

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 August 26, 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

1. directly and significantly restricts her ability to perform daily living activities (DLA) either continuously or periodically for extended periods; and,
2. 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 March 16, 2016. The Application contained:
 - A Self Report (SR) completed by the appellant;
 - A Physician Report (PR) dated April 13, 2016, completed by the appellant's general practitioner (GP) who has been the appellant's doctor for 2 months and has seen her once over the past year; and
 - An Assessor Report (AR) dated April 14, 2016, completed by an individual at a non-profit society (NPI) in the appellant's former community of residence, who has known the appellant for 4 to 6 weeks and seen her 2-10 times in that period;
2. The appellant's signed Request for Reconsideration dated August 9, 2016;
3. Two page laboratory (lab) investigation result report in the name of the appellant dated August 9, 2016;
4. Diagnostic imaging report dated April 11, 2013 for a computerized tomography (CT) scan performed on the appellant and signed by a physician in the appellant's former community of residence (physician 1);
5. One page letter dated December 3, 2013 from a physician in a community adjacent to the appellant's former community of residence (physician 2) identifying the appellant's medical history, and including details of a physical examination, investigation and interpretation;
6. Three page letter dated March 19, 2014 from a different physician in the same community adjacent to the appellant's former community of residence (physician 3) to physician 2 providing a medical and social history of the appellant and the results of a physical examination of the appellant;
7. Diagnostic imaging report dated September 27, 2012 for a CT scan performed on the appellant and signed by a physician 1;
8. Six page document titled "Pain Chart for PWD" dated March 15, 2016 and completed by the appellant; and
9. Two page PWD Decision Summary dated July 27, 2016 providing details of the ministry's original assessment of the appellant's PWD application.

In the PR, the GP lists the diagnosis related to the appellant's impairment (onset January 2011) as chronic low back pain.

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

to above-noted diagnostic imaging reports and physician's letters from 2012, 2013 and 2014 because they were provided several years ago and the ministry's decision relies on the April 2016 PR and AR assessments.

Severity/health history

Physical impairment

PR:

Under Health History, the GP writes: "Pain in lumbar spine ongoing since 2011, occasionally associated with pain radiating down her right leg. Aggravated by prolonged sitting, prolonged standing, bending, pushing/pulling (eg. vacuuming). CT (lumbar) spine indicates neural foraminal narrowing LS/S1. Pain interferes with sleep. Now also having pain in right hip, right knee and left elbow."

Under Degree and Course of Impairment the GP indicates that the impairment is likely to continue for two or more years, commenting "Difficult to determine prognosis. However, given duration of symptoms to date, will likely have chronic low back pain for years. Some cases improve with regular physiotherapy and analgesia."

As to functional skills, the GP reports that the appellant can walk 2 to 4 blocks unaided, can climb 5+ steps unaided, can lift 5 to 15 lbs., and can remain seated for less than 1 hour.

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

AR:

The NPI describes the appellant's impairment as follows: "Degenerative disc disease. Depression. End plate schlorosis (sic) Arthritis possibly Rheumatoid Arthritis."

Mental impairment

PR:

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

The GP indicates that the appellant has significant deficits with attention or sustained concentration, commenting: "Trouble staying focused on a task."

AR:

The NPI describes the appellant's mental impairment as follows: "Sleep disturbance from shifting and pain in back causes (appellant) to wake up and must get up. Is extremely forgetful, feels that is preoccupied with thoughts & is not in the here and now. Thoughts are overwhelming. Does experience overwhelming feelings of helplessness. Consequently loses (sic) motivation or

interest in things that used to interest her such as gardening and being around horses. Has experienced decreased motor activity. Has low tolerance for people who lie and are deceitful - will get angry and over-react. Has a strong sense of justice.”

The NPI assesses the appellant's ability to communicate as good for speaking and hearing, satisfactory for reading (commenting: “Must wear glasses”) and poor for writing (commenting: “Limited because of arthritis in wrists”).

