

PART C – Decision under Appeal

The decision under appeal is the Ministry of Social Development and Social Innovation (the ministry) reconsideration decision dated January 11, 2017, which found that the appellant did not meet three of the five statutory requirements of Section 2 of the *Employment and Assistance for Persons with Disabilities Act* for designation as a person with disabilities (PWD). The ministry found that the appellant met the age requirement and that her impairment is likely to continue for at least two years. However, the ministry was not satisfied that the evidence establishes that:

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

PART D – Relevant Legislation

Employment and Assistance for Persons with Disabilities Act (EAPWDA), Section 2

Employment and Assistance for Persons with Disabilities Regulation (EAPWDR), Section 2

PART E – Summary of Facts

The evidence before the ministry at the time of the reconsideration decision included the PWD Application comprised of the applicant information and self report (SR) dated July 12, 2016, a physician report (PR) dated July 4, 2016 and completed by the appellant's general practitioner (GP) who has known the appellant for over 3 years and who has seen the appellant 2 to 10 times in the past year, and an assessor report (AR) dated July 5, 2016 completed by the GP.

The evidence also included the following documents:

- 1) Medical Report- Employability (MRE) dated either July 4 or July 14, 2016 and completed by the GP which states in part that the appellant's condition is episodic in nature, that the episodes occur daily and the frequency at which they are likely to recur is unknown;
- 2) Request for Reconsideration (RFR) signed on December 16, 2016 asking for an extension to the request for reconsideration deadline "due to limitations imposed by (the appellant's) impairment" and "in order to gather information"; and,
- 3) Revised Request for Reconsideration (RRFR) bearing the same date as the first RFR appending a 3 page letter dated December 21, 2016 signed by the GP providing answers to 7 questions similar to some of the questions originally posed in the PR and the AR but phrased differently. The RRFR information is summarized with the SR, the PR and the AR information below.

Diagnoses

In the PR, the GP diagnosed the appellant with "Migraine - ocular (sic)" with an onset of June 2014, Bipolar Disorder, and Attention Deficit Hyperactivity Disorder (ADHD), both with an onset of January 2009. In the RRFR the GP diagnosed the appellant with Ocular Migraine and indicates that she suffers chronic pain, nausea and vertigo.

In the MRE the primary medical condition is identified by the GP as ocular migraines with an onset of June 2014 and the secondary medical condition is identified as bipolar disorder with a date of onset of January 2009. The overall medical condition is described as severe. The medical conditions are classified as being episodic in nature, having occurred on a daily basis. The GP indicates that the frequency of future occurrences is unknown.

Physical Impairment

In the PR, the GP reported that:

- In terms of health history, the appellant has a "history of diplopia and visual contortion such as overlapping images" and when she is having these episodes she has difficulty "walking straight". She also has a "vertigo-like sensation" and has fallen several times.
- The GP also reports that the appellant gets headaches, photophobia, anxiety, fatigue and weakness, and that these episodes are frequent, lasting "every day to most of the week for a duration of 2 hours to all day".
- All treatments to date have not improved her symptoms and the appellant is seeing a neurologist and a neuro-ophthalmologist (sic).
- The appellant was admitted to a hospital in her community as a result of her visual disturbances and was seen by specialists in psychiatry, neurology and neuro-ophthamology (sic). She has been referred to a psychiatrist.

-
- For functional skills, the appellant can walk 1 to 2 blocks unaided, climb 5 or more steps unaided, and has no limitations with lifting or remaining seated.

In the AR, the GP indicated that:

- The appellant is independent with standing, lifting and carrying and holding but requires periodic assistance from another person and takes significantly longer with walking indoors and outdoors and climbing stairs. The GP adds “when having episodes of occular (sic) migraine, patient has difficulty (with) mobility.”

In the SR, the appellant wrote that:

- Her symptoms include dioplia (sic) and vertigo resulting from her migraines.
- Her symptoms have increased in intensity over time and the incremental nature of her increasingly intense symptoms is resulting in more severe visual and vertigo issues.
- She has difficulty reading because “shifting (her) eyes” results in dioplia (sic) and vertigo.

