficult because she is distracted by the pain. Interacting with people on the computer is difficult because the computer itself is cold.

Letter from roommate:

In her letter, her roommate writes that the appellant has constant problems with regular household chores, as well as day-to-day functions, not only in winter but throughout the year. There have been many instances where she has had to drive the appellant when she has been in pain. In winter she cannot hold the wheel or even open the door of the car because of the intense and immediate pain. In the warm months, her hands are flooded with blood, making driving very difficult, as her hands are clammy and very sweaty, so it is difficult for her to properly hold the steering wheel.

There have been many instances where the appellant could not attend the local food bank due to her disability, so the roommate would go in her place. The lineup is located outside and requires standing for over an hour on the concrete floor, something that the appellant cannot tolerate. In the past, when she attempted this, she came back with chilblains on her feet from standing in the cold, resulting in a doctor visit pain for days afterwards.

The roommate also witnessed the appellant's difficulty in making food, especially preparing refrigerated or frozen foods. She also has problems with handling wet laundry, and washing dishes and even showering gives her very significant negative reactions. They have attempted to adapt their home to better suit the appellant's disability, despite limited means, by heating their home more than average, placing rugs in bathrooms and kitchen and also having towels and gloves easily accessible so that the appellant can use them to open the drawers and handle cutlery.

Advocate's submission:

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The advocate's submission went to argument regarding the original decision (see Part F, Reasons for Panel Decision, below).

Notice of Appeal

In her Notice of Appeal, dated 02 September 2016, the appellant writes: "My doctor & I believe I meet all the criteria necessary for Disability designation."

The hearing

At the hearing, the appellant submitted 2 information articles from the Internet on Raynaud's disease/syndrome. The roommate also showed the panel and the ministry colour photos on her smart phone of the appellant's hands when normal and when cold and hot. She explained that it was too costly for her to have them printed in colour.

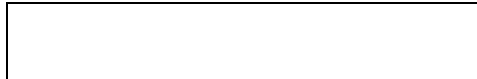
The appellant read from a prepared statement arguing that the reconsideration decision did not take into account the information provided by the appellant, her roommate or her advocate submitted at reconsideration and did not give sufficient weight to the GP's letter submitted at the same time. The appellant noted that she submitted the reconsideration material on 30 August 2016, and the reconsideration decision was dated the next day. She suggested that, given the fast turn-around, this material was not given the consideration it merited. The appellant's roommate also argued along the same lines (see Part F, Reasons for Panel Decision, below).

During the course of their presentations, the appellant and her roommate provided the following additional information on how her condition affects daily living:

- The appellant provided further details regarding her fainting episodes: when she goes from a hot location to a very cold location she has on occasion fainted; this has happened 15-20 times, and now occurs about once a year.
- Her roommate usually does all food preparation.
- Piles of towels are left near the fridge to use when taking items out.
- In ideal conditions she will leave the house on her own, but for no more than 10-20 minutes. Her roommate will go with her 90% of the time.
- Details on clammy hands – wet, sweating, dripping, super-sensitive, very uncomfortable, texture irritates; at the same time her feet sweat badly and act like 'suction cups' when she walks
- Details on cold hands – when blood drains out of her hands she feels pain – when they warm up the pain is worse, so she controls the warming of her hands at home by putting her hands in warm water until the blood circulation returns. Unable to do this in public places, so her hands hurt and she is unable to alleviate the pain when she goes from cold to warm locations.
- The appellant cannot manage her finances because she cannot go out in the cold to drop off her rent cheque.

The appellant volunteered that the SW completed the AR on the basis of a conversation by phone.

The ministry stood by its position at reconsideration. The ministry representative explained that



consideration of the appellant's Request for Reconsideration was prioritized because her deadline had been extended. As a result the reconsideration decision was completed the day after the request was received.

