

PART C – Decision under Appeal

The decision under appeal is the Ministry of Social Development and Social Innovation (the ministry) reconsideration decision dated August 17, 2016, which found that the appellant did not meet three of the five statutory requirements of Section 2 of the *Employment and Assistance for Persons with Disabilities Act* for designation as a person with disabilities (PWD). The ministry found that the appellant met the age requirement and that 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 daily living activities (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.

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

With the consent of both parties, the hearing was conducted as a written hearing, pursuant to section 22(3)(b) of the *Employment and Assistance Act*.

The evidence before the ministry at the time of the reconsideration decision included the Persons With Disabilities (PWD) Application comprised of the applicant information and self-report dated March 1, 2016, a physician report (PR) and an assessor report (AR) both dated March 2, 2016 and completed by a general practitioner (GP) who has known the appellant for 6 years.

The ministry also had before it the following additional documents:

- 1) Undated print out of side effects of a medication taken by the appellant;
- 2) Medical Imaging Report dated September 29, 2015;
- 3) Medical Imaging Report dated October 2, 2015;
- 4) Medical Report- Employability dated June 23, 2016 prepared by a specialist in cardiology;
- 5) Letter dated July 26, 2016 prepared by an advocate and signed by the GP who prepared the PR and the AR (“advocate-prepared letter”);
- 6) Note dated August 4, 2016 from the GP who prepared the PR and the AR; and,
- 7) Request for Reconsideration, with an accompanying letter from the appellant dated August 5, 2016.

Diagnoses

In the PR, the GP diagnosed the appellant with congestive heart failure, cardiomyopathy, previous myocardial infarction, emphysema, celiac artery stenosis, depression and a comment: “...consideration for implantable ICD [implantable cardioverter defibrillator]. Asked to describe the mental or physical impairments that impact the appellant’s ability to manage daily living activities, the GP wrote that she “...has significant impairment in functional capacity and frequent depressive episodes.”

Physical Impairment

In the PR and AR, the GP reported that:

- In terms of health history, the appellant “...has significantly compromised exercise tolerance due to dilated cardiomyopathy and chronic heart failure, emphysema. She experiences frequent angina.”
- The appellant does not require any prostheses or aid for her impairment.
- For functional skills, the appellant can walk 1 to 2 blocks unaided, climb 2 to 5 steps unaided, lift 7 to 16 kg (15 to 35 lbs), and remain seated 1 to 2 hours.
- The appellant is independently able to perform all areas of mobility and physical ability, specifically walking indoors and walking outdoors, climbing stairs, standing, lifting, and carrying and holding, and she also takes 2 to 3 times longer to perform these activities. The GP wrote that the appellant “...has difficulty carrying anything over 5 lbs. for any distance due to cardiopulmonary compromise.”
- In the section of the AR relating to assistance provided through the use of assistive devices, the GP did not identify any of the listed items. The GP indicated that the appellant does not have an assistance animal but she “does have a companion dog.”

In her self-report, the appellant wrote that:

- She has chronic heart failure, has had two heart attacks, a weak heart valve and a blockage of



a main artery plus emphysema.

- She has notice a very drastic negative affect on her ability to function day-to-day.
- Her heart condition prevents her from many activities. Walking uphill is all but impossible as she has to stop many times to catch her breath and sit down.
- She has to rest many times during the day and has had two mini-strokes where she experienced loss of feeling.
- When she has attacks of chest pain she is basically bed ridden and she uses her relaxation techniques.
- She gets tired very quickly and does not venture too far from home.

In her Request for Reconsideration, the appellant wrote that:

- She is waiting for a defibrillator to be implanted, which she thinks is an assistive device that will not only allow her to live a somewhat normal life, but it will save her life.
- There are times when she crawls to the bathroom because she is too weak to walk.
- She can manage a few stairs slowly but hills are out of the question.
- She has many side effects from her medications, including weakness, low energy, dizziness and diarrhea, and there are days she does not get off the toilet.

