

PART C – Decision under Appeal

The decision under appeal is the Ministry of Social Development and Social Innovation (the “ministry”) reconsideration decision of October 18, 2016, which found that the appellant did not meet four 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. However, the ministry was not satisfied that:

- in the opinion of a medical practitioner the appellant’s impairment is likely to continue for at least two years;
- 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:

- The appellant's PWD application form consisting of the appellant's self-report form dated April 24, 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 28, 2016.
- The physician's Visit Records from March 16 to April 28, 2016 (the "Visit Records").
- The appellant's Request for Reconsideration ("RFR") form asking for more time to submit information.
- Letter from a neurologist (the "neurologist") dated May 5, 2016 indicating that she is not accepting referrals for chronic pain at this time and that the physician could consider referral to a tertiary care center or to a specialist in management of chronic pain.
- Letter from the appellant dated September 9, 2016 with handwritten notations by the physician (the "Letter").
- Letter from the physician dated September 9, 2016 (the "Physician Letter") with various handwritten changes, which indicates that the appellant's advocate drafted the letter and that the physician made any changes which he felt were necessary to make the statement accurate.
- Letter from a physician at a chronic pain clinic (the "specialist") dated October 17, 2016.

Duration

- In the PR, the physician indicates that the appellant's impairment is not likely to continue for two years or more from today explaining that physio treatment may help and that a CT scan should give us more information then can refer to neurology.
- In the Physician Letter, the physician indicates that given how long her condition has already lasted, and given the challenges she is facing in getting additional specialists to assess and treat her condition, this may continue for two years or more.

Diagnoses

- In the PR the physician indicates that the appellant has been diagnosed with chronic neck and back pain. In the PR and the AR the physician indicates that he has been the appellant's general practitioner since March 16, 2016 and has seen her two to ten times during that period.
- In the specialist letter, he indicates that the appellant's symptoms are congruent with chronic pain syndrome and central sensitization. He also indicates that in relation to her pain she is suffering from depression.

Physical Impairment

- In the Health History section of the PR, the physician indicates that the appellant had a motor vehicle accident in October 2014 and has had chronic neck and back pain since that time, noting that she saw a chiropractor and physiotherapist but had never seen a doctor. The physician indicates that the appellant had x-rays on the accident date but no investigations and that a CT scan was ordered on April 27, 2016. The physician indicates that the appellant is

5'5" and weighs 58 kg.

- In terms of physical functioning, the physician reported in the PR that the appellant can walk 4+ blocks unaided, can climb 5+ steps unaided, is limited to lifting under 5 pounds and can remain seated less than 1 hour.
- In the PR, Part F – Additional Comments, the physician indicates that the appellant's chronic neck and back pain ("*impact on her life ++*"), that she is unable to lift heavy weights, and is able to work but takes frequent breaks and can't lift. He also indicates that she had not worked in over one year.
- In the AR the physician reports that the appellant is independent with walking indoors, walking outdoors, climbing stairs and standing but takes significantly longer with lifting (unable to lift any weights) and carrying and holding (unable to carry any weight).
- The Visit Records indicate that the appellant was seen for chief complaints of neck and back pain. The entry of April 27, 2016 indicates that the appellant reported a two year history of pain and she felt that the pain was getting worse.
- In the SR the appellant states that she has whiplash level 2 which means that she is in constant pain, has an extreme lack of strength in her back, and has nerve damage, explaining that the tendons around her spine are inflamed which is causing nerve damage and preventing her muscles from healing. She states that if she does not take painkillers she is unable to function in life normally. She states that she cannot turn her head to look at computers, people or books for more than a few minutes without intense stabbing pain. Her tailbone pain hinders her from sitting up constantly and aches if she is not sitting on a chair that is good for posture. The appellant states that she cannot walk normally or sit still and that she cannot carry her purse for long or anything over a few pounds, including groceries. She can't sleep on her side and has to sleep with a special neck brace pillow.
- In the Letter the appellant states that her ability to walk is significantly affected by her condition and that if she is carrying 3 bananas and a yogurt she has to stop every block and a half because it feels like her arms are going to come off. She reports a stabbing severe chronic pain between her shoulder blades and that her hips and tailbone are constantly grindy, stiff, and severely painful. She states that her knees start to creak and feel tight with sharp pains and she cannot carry anything upstairs due to her severe chronic pain in both her upper and lower spine. Even without carrying anything she has to stop and take breaks going up stairs. The appellant reports that she walks significantly slower than typical and that it takes her 25 minutes to walk 4 blocks. She estimates that once a week she breaks down and cries in extreme severe pain and just waits for a friend to come and get her. She states that her knees and lower back lock up in pain approximately twice a month on stairs so she avoids stairs whenever possible.
- In the Letter the physician indicates that a CT scan is not appropriate and that the neurologist recommended that she see the Specialist. The appellant indicates that she was referred for an MRI which is scheduled for July 2017.
- In the Physician Letter, the physician states that he read the Letter and finds the appellant's description to be credible.
- The specialist indicates that due to the severity of her pain the appellant experiences difficulty walking, sitting, standing, cooking, grocery shopping, bathing, computer work and lifting. The specialist indicates that the appellant reported her level of pain during her intake at 10/10 with 10 being the worst pain ever experienced. The specialist indicates that the appellant had decreased range of motion in neck extension and decreased range of motion in her shoulder on forward flexion.

