

PART C – Decision under Appeal

The decision under appeal is the Ministry of Social Development and Social Innovation (the “ministry”) reconsideration decision of September 1, 2016, which found that the appellant did not meet three of five statutory requirements of section 2 of the *Employment and Assistance for Persons With Disabilities Act* (“EAPWDA”) for designation as a person with disabilities (“PWD”). The ministry found that the appellant met the age requirement and that in the opinion of a medical practitioner the appellant’s impairment is likely to continue for at least two years. However, the ministry was not satisfied that:

- the evidence establishes that the appellant has a severe physical or mental impairment;
- the appellant’s daily living activities (“DLA”) are, in the opinion of a prescribed professional, directly and significantly restricted either continuously or periodically for extended periods; and that
- as a result of those restrictions, the appellant requires the significant help or supervision of another person, an assistive device, or the services of an assistance animal.

PART D – Relevant Legislation

EAPWDA, section 2

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

PART E – Summary of Facts

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

- Outpatient Clinic Note from an internal medicine specialist dated January 10, 2013 (the “Clinic Note”)
- Letter from a gastroenterologist dated March 13, 2013 (the “gastroenterologist”)
- History and Physical Note from a gynecologist dated March 13, 2015 (the “gynecologist”)
- Letter from a general surgeon dated April 7, 2015 (the “surgeon”)
- Letter from a hospital professor dated March 3, 2016 (the “Internal Medicine Specialist”)
- The appellant’s PWD application form consisting of the appellant’s self-report form dated April 7, 2016 (“SR”), a physician’s report (“PR”) and an assessor’s report (“AR”) both completed by the appellant’s general practitioner (the “physician”) dated April 12, 2016.
- Chart Summary printed April 8, 2016 with summary of appointments with the physician from September 21, 2010 to April 8, 2016
- Questionnaire completed by the physician dated August 4, 2016 (the “Questionnaire”)
- Letter from the appellant’s friend dated August 4, 2016 (“Friend A”)
- Email from the appellant’s friend dated August 8, 2016 (“Friend B”)
- The appellant’s Request for Reconsideration (“RFR”) form dated August 22, 2016 with attached submission from the appellant’s advocate

Diagnoses

- The Clinic Note indicates that the appellant was diagnosed with central sensitization and that the conditions of IBS, fibromyalgia, interstitial cystitis, chronic fatigue, and migraines are all components of this syndrome spectrum.
- In his letter dated March 13, 2013 the gastroenterologist indicates that the appellant was diagnosed with chronic dyspepsia, constipation, and IBS.
- In the History and Physical Note the gynecologist indicates that the appellant was diagnosed with generalized hypersensitivity syndrome and had a previous laparoscopic total colectomy in the past because of IBS. The gynecologist indicates that the appellant also had reflux surgery in the form of a laparoscopic fundoplication which was complicated by a postoperative abscess which caused a significant degree of distention and bowel obstruction that had to be dealt with by a mini-laparotomy.
- In the PR the physician diagnosed the appellant with central sensitization syndrome/fibromyalgia, (date of onset January 2013), peritonitis (date of onset July 2012), chronic pancreatitis, vitamin B12 deficiency, degeneration of shoulder joint secondary to a motor vehicle accident, hemorrhoids, irritable bowel syndrome (IBS), hiatus hernia, keloid scars, increased lipids, and post traumatic stress disorder (PTSD). In the PR and the AR the physician indicates that he has been the appellant’s general practitioner for 6 years and has seen the appellant two to ten times in the past 12 months.