Admissibility of additional information

The ministry did not object to the admissibility of the testimony of the appellant and her roommate. The panel finds that the information provided by the appellant and her roommate/advocate in their testimony at the hearing is in support of the information and records before the ministry at reconsideration, as it tends to corroborate the information provided by the appellant in her SR and at reconsideration. The panel therefore admits this testimony as evidence pursuant to section 22(4) 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;

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

Severity of impairment

Physical impairment

The appellant's position

The position of the appellant, as explained in her written statement read at the hearing, is that the information submitted at reconsideration should be paramount, as she was asked to provide more in-depth information and to go into more detail about how her disability affects her life. Throughout the reconsideration decision, it is only the original application that is being cited and used, instead of any information that was subsequently provided by the assessor and advocate, as well as by her physician.

In the reconsideration decision, the advocate's submission was not taken into consideration. The ministry only cites the original application and wording. The ministry has cited the original application eight times in the reconsideration decision and only once was a physician's letter mentioned, with no word of the roommate's letter or the advocate's second letter being used. The SW met her on only one occasion, yet she is had at least four meetings with the advocate, who she believes gave a broader picture of her overall disability.

Not only was the material submitted at reconsideration not looked at as in-depth as the original application, but the original AR completed by the SW was filled out on a worksheet provided by the Ministry. This worksheet has limited space, and only asked very limited questions, so the assessor could only write as much as the space dictated, with only enough room to answer the questions in the small space provided. The second Assessor Report was written out after a long interview with her advocate, and is five pages long. This report goes on to detail all the problems she faces on a daily

basis. The ministry kept citing the original AR in the reconsideration decision and she believes the second, more detailed report was looked over without the same validity as the original AR.

[Panel note: there is no second Assessor Report in the Appeal Record. The appellant may have been referring to the 5-page advocate's submission prepared by a law student, who in any event is not a prescribed professional.]

In her submission at reconsideration, the advocate submits that in assessing what is severe, the ministry ought to take into account the context in which the applicant is able to perform various functions. The appellant points out that cold air, wind, and moisture are included in the cold objects that cause exacerbated pain. As such, the appellant does not leave her house often to walk or climb stairs due to environmental factors. While she is able to walk without limitation within the strictly controlled environment of her own house, she reports that she is unable to walk the distance from the storefront to the vehicle without experiencing pain due to outside temperatures. These contextual factors ought to be considered when the ministry assesses the extent of the appellant's limitations. Taking these into account, the advocate submits that the appellant is severely restricted by her environment.

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 by the appellant's medical practitioner and assessor, 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 assistance required as a result.

The ministry finds the application is problematic as the AR was completed by a SW who had known the appellant for 2 weeks and had seen her once when completing 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, referring to the AR instruction page, is to be based on knowledge of the applicant, observations, clinical data and experience. By comparison, the PR was completed by the appellant's GP, who has known her for 5 years and has seen her 2 to 10 times in the past 12 months. As a result, the ministry is inclined to place more emphasis on the assessments provided by the GP.

The ministry refers to the GP's statement under Health History ("Daily living chores causes severe pain. Coming into contact with any cold objects exacerbates an already painful condition, which causes [illegible] pains") and to the GPs assessments of functional skills (can walk 2 - 4 blocks unaided, etc.) and notes that these assessments are not considered indicative of a severe impairment of physical functioning.

The ministry also noted the information provided by the SW in the AR regarding mobility and physical ability, including "When the weather is cold or wet (Sept – April) hands & feet become white, cold and more difficult to manipulate. This can take 10 – 45 minutes to recover from," and the assessments that she requires continuous assistance from another person when walking outdoors and periodic assistance from another person for walking indoors, standing, and carrying/holding. The ministry noted the discrepancy between GP's assessment that she can walk 2 – 4 blocks unaided (i.e. means without the assistance of another person, assistive device, or assistance animal) and the SW's assessment that the appellant requires continuous assistance from another person. The

ministry noted that while the SW assessed the appellant as being able to stand only for 10 to 15 minutes and faints frequently, the GP in the PR did not describe any issues with fainting or prolonged standing. As the ministry is inclined to place more emphasis on the assessments provided by the GP, it is difficult to establish a severe impairment of physical functioning based on the SW's assessments.