Mental Impairment

- In the Functional Skills section of the PR, the physician indicates that the appellant does not have any difficulties with communication.
- In the Functional Skills portion of the PR the physician indicates that the appellant has significant deficits with cognitive and emotional function in the area of emotional disturbance, noting that she has chronic pain, low mood and depression.
- 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 reports not applicable.
- In the SR the appellant states that concentrating is difficult, multi-tasking is extra challenging and sometimes she is in so much pain that carrying on a conversation is difficult.
- The specialist indicates that in relation to her pain she is suffering from depression. The specialist indicates that the appellant experiences daily low energy, low motivation, concentration and mood, increased hopelessness, and finds herself easily irritated, with a loss of appetite.

DLA

- In the PR the physician indicates that the appellant has not been prescribed medications that interfere with her ability to perform DLA.
- In the AR the physician indicates that the appellant is independent with all aspects of personal care, basic housekeeping, meals, and medications but notes that she takes significantly longer than typical with grooming (difficulty/ pain with brushing her hair) and food preparation (can't lift pots and pans). With respect to shopping, the appellant is independent with going to and from stores, reading prices and labels, and making appropriate choices but takes significantly longer with paying for purchases (unable to carry) and carrying purchases home (pain and can't carry any weight). The physician indicates that the appellant takes significantly longer than typical with all aspects of paying rent and bills noting that she has pain and can't work. With respect to transportation she requires periodic assistance with getting in and out of a vehicle but is independent with using public transport and using transit schedules and arranging transportation.
- For social functioning the physician notes ("N/A").
- In the SR the appellant states that she can't carry her purse for long or anything over a few pounds including groceries. Simple tasks are very difficult, like lifting a heavy pot for cooking or to wash in the sink, or carrying groceries home. Bending over to tie her shoes, brushing her hair, and looking at people hurts. She states that carrying her laundry and traveling to and from places takes her longer as she has to be mindful and take breaks. Riding as a passenger causes pain along her spine.
- In the Letter the appellant states that it takes her two hours to get ready (hair, makeup and clothing), that washing her hair is painful and it is excruciating to brush her hair. She reports that it can take up to five minutes to lace up one shoe. She states that her hands and feet become numb when she uses the washroom and it radiates severe pain from her lower back and neck too which leads to painful tingling and she struggles to stand up. She states that it takes her an hour to get out of bed in the morning, half of which is due to stretching she must do before she is able to move. The appellant states that she has to do her laundry in five small loads instead of one. She reports that she cannot perform tasks requiring squeezing beyond holding a pencil or pen and that scrubbing dishes is severely painful for her.

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 assistance is provided by other people. In the AR, the physician notes (“N/A”) in relation to Section D – Assistance Provided for Applicant.
- In the SR the appellant states that she has to sleep with a special neck brace pillow.
- In the Letter the appellant states that approximately once a week she has to get a friend to come and get her when she is shopping. She states that her housemates help her with housekeeping because of her limitations.

Additional information provided

In her Notice of Appeal dated October 27, 2016 the appellant states that she has severe chronic pain that causes her mental and physical impairment, which does significantly restrict her ability to perform daily tasks. The appellant states that she does require significant help to do DLA and her pain is likely to continue for 2 years.