Physical Impairment

- The gastroenterologist indicates that the appellant has chronic abdominal pain.
- The Clinic Note indicates that the appellant complained of symptoms including fatigue, post-

exertional malaise, sleep dysfunction, pain, decreased sensation, autonomic manifestations including lightheadedness, neuroendocrine manifestations including temperature fluctuation, and immune manifestations including previous tender lymph nodes and flu-like symptoms which have been persistent for many years

- In his letter dated April 7, 2015, the surgeon indicates that the appellant has ongoing issues with pelvic pain and will experience pain with her bowel movements and rectal bleeding but has not had any obstructive symptoms. The surgeon indicates that he discussed the potential risks of surgery and that the appellant elected to proceed with a laparoscopic hysterectomy to address her history of endometriosis and ongoing pelvic pain.
- In the Health History section of the PR, the physician indicates that the appellant has a significant medical history as documented in the Chart Summary. The physician indicates that the appellant suffers from “++ chronic fatigue” and pain secondary to her central sensitization syndrome. The physician indicates that the appellant is currently on opioid narcotics for pain. He also indicates that she is able to work part time but only selectively and cannot maintain at least 70% of full time job as a nurse. The physician indicates that the appellant is 5’1” and weighs 68 kg.
- In terms of physical functioning, the physician reported in the PR that the appellant can walk 2 to 4 blocks unaided on a flat surface, can climb 5+ steps unaided, can lift 5 to 15 pounds and has no limitations with respect to remaining seated.
- In the PR, Part F – Additional Comments, the physician indicates that the appellant has a very complicated history which is well documented by leading specialists in the field of fibromyalgia and central sensitization syndrome.
- In the AR the physician reports that the appellant is independent with walking indoors, climbing stairs and standing but requires periodic assistance from another person with lifting and carrying and holding, explaining that the appellant does have significant abdominal and shoulder pain. The physician comments that if objects are too heavy or if she must stay in a static position for a long time, this causes pain, fatigue and muscle fatigue, noting that the appellant works as a nurse.
- The Chart Summary indicates that the appellant has seen the physician for central sensitization syndrome, fibromyalgia, peritonitis, chronic pancreatitis, vitamin B12 deficiency, degeneration of shoulder joint secondary to a motor vehicle accident, hemorrhoids, irritable bowel syndrome (IBS), hiatus hernia, keloid scars, increased lipids, and vagus nerve damage.
- In the SR the appellant states that her chronic fatigue leaves her exhausted all the time and her fibromyalgia causes constant widespread pain in her muscles that never goes away. She states that her body aches all night which hinders her ability to sleep. The appellant states that her interstitial cystitis is debilitating and that the cramps makes it impossible to walk or function when it is bad and that she cannot leave her house and spends all of the time sitting on a heating pad or physically on the toilet. She states that she urinates often (“like every 3 seconds”) and cannot stop for hours to days and that she urinates blood and no pain killers can ease this excruciating pain. She reports that her migraines are so bad that she sometimes cannot open her eyes and the only thing that helps is lying in a dark room. She states that the migraines sometimes only last a day but sometimes go on for days with associated nausea and dizziness. The appellant states that her IBS is one of the worst problems she has as just drinking water or eating the smallest thing causes her bowel and stomach problems with unbearable pain resulting in inability to walk or even stand at times, lasting 30 minutes to several days at a time. She states that her abdomen can swell to five times its size and causes her to end up on the toilet for days on end with severe constipation

or diarrhea. The appellant reports that she has chronic abdominal pain and although she takes a fair amount of painkillers, sometimes they do not come close to touching this pain. The appellant states that every time she leaves the house she has to wear a stomach brace to help with the swelling and pain and it is very uncomfortable and restricting.

- In the Questionnaire the physician indicates that the appellant has significant chronic pain secondary to fibromyalgia and difficulty coping with pain.
- Friend B states that she has known the appellant for 6 years. Friend B indicates that the appellant is suffering and takes a lot of drugs to cope with her illness, that she is unable to work full time and has constant medical appointments.