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

- **Major impact** – bodily functions, emotion and attention/concentration.
- **Moderate impact** – , consciousness, executive, motivation, motor activity and other emotional or mental problems.
- **Minimal impact** – memory.
- **No impact** – impulse control, insight and judgment, language, psychotic symptoms and other neuropsychological problems.

Ability to perform DLA

PR:

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

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

The GP provides additional comments regarding the degree of restriction: “Housework aggravates back pain.”

In response to the question: what assistance does your patient need with DLA? The GP writes “Does her own housework but really aggravates symptoms.”

AR:

The NPI reports that the appellant lives alone and adds: “adult son has been with her until he leaves for a job in (another British Columbia (BC) community)”.

Regarding mobility and physical ability, the NPI assesses the appellant as independent for walking indoors, climbing stairs and standing, requiring periodic assistance from another person for lifting (“Cannot lift or bend to lift”) and carrying and holding (“Wrists or fingers get stiff & must let go. Just holding a book presents problems.”), and taking significantly longer than typical for walking outdoors (“Have problems with joints seizing up and giving out.Walking up and down hills have difficulty - joints stiffen & are painful.”). In this section the NPI adds the comment: “Shifting while sleeping is so painful that sleep is constantly interrupted.”

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

- **Personal Care** – independent for bathing (cannot wash out tub. usually shower(s)), feeding self, and regulating diet; periodic assistance from another person for transfers on/of chair (some chairs & getting in & out of cars); and takes significantly longer than normal for dressing (must sit down to dress, must be cautious when putting pants, socks and shoes on), grooming, toileting (difficulty caring for herself during menstrual cycles) and transfers in and out of bed (very painful, must slowly roll out of bed, cannot move quickly).
- **Basic Housekeeping** – independent for laundry; and takes significantly longer than normal for basic housekeeping (vacuuming or washing of floors, cleaning out bottom cupboards)
- **Shopping** – independent for reading prices and labels (needs to wear glasses), making appropriate choices and paying for purchases; and takes significantly longer than normal for carrying purchases home (must take her time). Going to and from stores was not assessed but a comment was provided (“(does not) like to (expose herself to) public places where people are coughing”).
- **Meals** – independent for food preparation, cooking and safe storage of food (No meal planning. Eat(s) simple foods. Cannot stand at counter long. Must lean or sit down.)
- **Pay Rent and Bills** – independent for banking (not enough money to budget); and periodic assistance from another person required to pay rent and bills (Difficult because of lack of money. On income assistance.)
- **Medications** – independent for filling/refilling of prescriptions and safe handling and storage; continuous assistance from another person or unable for taking as directed (Needs to set a timer to remember).
- **Transportation** – takes significantly longer than typical for getting in and out of a vehicle (very difficult, must move slowly); does not take public transit.

The NPI provides additional comments: “Very conscious of germs, washing hands, being around crowds of people is very difficult - avoids unnecessarily exposure.”

With respect to social functioning, the NPI assesses the appellant as independent for making appropriate social decisions (Does not do this any more), ability to develop and maintain relationships (Recent purging of relationships. Has ended all close relationships i.e. Family and close friends because of the toxic & negative nature of relationships), interacting appropriately with others, dealing appropriately with unexpected demands (No longer willing to drop everything to help friends & family - has felt used.), and securing assistance from others (Asks her son - otherwise will not). The NPI also notes that the appellant “has had background of negative experiences with relationships.

The NPI assesses the impact of the appellant's impairment on her immediate social networks as very disrupted functioning (“Disfunctional (sic) relationship with family - does not want to be part of family dynamics”) and marginal functioning with extended social networks.

Help provided/required

PR:

The GP does not indicate that the appellant needs any assistance with DLA.

AR:

The NPI indicates that the appellant's eldest son helps out the most but is leaving for another community in BC shortly. In response to the question: if help is required but there is none available what assistance would be necessary? The NPI states: "Would need support in the home to do housekeeping."