In the Medical Report- Employability dated June 23, 2016, the cardiologist reported that:

- The appellant's primary medical condition is severe cardiomyopathy and her secondary medical condition is syncope.

The Medical Imaging Reports from September and October 2015 set out the observations made from imaging of the appellant's heart, and the Note dated August 4, 2016 from the GP showed a diagram of a normal heart and the note "65%" and a larger heart and the note referencing the appellant and "abnormal 20% left ventricle enlarged and weak."

In the advocate-prepared letter dated July 26, 2016, the GP indicated he agreed that the combination of the appellant's conditions is severe.

Mental Impairment

In the PR and AR, the GP reported:

- The appellant has no difficulties with communication.
- The appellant has a significant deficit in her cognitive and emotional functioning in the one area of emotional disturbance. The GP commented: "...has had recurrent depressive episodes lasting 3 to 7 days, 1 to 2 times per month."
- The appellant has a good ability to communicate in all areas, specifically with speaking, reading, writing, and hearing.
- For the section of the AR assessing impacts to cognitive and emotional functioning, the GP indicated a major impact in emotion and motivation, with moderate impacts in the areas of consciousness and motor activity. There are minimal impacts assessed in the remaining 10 areas of functioning. The GP wrote that the appellant "has required hospitalization for depression, PTSD [post traumatic stress disorder] symptoms", she was previously treated with medication and "...during episodes of depression, she experiences agitation, lack of motivation, paranoia, sleep disorder."
- For the section of the AR assessing impacts to social functioning, the GP reported that the appellant requires periodic support/supervision in all areas, specifically: making appropriate



social decisions, developing and maintaining relationships, interacting appropriately with others, dealing appropriately with unexpected demands, and securing assistance from others.

- The GP wrote that "...when she is depressed, she isolates herself."
- The appellant has marginal functioning in both her immediate and extended social networks.

In her self-report, the appellant wrote that:

- She has noticed a very drastic negative effect on her ability to function day-to-day as a result of her heart issues and this has resulted in bouts of severe depression.
- She spends days, sometimes a week or more, in bed.
- At one point she was hospitalized because she was suicidal.
- She is very depressed because she does not have much quality of life.
- She is on a waiting list for counseling.

In her Request for Reconsideration, the appellant wrote that:

- All of the impacts from her physical conditions are very depressing and keep her confined to her room.
- She does not have any social interaction because she is so depressed.

In the advocate-prepared letter dated July 26, 2016, the GP agreed that:

- The appellant states that typically 1 to 2 times per month her motivation is very low due to her depression and these episodes last 3 to 7 consecutive days.
- The combination of the appellant's conditions is severe.

Daily Living Activities (DLA)

In the PR and AR, the GP indicated that:

- The appellant has been prescribed medications that interfere with her ability to perform DLA, and which she must take "long term."
- The appellant is independently able to move about indoors and outdoors although it takes her 2 to 3 times longer.
- The appellant is independently able to perform every task of all the listed DLA, specifically: the personal care DLA, the basic housekeeping DLA, the shopping DLA, the meals DLA, the pay rent and bills DLA, the medications DLA, and the transportation DLA.
- For the personal care DLA, the GP noted that the appellant "has difficulty" performing some tasks (dressing, grooming, bathing and toileting) and LOA [loss of appetite] during episodes of depression, as well as poor motivation.
- Regarding the basic housekeeping DLA, the GP commented regarding the tasks of laundry and basic housekeeping that she "...neglects these when depressed."
- For the task of carrying purchases home as part of the shopping DLA, the GP indicated that this task takes the appellant 2 to 3 times longer.
- The GP provided additional comments that the appellant "...lacks motivation when depressed. Episodes reported to be 1 to 2 per month lasting 3 to 7 days."
- Regarding the meals DLA, the GP commented regarding the tasks of meal planning, food preparation, cooking, and safe storage of food that the appellant "...lacks motivation when depressed and experiences lack of appetite."
- For the task of taking medications as directed as part of the medications DLA, the GP wrote that the appellant "...often forgets to take her medication."
- The GP provided additional comments: "...assistance with household chores."