Mental Impairment

- The Clinic Note indicates that in the screen for depression, the appellant reported difficulty sleeping, some decrease in interest, decreased energy but had maintained activity, decreased concentration, decreased appetite, some psychomotor agitations and thoughts of suicide.
- In the Functional Skills section of the PR, the physician indicates that the appellant does not have any difficulties with communication.
- In the PR the physician indicates that the appellant has significant deficits with cognitive and emotional function in the area of emotional disturbance, commenting that the appellant has PTSD from a childhood assault.
- In the AR the physician indicates that the appellant's ability to communicate in all areas is good. For cognitive and emotional functioning, the physician indicates that the appellant has moderate impact to consciousness, emotion, attention/concentration, memory, motivation and other emotional or mental problems, minimal impact to bodily functions, impulse control and no impact to the remaining areas of insight and judgment, executive, motor activity, language, psychotic symptoms and other neuropsychological problems. The physician comments that the appellant's fibromyalgia can cause the appellant to be both physically and mentally fatigued. The physician also comments that the appellant is quite fearful of others entering her house and is currently having a legal issue with her landlords as a result of tradesman entering her apartment.
- In the SR the appellant states that her PTSD affects her a lot but mostly in her own home as she has trouble having people in her home. She states that even if her landlord is coming into her home that causes her to completely unravel and have issues with everything. She states that she cannot function and it makes her very sick causing inability to sleep, severe anxiety, loss of bowel function and vomiting. She also states that she shies away from large groups of people as it causes her a bit of anxiety.
- In the Questionnaire the physician indicates that the appellant has severe PTSD and does not feel comfortable with outsiders coming into her home.

DLA

- In the PR the physician indicates that the appellant has been prescribed medications that interfere with her ability to perform DLA as the narcotic medications make her feel drowsy and constipated. In Part F – Additional Comments, the physician indicates that the appellant is a nurse and is able to do certain aspects of her job but is unable to do job full duties full time on a permanent basis due to the amount of pain and fatigue she has.
- In the AR the physician indicates that the appellant is independent with all aspects of personal care, meals, paying rent and bills, medications, and transportation. The physician indicates

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that the appellant requires periodic assistance with laundry and basic housekeeping. With respect to shopping the physician indicates that the appellant is independent with reading prices and labels, making appropriate choices and paying for purchases but requires periodic assistance from another person with respect to going to and from stores and carrying purchases home. The physician indicates that the appellant's fibromyalgia can make her fatigued and carrying groceries can make her shoulder hurt.

- In the AR the physician indicates that the appellant is independent with respect to all aspects of social functioning, has good functioning with respect to her immediate social network but marginal functioning with respect to her extended social network, noting that she has trust issues with new people or with people she doesn't know.
- In the SR, the appellant states that because of her constant pain and fatigue from her chronic fatigue syndrome and fibromyalgia, she needs help with the simplest things sometimes or she has to break them up and do them in sections. The appellant states that with so many conditions she finds it impossible to hold a full time job and she has a ton of medical appointments and medications to take. She states that she rarely does anything with friends because everything that is looked at as a social behavior she cannot really do.
- In the Questionnaire the physician indicates that the appellant has "+++ difficulties" with all DLA and that she wears a stomach brace to help with pain and abdominal support. The physician indicates that the appellant has difficulties with mobility because of weight gain, eating causes increased pain, pain with carrying simple groceries over 5 pounds. The physician indicates that the appellant has nausea and dizziness but the remainder of the phrase is illegible.
- In the letter from the appellant's friend, her friend indicates that the appellant expresses how she is frequently exhausted and unable to cope and manage her DLA, that she no longer interacts with groups, and shies away from activities due to pain and discomfort. The friend indicates that the appellant can't really eat like a normal person so she really doesn't involve herself anytime food can be involved.

Help

- In the PR, the physician indicates that the appellant does not require any prosthesis or aids for her impairment.
- Neither the PR nor the AR indicates that the appellant requires help or that other people provide assistance to her. In the AR, the physician indicates that the appellant does not have an Assistance Animal.
- In the Questionnaire the physician indicates that the appellant needs help with all DLA.
- In the SR the appellant states that she requires assistance with everyday tasks. Friend A states that there are times when she helps the appellant with basic things at home as the appellant is too sick to do them.
- Friend A states that she has known the appellant along time so it's okay for her to be in her house although the appellant is still not very comfortable with it. Friend A states that she is very busy with her own life so she does not have a lot of time to help her as much as she needs.

Additional information provided

The appellant's Notice of Appeal dated September 14, 2016 completed by her advocate indicates that the reconsideration decision was unreasonable. The advocate states that they are particularly

concerned that the reconsideration decision does not appear to acknowledge or weigh any of the supporting information provided with the appellant's RFR. The advocate submits that failure to consider or even acknowledge the supporting information provided with the RFR was unreasonable. . The advocate states that considering the totality of evidence available to the ministry at the time of reconsideration there was sufficient information to establish that the appellant meets the PWD eligibility criteria.