Self report

In her SR, the appellant writes that her night time sleeping patterns are interrupted because of chronic back pain. She cannot vacuum because of pain caused by the pushing and pulling motion. She seizes up when she's in the car for too long and must stay in a reclined position with a heating pad when she is at home. Any activity involving bending or crouching is extremely painful. She cannot sit on anything hard and when standing in one place she must continually shift from one foot to the other. She has to wear good, cushioned shoes with arch supports.

She writes that she can no longer hold down a job, and that while she has always been an active, outdoor enthusiast, she can no longer ride a horse, or partake of the winter and summer sporting activities she used to enjoy such as hiking and climbing.

She worked for 6 years, but in the 5th year she began to experience problems with a bulging/protruding disc, which was causing pain. Eventually in 2013 she had to quit her job. Even routine activities started to cause pain and her doctor recommended that she stay away from physical activities.

She avoids having baths because she cannot bend over to clean the tub. Walking on ice and shovelling snow are treacherous activities. Since 2013 she has noticed dramatic changes in her ability to do the simplest things, such as opening a can of dog food.

Her medical condition has caused her to become depressed and in December 2015 she went on antidepressants because she would not leave her home.

Request for Reconsideration

In the submission at reconsideration, the appellant states that:

- Her rheumatoid factor has increased significantly since her last test and attached a two page laboratory investigation result report to support her contention. As a result her physician has referred her to a rheumatoid arthritis specialist.
- The recent diagnosis has caused her considerable additional stress and frustration.
- Over the past few months she has experienced many new problems with pain, including a lack of ability to use her right arm and extreme elbow pain, and the pain in her wrists and knees has gotten much worse to the point that it is making DLAs extremely difficult or impossible.
- Lately she has experienced anxiety and panic attacks because she doesn't know what is wrong; only that it is getting worse.

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- The knowledge of not being able to do the things she used to do is extremely hard for her to accept and is affecting her entire thought process and her ability to make even simple decisions.

Evidence on Appeal

The appellant's Notice of Appeal (NOA) is dated September 1, 2016. Under Reasons, she writes: "My daily life is in fact affected - my recent lab work with the high (Rheumatoid Arthritis) factor - has now been determined that it is the Hepatitis B virus - I have had more blood work done and I am awaiting results. (My GP) has indicated to me that the Hep B virus can easily cause all the joint pain and the sickness I've been feeling. I am awaiting lab test results and don't (believe) I'll have them within the (allotted) 7 days - but my written consent to contact (my GP) or my new family doctor - Dr. X, for any results. This diagnosis is extremely hard and I haven't begun any treatment until results are back. Yes this, as well as my previous medical problems do impact everything I do or don't do. It affects EVERY aspect of my life."

The ministry did not object to the introduction of the new evidence provided in the NOA.

No additional evidence was submitted by either the appellant or the ministry at the hearing.

Admissibility of Additional Information

The panel finds the additional information provided in the NOA relating to the need for additional blood tests is in support of the information before the ministry of reconsideration and therefore admits this information as evidence pursuant to section 22(4)(b) of the *Employment and Assistance Act* (the Act). However, the panel finds that the new information regarding the possible Hepatitis B diagnosis is not admissible because it was not information and records that were before the minister when the decision being appealed was made, as required under section 22(4)(b) of the Act.

The Hearing

At the hearing, the appellant stated that the problems with her back started in 2011 approximately 4 years after she had started a job. The back pain got worse to the point that she had to quit her job in 2013. After quitting her job she was on employment insurance for a time, but quickly realized that her back pain was not just as a result of her job because there were other daily activities that caused pain such as bending and lifting. She had other part-time jobs after that, including a 9 month job at a department store and a 4 month job at a different store but she couldn't keep working because of her lower back pain, which eventually spread to her right knee, wrist and hip and her left elbow. She has always been independent and is only applying for a PWD designation as a last resort.

The appellant stated that she is in constant pain now and has recently been diagnosed with Hepatitis B. She is waiting for the next round of blood test results and x-rays of her hand and fears a diagnosis of osteoarthritis. She hasn't begun treatment pending final test results but in the meantime takes non-prescription painkillers to help deal with the pain. She is unable to bend down or pick up her 10 lb dog.

