

PART C – Decision under Appeal

The decision under appeal is the Ministry of Social Development and Social Innovation (the “ministry”) reconsideration decision of October 14, 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 the appellant has a severe physical impairment. 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 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 May 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 May 11, 2016.
- Letter from a physician specializing in sports medicine and exercise medicine (the "specialist") dated March 29, 2016.
- The appellant's Request for Reconsideration form signed and dated September 28, 2016 with attached letter providing further information regarding her condition (the "RFR").
- Letter from another physician acting as a locum for the physician (the "locum") dated September 27, 2016 requesting a consult from a medical geneticist with respect to suspected Ehlers Danlos Syndrome.
- Letter from the specialist dated September 13, 2016 providing his consultation opinion.

Duration

- In the PR, the physician did not check off either the yes or no box to indicate whether the appellant's impairment is likely to continue for two years or more from today, noting "?". The physician states: "*Current level of disability x 2 years. Predict no change in short term*". He indicates that her right knee should improve and that she is awaiting referral and consideration of surgery for her pelvic pain syndrome.

Diagnoses

- In the PR the physician indicates that the appellant has been diagnosed with chronic pain syndrome (date of onset April 2014), endometriosis (date of onset July 2014) and musculoskeletal disorder of subluxating patella (date of onset February 2015). In the PR and the AR the physician indicates that he has been the appellant's general practitioner since early childhood and has seen her two to ten times in the past 12 months.

DLA

- In the PR the physician indicates that the appellant has not been prescribed medications that interfere with her ability to perform DLA, explaining that she is intolerant and is currently not taking any medications.
- In the PR the physician indicates that the appellant's impairment continuously restricts her ability to perform DLA of meal preparation, basic housework, daily shopping and mobility outside the home. The physician indicates that the appellant's impairment periodically restricts her ability to perform mobility inside the home and use of transportation. He indicates that she is not restricted with her DLA of personal self care, management of medications, management of finances, or social functioning. Regarding periodic restrictions the physician explains that it relates to the severity of her pelvic pain and how irritated her right knee is. The physician indicates that the degree of restriction is mostly in significant delay in performing DLA's.
- In the AR the physician indicates that with personal care the appellant is independent with toileting, feeding self, regulating diet, transfers (in/out of bed); requires periodic assistance with transfers (on/off of chair), and takes significantly longer than typical with dressing, grooming

and bathing, explaining that the delay mostly relates to her knee impairment.

- With respect to basic housekeeping the physician indicates that the appellant requires periodic assistance with laundry and continuous assistance from another person with basic housekeeping due to her right knee immobility. With shopping, the physician indicates that the appellant is independent with reading prices and labels, making appropriate choices and paying for purchases but requires continuous assistance going to and from stores and carrying purchases home, explaining that she is using crutches or a cane.
- With respect to meals, the physician indicates that the appellant is independent with meal planning and safe storage of food but requires periodic assistance with food preparation and cooking, explaining that she has reduced standing time.
- The physician indicates that the appellant is independent with all aspects of paying rent and bills and medications. With respect to transportation the appellant is independent with getting in and out of a vehicle and using transit schedules and arranging transportation but with respect to using public transit the physician indicates that the appellant uses an assistive device. The physician indicates that the appellant has reduced access to public transport and does not drive.
- The physician did not complete the section with respect to social functioning except to comment that with respect to extended social networks the appellant is exhibiting significant difficulties with her extended social networks.
- In the SR the appellant states that her disability has a significant negative effect on her ability to perform most DLA. She states that she is generally unable to remain standing long enough to prepare a healthful meal, shower, perform basic grooming or complete basic household chores such as loading or unloading a dishwasher or sweeping/vacuuming floors. The appellant states that maintaining a reasonably healthy diet and living space is extremely difficult if not impossible without assistance. She states that due to her reduced range of motion she is entirely unable to clean/sanitize certain areas of the house, such as her bathtub.
- The appellant states that trips outside the home are made extremely difficult by her inability to stand or walk for more than a few moments. She also states that as public transit service has made cuts to places she is required to visit such as doctors' offices or the pharmacy, her limitations make these places inaccessible.
- The specialist's letter of March 29, 2016 indicates that the appellant reported that any pivot, twisting, walking or stairs all make her feel worse.