In the RRRFR, the GP wrote that the appellant’s impairment is usually severe and that she has difficulty reading and writing.

Mental Impairment

In the PR, the GP reported:

- The appellant has significant deficits in her cognitive and emotional functioning in the areas of perceptual psychomotor (visual spacial) and emotional disturbance. The GP adds “Given (the appellant’s) visual distortion this causes a lot of emotional distress as she is unable to carry on her ADL (sic).”
- While the appellant is not restricted in her social functioning, the GP states that when the appellant has visual disturbance episodes she gets significant anxiety and has a hard time leaving home to visit her friends.

In the AR, the GP reported that:

- The appellant has visual-spacial distortion that affects her ADL (sic) and causes feelings of isolation and anxiety.
- The appellant’s speaking, reading, writing and hearing abilities are all good.
- The appellant’s mental impairment has no impact on her bodily functions, consciousness, impulse control, insight and judgement, executive functions, memory or language, and she has no psychotic symptoms. The GP reports that the appellant’s mental impairment has a minimal impact on attention and concentration, a moderate impact on motivation and motor activity and a major impact on emotion and other neuropsychological and other emotional or mental problems. The GP adds “ocular migraines (when they occur) significantly (affect) her schooling and causes difficulty in concentration.”

In the SR the appellant states that her migraines result in anxiety and that leaving her house is extremely stressful and that as a result she is unable to socialize.

In the RRRFR, the GP wrote that:

- The pain associated with the appellant’s visual impairment gives her cognitive and emotional deficits, specifically that she has difficulty with concentration, executive functions, decision making, short term memory, motivation and ability to communicate.

- The impairment causes her great emotional and psychological stress.

Restrictions in the Ability to Perform DLA

In the PR, the GP reported:

- The appellant has been prescribed medication that interferes with her ability to perform DLA and adds “currently trialed on gabapentin but unfortunately unable to improve symptoms”.
- The appellant’s impairment directly restrict her ability to perform all of her DLA except the management of finances. The GP reports that periodic restrictions exist for personal self care, meal preparation, management of medications, basic housework, daily shopping, mobility both inside and outside the home, use of transportation and social functioning.
- The periodic restrictions occur when the appellant suffers from uncontrollable ocular migraines because the negative impact on her vision during those episodes make it difficult for her to perform DLA, and that these episodes are frequent, lasting “every day to most of the week for a duration of 2 hours to all day”.
- The appellant has difficulty reading, writing and travelling.

In the AR, the GP reported that:

- The appellant is able to perform every task of all listed DLA independently except for basic housekeeping (noting that laundry can be independently done) and shopping (except for making appropriate choices, for which she is independent).
- For additional comments, the GP wrote that while the appellant is able to get in and out of a vehicle, use public transit and use transit schedules and arrange transportation independently, it may take her significantly longer “when (she has) migraine attack(s) and ... loss of balance”.

In her SR, the appellant wrote that:

- Her illness has profoundly affected her academic performance as she is often unable to attend classes because she can’t leave the house.
- Her symptoms have become worse with time and as a result her ability to perform DLA, including walking indoors, cooking and reading, have become more and more difficult.

In the RRFR, the GP wrote that:

- *The appellant states that* she is significantly restricted in her ability to perform DLA by one or more of her recurring symptoms on a daily basis.
- Restrictions to DLA include meal preparation, housework, shopping, using public and private transport, moving about indoors and outdoors. The GP also states that the appellant has difficulty with financial management “if (she) can’t read, [forgets]” and that *the appellant states that* she must always be accompanied outside the home.

In the MRE, the GP indicates that the appellant is restricted with respect to movement, specifically with walking, as a result of diplopia.

Need for Help

In the PR, the GP indicated that:

- The appellant doesn’t require any prosthesis or aids for her impairment.
- The appellant is assisted by her family with transportation.
- The GP also states that the appellant needs assistance from her family and her friends without

elaborating.

