

PART C – Decision under Appeal

The decision under appeal is the Ministry of Social Development and Social Innovation (the ministry) reconsideration decision dated September 15, 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 4, 2016, a physician report (PR) and an assessor report (AR) both dated April 25, 2016 and completed by a general practitioner (GP) who has known the appellant since July 2008.

The ministry also had before it the following additional documents:

- 1) Undated letter from the appellant;
- 2) Undated sketches of the front and back sides of a body with markings to show pain sites;
- 3) Letter from Work Safe BC dated May 22, 2009;
- 4) Note from the GP who completed the PR and the AR dated February 5, 2013;
- 5) Fitness for Work Assessment dated February 25, 2013;
- 6) Note from the GP who completed the PR and the AR dated July 30, 2013;
- 7) Lenses Prescription dated September 14, 2013;
- 8) Functional Abilities Form for Safe & Timely Return to Work for an accident on June 9, 2014;
- 9) Lenses Prescription dated July 6, 2014;
- 10) Letter from a physician dated July 30, 2014;
- 11) Prescription for physiotherapy dated August 10, 2014;
- 12) Letter from Work Safe BC dated August 12, 2014;
- 13) Note from a physician dated August 17, 2014;
- 14) Optometry appointment reminder for October 19, 2014;
- 15) Medical Imaging Report for an ultrasound of the left shoulder dated January 12, 2015;
- 16) Prescription for an anti inflammatory pain medication dated August 24, 2015;
- 17) Letter from the GP who completed the PR and the AR dated August 27, 2015;
- 18) Letter from Work Safe BC dated August 28, 2015;
- 19) Medical Imaging Report for the appellant's left shoulder dated August 29, 2015;
- 20) Prescriptions for physiotherapy and for pain medications dated August 29, 2015;
- 21) Letter from Work Safe BC dated September 15, 2015;
- 22) Medical Imaging Report for an MRI of the appellant's left shoulder dated September 29, 2015;
- 23) Record of Employment dated October 20, 2015;
- 24) Letter from the appellant dated December 10, 2015;
- 25) Letter from the GP who completed the PR and the AR dated January 6, 2016;
- 26) Medical Imaging Report for the appellant's right foot dated February 4, 2016;
- 27) Medical Imaging Report of the appellant's cervical spine dated February 29, 2016;
- 28) Medical Imaging Report of the appellant's thoracic spine dated May 2, 2016;
- 29) Prescription for pain medication dated August 2, 2016;
- 30) Medical Imaging Report of the appellant's thoracic and lumbar spine dated September 1, 2016;
- 31) Undated notes of "Eye Doctor visited for eye problem" and future appointments in November 2016; and,
- 32) Request for Reconsideration dated August 30, 2016.

Diagnoses

In the PR, the GP diagnosed the appellant with bilateral calcific shoulder tendonitis, mostly supraspinatus on the left more than right with an onset in 2012, fibromyalgia, osteoarthritis left acromioclavicular (AC) joint with an onset in 2013, chronic tendonitis of the fifth metatarsal and

calcaneal spur right foot, with an onset in 2013, and residual abdominal pain due to adhesions after bilateral oophorectomy and previous hysterectomy. There is no diagnosis provided of a mental disorder. 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 "...severe tendonitis of both shoulders with adhesive capsulitis, fibromyalgia, chronic tendonitis in feet, osteoarthritis of lumbar spine and left AC joint."

Physical Impairment

In the PR and AR, the GP reported that:

- In terms of health history, "...since about 2012/2013 she has developed tendonitis of both shoulders left more than right (severe supraspinatus tendonitis left shoulder and adhesive capsulitis left with mild infraspinatus calcific tendonitis left. She has overuse syndrome with pain in right shoulder and neck. She has suffered from fibromyalgia, chronic lumbar pain, pain in her feet, visual concerns and problems with abdominal pain possibly related to adhesions from surgery. She is unable to lift weights, perform any above-shoulder activity in a sustained manner and is managing ADL's at her own pace and with some difficulty. A work injury in June 2014 has aggravated her shoulders. As she is only trained in manual labour and with limited education, she is unable to pursue gainful occupation. I believe that her disability is severe and prolonged. "
- The appellant does not require any prostheses or aids for her impairment.
- For functional skills, the appellant can walk 1 to 2 blocks unaided, climb 5 or more steps unaided, remain seated less than 1 hour, and can do no lifting.
- The appellant is independently able to perform her mobility, specifically walking indoors and walking outdoors, and walking outdoors takes her significantly longer, with a comment that this is "...affected by cold weather, she usually has to avoid cold or suffer aggravation." The appellant requires some assistance with her physical ability, specifically periodic assistance from another person with climbing stairs, which also takes her longer, and with standing, with a comment that "...standing is limited by neck and back pain." The appellant requires continuous assistance from another person with lifting and carrying and holding, with the comment that "...she cannot lift and/or carry weights. Minimal groceries for a short time."
- 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.