The appellant confirmed that the imaging reports and physicians' letters submitted by the appellant with her request for reconsideration and dated between September 27, 2012 and March 19, 2014 were the only medical reports available up until the April 13, 2016 PR. She explained that her previous GP retired over a year ago and that for a time she had to attend a walk-in clinic. More recently she was evicted from her rental accommodation in her previous community and has since moved to a different community and found a new GP.

The appellant also confirmed that she has no current diagnoses of a mental impairment. While she has been coping with depression relating to her physical ailments and was prescribed anti-depressants last year she has stopped taking them because they made her feel "like a zombie".

In response to a question about the same handwriting appearing on the SR and the AR, the appellant stated that she met with an individual who worked for the community society, and that person filled out both the SR and the AR on her behalf. However, the person who completed the AR was not the same person as the one who signed the AR. She did not know whether she ever met the person who actually signed the AR, but guessed that person who signed the AR might have been the supervisor of the person who actually met with her.

The appellant confirmed that she was not using any prostheses or aids for her impairment other than a padded belt with a cushion for her back, which she has stopped using because it was not entirely effective. She said that she had tried yoga and stretching exercises but stopped because she could not bend her knees. She has not regularly swum as a form of physiotherapy because she has a phobia about public swimming pools.

The appellant said that her eldest son has now moved to another community and is therefore unable to assist her but that she has a roommate in her current residence who helps her with the housework.

The ministry relied on the reconsideration decision and stated that the ministry determines severity by looking at the extent of the impact on a PWD applicant's ability to function normally and that there is no definition of "significant" in the EAPWDA or EAPWDR. The ministry also explained that if there was a new diagnosis of the appellant's medical condition and a significant downturn in the appellant's ability to perform her DLAs, she could re-apply for a PWD designation.

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 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;

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

The Positions of the Parties

The Appellant's Position

With regard to the severity of the physical impairment, the position of the appellant, as summarized in her SR and her request for reconsideration, is that she has chronic back pain and that any activity involving bending or crouching is extremely painful. She cannot sit on anything hard and when standing in one place she must continually shift from one foot to the other. Over the past few months she has experienced many new problems with pain, including a lack of ability to use her right arm and extreme elbow pain, and the pain in her wrists and knees has gotten much worse.

The appellant does not consider that she has a mental impairment.

As to her ability to perform DLA, the appellant states that she takes significantly longer with most personal care activities and with basic housekeeping. For example, she must sit down to dress and cannot wash out the bath tub, so she usually takes showers, and vacuuming and washing floors is very painful. She needs periodic assistance getting in or out of some chairs.

The Ministry's Position

The position of the ministry, as set out in the reconsideration decision, is that the appellant does not have a severe impairment that directly and significantly restricts her ability to perform DLAs, and that because her DLAs are not significantly restricted, the need for significant help from other persons cannot be determined.

Regarding the severity of the appellant's physical impairment, the ministry notes that the PR indicates

that the appellant is able to walk 2 to 4 blocks on a flat surface, climb 5+ steps unaided, lift between 5 and 12 lbs and remain seated for less than an hour. The GP also confirms that the appellant does not require any prosthesis or aids for her impairment. With respect to the AR, the NPI indicates that the appellant takes significantly longer with walking outdoors, but does not say how much longer. Without an indication of the extra time taken, the ministry's position is that it cannot be determined whether this is a significant restriction. Furthermore, the ministry points out that the PR indicates that the appellant has no restrictions outdoors. In addition, while the AR indicates that the appellant needs periodic assistance with lifting, carrying and holding, the nature, duration, and frequency of the required periodic assistance is not described. As a result, the ministry has determined that the evidence does not establish the presence of a severe impairment of the appellant's physical functioning.

In terms of the severity of mental impairment, the ministry reviewed the assessments provided in the PR and AR, noting that only a medical practitioner is qualified to diagnose a medical condition and that neither the GP nor any of the other medical practitioners providing consultations in the documents submitted with the appellant's PWD application confirm a diagnosis of depression or any other form of mental disorder.