At the hearing the appellant stated that she has always worked, starting with babysitting at age 12. She put herself through college and has never needed help but since the accident she can barely think straight anymore, and it took her about one year before she realized that she needed to seek help from the physician. She stated that she has muscle damage and that walking down the street and even the smallest of tasks causes her pain. She explained that she can't carry one grocery bag and has to stop five times on the way home. She states that she started anti-depressants approximately one month ago and takes painkillers at night. She is attending group pain therapy and therapeutic yoga. The appellant stated that she should have waited for the specialist to complete her PWD application as the physician refused to comment on her pain. The appellant stated that she “*would be dead without assistance from her friend*” but that she can only ask for so much help. She states that when she goes to the food bank she can't carry her groceries home so she calls her friend and waits until her friend can come and pick her up. She states that sometimes it takes her eight trips to the laundry, taking hours more than it should.

Admissibility of New Information

The ministry did not object to the information in the Notice of Appeal or the appellant's oral evidence. The panel has admitted the information in the Notice of Appeal and the appellant's oral information into evidence as it is 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 panel accepts the information in the NOA 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 that is likely to continue for at least two years, 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:

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 is in a prescribed class of persons or that the person has a severe mental or physical impairment that

(a) in the opinion of a medical practitioner or nurse 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.

Duration

In the PR, the physician indicates 'no' when asked if the appellant's impairment is likely to continue for two or more years and that he indicates that physio treatment may help and that a CT scan should provide more information and then he can refer the appellant to a neurologist. The ministry's position is that based on the information in the PR, the ministry is not satisfied that it is the physician's opinion that the appellant's impairment is likely to continue for at least two years.

The appellant's position is that she has had her impairment and chronic pain for more than two years already and it is only getting worse. The appellant stated that everyone says it will probably last a lifetime. The appellant's position is that the ministry's reconsideration decision was not reasonable and did not consider the Physician Letter in which the physician clarifies his opinion regarding the

duration of her impairment.

Panel Decision

While the appellant states that everyone says that her impairment will last a lifetime, the information provided by the physician does not support her statement in this regard. In the PR the physician indicates that it is unlikely that her impairment is likely to continue for two or more years. In the Physician's Letter, the advocate had written, on behalf of the physician to say that "[g]iven how long her condition has already lasted, and given the challenges she is facing in getting additional specialists to assess and treat her condition, I would expect it to continue for two years or more, possibly a lifetime". However, the physician has crossed out the words "*possibly a lifetime*" and has indicated only that her condition may continue for two years or more. The physician crossed out the words indicating that he would expect her condition to continue for two years or more.

While the Physician's Letter indicates that the likelihood of her condition may be longer than originally indicated in the PR, the panel finds that there is no information to support the appellant's statement that her impairment may last a lifetime. The panel also finds that as the physician has only indicated that her impairment may continue for 2 years, and does not specify that her condition is likely to continue for at least 2 years, that the ministry was reasonable in determining that the information provided did not meet the legislative criteria.

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 ministry's position is that while the physician indicates some restrictions with lifting, the information provided is not indicative of a severe impairment and the information provided is not consistent. For example the ministry notes that in the PR the physician indicates that the appellant is capable of lifting under 5 pounds but in the AR he indicates that the appellant is unable to lift any weight or unable to carry any weights. The ministry's position is that if the appellant was unable to carry or lift any weights then the physician would have checked off the box indicating "no lifting" for functional skills in relation to her limitations in lifting.

The ministry's position is that while the appellant may experience restrictions with lifting, the minister is not satisfied that this necessity confirms a severe physical impairment, as she is capable of lifting small amounts of weight that enable her to perform a majority of her DLA independently.

The reconsideration decision indicates that the ministry also considered the specialist's letter. While the specialist indicates that the appellant reported pain of 10/10 during intake and that she experiences difficulty with walking, sitting, standing, cooking, grocery shopping, bathing, computer work and lifting, the specialist does not provide any further information regarding the degree or frequency of the restriction. The ministry notes that the specialist had only known the appellant for 13 days at the time the report was written and while the legislation does not require that the appellant have a long-standing history with the professionals who provide information regarding the impairment, it does require the minister be satisfied that a severe impairment exists. The ministry has determined it is more likely that a majority of the information he provides is more so a reiteration of the impairments that the appellant reported to him, rather than a direct reflection of his medical opinion because he had not known the appellant very long. The ministry notes that while the

specialist reports a decreased range of motion in the neck and shoulder flexion this does not establish a severe impairment.