Prior to the hearing the appellant submitted a submission dated October 31, 2016 by her advocate setting out the appellant's position as to why the reconsideration decision was unreasonable (the "Submission"). The appellant also submitted a Medical Imaging Report MR Cervical Spine dated October 10, 2016 (the "MRI") indicating that the appellant has a moderate broad-based posterior disc osteophyte at C5-6 encroaching on the central canal and cervical cord resulting in moderate central canal stenosis and moderate cord deformity. The MRI also indicates that the appellant has mild posterior disc osteophyte at C3-4 with mild right foraminal stenosis.

At the hearing the appellant stated that she was always sick as a child and has since had three surgeries, two rounds of radiation and skin grafts. The appellant states that she has seen chronic pain specialists and her health has gotten worse as she ages and she has no control over her symptoms. She states that she had a total cholecystectomy with an abdominal abscess that ruptured that resulted in significantly more pain and that she often has significant abdominal swelling resulting. She states that she has severe and chronic pancreatitis. She has frequent trips to the bathroom (5-20 per day) and cannot share a bathroom with anyone. The appellant states that she now relies on her stomach brace for everything except sleeping. The appellant states that it is hard to eat as she will often experience pain, that she has headaches and nausea that do not go away. The appellant states that she receives injections into her neck and shoulder every two months that "takes the edge off" but does not result in complete pain relief, she cannot sleep on her shoulder because of pain so she has trained herself to sleep on her back. She takes pain medications every four hours. She states that sometimes she cannot stand up or stay up for more than five minutes in an entire day. The appellant states that holding a job is very hard and that she needs a lot of assistance 50% of the time but she has no family. The appellant states that she has to pre-plan everything and tries to go to the store once a month or plans to get help from friends with housework or to get to the store once or twice per month.

At the hearing the appellant's advocate provided oral submissions setting out the appellant's position why the reconsideration decision was unreasonable.

Admissibility of New Information

The ministry did not object to the information in the Notice of Appeal, the Submission, MRI, appellant's oral evidence or the advocate's oral submissions. The panel has admitted the appellant's oral information and the MRI report into evidence as it is information in support of information and records that were before the ministry at the time of reconsideration, in accordance with section 22(4)(b) of the *Employment and Assistance Act*. In particular, the appellant's oral testimony provides further explanation about the appellant's medical condition, impacts on her DLA, and help needed. The MRI report provides further information about the appellant's medical condition. The panel accepts the information in the NOA, the Submission and the advocate's oral testimony as argument.



At the hearing, the ministry relied on the reconsideration decision.

PART F – Reasons for Panel Decision

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

The relevant legislation is as follows:

EAPWDA:

2 (1) In this section:

"assistive device" means a device designed to enable a person to perform a daily living activity that, because of a severe mental or physical impairment, the person is unable to perform;

"daily living activity" has the prescribed meaning;

"prescribed professional" has the prescribed meaning.

(2) The minister may designate a person who has reached 18 years of age as a person with disabilities for the purposes of this Act if the minister is satisfied that the person has a severe mental or physical impairment that

(a) in the opinion of a medical practitioner is likely to continue for at least 2 years, and

(b) in the opinion of a prescribed professional

(i) directly and significantly restricts the person's ability to perform daily living activities either

(A) continuously, or

(B) periodically for extended periods, and

(ii) as a result of those restrictions, the person requires help to perform those activities.

(3) For the purposes of subsection (2),

(a) a person who has a severe mental impairment includes a person with a mental disorder, and

(b) a person requires help in relation to a daily living activity if, in order to perform it, the person requires

(i) an assistive device,

(ii) the significant help or supervision of another person, or

(iii) the services of an assistance animal.