In the AR, the GP wrote that:

- The appellant lives with her parents but no help is needed to maintain her in the community.
- The appellant required help from family and friends with commuting by public transit and help from her family with travel.
- The appellant does not have an assistance animal.

In the RRRFR, the GP stated that:

- The appellant has moved back home with her parents as a result of her impairments and that her parents “must provide assistance with meal (preparation), housework, shopping, transportation, paying bills (and) emotional support.”
- The appellant must be accompanied when she leaves home and that she uses a cane for ambulation outside the home and grab bars in the bathroom.

Additional Information submitted after reconsideration

In her Notice of Appeal dated January 21, 2017, the appellant expressed her disagreement with the ministry’s reconsideration decision and wrote that:

- Her condition is worsening and a diagnosis has not been established.
- Her symptoms render her immobile and she cannot perform her DLA on her own.

At the hearing, the appellant’s advocate introduced a six page document dated February 10, 2017 signed by the advocate (the Advocate’s Document) which expressed strong disagreement with the ministry’s decision and which concludes that the ministry was unreasonable in determining that the appellant did not have a severe impairment, that she did not have direct and significant restrictions in her ability to perform her DLA and that she did not require help from other people to perform her DLA.

The appellant’s father attended the hearing as a witness for the appellant. The witness explained that the appellant’s condition appears to be permanent though the family has not given up on the possibility of a cure. They are frustrated because the doctors don’t know what has caused her condition. She has seen several specialists including a neuro-ophthalmologist.

The witness said that the appellant has always lived at her parent’s home except when she was at university, and that she had to drop out of university a few years ago due to her disability. The witness stated that the appellant’s disability is severe, that some days are worse than others, and that things can change during the day. She is not capable of holding down a job, and while she has a few friends who also help her, she has limited social interaction and strives to maintain contact with her friends.

The witness explained that he is retired so he sees her every day, asking her each morning how she is feeling. Sometimes she sees double or triple, and she has fallen in her bedroom. Occasionally she feels well enough to take public transport but he has to drive her to appointments about three times a week. Sometimes when she has left the home and taken public transport she will call him because she is disorientated or has fallen and cannot find her way home by herself. This happens on average about once a week.

The witness explained that she does her DLA as much as possible by herself, but sometimes she asks a family member to help her with tasks such as tidying the kitchen because she feels she has to

lie down. While she has the help of family and friends, the witness said that she could likely manage living on her own or with a friend if she chose to move out of her family home because she is so determined to live her life as normally as possible.

At the hearing, the appellant stated that the severity of her symptoms is steadily increasing. She described her disability as being more of a range of symptoms on a spectrum than episodes that come and go. She said that she is almost always incapacitated to some degree, and assesses the degree of impairment at any given time on a 10 point scale. If she feels she is “over 6 out of 10” she won’t leave the house. She also avoids going places she hasn’t been before because she never knows in advance when she might fall or be incapacitated or disorientated. She doesn’t have all of her symptoms all of the time; sometimes she has a severe headache or dizziness or anxiety or double or triple vision and vertigo, and she can have any of these symptoms in any combination. She stated that she is always in some pain.

The appellant explained that her ocular migraine symptoms began in 2014, and that they have increased in frequency and severity over time. She said that currently the “full on double vision, vertigo and pain” occur in combination approximately 4 times a week and when they occur they can last from a few hours to all day. If she feels the symptoms coming on when she is at home she can manage the symptoms to a degree by lying down and keeping immobile.

The appellant stated that she is currently seeing her GP on a regular basis, and she sees a neuro-ophthalmologist and a psychiatrist on a less regular basis. She said the medications she takes to deal with her anxieties are being adjusted. She also said that while she was diagnosed with a bipolar disorder in 2009 she feels that the depression and anxiety that she is dealing with now is largely a result of the effect of her physical symptoms (i.e. ocular migraines).