In her self-report, the appellant wrote that:

- Her conditions include the following: calcification, tendonitis, osteoarthritis, complication from injuries (coccyx pain, back pain), complications from surgeries (bladder and urinal problem), constant eye socket pain (eye get sore, bloody, vision fluctuates), dizziness (sudden dizziness occurs), extreme stress from hardship (financial).
- She lost the capacity not only to do professional physical work but also it has made it hard to do her day-to-day normal life work too.
- Every hand movement hurts, gives sharp pain sometimes in her arm muscles, sometimes in her shoulder and arm joints and sometimes in her neck muscle. The neck and shoulder muscle problem makes her suddenly dizzy. Constant neck muscle pain makes her restless.
- Several surgeries and injuries made her body very weak.
- She has to bear these conditions for an uncertain period or for the rest of her life.

In her August 30, 2016 letter, the appellant wrote that:

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- Her medical condition has deteriorated and is continuing to deteriorate since 2008. She is suffering various kinds of difficulties in one body.
 - She has gone through all kinds of treatments under professional medical doctors, physiotherapists, and acupuncturists for years.
 - The problem in her thoracic spine with bone formation, rib pain, and nerve pain has made her medical condition worse. She lost normal body capacity of longer walking, sitting, standing in one go. Her condition makes her restless, she feels constant pain, her body shakes and twists to the right side and sudden imbalance occurs. She has problems breathing and chest and rib discomfort. The pain and discomfort bothers her at night and she has difficulty sleeping.
 - The problem in her cervical spine causes neck and nerve pain, which goes to her arms and hands and fingers. Her neck movement is limited. The neck nerve problem goes straight to her head scale and constant “pocking” and discomfort makes her very vulnerable. She feels dizziness and drowsiness. She feels that at anytime her neck bone can crack. Sometimes a severe headache comes on the right forehead side and stops her doing things.
 - Problems in both shoulders make her hands too weak to handle weight, hold weight. It tightens her shoulder muscles, arm muscles and sharp pain and discomfort spreads up to her fingers.
 - The problem in her right foot and leg includes both knees and her right thigh muscle and her right foot. Her muscle tightens and makes walking difficult and it is hard to keep her body balance.
 - The problem on her right head scale is under observation. She explained her problem to the doctors and it is still in progress. Her symptoms are constant discomfort on head scale, severe nerve pain and pocking on one spot on the right side head scale, sudden dizziness and drowsiness and sometimes her body shakes.
 - Her eye problem include eye socket pain, eye socket muscles and nerve discomfort, eye solenoids, blood clots (related to hand movements, light sensitive, heat sensitive, unknown allergy sensitive, dust and powder sensitive, vision tiredness restricts reading capacity and eye pain).
 - Intestinal bowel and bladder problem resulted from complications from four surgeries.

In the Medical Imaging Reports, the diagnoses set out in the PR that relate to her left shoulder, spine and right foot are confirmed, with an impression of degenerative disc disease in the lumbar and thoracic spine as of September 1, 2016.

The various documents since May 2009 show a history of work place injuries and notes from physicians recommending medical leaves of absence or modified duties/ light duties at work as a result of pain and fatigue.

Mental Impairment

In the PR and AR, the GP reported:

- In terms of health history, “...her inability to work is causing her mood and self-esteem to be low.”
- The appellant has no difficulties with communication.
- The appellant has significant deficits in her cognitive and emotional functioning in the areas of memory, emotional disturbance, motivation, and attention or sustained concentration. The GP did not provide any comments.
- The appellant has a good ability to communicate in most areas, specifically with speaking,

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reading, and hearing, with a comment regarding English being her second language. The appellant has a satisfactory ability with writing, with a comment that it is "...very slow but satisfactory."