In her self-report, the appellant wrote that:

- She has been advised that she needs a pace maker and surgery to remove the blockage and that she should not work until that is done.
- It can take her all day to get dressed and some days that does not happen at all.

In her Request for Reconsideration, the appellant wrote that:

- She has no one to help her with her day-to-day living and there are times when she crawls to the bathroom because she is so weak.
- She has done everything she can to remain self-sufficient and self-supporting, yet her health stands in her way until she gets a defibulator. She would work now if it was an option.

In the Medical Report- Employability dated June 23, 2016, the cardiologist reported that:

- The restrictions associated with the medical conditions of severe cardiomyopathy and syncope are to "...avoid performing strenuous work, driving or operating machines."

In the advocate-prepared letter dated July 26, 2016, the GP agreed that:

- The appellant states that typically 1 to 2 times per month her motivation is very low due to her depression and these episodes last 3 to 7 consecutive days. During this time, she does not groom, shower or get dressed.
- The appellant states that she has no motivation to clean her home most days, she has vacuumed only once in 3 months, she has not cleaned her bathroom in 3 months, and she leaves dirty dishes in the sink often going mouldy.
- The appellant states she has no motivation to cook or prepare regular meals. She will make boxed noodles, eggs, cereal, or other quick foods. She should be eating a proper diet due to her heart condition but does not because of her lack of motivation.
- The combination of the appellant's conditions is severe, she has significant restrictions with her ADL's and, as a result, requires support and/or help from another person as noted.

Need for Help

In the AR, the GP did not indicate who provides the appellant with help for DLA. For help required where none is available, the GP wrote "...psychological counseling to assist with PTSD- has applied for." In the section of the AR relating to assistance provided through the use of assistive devices, the GP did not identify any of the listed items. The appellant does not have an assistance animal but she "...does have a companion dog." In her Request for Reconsideration, the appellant wrote that she is waiting for a defibrillator to be implanted and she believes it is an assistive device that "...will not only allow me to live a somewhat normal life, it will save my life."

Additional Information submitted after reconsideration

In her Notice of Appeal dated August 25, 2016, the appellant expressed her disagreement with the ministry's reconsideration decision and wrote that she feels she is disabled and the ministry is not viewing her as an individual with unique disabilities and health issues and is basing their decision on a list of rules that she may not fit in and yet she is still very disabled.

Prior to the hearing, the appellant submitted the following additional documents:

- 1) Letter dated September 29, 2016 in which the appellant's mother that:
 - She drove the appellant to the cardiologist and was in the office when she was told that

she could drop dead at any moment.

- She is the appellant's support system with driving her to doctors' appointments, grocery shopping, etc. as she is not allowed to drive and the bus system is impossible in the area she has to live in.
- She tries to keep the appellant's spirits up but she is very depressed.
- There is no money for decent food for a person with her health problems, which requires lots of fruit and vegetables and not cheap salt-laced products.

2) Letter dated September 30, 2016 from the appellant in which she wrote that:

- She had urgent surgery this week to have a defibrillator implanted. During the procedure, her ventricle was torn, they were unable to finish the procedure, and she still does not know the eventual outcome.
- She mostly just cries these days. She is wearing the same clothes she has worn for 3 days. She slept in them and she knows she should change them and wash, but she won't see anyone.
- She has given up.
- She thinks her family doctor has not given an accurate account of her condition.
- She is not able to walk up hills at all. Not one block. Her legs get a very heavy feeling and she cannot get her breath, so she is unable to shop for groceries. Even if she was able to get to the bus stop, she would not be able to pack her groceries home.
- Her mother drops off meals for her when she can but many days she is not able and she has no one else.
- She has lost touch with all her friends because she is ashamed of the way her life has turned out and she cannot do the things that they are capable of physically.
- She can no longer do any of the things she used to. To not be able to do the simple things she used to has resulted in a depression that envelopes her in a thick fog of despair.
- She was going to counseling every week and it was helping but now she has lost her ability to drive and she had to stop going.