The ministry also notes that while the appellant's employability is mentioned in her application, the PWD application is not intended to assess employability or vocational abilities and that a medical barrier to her ability to engage in paid employment is not a legislated criterion for severity.

The reconsideration decision indicates that determining a severe physical impairment requires weighing the evidence provided against the nature of the impairment and its reported functional skill limitations. The ministry's position is that the information provided does not sufficiently describe or portray a severe impairment.

The appellant's position is that she has a severe physical impairment resulting from chronic neck and back pain, inflamed tendons and nerve damage resulting from a motor vehicle accident. The appellant's position is that she has severe pain and that the information provided by the physician and the specialist, in combination with her information, demonstrate that she meets the legislative criteria.

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 information provided demonstrates that the appellant has been diagnosed with chronic neck and back pain that cause some restrictions with lifting. While the appellant states that she has inflamed tendons and nerve damage the information provided by the physician and the specialist do not support the appellant's statement. In particular, in the Letter, the appellant writes "*[d]ue to nerve damage, my hands feet become numb when I use the washroom*" but the physician crossed out the words "*due to nerve damage*".

In the PR the physician indicates that the appellant can walk 4+ blocks unaided, can climb 5+ steps unaided, is limited to lifting under 5 pounds and can remain seated less than one hour. In the AR the physician indicates that the appellant is independent with walking indoors, walking outdoors, climbing stairs and standing but that she takes significantly longer than typical with lifting and carrying and holding. In the AR the physician indicates that the appellant is unable to lift any weight and is unable to carry any weight but this information is inconsistent with the information in the PR and if the appellant is unable to lift or carry weights it is not clear why the physician did not check off the box indicating "no lifting" in respect of her functional skills for lifting. The inconsistency of this information makes it difficult to determine the nature of the appellant's restriction with lifting, carrying and holding.

The panel also notes that there are significant inconsistencies between the information provided by

the appellant and the information reported by the physician. The appellant's description of her pain and limitations is considerably different than that reported by the physician making it more difficult to determine the extent of the appellant's impairment or restrictions.

While the letter from the specialist indicates that the appellant reported pain of 10/10 during intake there is no information to indicate whether her pain remained at that level and if so for how long. While the specialist indicates that due to the severity of her pain the appellant experiences difficulty with walking, sitting, standing, cooking, grocery shopping, bathing, computer work and lifting, the specialist has not provided any information on the nature of her impairment such as whether she requires periodic assistance or continuous assistance from another person, whether these tasks take significantly longer than typical and if so, how much longer than typical. While the appellant provides several examples of how much longer than typical it takes her to perform various tasks there is no information from the physician or specialist to corroborate the information she provides.

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 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 ministry's position is that although the PR indicates that the appellant has significant deficits in with cognitive and emotional functioning in the area of emotional disturbance and the physician comments that the appellant has chronic pain, low mood and depression, the physician has not identified any mental conditions in the diagnosis portion of the PR. The ministry's position is that if the appellant had a mental health condition that was considered severe, it would be expected that the physician would provide a diagnosis on this page. The ministry notes that although the physician indicates that the appellant has low mood and depression he writes "N/A" for the sections of the AR with pertaining to cognitive and emotional functioning and social functioning.

The ministry notes that while the specialist mentions low energy, low motivation, concentration and mood, increased hopelessness, easily irritated and loss of appetite, explaining that the appellant is suffering from depression, no further information is provided. The ministry notes that there is no mention of a referral to a mental health professional such as a counselor or psychiatrist and that if the appellant's mental health condition was considered severe, it would be expected that she would benefit from a referral and regular visits with someone in this field. The minister is not satisfied that the information provided establishes a severe mental impairment. .

The appellant's position is that she has a severe mental impairment of depression related to her chronic pain. The appellant's position is that the information from the physician and the specialist demonstrate 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. The physician comments that the appellant has low mood and depression but in the AR the physician indicates “N/A” for the section to be completed for an appellant with an identified mental impairment or brain injury. In the PR the physician indicates that the appellant does not have any difficulties with communication and in the AR the physician writes “N/A” with respect to the section relating to social functioning.

While the appellant reports that she is taking anti-depressant medications and pain medications, the physician indicates that the appellant is not taking any medications that interfere with her ability to perform DLA and in the Physician’s Letter he does not provide any further information regarding the appellant’s mental health condition.