The ministry also reviewed the statement in the GP's letter at reconsideration that stated, "[The appellant] has severe Raynaud disease. [She] can walk 4 blocks in ideal weather conditions, but is limited in cold conditions and thus hampering her and doing housework and shopping. Frequent affection of her condition during summer resulting in hot clammy hands and in winter she experiences cold fingers multiple times a day." The ministry noted that in the letter the GP does not describe how far she can walk in cold conditions and that "hot clammy hands" and "cold fingers" are not considered indicative of a severe impairment of physical functioning.

Based on the assessments provided by the GP in the PR and at reconsideration and by the SW in the AR, and the information provided by the appellant, her roommate and legal advocate at reconsideration, the ministry acknowledges that although her physical functioning is affected by cold weather, severe impairment of her physical functioning has not been established.

Panel decision

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 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 by the medical practitioner and prescribed professional presents a comprehensive overview of the nature and extent of the impacts of the person's medical conditions on daily functioning.

The GP diagnosed the appellant with Raynaud's disease. In his letter at reconsideration, he added the adjective "severe," without explaining why he considered her condition severe.

In the PR, under health history, in the space provided to explain the severity of the appellant's condition, the GP wrote: "Daily living chores causes severe pain. Coming into contact with any cold objects exacerbates an already painful condition, which causes [illegible] pains." And under Degree and Course of Impairment the GP the GP, commented, "Chronic pain and discomfort affecting quality of life as well as daily living." In his letter and reconsideration, he stated: "[The appellant] can walk 4

blocks in ideal weather conditions, but is limited in cold conditions and thus hampering her and doing housework and shopping. Frequent affection of her condition during summer resulting in hot clammy hands and in winter she experiences cold fingers multiple times a day.” He goes on to the list clothing and household items as her current aids. In the PR, when asked to provide additional comments regarding the degree of restriction in the appellant's ability to perform DLA and to provide any additional information relevant to an understanding of the nature and extent of the appellant's impairment and its impact on daily functioning, the GP referred to his Health History statement.

In reviewing the GP's statements above, the panel considers the narrative to be more of a description of the appellant's medical condition, without much explanation on the extent to which this condition restricts her daily functioning. For instance, “Daily living chores causes severe pain” does not describe what chores she is unable to perform. “Coming into contact with any cold objects exacerbates an already painful condition” does not explain the nature of the already painful condition and the extent to which she is restricted if she avoids contact with a cold object. And as the ministry noted, the GP does not describe how far she can walk in cold conditions and that “hot clammy hands” and “cold fingers” are, without further explanation, not considered indicative of a severe impairment of physical functioning.

As to functional skills, the GP reports that the appellant can walk 2 - 4 blocks unaided, can climb 5+ steps unaided, is limited to lifting 5 to 15 lbs., and there is no limitation to remaining seated. As these assessments are in the moderate range, as the ministry noted, by themselves they are not indicative of a severe impairment of physical functioning.

In the AR, the SW reported that the appellant requires periodic assistance from another person for walking indoors, standing and carrying and holding, noting that she cannot walk on bare feet at all, faints frequently and can stand for only 10-15 minutes, and that poor circulation makes carrying very difficult. The SW assesses the appellant as requiring continuous assistance from another person or unable for walking outdoors, commenting that from September to April she can only stay outdoors for 10-15 minutes. As the ministry noted, there are several discrepancies between these assessments and those provided by GP. In particular, in the PR the GP assesses the appellant as being able to walk 2 - 4 blocks unaided (i.e. without the assistance of another person or an assistive device) and in his letter stated that she can walk 4 blocks in ideal conditions. Further the GP makes no reference to frequent fainting and in her testimony at the hearing the appellant stated that recently this happens about once a year. Considering these discrepancies and taking into account that the GP has known the appellant for five years and the appellant had met the SW only once (and as the appellant volunteered at the hearing, this was through a telephone interview), the panel finds the ministry was reasonable in placing more emphasis on the assessments of the GP.