As to the direct and significant restrictions in the appellant's ability to perform DLA, the ministry reviewed the assessments provided by the GP and the NPI. The ministry notes that the PR indicates that the appellant has no restrictions in her ability to perform DLAs except for continuous restrictions in her ability to complete basic housework. In describing the nature of the continuous restrictions, the GP indicates that the appellant does the housework but that it aggravates her back pain. The AR notes that it takes significantly longer to complete several of the DLAs, but the NPI does not describe how much longer it takes. Without this information, the ministry concludes that it cannot determine whether or not the extra time represents a significant restriction in the performance of DLAs.

The ministry concludes that overall, with the exception of the need for continuous assistance with basic housekeeping, the information provided in the PR, the AR, the SR, and at reconsideration does not indicate that the appellant requires continuous assistance with or is unable to manage any DLAs.

Panel Decision

Severity of Impairment

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

To assess the severity of impairment one must consider the nature of the impairment and the extent of its impact on daily functioning, as evidenced by functional skill limitations and the degree to which the ability to perform DLA is restricted. The legislation makes it clear that the determination of severity is at the discretion of the minister, taking into account all of the evidence. However, the legislation is also clear that the fundamental basis for the analysis is the evidence from a medical practitioner and a prescribed professional; in this case, the appellant's GP.

The legislation requires that for PWD designation, the minister must be "satisfied" that the person has a severe mental or physical impairment. For the minister to be "satisfied" that the person's impairment

is severe, the panel considers it reasonable for the ministry to expect that the information provided presents a clear and complete picture of the nature and extent of the impacts of the person's medical conditions on daily functioning.

Physical Impairment

When asked in the PR to indicate the severity of the medical conditions relevant to the applicant's impairment, the GP describes in which parts of the appellant's body she experiences pain, but does not describe the frequency or the duration of the periods during which her pain is severe. Further, no information is provided as the intensity of pain.

The GP assesses the appellant as being able to walk 2 to 4 blocks and climb 5+ stairs unaided, and lift 5 to 15 lbs. and indicates that the appellant is not restricted for mobility inside and outside the home. Given the level of physical functioning reported by the GP, the panel finds that the ministry was reasonable in considering these assessments as not indicative of a severe impairment of physical functioning.

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

Mental Impairment

The GP has not diagnosed the appellant with a mental impairment. The GP also indicated that the appellant has no difficulties with communications and is not restricted with social functioning. In addition, the appellant acknowledges that she does not have a diagnosed mental impairment. Considering these assessments, the panel finds the Ministry was reasonable in determining that a severe mental impairment has not been established.

Direct and Significant Restrictions in the Ability to Perform DLA

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

In the PR, the GP assessed the appellant as continuously restricted for the DLA of basic housework. However she has not provided any narrative that describes the degree of these restrictions other to say that housekeeping activities aggravate the appellant's symptoms without saying how often, or to what degree. Furthermore, the GP has indicated that none of the other DLAs are restricted.

Given the level of independence reported by the GP, and the lack of detail noted above that make it difficult to obtain a clear, consistent and complete picture of the impacts of the appellant's impairments on her ability to perform DLA, the panel finds that the ministry was reasonable in determining that it had not been established that in the opinion of the prescribed professionals the appellant's impairment directly and significantly restricted her ability to perform DLA either

continuously or periodically for extended periods.

Help with DLAs

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

The panel recognizes that the appellant occasionally used to benefit from the help of her eldest son until he moved to another community, and now relies on her roommate to carry out the basic housekeeping activities that she has trouble with, such as vacuum cleaning and floor washing. The appellant never relied on an assistance animal for help. Regardless of whether or not the appellant requires help with her DLAs, as the ministry reasonably determined that direct and significant restrictions in the appellant's ability to perform DLA have not been established, the panel finds that the ministry reasonably concluded that under section 2(2)(b)(ii) of the *EAPWDA* it cannot be determined that the appellant requires help to perform DLA.

Conclusion

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