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

Admissibility of Additional Information

The panel considered the information in the Notice of Appeal, the Advocate’s Document, the appellant’s witness’s oral testimony and the appellant’s oral testimony as corroborating the previous information from the appellant in her Request for Reconsideration and the PWD application regarding the impacts of her medical conditions, which was before the ministry at reconsideration. Therefore, the panel admitted this additional information as being in support of information and records that were before the ministry at the time of the reconsideration, in accordance with Section 22(4)(b) of the *Employment and Assistance Act*.

PART F – Reasons for Panel Decision

The issue on the appeal is whether the ministry's reconsideration decision, which found that the appellant is not eligible for designation as a person with disabilities (PWD), was reasonably supported by the evidence or was a reasonable application of the applicable enactment in the circumstances of the appellant. The ministry found that the appellant does not have a severe mental or physical impairment and that her DLA are not, in the opinion of a prescribed professional, directly and significantly restricted either continuously or periodically for extended periods and that, as a result of those restrictions, it could not be determined that the appellant requires the significant help or supervision of another person, the use of an assistive device, or the services of an assistance animal to perform DLA.

The criteria for being designated as a PWD are set out in Section 2 of the EAPWDA as follows:

Persons with disabilities

2 (1) In this section:

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

"daily living activity" has the prescribed meaning;

"prescribed professional" has the prescribed meaning.

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

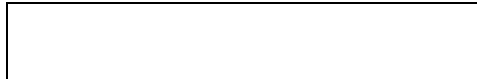
(4) The minister may rescind a designation under subsection (2).

The EAPWDR provides as follows:

Definitions for Act

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

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



- (i) prepare own meals;
 - (ii) manage personal finances;
 - (iii) shop for personal needs;
 - (iv) use public or personal transportation facilities;
 - (v) perform housework to maintain the person's place of residence in acceptable sanitary condition;
 - (vi) move about indoors and outdoors;
 - (vii) perform personal hygiene and self care;
 - (viii) manage personal medication, and
- (b) in relation to a person who has a severe mental impairment, includes the following activities:
- (i) make decisions about personal activities, care or finances;
 - (ii) relate to, communicate or interact with others effectively.

(2) For the purposes of the Act, "**prescribed professional**" means a person who is

- (a) authorized under an enactment to practise the profession of
- (i) medical practitioner,
 - (ii) registered psychologist,
 - (iii) registered nurse or registered psychiatric nurse,
 - (iv) occupational therapist,
 - (v) physical therapist,
 - (vi) social worker,
 - (vii) chiropractor, or
 - (viii) nurse practitioner ...

The Positions of the Parties

Appellant's Position

The appellant's position is that she has a severe impairment which continues to worsen over time and that she cannot perform a significant number of DLA without the assistance of family and friends.

In the Advocate's Document the advocate states that the appellant strongly disagrees with the ministry's reconsideration decision and argues that the ministry's decision "was neither reasonably supported by the evidence nor was it a reasonable application of the applicable enactment."

Specifically the advocate makes the following arguments in the Advocate's Document, which are addressed in the "Panel Decision" section of this decision below:

- There appear to be no references to the applicable legislative provisions nor any direct application of the available evidence to the legislative criteria;
- There is extensive evidence before the ministry to establish a severe impairment with both physical and mental components;
- It is noted by the advocate that in the reconsideration decision the ministry notes that the GP states "*Patient states daily*" (emphasis ministry's) in the RFR with regards to how significantly

[]

the appellant's DLA are impacted, which suggests to the ministry that "the daily frequency of restriction is based on (the appellant's) SR as opposed to the medical assessments of (the GP)". The advocate argues that the GP's language in the RRFR ("Patient states daily") is not indicative of the GP not having taken efforts to understand the impacts of the appellant's impairments on her DLA and that the ministry's determination that the daily frequency of impacts is based on the appellant's assessment rather than a medical assessment is unreasonable "given the totality of the other information available";

- In the RRFR the GP indicates that the appellant is significantly restricted with respect to many of the areas of DLA listed in Section 2(1) of the EAPWDR;
- Regarding help required, the appellant has moved back in with her family due to her impairments, her GP confirms that the appellant is assisted by her family with transport, help from family and friends with public transport, and periodic assistance with a number of DLA including going to and from stores, performing basic housework, reading labels and paying for purchases. In addition, the GP reiterates and expands on these points in the RRFR. Therefore, the advocate argues, the ministry's determination that the evidence does not establish that the appellant requires help to manage her DLA is unreasonable.