The ministry relied on its reconsideration decision as its submission on the appeal.

Admissibility of Additional Information

The ministry did not raise an objection to the admissibility of the letters provided on behalf of the appellant. The panel considered the information provided by the appellant and her mother as corroborating the previous information from the appellant regarding the impacts of her medical conditions diagnosed in the PWD application before the ministry at reconsideration. Therefore, the panel admitted this additional information as being in support of information and records that were before the ministry at the time of the reconsideration, in accordance with Section 22(4)(b) of the *Employment and Assistance Act*.

PART F – Reasons for Panel Decision

The issue on the appeal is whether the ministry's reconsideration decision, which found that the appellant is not eligible for designation as a person with disabilities (PWD), was reasonably supported by the evidence or was a reasonable application of the applicable enactment in the circumstances of the appellant. The ministry found that the appellant does not have a severe mental or physical impairment and that her daily living activities (DLA) are not, 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, it could not be determined that 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 criteria for being designated as a PWD are set out in Section 2 of the EAPWDA as follows:

Persons with disabilities

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.

(4) The minister may rescind a designation under subsection (2).

Section 2(1) of the EAPWDR defines DLA for a person who has a severe physical or mental impairment as follows:

Definitions for Act

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;

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- (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.

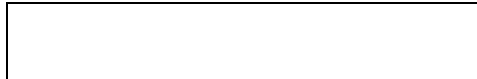
Section 2(2) of the EAPWDR defines prescribed profession as follows:

- (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.

Severe Physical Impairment

The appellant's position is that she has a severe physical impairment due to the frequent angina and weakness from congestive heart failure, cardiomyopathy, previous myocardial infarction, emphysema, and celiac artery stenosis, particularly when viewed in conjunction with her emotional problems. The appellant argued in her Request for Reconsideration that there are times when she crawls to the bathroom because she is too weak to walk and she can manage a few stairs slowly but hills are out of the question. The appellant wrote that she also has many side effects from her medications, including weakness, low energy, dizziness and diarrhea, and there are days she does not get off the toilet. In her letter dated September 30, 2016, the appellant argued that she recently had urgent surgery to have a defibulator implanted and, during the procedure, her ventricle was torn and they were unable to finish the procedure, and she still does not know the eventual outcome.

The ministry's position, as set out in the reconsideration decision, is that there is insufficient evidence to establish that the appellant has a severe physical impairment. The ministry wrote that the GP reported functional skills in the middle range of functioning, that the appellant is independent in all aspects of mobility and physical ability, and an assessment of taking 2 to 3 times longer with mobility and physical ability is not indicative of a severe impairment.



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, the ministry must consider both 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. In making its determination the ministry must consider all the relevant evidence, including that of the appellant. However, the legislation is clear that the fundamental basis for the analysis is the evidence from a prescribed professional – in this case, the appellant’s GP.

In the PR, the GP, who has known the appellant for 6 years, diagnosed the appellant with congestive heart failure, cardiomyopathy, previous myocardial infarction, emphysema, and celiac artery stenosis the appellant “...has significantly compromised exercise tolerance due to dilated cardiomyopathy and chronic heart failure, emphysema” and “...she experiences frequent angina.” In the Note dated August 4, 2016, the GP provided a diagram of a normal heart and the note “65%” and a larger heart and the note referencing the appellant and “...abnormal 20% left ventricle enlarged and weak.” In the letter dated September 29, 2016, the appellant’s mother wrote that she was in the cardiologist’s office when the appellant was told that she could drop dead at any moment. However, the GP reported in the PR that the appellant does not require any prostheses or aid for her impairment, and she can walk 1 to 2 blocks unaided, climb 2 to 5 steps unaided, lift 15 to 35 lbs., and remain seated 1 to 2 hours.