- For the section of the AR assessing impacts to cognitive and emotional functioning, the GP indicated no major impacts, with moderate impacts in the areas of bodily functions (sleep disturbance emphasized), emotion, attention/concentration, memory and motivation. There is a minimal impact assessed in the area of executive and no impacts in the remaining 7 areas of functioning. The GP wrote that the appellant has "...insomnia and inability to experience refreshing sleep on account of shoulder, neck and back pain; she has difficulty getting comfortable. Depression is situational- alone, isolated, unable to work and fears for her future support systems and lack thereof."
- For the section of the AR assessing impacts to social functioning, the GP reported that the appellant is independent with making appropriate social decisions and requires periodic support/supervision with developing and maintaining relationships, interacting appropriately with others, and securing assistance from others. She requires continuous support/supervision with dealing appropriately with unexpected demands. The GP provided no comments to explain or describe the need for support/supervision.
- The appellant has good functioning in both her immediate and extended social networks.
- The additional comments provided by the GP are: "...transit bus drivers can assist to get her in and out of their vehicles."

In her self-report, the appellant wrote that:

- She cannot concentrate for a long period. Her memory is not good anymore.
- Her reaction time is very slow.
- She feels extreme stress.

In her August 30, 2016 letter, the appellant wrote that she cannot concentrate, she is facing poor memory, it is very hard to learn new things and memorize new things.

Daily Living Activities (DLA)

In the PR and AR, the GP indicated that:

- The appellant has not been prescribed any medication and/or treatment that interferes with her ability to perform DLA.
- The appellant is independently able to move about indoors and outdoors although it takes her longer when walking outdoors.
- The appellant is independently able to perform every task of the DLA medications, specifically filling/refilling prescriptions, taking as directed and safe handling and storage.
- The appellant is independently able to perform every task of the DLA "pay rent and bills" and she also requires periodic assistance with banking, budgeting and paying rent and bills, with the comment that "...her daughter has to help at times."
- For the personal care DLA, the appellant is independent with some tasks, specifically toileting, feeding self, regulate diet, transfers in/out of bed, and transfers on/off of chair, although transfers take the appellant longer. The appellant requires periodic assistance and takes longer with some tasks, namely dressing, grooming, and bathing, and the GP wrote: "is able to do ADL's slowly by pacing herself. Needs help to wash hair, scrub her back, etc. from her daughter."
- Regarding the basic housekeeping DLA, the appellant requires continuous assistance from

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another person with both tasks and also takes significantly longer than typical. The GP commented regarding the tasks of laundry and basic housekeeping that she "...has reduced frequency of such chores."

- For the shopping DLA, the appellant is independent with most tasks, specifically going to and from stores, reading prices and labels, making appropriate choices, and paying for purchases. The appellant requires continuous assistance from another person with the task of carrying purchases home and the GP commented that the appellant "...requires her daughter's help for carrying her purchases."
- In the additional comments, the GP wrote that "...her daughter and her neighbours have to pitch in frequently to help her."
- Regarding the meals DLA, the appellant is independent with safe storage of food, requires periodic assistance with meal planning and takes significantly longer and requires continuous assistance with food preparation and cooking, which both take her longer. The GP commented regarding these tasks that she "...cooks larger batches with help from her daughter or friends and freezes portions. Simple meals only."
- For the transportation DLA, the appellant is independent with using public transit (note: "...has to plan and pace herself") and using transit schedules and arranging transportation and these tasks take her longer. The task of getting in and out of a vehicle takes the appellant longer (note: "...with difficulty").

In her self-report, the appellant wrote that:

- She lost the capacity not only to do professional physical work but also it has made it hard to do her day-to-day normal life work too. Even writing, opening the door, wearing clothes, combing her hair, holding goods, and moving stuff is difficult and painful.
- She cannot do repetitive work for a long time.
- With her medical condition, if she pushes herself at work, which she did before, her eye becomes sore, blood comes in her eyes, she loses stable vision and if she continues with her sore/blood clotted eye it reacts to dust or any kind of powder or cardboard dust.

Need for Help

In the AR, the GP indicated that help required for DLA is provided by family and friends. 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.

In her August 30, 2016 letter, the appellant wrote that she has starting using a "rollator" for walking safety, to avoid falling and further damage. She wrote that in the near future she may need a neck support or neck brace or something that will be helpful for neck and spine and nerve support.