EAPWDR section 2(1):

2 (1) For the purposes of the Act and this regulation, "**daily living activities**" ,

(a) in relation to a person who has a severe physical impairment or a severe mental impairment, means the following activities:

- (i) prepare own meals;
- (ii) manage personal finances;
- (iii) shop for personal needs;
- (iv) use public or personal transportation facilities;
- (v) perform housework to maintain the person's place of residence in acceptable sanitary condition;
- (vi) move about indoors and outdoors;
- (vii) perform personal hygiene and self care;
- (viii) manage personal medication, and

(b) in relation to a person who has a severe mental impairment, includes the following activities:

- (i) make decisions about personal activities, care or finances;
- (ii) relate to, communicate or interact with others effectively.

Severe Physical Impairment

The ministry's position, as set out in its reconsideration decision, is that the information provided is not evidence of a severe physical impairment. The reconsideration decision indicates that the ministry reviewed all documents submitted with the appellant's application. The reconsideration decision indicates that in the PR the physician indicates that the appellant is able to walk 2-4 blocks unaided, climb 5+ steps unaided, lift 5 to 15 pounds and has no limitation with remaining seated. The reconsideration decision notes that the physician indicates that the appellant requires periodic assistance with lifting and carrying and holding, noting that the appellant has significant abdominal and shoulder pain. The reconsideration decision indicates that while the physician indicates that "if objects are heavy or if she must stay in a static position for a long time this causes pain and fatigue and muscle fatigue" and that the appellant works as an OR nurse but no information is provided to explain the type or the degree of the assistance that the appellant requires to manage her mobility and physical ability. The ministry indicates that the Questionnaire was reviewed, in which the physician notes that he appellant has "significant chronic pain" and has difficulty coping with the pain, but that the physician has not provided further information to explain her mobility and physical ability.

The ministry acknowledges that the appellant experiences some pain and limitations as a result of medical conditions but finds that the functional skill limitations described by the physician are more in keeping with a moderate degree of physical impairment. The ministry's position is that it is not satisfied that the information provided is evidence of a severe physical impairment.

The ministry also notes that while the physician indicates that the appellant is able to work part time but only selectively, employability is not a criterion of the PWD designation.

The appellant's position is that she has a severe physical impairment resulting from her medical conditions including IBS, fibromyalgia, interstitial cystitis, chronic fatigue, and migraines that result in constant and chronic pain, frequent trips to the bathroom, requirement of a stomach brace, inability to work and often result in her staying in bed for hours at a time.

The appellant's position, as presented by her advocate is that while the ministry acknowledged the appellant's medical conditions, the ministry failed to consider relevant information including the letter from the gastroenterologist, the letter from the surgeon, and the History and Physical Note from the gynecologist. The Submission states that the evidentiary record establishes that the appellant has been seeing several physicians in recent years who have attempted to help her address her well documented and longstanding medical issues which include a history of rectal bleeding, longstanding dysmenorrheal and severe vaginismus. The appellant's position is that the reconsideration decision fails to acknowledge this information which speaks to a lack of care and diligence in the reconsideration decision. The advocate stated that written decisions are important to administrative decision making and while the ministry is afforded considerable discretion and he does not expect perfection, failure to acknowledge and explain why the ministry did not accept the additional information or explain why they are not relevant makes the reconsideration decision unreasonable.

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. Likewise the use of the word "severe" in and of itself does not establish a severe impairment.

To assess the severity of an impairment one must consider the nature of the impairment and the extent of its impact on daily functioning as evidenced by functional skill limitations and the degree to which performing DLA is restricted.

The panel finds that the information provided establishes that the appellant has been diagnosed with IBS, fibromyalgia, interstitial cystitis, chronic fatigue, migraine headaches, and suffers from chronic fatigue, rectal bleeding, longstanding dysmenorrheal and severe vaginismus. The panel notes that the physician in the PR indicates that the appellant has complicated medical history.

The PR indicates that the appellant can walk 2 to 4 blocks unaided on a flat surface, can climb 5+ steps unaided, can lift 5 to 15 pounds and has no limitations with respect to remaining seated. The AR indicates that the appellant is independent with walking indoors, walking outdoors, climbing stairs and standing but requires periodic assistance with lifting and carrying and holding due to significant abdominal and shoulder pain. While the appellant's position is that the reconsideration decision is unreasonable because the ministry has failed to adequately provide written decisions and acknowledge the additional information provided by the gastroenterologist, surgeon and the gynecologist the panel notes that in the reconsideration decision the ministry indicates that "[a]ll documents submitted were considered in the making of this decision...". While the appellant's position is that this is not sufficient the panel notes that the reconsideration does specifically indicate that the ministry reviewed the additional information provided by the physician in the Questionnaire and notes that while the physician indicates that the appellant has "significant chronic pain" and difficulty coping with that pain, no further information was provided to explain the appellant's mobility

and physical ability.