Help

- In the PR, the physician indicates that the appellant does require a prosthesis or aids for her impairment, explaining that she has a right knee brace to be worn daily and she uses a cane for gait and balance support. The physician also states that the appellant requires mobility aids, needs help with housework and often goes shopping with her mother or friend.
- In the AR the physician indicates that family and friends provide assistance with DLA and that the appellant routinely uses a cane, crutches and braces. The physician explains that the appellant currently has a full right leg brace most of the time and certainly with mobility. He indicates that she uses a cane for additional comfort and safety. He also indicates that a shower chair would be prudent for her safety. The appellant does not have an assistance animal.
- In the SR the appellant states that her required mobility aids (cane or crutches) make it impossible for her to carry home enough groceries and toiletries for herself without assistance.
- The specialist's letter of March 29, 2016 indicates that he recommended the appellant obtain a

-
- patellofemoral brace to wear throughout the day as well as when she is sleeping.
 - The specialist's letter of September 13, 2016 indicates that the appellant has obtained a brace for her right knee and has increased stability. The specialist recommended she wear the brace with her at-risk activities.

Additional information provided

In her Notice of Appeal dated October 28, 2016 the appellant states that her restrictions to DLA were described as instructed on the PWD application form within the constraints of the application format. The appellant states that she is clearly unable to perform DLA unassisted and does not appreciate being repeatedly denied necessary assistance as an intimidation tactic.

Prior to the hearing the appellant provided a submission containing the following:

- Letter from the physician dated December 9, 2016 (the "physician December 2016 Letter") stating that notwithstanding his initial presumption a year or two ago that the appellant would experience significant improvements in her function, this has not been the case over the past couple of years. The physician states that it is fair to say that the appellant is suffering from a degree of chronic pain syndrome and chronic fatigue albeit the exact nature and basis for the condition remains unclear. The physician states that examination of the appellant's condition has remained consistent and her quality of life and ability to do many of the DLA's are both impaired and/or significantly delayed. He states that her examination demonstrated consistent findings of slow mobility which results in her taking an inordinate amount of time to mobilize and by extension he has no doubt that her DLA's are delayed or are requiring assistance from friends or family. He also states that most recently, in reviewing her case with her family it is apparent that her executive function is delayed and impaired as well. The physician states that the appellant is awaiting a number of consultations including "*...physiatry, chronic pain, gynecology, gastroenterology and psychiatrist and undoubtedly these will represent critical consultations in documenting her diagnosis and presumably expanding on my description of her impairment*". He states that in the midterm, meaning over the next few years, there will be no significant improvement in her current disability status, which he supports.
- Letter from the appellant indicating that her condition has progressed since the original PWD application was submitted. The appellant states that her endometriosis is a life long condition for which non-invasive treatments have continued to fail. The appellant states that without major surgery (oophorectomy and hysterectomy), this condition will debilitate her daily functioning for two years or more from today. The appellant states that she was diagnosed in March 2014 and that the ministry has documents to confirm that her disability has already lasted more than two years. The appellant states that she lives with suspected Ehlers Danlos Syndrome for which she is seeking testing and diagnosis. The appellant states that she suffers from chronic fatigue syndrome, which causes chronic, severe levels of drowsiness and fatigue, along with cognitive impairments such as foginess. She also lives with irritable bowel syndrome and celiac disease. The appellant states that her conditions will continue for two or more years from today.
- The appellant states that approximately 10-15 days per month, getting out of bed to eat and go to the washroom is all that she can do; and she is often forced to drag her lower body with her forearm crutches. She states that the specialist told her not to walk outside without assistive devices due to her impaired mobility. She states that she can lift a maximum of 5 pounds and avoids stairs at all times. The appellant also states that approximately 10-15 days per month

[]

she is limited to drinking meal replacement shakes because she cannot stand long enough to prepare meals or because she does not have the manual dexterity to grasp and hold items of any weight and for any duration. She relies on her parents for all grocery shopping tasks and transportation to and from appointments. She can only complete housecleaning tasks on her best days but all tasks below the waist that require bending down or leaning forward are not doable for her, such as laundry (the “Appellant’s Submission”).

- Letter from a client support worker to the specialist dated December 2, 2016 requesting a letter explaining how the appellant’s diagnosis impacts her daily functioning and information regarding the duration of the appellant’s condition
- Letter from the specialist to the client support worker dated December 5, 2016 stating that the specialist would provide a medical legal letter upon receipt of payment of \$815 along with an invoice for \$815 as attached. The client support worker notes that neither the appellant nor the center where the client support worker works are able to pay the \$815 fee for the medical legal letter from the specialist.