In her Request for Reconsideration, the appellant wrote that she was waiting for a defibrillator to be implanted, which she thinks is an assistive device that will not only allow her to live a somewhat normal life, but it will save her life. However, the GP did not identify any of listed assistive devices as being required by the appellant and did not refer to the ICD as an assistive device. In Section 2(1) of the EAPWDA an assistive device is defined to mean “...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,” whereas the ICD is designed to correct an abnormal heart rhythm. In her September 30, 2016 letter, the appellant wrote that she had the surgery to implant the defibrillator and, during the procedure, her ventricle was torn, they were unable to finish the procedure, and she still does not know the eventual outcome. In her Request for Reconsideration, the appellant wrote that her health stands in her way of being self-sufficient until she gets a defibrillator, and there was no further information from the GP or the cardiologist regarding her prognosis following the recent surgery to implant the defibrillator.

In the AR, the GP wrote that the appellant has “significant impairment in functional capacity” and yet the GP’s assessment is that the appellant is independently able to perform all areas of mobility and physical ability, specifically walking indoors and walking outdoors, climbing stairs, standing, lifting, and carrying and holding, and that she takes 2 to 3 times longer to perform these activities. The GP wrote that the appellant “...has difficulty carrying anything over 5 lbs. for any distance due to cardiopulmonary compromise” while the GP also assessed the appellant with a lifting capacity of 15 to 35 lbs. In her self-report, the appellant wrote that her heart condition prevents her from many activities, including walking uphill, which is all but impossible as she has to stop many times to catch her breath and sit down. In her Request for Reconsideration and her letter dated September 30, 2016, the appellant wrote that she can manage a few stairs slowly but hills are out of the question.

In the advocate-prepared letter dated July 26, 2016, the GP indicated he agreed that the combination of the appellant's conditions is severe; however, Section 2(2) of the EAPWDA requires that the ministry be satisfied that the person has either a severe mental impairment or a severe physical impairment as a result of the medical conditions.

Given the level of independent physical functioning reported by the GP, and the unknown prognosis following the appellant's recent surgery, the panel finds that the ministry reasonably determined that there is not sufficient evidence to establish that the appellant has a severe physical impairment under Section 2(2) of the EAPWDA.

Severe Mental Impairment

The appellant's position is that a severe mental impairment is established by the impacts from her depression. The appellant argued in her self-report, the appellant wrote that she has noticed a very drastic negative effect on her ability to function day-to-day as a result of her heart issues and this has resulted in bouts of severe depression. The appellant wrote that she spends days, sometimes a week or more, in bed and at one point she was hospitalized because she was suicidal. The appellant argued in her Request for Reconsideration that all of the impacts from her physical conditions are very depressing and keep her confined to her room and she does not have any social interaction because she is so depressed.

The ministry's position, as set out in the reconsideration decision, is that there is insufficient evidence to establish that the appellant has a severe mental impairment. The ministry argued that although the GP reported major impacts to cognitive and emotional functioning in the areas of emotion and motivation, he also assessed moderate impacts to two areas and minimal impacts to ten areas of functioning. The ministry argued that the GP's assessments, which include no difficulties with communication and an unspecified need for periodic support/supervision with social functioning, are indicative of a moderate as opposed to a severe impairment of mental functioning.

Panel Decision

The GP diagnosed the appellant with depression and wrote in the AR that the appellant has "frequent depressive episodes" that impact her ability to manage DLA. The GP reported in the PR that the appellant has a significant deficit in her cognitive and emotional functioning in the area of emotional disturbance and commented that she "...has had recurrent depressive episodes lasting 3 to 7 days, 1 to 2 times per month." For the section of the AR assessing impacts to cognitive and emotional functioning, the GP indicated a major impact in emotion and motivation, with moderate impacts in the areas of consciousness and motor activity. The GP wrote that the appellant "...has required hospitalization for depression, PTSD symptoms," she was previously treated with medication and "...during episodes of depression, she experiences agitation, lack of motivation, paranoia, sleep disorder." In the letter dated September 29, 2016, the appellant's mother wrote that she tries to keep the appellant's spirits up but the appellant is very depressed. For the section of the AR assessing impacts to social functioning, the GP reported that the appellant requires periodic support/supervision in all areas and that "...when she is depressed, she isolates herself." Given the information from the GP that the appellant's recurrent depressive episodes last 3 to 7 days, 1 to 2 times per month, resulting in a range of impacts from 3 to 14 days each month, the panel finds that the ministry unreasonably concluded that the GP does not describe the frequency or duration of the periodic support/supervision required with social functioning. The GP reported that the appellant has marginal functioning in both her immediate and extended social networks.