The panel notes that the letter from the Internal Medicine Specialist provides information about fibromyalgia and chronic fatigue syndrome, explaining that chronic fatigue syndrome is a distinct syndrome that requires very little medical work up to make a diagnosis. The letter refers to a report from the US Institute of Medicine that was highly critical of physicians who do not accept chronic fatigue syndrome as real. However, the letter from the Internal Medicine Specialist does not provide any information about the appellant's medical condition or the severity of her physical impairment and there does not appear to be any question as to whether the appellant suffers from chronic fatigue syndrome, so the panel finds that the ministry was not unreasonable in not specifically referring to this information in its reconsideration decision.

The panel finds that the additional information provided in the Clinic Note, the letters from the surgeon and the gastroenterologist, and the History and Physical Note from the gynecologist confirm the diagnoses provided by the physician and the appellant's various medical history, consultations and complexity of her medical conditions but they do not provide further information regarding the severity of the appellant's physical impairment or her functional ability and mobility. The panel finds that the ministry was not unreasonable in not specifically referring to each of the additional letters from the appellant's various specialists.

The panel finds that while it may be helpful for the ministry to state why additional information is not relevant to its decision, the fact that it did not do so does not result in the reconsideration decision being unreasonable.

The information provided by the appellant in the SR and at the hearing indicates her condition is more severe than reported by the physician. While the physician may not have a full appreciation of the appellant's daily functioning and her struggles, the legislation is clear that the fundamental basis for the analysis is the evidence from a prescribed professional.

The panel also notes that while the appellant indicates that she is unable to work due to her condition, employability is not a criterion for designation for PWD.

The panel also notes that the new information contained in the MRI report indicates that the appellant has osteophyte's at the C3-4 and C5-6 levels of her cervical spine. In particular, the MRI report indicates that the C3-4 levels have mild right foraminal stenosis and the C5-6 levels indicate that the disc osteophyte also encroaches on the neural foramina with moderate to severe bilateral foraminal stenosis. While this new information further confirms that the appellant has some degenerative processes in her cervical spine, the panel finds that based on the information as a whole, the ministry reasonably determined that the information provided speaks to a moderate rather than severe physical impairment.

Severe Mental Impairment

The reconsideration decision indicates that the ministry acknowledges that as a result of PTSD the appellant experiences a deficit to her cognitive and emotional functioning in the area of emotional disturbance with impacts to the appellant's daily functioning as a result of her cognitive and emotional functioning. However the ministry's position is that as the physician has not indicated any major

impacts to the appellant's cognitive and emotional functioning, the information provided is more in keeping with a moderate degree of impairment. The minister is not satisfied that the information provided is evidence of a severe mental impairment.

The appellant's position is that she has a severe mental impairment from PTSD that impacts her cognitive, emotional and social functioning. In addition the appellant's position is that the chronic pain from her various physical condition impacts her emotional state and she is much less patient than before and shies away from friendships and public situations. The appellant's position is that the information provided demonstrates that she has a severe mental impairment.

Panel Decision

In the PR, the physician indicates that the appellant has significant deficits with cognitive and emotional function in the area of emotional disturbance. However, in the AR the physician indicates that the appellant does not have major impacts to any areas of cognitive and emotional functioning. The AR indicates that the appellant has moderate impact in the areas of consciousness, emotion, attention/concentration, memory, motivation and other emotional or mental problems, minimal impact in the areas of bodily functions and impulse control and no impact to the remaining areas of insight and judgment, executive, motor activity, language, psychotic symptoms and other neuropsychological problems. Both the PR and the AR indicate that the appellant's ability to communicate is good. In the Questionnaire, the physician indicates that the appellant has severe PTSD and does not feel comfortable with outsiders coming into her home but the physician does not provide any further information regarding the severity of her PTSD and does not provide any further information to explain why the PTSD is severe when the information provided in the AR does not indicate that the appellant has any major impacts to her cognitive and emotional functioning.