At the hearing the appellant stated that she has concerns with the PWD application form, as there is not a lot of space for the physician to add in additional information. The appellant provided additional information regarding her function and ability to perform DLA. She indicated that when she is having a great day she could walk or stand for 10 minutes but on a bad day she cannot stand up at all. The appellant stated that she cannot live safely on her own and receives help from her parents, particularly with carrying, picking items, up, shopping, laundry, sweeping floors, mopping and cleaning her bathtub. The appellant stated that if she lived on her own she would need help at least once a week with groceries, laundry, cleaning and transportation. The appellant stated that the specialist gave her verbal advice that her condition would last longer than two years, and that she needs to use a cane or knee brace and he told her that she should avoid at-risk activities without a brace. The appellant stated that her chronic pain and chronic fatigue cause cognitive difficulties and that it is hard for her to concentrate.

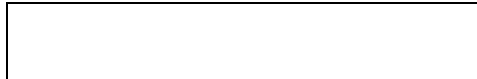
At the hearing the appellant’s advocate provided oral argument as to why the ministry’s reconsideration decision was not reasonable.

At the hearing, the ministry relied on the reconsideration decision. The ministry representative provided a written submission summarizing the information in the reconsideration decision.

Admissibility of New Information

The ministry did not object to the information in the Notice of Appeal, the appellant’s oral evidence, the physician’s December 2015 Letter, the Appellant’s Submission, the letter from a client support worker, or the letter from the specialist dated December 5, 2016.

The panel has admitted the information in the physician’s December 2016 Letter, the Appellant’s Submission, the letter from the client support worker, the letter from the specialist dated December 5, 2016 and the appellant’s oral submissions into evidence as they are evidence 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 and the physician December 2016 Letter provide further explanation about the appellant’s medical condition, impacts on her DLA, and help that is needed. The letter from the client support



worker provides information regarding the appellant's efforts to obtain information supporting her PWD application and the letter from the specialist dated December 5, 2016 provides information regarding his fee requirements in order to provide the requested medical legal letter.

The panel accepts the information in the appellant's Notice of Appeal and the advocate's oral information as argument.

The panel accepts the ministry's written submission as argument.

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's impairment is unlikely to continue for at least two years, and that in the opinion of a prescribed professional the appellant's impairment does 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 did not indicate whether the appellant's impairment is likely to continue for two or more years from today, simply noting "?". The physician states "*[c]urrent level of disability x 2 years, predict no change in short term*". The physician indicates that the appellant's right knee should improve and that the appellant has pelvic pain syndrome awaiting referral and consideration of surgery. The ministry's position is that the physician has not indicated that the appellant's impairment is likely to continue for two or more years from today, so the ministry is not satisfied that the appellant meets the legislative criteria of EAPWDR section 2(2)(a).

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 states that the ministry has documentation confirming that she was diagnosed with her impairment in March 2014, that she was accepted for income assistance under then temporarily disabled category in October 2014 and that December 6,

2016 marks her 2 year and 2 month duration provable by government files. The appellant and her advocate state that the physician's December 2016 Letter provides clarification regarding the duration of her impairment and that the information provided satisfies the legislative criteria as the physician indicates that her condition will have no significant improvement over the next few years. The appellant also states that she could not afford to pay the \$815 required by the specialist to obtain the letter regarding her impairment but argues that the fact the specialist offered to provide a letter is evidence that the specialist would have provided confirmation that the appellant's impairment would last at least two or more years from today.

Panel Decision

The panel does not accept the appellant's argument that the specialist's invoice and letter indicating that he would provide a letter once the \$815 fee was received is evidence confirming that her impairment is likely to last more than two years from today. While the specialist has indicated that he would provide a letter once the requisite fee is paid that does not necessarily mean that the specialist would provide the opinion that the appellant is seeking. The panel is unable to determine what the specialist's information would be and an invoice requiring a fee for a letter is only an indication of the specialist's willingness to provide a medical opinion for a fee.

The appellant states that her impairment is getting worse and as it has already been more than two years and there is no indication that she is going to improve, the panel should find that the ministry's decision that she did not meet the duration criteria was not reasonable. The panel notes, however, that EAPWDR section 2(2)(a) clearly states that it is the opinion of a medical practitioner indicating that the impairment is likely to continue for at least two years.

The information provided by the physician in the PR was unclear as to the physician's opinion regarding the likely duration of the appellant's condition. He indicated that he did not expect any change in the "short term" but did not provide any further explanation as to what length of time he meant by the use of the phrase "short term". However the physician's December 2016 Letter provides further information clarifying the physician's opinion regarding the appellant's impairment. In particular the physician's 2016 Letter indicates that despite his initial presumption and expectation that the appellant would experience significant improvement in her function that has not been the case. Based on his updated assessment of the appellant's conditions, the physician indicates that over the next few years the appellant will not have significant improvement in her current disability status. As the physician has indicated that his initial expectation regarding the likelihood of improvement has not occurred and he does not expect any significant improvement over the next few years the panel finds that the ministry was not reasonable in determining that the legislative criteria of EAPWDR section 2(2)(a) was not met.