In her submission at reconsideration, the appellant's advocate submitted that in assessing what is severe, the ministry ought to take into account the context in which the appellant is able to perform various tasks. The appellant has pointed out that cold air, wind, and moisture are included in the cold objects that cause exacerbated pain. The advocate submits that contextual factors ought to be considered when the ministry assesses the extent of the appellant's limitations. The panel acknowledges that the information submitted by the appellant and her roommate, including in the SR, at reconsideration and at the hearing, does provide contextual information. This includes descriptions of the measures that the appellant takes using the items listed by the GP in his letter to avoid skin contact with cold objects or surfaces, how she avoids going outside in cold/rainy/windy weather, and

how clammy hands and sweaty feet in hot/humid weather make it difficult for her to drive her vehicle. However, in the panel's view, this contextual information adds little to the narrative and assessments of the prescribed professionals, particularly that of the GP, that would point to a severe physical impairment. In particular, while the appellant is subject to flare-ups when in contact with cold surfaces or cold weather, there remains no explanation, taking into account the preventative measures she takes to avoid direct contact with cold objects/surfaces/weather, of how and to what extent she is otherwise restricted in her physical functioning. As the panel noted above, this facet of the appellant's impairment was also not addressed by the GP or SW.

On balance, and based on the above discussion, the panel finds that the ministry was reasonable in determining that a severe physical impairment had not been established.

Mental impairment

The appellant's position

The appellant's position is that her disability has taken a heavy toll on her emotional well being, and this clearly establishes a severe mental impairment. In her statement at the hearing, the appellant noted that the ministry in the reconsideration decision had stated that she had been assessed with good functioning with both her immediate and extended social networks. However, as she stated in her reconsideration letter [SR2], the only support she has is from her roommate. She does help with her daily activities, such as meal prep and some transportation, but this does not qualify as an extended social network. In her reconsideration letter, she stated that things she used to enjoy doing for her emotional well being, she cannot do anymore. Going to the pool, meeting friends for coffee, visiting family, or even conversing on the computer is virtually impossible for her. All of this was explained in the reconsideration letter, showing the effect of her disability on her emotional state and her ability to interact with social networks.

The ministry's position

In the reconsideration decision, the ministry noted that the GP had not diagnosed nor described a mental disorder/brain injury in the PR or in his reconsideration letter. In the PR the GP indicated that the appellant has no difficulties with communication and has no significant deficits with cognitive and emotional functioning. He also indicated that the appellant is not restricted with social functioning.

The ministry also reviewed the assessments provided by the SW in the AR relating to cognitive and emotional functioning and social functioning, noting that these sections are to be ignored by the assessor when a mental disorder/brain injury has not been diagnosed, though the assessor is at liberty to complete these sections without said diagnoses, as long as they can be reviewed as supporting information in the PR regarding significant deficits to cognitive and emotional function.

The ministry noted that while the SW indicated that the appellant has poor ability with writing, the GP indicated that she has no difficulties with communication. In addition, although the SW indicated impacts to significant deficits with cognitive and emotional functioning, the GP reported no significant deficits with cognitive and emotional functioning. Further, while the SW indicated no major impacts to cognitive and emotional functioning and one moderate impact on bodily functions (with minimal impacts in 2 areas and no impacts in the remaining 11 areas), the ministry noted the SW's comment:

[]

“difficult to hold or prepare cold foods. Cannot touch cold water...” and found that this suggests the impacts to her bodily functions are related to physical functioning as opposed to mental functioning.

Based on all the evidence provided in the original application and at reconsideration, the position of the ministry was that a severe impairment of mental functioning has not been established.