The panel notes that while the ministry indicates that the appellant was not referred to a counselor or psychiatrist the specialist does indicate that the appellant has been accessing support from their clinic including chronic pain counseling since October 2016 so it does appear that the appellant has just started attending counseling. However, while the specialist indicates that the appellant is suffering from depression in relation to her pain and reports daily low energy, no motivation, increased hopelessness, becoming easily irritated, loss of appetite, decreased concentration and mood, the specialist does not provide further information with respect to any restrictions or the degree of impairment.

The panel accepts the appellant’s evidence that her physical symptoms also impact her mood. 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 is independent in a large majority of her DLA and does not require any periodic or continuous assistance in any of the categories of her DLA except getting in and out of a vehicle – periodic assistance). The reconsideration decision indicates that the ministry recognizes that the physician indicates that the appellant has restrictions with lifting but that he reports that she is independent with dressing, bathing, laundry and basic housekeeping which are all tasks that involve at least some degree of lifting. The ministry also notes that the physician indicates that the appellant is independent with food preparation and cooking with the comment that she can’t lift pots and pans, noting that this implies that the appellant is capable of lifting simpler kitchen objects such as plates, glasses and bowls.

The ministry’s position is that the legislation requires that the restrictions be both significant and either continuous or periodic for extended periods in order to be eligible for PWD designation. The minister is not satisfied that the appellant’s restrictions are considered significant based on the information provided.

The appellant's position is that due to her chronic pain she struggles with the simplest of tasks and that it takes her significantly longer to perform all DLA. In particular the appellant indicates that she struggles with walking, doing laundry, grocery shopping, getting groceries home, cooking, washing her hair, carrying her purse, opening jars and performing housework. The appellant's position is that she meets the legislative criteria.

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.

While the information provided by the appellant in the SR and the Letter indicate that she struggles to perform many aspects of DLA including bathing, grooming, laundry, basic housekeeping, going to and from stores, carrying purchases home, food preparation, cooking and getting in and out of a vehicle, the information provided by the physician is not consistent with the information provided by the appellant. In particular the AR indicates that the appellant is independent with the majority of DLA, that she does not require either periodic or continuous assistance with any aspects of DLA except getting in and out of a vehicle, noting that she requires periodic assistance with this activity. The physician indicates that the appellant takes significantly longer than typical with grooming, paying for purchases, carrying purchases home, food preparation, banking, budgeting and paying rent and bills. However the information provided by the physician with respect to the appellant's lifting restrictions is inconsistent and unclear. For example with respect to paying for purchase and carrying purchases home, the physician indicates that these tasks take the appellant significantly longer than typical noting that she is unable to carry and can't carry any weight. However, if the appellant is unable to carry or unable to lift any weight then one would expect that the physician would have indicated that the appellant would require either periodic or continuous assistance.

The panel also notes that as set out in the reconsideration decision, the physician indicates that the appellant is independent with food preparation and cooking with the comment that she can't lift pots and pans, noting that this implies that the appellant is capable of lifting simpler kitchen objects such as plates, glasses and bowls. The panel also notes that while the appellant reports significant limitations in her ability to perform laundry and housework the AR indicates that she is independent with laundry and basic housekeeping.

While the specialist indicates that the appellant experiences difficulty with cooking, grocery shopping, bathing, computer work and lifting due to the severity of her pain, he has not provided any further

information indicating whether the appellant requires periodic or continuous assistance and if so the frequency or duration of assistance required. The specialist has not provided any information indicating that it takes the appellant significantly longer than typical to perform DLA. In addition the Physician's Letter does not provide any further information regarding the appellant's ability to perform DLA.

Given the inconsistencies between the appellant and the physician's information, the lack of further information from the specialist regarding the appellant's restrictions regarding her DLA, the physician's information indicating that the appellant independent with the majority of DLA, and the inconsistent information from the physician with respect to the appellant's lifting activities, 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 that is not very often.

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. The information provided by the specialist indicates that the appellant is accessing support from the pain clinic including yoga therapy and chronic pain counseling. The Letter indicates that the appellant gets help from her housemates. The Physician's Letter does not provide any further information indicating that the appellant requires help.

Although the appellant receives some assistance from friends/housemates, 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 chronic pain that that impacts her functional ability



and her ability to perform some 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.