In the advocate-prepared letter dated July 26, 2016, the GP agreed that typically 1 to 2 times per month the appellant's motivation is very low due to her depression and these episodes last 3 to 7 consecutive days. Again, the GP agreed that the combination of the appellant's conditions is severe. In her letter dated September 30, 2016, the appellant wrote that she mostly just cries these days, she wears the same clothes she has worn for several days, she knows she should change them and wash, but she does not see anyone, and she has "given up." The appellant wrote that she has lost touch with all her friends because she is ashamed of the way her life has turned out and she cannot do the things that they are capable of physically. To not be able to do the simple things she used to has resulted in a depression that envelopes her in a thick fog of despair. She was going to counseling every week and it was helping but now she has lost her ability to drive and she had to stop going.

With the assessed impacts to the appellant's cognitive, emotional and social functioning as a result of her depression, which is exacerbated in depressive episodes lasting from 3 to 14 days each month as reported by the GP and elaborated by the appellant, the panel finds that the ministry's conclusion that a severe mental impairment was not established under Section 2(2) of the EAPWDA was not reasonable.

Significant restrictions in the ability to perform DLA

The appellant's position is that her physical and mental impairments severely impair her and her ability to perform DLA is significantly restricted to the point that she requires significant help and support from other people. The appellant argued in her Request for Reconsideration that she has no one to help her with her day-to-day living and there are times when she crawls to the bathroom because she is so weak. The appellant wrote that she has done everything she can to remain self-sufficient and self-supporting, yet her health stands in her way until she gets a defibrillator, and she would work now if it was an option.

The ministry's position, as set out in the reconsideration decision, is that the information from the prescribed professional does not establish that impairment significantly restricts DLA either continuously or periodically for extended periods. The ministry wrote that the GP indicated in the AR that the appellant is independent with most listed areas of DLA and for those aspects of social functioning that she requires periodic assistance from another person, he did not explain whether the assistance is required for extended periods. The ministry argued that taking 2 to 3 times longer with performing DLA is not considered indicative of a significant restriction. The ministry argued that the statements in the advocate-prepared letter are more in the nature of a self-report by the appellant since the GP is merely agreeing that the appellant has made these statements and not that they are accurate based on his assessment.

Panel Decision

Section 2(2) of the EAPWDA requires that a severe impairment directly and significantly restricts the appellant's ability to perform the prescribed 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. In circumstances where the evidence indicates that DLA are directly restricted, it is appropriate for the ministry to require evidence as to whether the restriction is continuous or periodic and – if periodic – of how frequently the restriction arises. The legislation also requires the minister to assess direct and significant restrictions of DLA in consideration of the opinion of a prescribed professional, in this case the

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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 advocate-prepared letter dated July 26, 2016, the GP agreed that the appellant has significant restrictions with her ADL's and, as a result, requires support and/or help from another person as noted in the letter. The panel finds that the ministry reasonably conducted an analysis of the entirety of the information provided by the appellant to determine whether the ministry was satisfied that the conclusion in the advocate-prepared letter was supported. In the appellant's circumstances, the GP reported in the PR that the appellant has been prescribed medications that interfere with her ability to perform DLA, and which she must take "long term." In her Request for Reconsideration, the appellant wrote that she experiences many side effects from her medications, including weakness, low energy, dizziness and diarrhea, and there are days she does not get off the toilet. In the PR and the AR, the GP reported that the appellant is independently able to move about indoors and outdoors and that she can walk 1 to 2 blocks unaided although it takes her 2 to 3 times longer. The GP indicated that the appellant is independently able to perform every task of all the listed DLA, specifically: the personal care DLA, the basic housekeeping DLA, the shopping DLA, the meals DLA, the pay rent and bills DLA, the medications DLA, and the transportation DLA.