Panel decision

As the ministry noted in the reconsideration decision, the GP has not diagnosed the appellant with any mental disorder or brain injury and has not identified any significant deficits in cognitive and emotional functioning. The GP also assessed the appellant as having no difficulties with communication and no restrictions with social functioning. While the SW has indicated that in terms of communications the appellant's ability to write is poor, the explanation that her hands get cold when using a pen or keyboard is more indicative of the appellant's physical impairment rather than a restriction due to mental functioning. Similarly, the SW assessed no major impacts of cognitive and emotional functioning and one moderate impact relating to bodily functions, but again, as the ministry noted, her comments suggest that the impacts are related to physical functioning as opposed to mental functioning.

While the appellant argues that her Raynaud's disease condition causes her much emotional distress that would constitute a severe mental impairment, this has not been confirmed by her GP. Section 2 of the *EAPWDA* states in part that “The minister may designate a person ... as a person with disabilities ... if the minister is satisfied that the person has a severe mental or physical impairment that in the opinion of a medical practitioner is likely to continue for at least 2 years...” As the appellant's medical practitioner – her GP – has not identified a mental disorder or brain injury as an impairment that will continue for at least 2 years, then the minister cannot be satisfied that she has a mental impairment that is severe.

Based on the foregoing, the panel finds that the ministry was reasonable in determining that the information provided does not establish a severe mental impairment.

Direct and significant restrictions in the ability to perform DLA

The appellant's position

The appellant's position, as explained in her advocate's submission at reconsideration, is that according to *Hudson* (2009 BCSC 1461), to meet the requirements set out in section 2(2)(b)910 and (ii), the applicant needs the opinion of a prescribed professional that indicates that there are limitations and assistance is needed in at least two of the legislative categories. The advocate submitted that this requirement is met, as the GP found that the appellant is continuously restricted in 6 of 8 categories and the SW found that she is restricted 3 of the 8 categories, with periodic restriction in other categories as well.

The ministry's position

In the reconsideration decision, the ministry reviewed the information provided by the GP in the PR

and noted that although the GP indicates that the appellant is continuously restricted with the majority of listed daily living activities, he also states “Can manage but severely limited.” The ministry also noted that the GP does not describe the nature of the limitations in the appellant's ability to perform the restricted DLA.

The ministry also reviewed the assessments provided by the SW in the AR (see Part E above) and noted the need to use warm water for grooming/showering/housekeeping and the inability to stand on cold services are not considered indicative of significant restrictions to DLA. The ministry also noted that in her assessments the SW does not describe the frequency or duration of the periodic assistance from another person required for grooming, bathing, feeding self, regulating diet, laundry and basic housekeeping.

Relying on the medical opinions and expertise from the appellant's medical practitioner and prescribed professional, and considering that a severe mental or physical impairment has not been established, the position of the ministry is that there is not enough evidence to confirm that the appellant has a severe impairment that significantly restricts her ability to perform DLA continuously or periodically for extended periods and therefore this legislative criterion has not been met.

Panel decision

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 or 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.” And for the minister to be “satisfied,” it is reasonable for the ministry to expect that a prescribed professional provides a clear picture of the degree to which the ability to perform DLA is restricted in order for the ministry to determine whether the restrictions are “significant.”

In the PR, the GP indicated that the appellant was restricted on a continuous basis for all but 2 of the listed DLA requiring physical effort, noting: “Can manage but severely limited.” However, as the ministry noted in the reconsideration decision, the GP has not described the nature of the limitations – i.e. he did not provide any information as to the degree to which the appellant's ability to perform DLA is restricted, information that would have been helpful in determining whether the restrictions are “significant.”