Additional Information submitted after reconsideration

In her Notice of Appeal dated September 21, 2016, the appellant expressed her disagreement with the ministry's reconsideration decision and wrote that it is a total injustice to her and she is submitting another Hip-Right X-Ray report. In an attached letter, the appellant wrote that:

- She has genuine constant, prolonged, continuous problems.
- On top of this, her liver problem makes her condition worse.
- She is schedule for a CT scan on December 5, 2016.
- Calcification has spread in her body. Her bones are vulnerable (neck, spine, hip).
- Severe tendonitis creates sudden and severe muscle pulls.

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- Shoulder joint problem creates sudden, unpredictable left hand lock and because she has more problems on the right side, her body balance is tough and complicated.
 - Her right thigh muscle pulls and her right cup muscle pulls.
 - She cannot do repetitive body bending, standing, and sitting. Lying is always a discomfort and painful.
 - She cannot hold or move heavy things.

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

- 1) Medical Imaging Report for the appellant's right hip dated September 6, 2016 that indicated "...mild right sacroiliitis. Moderate osteoarthritis of the hip. Chronic calcific trochanteric tendinitis."
- 2) Prescription dated September 20, 2016 for physiotherapy for thoracolumbar DDD [degenerative disc disease] and right hip arthritis.

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 in her Notice of Appeal and attached letter, as well as the Medical Report and Prescription, 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, with the exception of the appellant's reference in her letter to a 'liver problem.' 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*. The panel did not admit the information from the appellant regarding a liver problem as this was not diagnosed or referred to in the information before the ministry at reconsideration.

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:

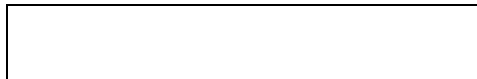
Definitions for Act

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;

(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.

The positions of the parties

Appellant's position

The appellant's position is that she has severe physical and mental impairments as her medical conditions include calcification, tendonitis, osteoarthritis, complication from injuries (coccyx pain, back pain), complications from surgeries (bladder and urinal problem), constant eye socket pain (eye get sore, bloody, vision fluctuates), dizziness (sudden dizziness occurs), and right hip arthritis, extreme stress from hardship (financial), and her condition is getting worse. The appellant wrote that calcification has spread in her body, her bones are vulnerable (neck, spine, hip), severe tendonitis creates sudden and severe muscle pulls and she cannot do repetitive body bending, standing, and sitting. The appellant wrote that lying is always a discomfort and painful and she cannot hold or move heavy things. The appellant's position is that her severe physical and mental impairments directly and significantly restrict her ability to perform DLA on an ongoing basis and her daughter and neighbours must help her with many day-to-day activities.

Ministry's position

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 or mental impairment as required by Section 2(2)

of the EAPWDA. The ministry wrote that the GP indicated that the appellant has functional skills in the middle range, with the exception of lifting weights in performing any above-shoulder activity, and that there is insufficient information regarding the extent of periodic assistance needed with climbing stairs and standing. The ministry wrote that although the GP indicated significant deficits with cognitive and emotional functioning in the areas of memory, emotional disturbance, motivation and attention/sustained concentration, he reported moderate impacts to daily functioning in these areas. The ministry wrote that the assessment of the appellant's social functioning provided by the GP does not describe the frequency or duration of the periodic support/supervision required with some aspects and the GP also indicated good functioning in both the appellant's immediate and extended social networks.

As to DLA, the ministry's position is that the information from the prescribed professional does not establish that the appellant's impairment significantly restricts her DLA either continuously or periodically for extended periods of time. The ministry wrote that the GP did not provide detail of how much longer than typical it takes the appellant with some tasks of DLA or describe the frequency or duration of the periodic assistance required from another person with other tasks of DLA. The ministry's position is that because it has not been established that DLA are significantly restricted, it cannot be determined that significant help is required.

Panel Decision

Severe Physical Impairment

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 since July 2008 diagnosed the appellant with bilateral calcific shoulder tendonitis on the left more than right, osteoarthritis left AC joint, chronic tendonitis in right foot, fibromyalgia, and residual abdominal pain. In the health history, the GP wrote that the appellant has tendonitis of both shoulders, on the left more than the right, with severe supraspinatus tendonitis in her left shoulder and overuse syndrome with pain in her right shoulder and neck. The GP wrote that the appellant has fibromyalgia, with chronic lumbar pain, pain in her feet, visual concerns and problems with abdominal pain possibly related to adhesions from previous surgery. The GP indicated that, as a result, the appellant is unable to lift weights, perform any above-shoulder activity in a sustained manner and "...is managing ADL's at her own pace and with some difficulty," and "...is unable to pursue gainful occupation" and he "...believe(s) that her disability is severe and prolonged." In the most recent letter, dated January 6, 2016, the GP who completed the PR and the AR wrote that the appellant is "...medically unfit to work."