Significant Restrictions to DLA

The reconsideration decision states that the minister is not satisfied that the appellant's impairment directly and significantly restricts DLA continuously or periodically for extended periods. The reconsideration decision notes that the physician reports that the appellant is continuously restricted in her ability to perform meal preparation, basic housework, daily shopping, and mobility outside the home but that in describing the degree of the restriction the physician notes "*mostly in significant delay in performing ADL's*" but that no information is provided to explain how much longer it takes the

appellant to perform these DLA. The reconsideration decision indicates that the physician also indicates that the appellant is periodically restricted in her ability to perform mobility inside the home and use of transportation but no additional information is provided to explain the frequency, the degree, or the type of the assistance that the appellant requires to perform these DLA.

The ministry also states that the information provided indicates that the appellant is unrestricted in her ability to perform personal self care, management of medications, management of finances, and social functioning. The reconsideration decision states that while the physician indicates that the appellant requires continuous assistance with basic housekeeping, going to and from stores, and carrying purchases home, noting "*generally requires assistance of another person*", but that the degree or the type of assistance that the appellant requires remains unclear. The ministry also notes that while the physician indicates that the appellant requires periodic assistance with managing transfers on/off of a chair, laundry, food preparation and cooking, noting "*reduced standing time*", no information is provided to explain the frequency, the type, or the degree of the assistance that the appellant requires to manage these activities. The ministry also notes that the physician indicates that the appellant is independently able to manage most areas of daily living, including most areas of personal care and shopping, as well as meal planning and safe storage of food, paying rent and bill, medications, and most areas of transportation.

The reconsideration decision states that with regards to social functioning, the physician does not indicate that the appellant requires support/supervision with managing social functioning and the physician does not provide information to describe the appellant's relationship with both her immediate social network and her extended social network.

The ministry acknowledges that as a result of her severe physical impairment the appellant experiences some limitations in her ability to perform DLA. However, the ministry's position is that as the majority of DLA are performed independently and the required help from others remains unclear, the minister finds the information from the physician, (the prescribed professional), does not establish that the appellant's impairment significantly restricts DLA either continuously or periodically for extended periods.

The appellant's position is that the information provided by the physician and the specialist is sufficient to establish that her impairment significantly restricts her DLA and that the ministry was unreasonable in determining that she did not meet the legislative criteria. The appellant's position, as indicated in the RFR, is that her condition has worsened significantly since the time she submitted the original PWD application and that she struggles with almost all DLA and requires significant help with housekeeping, grocery shopping, transportation, cooking and personal care. As described in the Appellant's Letter and in her oral evidence at the hearing, the appellant has approximately 10-15 bad days per month (once every 3-4 days) where getting out of bed to eat and go to the washroom is all that she can do. The appellant's evidence is that she cannot live alone and she requires significant help. The appellant's position is that the specialist has given her a verbal order that she should not walk outside without assistive devices due to her impaired mobility, which further supports her position that she is restricted with DLA. The appellant states that the area in which she lives is extremely hilly and dangerous for her to walk as she requires flat, sturdy walking surfaces at all times. The appellant's position is that the additional information provided in the physician's December 2016 Letter confirms that her ability to perform many DLA are impaired and/or significantly delayed.

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, RFR, Appellant's Letter and her oral evidence indicates 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 does not describe the same level of restriction as the appellant's evidence describes. In addition, there are inconsistencies in the information provided by the physician in the PR and the AR. For example, in the PR the physician indicates that the appellant is continuously restricted with meal preparation but in the AR the physician indicates that the appellant is independent with meal planning and safe storage of food but requires periodic assistance from another person with food preparation and cooking, explaining that she has reduced standing time. The physician does not provide any explanation for this difference.

In the PR the physician indicates that the appellant is continuously restricted with respect to basic housework but in the AR the physician indicates that the appellant is continuously restricted with basic housekeeping noting right knee immobility but at the same time, that she only requires periodic assistance from another person with laundry. In the PR the physician indicates that the appellant is continuously restricted with daily shopping, but in the AR, the physician indicates that the appellant is independent with reading prices and labels, making appropriate choices and paying for purchases but requires continuous assistance from another person going to and from stores and carrying purchases home. In the PR the physician indicates that the appellant requires continuous assistance with mobility outside the home, but in the AR the physician indicates that the appellant is independent with getting in and out of a vehicle and uses an assistive device for using public transit. While some of the information in the PR and the AR is consistent there are several inconsistencies that make it difficult to obtain a clear picture of the appellant's ability to perform DLA, especially when the physician does not provide any explanation for differences in the information.