For the personal care DLA, the GP noted that the appellant "has difficulty" performing some tasks (dressing, grooming, bathing and toileting) and has loss of appetite during episodes of depression, as well as poor motivation. In her self-report, the appellant wrote that it can take her all day to get dressed and some days that does not happen at all. In her Request for Reconsideration, the appellant wrote that she has no one to help her with her day-to-day living and there are times when she crawls to the bathroom because she is so weak. In the advocate-prepared letter dated July 26, 2016, the GP agreed that typically 1 to 2 times per month the appellant's motivation is very low due to her depression and these episodes last 3 to 7 consecutive days and during this time the appellant does not groom, shower or get dressed. For these tasks of the personal care DLA, the GP indicated a change in his original assessment in the AR from independent to requiring some assistance during the depressive episodes as the appellant does not perform them on her own.

Regarding the basic housekeeping DLA, which the GP assessed as independent, the GP also commented regarding the tasks of laundry and basic housekeeping that the appellant "...neglects these when depressed." The GP provided additional comments in the AR that the appellant requires "...assistance with household chores." In the advocate-prepared letter dated July 26, 2016, the GP agreed that the appellant has no motivation to clean her home most days, she has vacuumed only once in 3 months, she has not cleaned her bathroom in 3 months, and she leaves dirty dishes in the sink often going mouldy. While the GP initially reported that basic housekeeping is independent and neglected when depressed, he indicated a change in his assessment to a requirement for some assistance with the housekeeping DLA due to depression.

With respect to the shopping DLA, the appellant is assessed in the AR as independent with all tasks, specifically going to and from stores, reading prices and labels, making appropriate choices, paying for purchases and carrying purchases home. For the task of carrying purchases home as part of the shopping DLA, the GP indicated that the appellant takes 2 to 3 times longer. The appellant's mother wrote in her letter dated September 29, 2016 that she is the appellant's support system with driving her to doctors' appointments, grocery shopping, etc. as she is not allowed to drive and the bus

system is impossible in the area she has to live in. While the GP provided additional comments that the appellant "...lacks motivation when depressed" and "...episodes reported to be 1 to 2 per month lasting 3 to 7 days," it is not clear which tasks are impacted by the appellant's restriction with driving or a lack of motivation, or how much assistance is required.

Regarding the meals DLA, the GP commented regarding the tasks of meal planning, food preparation, cooking, and safe storage of food that the appellant is independent and "...lacks motivation when depressed and experiences lack of appetite." In the advocate-prepared letter dated July 26, 2016, the GP agreed that the appellant has no motivation to cook or prepare regular meals and she will make quick foods when she should be eating a proper diet due to her heart condition. In the appellant's letter dated September 30, 2016 she wrote that her mother drops off meals for her when she can but many days she is not able. The appellant's mother wrote in her letter dated September 29, 2016 that the appellant has no money for decent food for a person with her health problems, which requires lots of fruit and vegetables and not cheap salt-laced products. Based on the comments, it appear the lack of motivation relates to the quality of the meals that the appellant prepares and it is not clear which part of the difficulty is tied to finances. For the medication DLA, the GP assessed the appellant with all tasks, specifically filling/refilling prescriptions, taking as directed, and safe handling and storage. With the task of taking medications as directed, the GP wrote that the appellant "...often forgets to take her medication" without specifying how often this occurs or whether any assistance is required.