In her self-report, the appellant described her condition to include calcification, tendonitis, osteoarthritis, complication from injuries (coccyx pain, back pain), complications from surgeries (bladder and urinal problem), constant eye socket pain (eye get sore, bloody, vision fluctuates),

dizziness (sudden dizziness occurs), and extreme stress from hardship (financial), resulting in loss of the capacity "...not only to do professional physical work but also it has made it hard to do [her] day-to-day normal life work too." Although the appellant argued that the combination of her many medical conditions is severe; 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. The panel finds that the ministry reasonably concluded that the GP and the appellant emphasized her inability to work and 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.

In her August 30, 2016 letter, the appellant wrote that her medical condition has deteriorated since 2008 and she is suffering various kinds of difficulties in one body. She wrote that the problem in her thoracic spine causes rib and nerve pain and she lost the normal body capacity of longer walking, sitting, standing in one go. The problem in her cervical spine causes neck and nerve pain, which goes to her arms and hands and fingers, and her neck movement is limited. The appellant wrote that problems in both shoulders make her hands too weak to handle weight, hold weight, and the problem in her right foot and leg includes both knees and her right thigh muscle and her muscle tightens and makes walking difficult and it is hard to keep her body balance. The appellant wrote that the problem on her right head scale is under observation and her eye problem includes eye socket pain, eye socket muscles and nerve discomfort, eye solenoids and blood clots related to hand movements and various sensitivities. The appellant also wrote that she has intestinal bowel and bladder problem resulted from complications from four surgeries. In the Medical Imaging Report dated September 6, 2016 submitted by the appellant prior to the hearing, there is a finding of "mild" right sacroiliitis and "moderate" osteoarthritis of the hip as well as "chronic" tendinitis; the appellant wrote that further tests are ongoing as she is schedule for a CT scan on December 5, 2016.

In her August 30, 2016 letter, the appellant also wrote that she has starting using a "rollator" to avoid falling and further damage and, in the near future, she may need a neck support or neck brace or something that will be helpful for neck and spine and nerve support. However, when assessing functional skills in the PR, the GP reported that the appellant does not require any prostheses or aid for her impairment, and she can walk 1 to 2 blocks unaided, climb 5 or more steps unaided, remain seated less than 1 hour, with no lifting. In the AR, the GP reported that the appellant is independently able to perform her mobility, specifically walking indoors and walking outdoors. While the GP indicated that the appellant requires periodic assistance from another person with climbing stairs, which also takes her longer, the GP reported in the PR that she is able to climb 5 or more steps unaided, or without the assistance of another person or an assistive device. For lifting and carrying and holding, the GP indicated that the appellant requires continuous assistance from another person with the comment that "...she cannot lift and/or carry weights." In the appellant's letter attached with her Notice of Appeal, she wrote that she "...cannot hold or move heavy things," which is consistent with the comment by the GP in the AR "...minimal groceries for a short time." With the comment noted by the GP in the PR that the appellant cannot perform above-shoulder activity in a sustained manner, the appellant may have lifting capacity for lighter weights on her right side, which the GP referred to as having "overuse syndrome."

Given the emphasis by the GP and the appellant on her inability to work, the level of overall independent physical functioning reported by the GP, with the exception of a restriction in lifting and carrying/holding heavy weights, 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

Given an opportunity in the diagnoses section of the PR, the GP did not provide a definitive diagnosis of a mental disorder, but noted in the health history that the "...inability to work is causing her mood and self-esteem to be low." In her self-report, the appellant wrote that she cannot concentrate for a long period, her memory is not good anymore, her reaction time is very slow, and she feels extreme stress. In her August 30, 2016 letter, the appellant wrote that she cannot concentrate, she is facing poor memory and it is very hard to learn new things. The GP reported in the PR that the appellant has significant deficits in her cognitive and emotional functioning in the areas of memory, emotional disturbance, motivation, and attention or sustained concentration; however, the GP indicated in the AR there are no major impacts to cognitive and emotional functioning and the impacts in the areas of significant deficit, with the addition of bodily functions (sleep disturbance emphasized), are moderate. The GP wrote that the appellant has "...insomnia and inability to experience refreshing sleep on account of shoulder, neck and back pain; she has difficulty getting comfortable. Depression is situational- alone, isolated, unable to work and fears for her future support systems and lack thereof."