In the PR the physician indicates that the appellant requires periodic assistance with mobility inside the home and use of transportation and explains that the restriction relates to the severity of the appellant's pelvic pain and how irritated her right knee is. With respect to the degree of restriction the physician indicates that it is mostly in significant delay in performing DLA's; however, as noted by the ministry, he does not describe how much longer these activities take the appellant to perform. In the AR the physician indicates that the appellant is independent with many aspects of DLA including

toileting, feeding self, regulating diet, transfers (in/out of bed), reading prices and labels, making appropriate choices, paying for purchases, meal planning, safe storage of food, all aspects of paying rent and bills, medications, getting in and out of a vehicle, using transit schedules and arranging transportation. In the AR the physician indicates that the appellant requires periodic assistance with transfers (on/off of chair), food preparation, and cooking; however, the physician does not provide further information regarding the nature and type or frequency of assistance needed, only noting reduced standing time.

With respect to the appellant's relationships with her extended social networks, the physician comments that the appellant is exhibiting significant disability but the physician does not provide any other information with respect to her social functioning or explain the nature or type of significant disability the appellant is experiencing.

The appellant argues that the physician's December 2016 Letter confirms that she has significant restrictions with her DLA, and the physician states that many of her DLA are both impaired and/or significantly delayed. However, this additional statement does not provide very helpful information to explain the inconsistencies between the PR and the AR and it does not provide further information to explain the frequency, type, or degree of periodic assistance required. The physician further explains that the appellant takes an "*inordinate*" amount of time to mobilize and by extension he has no doubt that her DLA are delayed or that she requires assistance from friends or family but he does not provide further information to indicate what an "*inordinate*" amount of time is, or to explain the nature, type, or degree of assistance required. While the appellant states that she would not be able to live alone due to the amount of help that she requires; her information is not corroborated by the physician or the specialist.

In addition, while the appellant states that her condition has worsened, the information provided by the physician does not confirm that her ability to perform DLA is impacted by a worsening of her condition. The physician indicates that her condition has not improved and that she is waiting for several consultations that will hopefully provide more clarification regarding her diagnosis and description of her impairment but he does not say that her condition has worsened. In particular, the physician states that while the appellant is suffering from a degree of chronic pain and chronic fatigue, the exact nature and basis for her condition remains unclear.

Overall, the physician's reports of the appellant's restrictions with DLA do not indicate the same degree of restrictions as described by the appellant. It may be that the physician does not understand or appreciate the appellant's restrictions or perhaps that he did not report them fully in the PR and the AR. However, based on 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 significant help with DLA particularly housework, carrying

and lifting items, cooking, getting groceries and getting to and from appointments. The appellant's position is that she requires mobility devices all the time and cannot walk without them. The appellant's evidence is that she gets a lot of help from her parents, and that she would not be able to live on her own without help at least once a week.

Panel Decision

In the PR, the physician indicates that the appellant does require a prosthesis or aids for her impairment, explaining that she has a right knee brace to be worn daily and she uses a cane for gait and balance support. The physician also states that the appellant requires mobility aids, needs help with housework and often goes shopping with her mother or friend.

In the AR the physician indicates that family and friends provide assistance with DLA and that the appellant routinely uses a cane, crutches and braces. The physician explains that the appellant currently has a full right leg brace most of the time and certainly with mobility. He indicates that she uses a cane for additional comfort and safety. He also indicates that a shower chair would be prudent for her safety. The appellant does not have an assistance animal.

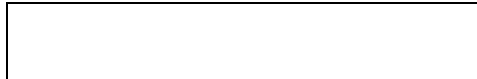
In the SR the appellant states that her required mobility aids (cane or crutches) make it impossible for her to carry home enough groceries and toiletries for herself without assistance. The specialist's letter of March 29, 2016 indicates that he recommended the appellant obtain a patellofemoral brace to wear throughout the day as well as when she is sleeping. The specialist's letter of September 13, 2016 indicates that the appellant has obtained a brace for her right knee and has increased stability. The specialist recommended she wear the brace with her at-risk activities.

Although the appellant receives assistance from her family and friends and uses assistive devices, 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's severe physical impairment does not directly and significantly restrict the appellant's 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 some DLA. Having reviewed and considered all of the evidence the panel finds that the ministry was unreasonable in determining that the appellant's severe physical impairment is unlikely to last two or more years as required by EAPWDR section 2(2)(a). However, the panel finds that the ministry's decision finding the appellant ineligible for PWD designation on the basis that she did not meet the legislative criteria of EAPWDR section 2(2)(b) was 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.