The panel notes that the Clinic Note indicates that in the screen for depression, the appellant reported difficulty sleeping, some decrease in interest and decreased energy but had maintained activity, decreased energy but had maintained activity, decreased concentration, decreased appetite, some psychomotor agitations and thoughts of suicide. However the Clinic Note was from 2013 and there was no further recent information to indicate whether the appellant was continuing to suffer from symptoms of depression and if so, the severity of those symptoms. The other additional information contained in the letter from the Internal Medicine specialist, the letters from the gastroenterologist and the gynecologist do not provide any further information with respect to the appellant's mental impairment.

The panel accepts the appellant's evidence that her physical symptoms also impact her mood and that she struggles with PTSD and difficulty allowing outsiders into her home. . However, given the information provided, the panel finds that the ministry was reasonable in determining that the cumulative impact to cognitive and emotional functioning is not indicative of a severe mental impairment.

Significant Restrictions to DLA

The reconsideration decision states that the minister is not satisfied that the appellant has a severe impairment that, in the opinion of a prescribed professional, directly and significantly restricts her ability to perform DLA continuously or periodically for extended periods. The reconsideration decision

indicates that the physician reports that the appellant requires periodic assistance with basic housekeeping, going to and from stores, and carrying purchases home. The ministry notes the physician's comments that the appellant's fibromyalgia can make her fatigued and carrying groceries can make her shoulder hurt. However, the reconsideration decision indicates that no information is provided to explain the frequency or the degree of the periodic assistance that the appellant requires to manage these activities.

The reconsideration decision indicates that in the AR the physician indicates that the appellant is independently able to manage all other DLA, including personal care, shopping, meals, paying rent and bills, medications and transportation. The ministry notes that in the Questionnaire the physician indicates that the appellant needs help with all DLA's and that she has difficulty with mobility because of weight gain and wears a stomach brace to help with pain and abdominal support. However, the minister notes that the physician has not provided information to explain the type, degree or frequency of the assistance that the appellant requires, so her ability to manage DLA remains unclear.

The reconsideration decision notes that the appellant is independent with social functioning, has good functioning with her immediate social networks and marginal functioning with extended social networks. The ministry's position is that as the majority of DLA are performed independently or require little help from others, the information from the appellant's prescribed professional does not establish that her impairment significantly restricts DLA either continuously or periodically for extended periods.

The appellant's position is that due to all of her medical conditions, she has difficulty with DLA including shopping, housework, and that she needs help. The appellant states that she has to wear her stomach brace for almost all activities. In the Submission the advocate states that the information provided by the physician in the PR, AR and the Questionnaire establish the appellant's eligibility. In particular, the Submission indicates that in the Questionnaire, the physician confirms that the appellant has difficulty with all DLA; she wears a stomach brace to help mitigate pain, and has difficulty with mobility and difficulty carrying groceries greater than 5 pounds.

Panel Decision

The legislation – s. 2(2)(b)(i) of the EAPWDA – requires that the minister be satisfied that in the opinion of a prescribed professional, a severe mental or physical impairment directly and significantly restricts the applicant's ability to perform DLA either continuously or periodically for extended periods. The term "directly" means that there must be a causal link between the severe impairment and the restriction. The direct restriction must also be significant. Finally, there is a component related to time or duration. The direct and significant restriction may be either continuous or periodic. If it is periodic it must be for extended periods. Inherently, any analysis of periodicity must also include consideration of the frequency of the restriction. All other things being equal, a restriction that only arises once a year is less likely to be significant than one, which occurs several times a week. Accordingly, in circumstances where the evidence indicates that a restriction arises periodically, it is appropriate for the ministry to require evidence of the duration and frequency of the restriction in order to be "satisfied" that this legislative criterion is met.