In assessing impacts to social functioning, the GP reported in the AR that the appellant is independent with making appropriate social decisions. While the GP indicated that the appellant requires periodic support/supervision with developing and maintaining relationships, interacting appropriately with others, and securing assistance from others and she requires continuous support/supervision with dealing appropriately with unexpected demands, the GP provided no comments to explain or describe the need for support/supervision. The GP also assessed the appellant with good functioning in both her immediate and extended social networks and she has no difficulties with communication.

In the absence of a definitive diagnosis and with the emphasis by the GP on the situational impact from the appellant's physical impairment and inability to work, and the lack of evidence of significant impacts to the appellant's cognitive, emotional, and social functioning, the panel finds that the ministry reasonably determined that a severe mental impairment was not established under Section 2(2) of the EAPWDA.

Significant restrictions in the ability to perform DLA

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 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 appellant's circumstances, the GP reported that she has not been prescribed any medication and/or treatment that interferes with her ability to perform DLA and the GP indicated that the appellant is independently able to move about indoors and outdoors. The appellant is also independently able to perform every task of the DLA medications. While the GP reported that the

appellant is independently able to perform every task of the DLA “pay rent and bills,” the GP also assessed her as requiring periodic assistance with banking, budgeting and paying rent and bills, as “...her daughter has to help at times.” For the personal care DLA, the appellant is independent with many tasks and the appellant requires periodic assistance and takes longer with some tasks, namely dressing, grooming, and bathing, and the GP wrote: “...is able to do ADL’s slowly by pacing herself. Needs help to wash hair, scrub her back, etc. from her daughter.” The panel finds that the ministry reasonably concluded that this assessment of independence and requiring assistance with these tasks of “pay rent and bills” and personal care is not entirely consistent and there is not sufficient information to allow the ministry to determine that the periodic assistance is required for extended periods of time. For the transportation DLA, the appellant is assessed as being independent with using public transit and using transit schedules and arranging transportation and these tasks, along with getting in and out of a vehicle, take the appellant longer. The GP noted that getting in and out of a vehicle is performed “...with difficulty” but does not describe how much longer than typical it takes the appellant.

For the shopping DLA, the appellant is independent with most tasks, specifically going to and from stores, reading prices and labels, making appropriate choices, and paying for purchases, and she requires continuous assistance from another person with the task of carrying purchases home as the appellant “...requires her daughter’s help for carrying her purchases.” As the GP also noted in the AR “minimal groceries for a short time,” the appellant may retain some lifting capacity for light weights on the right side, but this is not clear from the evidence. Regarding the basic housekeeping DLA, the appellant requires continuous assistance from another person with both tasks and also takes significantly longer than typical and she “...has reduced frequency of such chores.” Regarding the meals DLA, the appellant is independent with safe storage of food, requires periodic assistance with meal planning and takes significantly longer and requires continuous assistance with food preparation and cooking, which both take her longer. The GP commented regarding these tasks that the appellant “...cooks larger batches with help from her daughter or friends and freezes portions. Simple meals only.” The panel finds that the extent of the assistance required by the appellant is not made clear as the appellant may be independent with “simple meals only.”

In her self-report, the appellant wrote that she lost the capacity not only to do professional physical work but also it has made it hard to do her day-to-day normal life work too. Even writing, opening the door, wearing clothes, combing her hair, holding goods, and moving stuff is difficult and painful. The appellant wrote that she cannot do repetitive work for a long time and, with her medical condition, if she pushes herself at work, which she did before, her eye becomes sore, blood comes in her eyes, she loses stable vision. In the PR, the GP wrote that the appellant “...is managing ADL’s at her own pace and with some difficulty” and that “...a work injury in June 2014 had aggravated her shoulders” and, with training only in manual labour, “...she is unable to pursue gainful occupation.” As previously noted, 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.

Given the summary by the GP that the appellant is managing her DLA “at her own pace,” as well as a focus on the appellant’s inability to work and a lack of consistency between assessments and the description and explanation by the GP regarding the extent of assistance required with some tasks of DLA, 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

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 indicated that help required for DLA is provided by family and friends and "...her daughter and her neighbours have to pitch in frequently to help her." In her August 30, 2016 letter, the appellant wrote that she has starting using a "rollator" to avoid falling and further damage, and she may need a neck support or neck brace in the near future; however, 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 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.