In her self-report, the appellant wrote that she has been advised that she needs a pace maker and surgery to remove the blockage and that she should not work until that is done. In her Request for Reconsideration, the appellant wrote that she has done everything she can to remain self-sufficient and self-supporting, yet her health stands in her way until she gets a defibulator, and she would work if that was an option. In the Medical Report- Employability dated June 23, 2016, the cardiologist reported that the restrictions associated with the appellant's medical conditions of severe cardiomyopathy and syncope are to "...avoid performing strenuous work, driving or operating machines," which does not state that all types of employment must be avoided. As for finding work and/or working, the panel notes that employability is not a criterion in section 2(2) of the EAPWDA nor is it listed among the prescribed daily living activities in section 2 of the EAPWDR.

With respect to the two DLA that are specific to mental impairment – make decisions about personal activities, care or finances (decision making), and relate to, communicate or interact with others effectively (social functioning), the panel finds that the ministry reasonably concluded that there is insufficient evidence to establish that the appellant is significantly restricted in either. Regarding the decision making DLA, the GP reported in the AR that the appellant independently manages most decision-making components of DLA, specifically: personal care (regulate diet), shopping (making appropriate choices and paying for purchases), meals (safe storage of food), "pay rent and bills" (including budgeting), medications (taking as directed and safe handling and storage), and transportation (using transit schedules and arranging transportation). Although the GP reported that the appellant requires periodic support/supervision with making appropriate social decisions, his comment that "when she is depressed, she isolates herself" did not provide any explanation or description to allow the ministry to determine the nature of the periodic support/supervision required with making appropriate social decisions.

Regarding the DLA of social functioning, the GP assessed the appellant in the AR as requiring periodic support/supervision with developing and maintaining relationships and interacting

appropriately with others, as well as with securing assistance from others, with marginal functioning in both her immediate and extended social networks. While the GP commented elsewhere in the AR that the appellant "...has had recurrent depressive episodes lasting 3 to 7 days, 1 to 2 times per month," this does not explain or describe the particular support/supervision required with these aspects of social functioning in order to determine that the restrictions in this DLA are "significant." The GP further reported in the PR and the AR that the appellant has no difficulties with communication, with a good ability to communicate in all areas.

Given the initial assessment of independence in all DLA with the exception of social functioning and a lack of description and explanation by the GP in his narrative regarding the degree of assistance required, as well as the lack of evidence to establish significant restrictions with the two DLA specific to mental impairment, the panel finds that the ministry reasonably concluded that there is not enough evidence from the prescribed professional to establish that the appellant's impairments significantly restrict her ability to manage her DLA either continuously or periodically for extended periods, thereby not satisfying the legislative criterion of Section 2(2)(b)(i) of the EAPWDA.

Help to perform DLA

The appellant's position is that she requires the significant assistance of another person to perform DLA, specifically counseling by professions and help from her mother.

The ministry's position, as set out in the reconsideration decision, is that because it has not been established that DLA are significantly restricted, it cannot be determined that significant help is required from other persons or an assistive device.

Panel Decision

Section 2(2)(b)(ii) of the EAPWDA requires that, as a result of direct and significant restrictions in the ability to perform DLA, a person requires help to perform those activities. 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.

In the AR, the GP did not indicate who provides the appellant with help for DLA. For help required where none is available, the GP wrote "...psychological counseling to assist with PTSD- has applied for" and, in the section of the AR relating to assistance provided through the use of assistive devices, the GP did not identify any of the listed items. The appellant does not have an assistance animal but she "...does have a companion dog."

The panel finds that the ministry reasonably determined that as direct and significant restrictions in the appellant's ability to perform DLA have not been established, it cannot be determined that the appellant requires help to perform DLA as a result of those restrictions, as defined by Section 2(3)(b) of the EAPWDA.

Conclusion

Having reviewed and considered all of the evidence and relevant legislation, the panel finds that the ministry's reconsideration decision, which determined that the appellant was not eligible for PWD designation under Section 2 of the EAPWDA, was reasonably supported by the evidence and therefore confirms the decision. The appellant's appeal, therefore, is not successful.