Ministry's Position

The ministry's position, as set out in the reconsideration decision, is that there is not enough evidence to confirm that the appellant has a severe impairment that significantly restricts her ability to perform her DLA continuously or periodically, and because it has not been established that DLA are significantly restricted, it cannot be determined that significant help is required.

Panel Decision

With respect to the advocate's argument in the Advocate's Document that there appear to be no references to the applicable legislative provisions nor any direct application of the available evidence to the legislative criteria in the arguments presented in the ministry's reconsideration decision, the panel finds that while the ministry might not have identified the specific legislative provisions in its reconsideration decision, the ministry did use the correct legislative tests in reaching its decision.

Severe Physical Impairment

Section 2(2) of the EAPWDA requires that in determining whether a person may be designated as a PWD the ministry must be satisfied that that person has a severe physical or mental impairment. A diagnosis of a serious medical condition does not in itself determine PWD eligibility or establish a "severe" impairment. An "impairment" is a medical condition which results in restrictions to a person's ability to function independently or effectively.

To assess the severity of an impairment, the ministry must consider both the nature of the impairment and the extent of its impact on daily functioning as evidenced by functional skill limitations and the degree to which the ability to perform DLA is restricted. In making its determination the ministry must consider all the relevant evidence, including that of the appellant. However, the legislation is clear that the fundamental basis for the analysis is the evidence from a prescribed professional – in this case the appellant's GP.

The GP reported in the PR, which was prepared in July 2016, that the appellant can walk 1 to 2 blocks unaided, climb 5 or more steps unaided, has unlimited abilities with respect to lifting and

sitting, and that she does not require any prostheses or aid for her impairment. In the AR, which was also prepared in July 2016, the GP indicated that the appellant is independent with standing, lifting and carrying and holding with periodic assistance required from another person with respect to walking indoors and outdoors and climbing stairs.

In the section of the AR relating to assistance provided through the use of assistive devices, the GP reported that none of the listed assistive devices are used by the appellant, and no aids to mobility such as a cane are identified in the PR as being required by the appellant. However the GP did state that the appellant has difficulty with mobility.

In the RRFR, which was completed in December 2016, the GP said that the appellant must be accompanied when she leaves home and that she uses a cane for ambulation outside the home and grab bars in the bathroom. Regarding the frequency and severity of her medical conditions, the GP writes in the December 2016 RRFR that “Her migraine attacks have become worse and more frequent. Her vision, nausea and vertigo (have) not improved and symptoms have worsened.”

The panel notes that, when asked to indicate the severity of the appellant’s medical conditions in the PR, the GP reported that the medical conditions are “frequent, (lasting) every day to most of the week for a duration of 2 hours to all day”. The panel further notes that both the prescribed professional (in the RRFR) and the appellant (in the SR and in her testimony at the hearing) have indicated that the appellant’s symptoms have become more frequent and more severe in recent months, but the specific details regarding the severity of the impairments in more recent months, in particular the frequency and duration of the periodic episodes, was not information that was before the ministry at reconsideration.

In its reconsideration decision, after quoting the GP’s description of the appellant’s medical condition from the PR, the ministry states “The ministry notes that a diagnosis of a serious medical condition does not in itself determine PWD eligibility or establish a *severe impairment*”. Therefore the ministry implicitly acknowledges that the GP has described a diagnosis of a serious medical condition, but argues that a *severe* impairment of the appellant’s physical functioning has not been established because the GP has not described the frequency of periods during which the appellant’s episodes last most of the week or the frequency and duration of periods during which her impairments last more than 2 hours. The ministry’s position is that when impairments are periodic or episodic rather than continuous, the frequency and duration of those periodic impairments is crucial in assessing the severity of the impairment.