In the AR, for the DLA of moving about indoors and outdoors, the SW assesses the appellant as requiring periodic assistance from another person for walking indoors, stating that she cannot walk in bare feet at all, but does not describe the nature or frequency or duration of the assistance from another person required, The SW assessed the appellant as requiring continuous assistance from another person or unable for walking outdoors, but does not explain the nature of this assistance. While the appellant at the hearing testified that she was accompanied by her roommate 90% of the time when going outdoors, this assessment has not been confirmed by the GP, who in the PR assessed the appellant as being able to walk 2 – 4 blocks unaided and in his letter at reconsideration did not mention she needed to be accompanied when walking outdoors.

Regarding the DLA of personal care, the SW assesses the appellant as requiring periodic assistance from another person for grooming, bathing, and feeding self/regulating diet. The SW explains why the appellant is restricted in these tasks (e.g. must use warm water for bathing), but again does not explain the nature, frequency or duration of periodic help from another person required.

Similarly with the DLA of basic housekeeping, the SW assesses the appellant as requiring periodic assistance from another person for laundry and basic housekeeping, explaining why she is restricted in these tasks (e.g. “difficult to touch wet clothing”) but again does not explain the nature, frequency or duration of periodic help from another person required.

For the DLA of shopping, the SW assesses the appellant as requiring continuous assistance from another person or unable for the tasks of going to and from stores, reading prices and labels, paying for purchases and carrying purchases home. Again, the SW explains why the appellant is thus restricted (e.g. “avoids if weather is cold or wet” for going to and from stores), but does not explain the nature or extent of the continuous assistance required.

Likewise for the DLA of meals, the SW assesses the appellant as requiring continuous assistance from another person for the tasks of meal planning, food preparation and cooking, explaining why (e.g. eats simple, easy to prepare foods, cannot hold cold items or open jars when cold) but does not describe the nature or extent of the continuous assistance required.

The SW assesses the appellant as independent in all aspects of the DLA of managing personal finances and managing medications. For the DLA of transportation, the SW assesses the appellant as requiring the continuous assistance of another person for using public transit, explaining, “Cannot wait for transit outdoors.”

The panel notes that the SW assessed the appellant as requiring the periodic support/supervision for two aspects of social functioning – ability to develop and maintain relationships and ability to deal appropriately with unexpected demands. As the ministry noted in the reconsideration decision, the SW did not provide an explanation as to the nature and degree of the support/supervision required. Further, these abilities relate to the 2 DLA applicable only to a person with an identified mental impairment – make decisions about personal activities, care or finances and relate to, communicate or interact with others effectively. As explained above, the GP has not diagnosed a mental disorder/brain injury or identified any significant deficits in cognitive or emotional function as a mental impairment; therefore these DLA do not apply in this case.

Considering that a severe impairment has not been established, and taking into account the assessments reviewed above, the panel finds that the ministry was reasonable in determining that the information provided does not establish that in the opinion of a prescribed professional the appellant's ability to perform DLA are directly and significantly restricted either continuously or periodically for extended periods.

Help with DLA

The appellant's position

The appellant's position, as explained in her advocate's submission at reconsideration, is that the AR shows that the appellant receives assistance in categories where there are noted restrictions. This assistance ranges from the assistance of another person doing the task for her when temperature factors do not allow the appellant to do it herself, or the assistance of a device such as specified gloves, socks or shoes.

The ministry's position

The ministry noted the aids listed by the GP in his letter at reconsideration. 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

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 ministry did not address whether the items listed as aids (socks, gloves, hand-warmers, etc.) as set out in the GP's letter can be considered "assistive devices." The legislation defines "assistive device" as "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." To the panel, this means that the device must be designed for the specific purpose of assisting a person whose ability to perform a DLA is impaired. The everyday items listed were not designed with for that purpose, and so cannot be considered "assistive devices."

While the appellant benefits from the assistance of her roommate, 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

The panel finds that the ministry's reconsideration decision, which determined that the appellant was not eligible for PWD designation, was reasonably supported by the evidence, and therefore confirms the decision. The appellant is thus not successful on appeal.