The information provided by the appellant in the SR and at the hearing indicates that she spends

considerable amounts of her day going to and from the bathroom or lying in bed due to chronic pain and abdominal issues. The information from Friend B also indicates that the appellant's social functioning is limited as she shies away from interactions with others.

The AR indicates that the appellant is independent with most of the listed areas of DLA: dressing, grooming, bathing, toileting, feeding self, regulating diet, transfers (in/out of bed), transfers (on/off of chair), reading prices and labels, making appropriate choices, paying for purchases, meal planning, food preparation, cooking, safe storage of food, all aspects of paying rent and bills, all aspects of medication, transportation, and all aspects of social functioning. The physician indicates that the appellant requires periodic assistance with laundry, basic housekeeping, going to and from stores and carrying purchases home. However, the physician does not provide any information regarding the frequency or duration of the periodic assistance needed.

In the Questionnaire, the physician indicates that the appellant has significant difficulties with all DLA and that she wears a stomach brace to help with pain and abdominal support but in the PR the physician indicates that she does not require any aids for her impairment. The physician indicates that the appellant has pain with carrying simple groceries over 5 pounds. The information in the Questionnaire appears to be more consistent with the information provided by the appellant; however, the information in the Questionnaire is not consistent with the information in the AR and the physician has not provided further information to indicate why he reports that the appellant is independent with the majority of DLA in the AR but subsequently reports that the appellant has significant difficulty with all DLA in the Questionnaire. In addition, in the Questionnaire the physician does not provide any information indicating the type, frequency or duration of assistance needed. The appellant states that she gets help approximately once or twice per month. Friend A states that she helps the appellant but that she is very busy with her own life so she does not have a lot of time to help her as much as she needs. Friend A does not describe the type, nature or frequency of help provided so it is difficult to know what DLA she does to help the appellant.

The panel notes that the additional information provided in the letter from the Internal Medicine Specialist, the gastroenterologist and the surgeon and the History and Physical Note of the gynecologist do not provide further information regarding the appellant's ability to perform DLA.

Given the inconsistencies in the information provided by the physician in the AR and the Questionnaire and the lack of any further information from the physician with respect to the frequency and duration of the periodic assistance required and/or clarification as to the inconsistency in the information provided, the panel finds that the ministry reasonably determined that the appellant's impairment does not significantly restrict DLA either continuously or periodically for extended periods as required by EAPWDA section 2(2)(b)(i).

Help with DLA

The ministry's position is that, as it has not been established that DLA are significantly restricted as a result of a severe impairment, it cannot be determined that significant help is required from other persons.

The appellant's position is that she requires help with DLA particularly housework and getting groceries. The appellant's evidence is that she gets assistance from friends when they are able but

she pre-plans her outings and currently receives help approximately once or twice a month. Friend A indicates that she provides some help but she does not provide any indication of the frequency or duration of help provided.

Panel Decision

In the PR, the physician indicates that the appellant does not require any prostheses or aids for her impairment. Neither the PR nor the AR indicates that the appellant requires help with DLA. In the AR, the physician indicates that the appellant does not have an assistance animal. In the Questionnaire the physician indicates that the appellant needs help with all DLA's but he does not indicate what assistance is required or the amount of assistance required.

Although the appellant needs and receives some assistance from friends, a finding that a severe impairment directly and significantly restricts a person's ability to manage her DLA either continuously or periodically for an extended period is a precondition to a person requiring "help" as defined by section 2(3)(b) of the EAPWDA. As the panel finds that the ministry reasonably determined that the appellant does not have a severe impairment that directly and significantly restricts her ability to manage her DLA either continuously or periodically for an extended period of time, the necessary precondition has not been satisfied.

The panel finds that the ministry's decision that the appellant did not satisfy the legislative criteria of EAPWDA section 2(3)(b) was therefore reasonable.

Conclusion

The panel acknowledges that the appellant has serious medical conditions that impact her functional ability and her ability to perform DLA. However, having reviewed and considered all of the evidence and the relevant legislation, the panel finds that the ministry's decision finding the appellant ineligible for PWD designation is reasonable based on the evidence and is a reasonable application of the legislation in the circumstances of the appellant.

The panel therefore confirms the ministry's reconsideration decision and the appellant is not successful in her appeal.