The panel notes that the Section 2(2)(b)(i) of the EAPWDR requires that a mental or physical impairment directly and significantly restrict the person's ability to perform daily living activities either continuously, or *periodically for extended periods*. As the GP has indicated that the appellant’s episodes of impairment are frequent rather than continuous, the panel finds that the ministry was reasonable in determining that in order to assess whether the periodic impairments were for extended periods it would need to know how often and for how long the episodes occur. If, for example, the vast majority of an individual’s impairments occurred approximately 4 times a week and lasted 2 hours, and that on average an episode of impairment would be expected to last all day only once a year, it might reasonably be concluded that one’s periodic impairment was not for extended periods.

The panel finds that the ministry’s determination that there is not sufficient evidence to establish that the appellant has a severe physical impairment which directly and significantly restricts the appellant's ability to perform daily living activities either *continuously, or periodically for extended*

[]

periods pursuant to Section 2(2) of the EAPWDA, was reasonably supported by the evidence before the ministry at reconsideration.

Severe Mental Impairment

In its reconsideration decision, the ministry found that the GP's assessments in the PR provided evidence of significant deficits with respect to cognitive and emotional functioning in the areas of perceptive psychomotor and emotional disturbance, but no significant deficits for the majority of areas of cognitive and emotional functioning. In addition, the ministry determined that the GP indicates that the appellant is independent in all aspects of social functioning. In the AR the ministry noted that the GP indicated major impacts to three areas of cognitive and emotional functioning, moderate impacts to two areas, minimal impacts to one area, and no impact to eight areas of cognitive and emotional functioning. On balance the ministry found that, based on the GP's assessment, the cumulative impact on cognitive and emotional functioning was not indicative of a severe impairment to mental functioning.

In the PR the GP diagnosed the appellant with bipolar disorder, and ADHD, whereas in the MRE the secondary medical condition is identified by the same GP as only bipolar disorder

The GP reported in the PR that the appellant suffers from visual distortion which causes her emotional distress and as a result she is unable to carry on her DLA. However, for the sections of the AR assessing impacts to cognitive and emotional functioning, the GP indicated that the appellant's mental impairment has no impact on the majority of functions including: her bodily functions, consciousness, impulse control, insight and judgement, executive functions, memory or language, and she has no psychotic symptoms. The GP reports that the appellant's mental impairment has a minimal impact on attention and concentration, a moderate impact on motivation and motor activity and a major impact on emotion and other neuropsychological and other emotional or mental problems. However, the GP does not identify which other neuropsychological and other emotional or mental problems are affected or, with one exception, comment on the extent to which the cognitive and emotional functions are impacted. The exception is in the area of concentration, where the GP identifies a minimal impact and notes "when having ocular migraines (i.e. several times a week for between 2 hours and the full day) ... (the appellant has) difficulty (concentrating)".

At the hearing, the appellant stated that she feels that the depression and anxiety that she is dealing with now is largely a result of the effect of her ocular migraines (i.e. her physical impairment) rather than the secondary diagnosis of bipolar disorder and ADHD.

The panel finds that the evidence shows that most of the cognitive and emotional functions are not impacted by the appellant's mental impairment and that for functions where impacts are identified there is no additional information provided by the prescribed professional (except with respect to concentration as discussed above). Therefore the panel finds that the ministry reasonably determined that a *severe* mental impairment was not established pursuant to Section 2(2) of the EAPWDA.

Significant restrictions in the ability to perform DLA

Section 2(2)(b) of the EAPWDA requires that the ministry be satisfied that a prescribed professional has provided an opinion that an applicant's severe impairment *directly* and *significantly* restricts her DLA, continuously or periodically for extended periods. In this case, the GP is the prescribed

professional. DLA are defined in Section 2(1) of the EAPWDR and are also listed in the PR and, with additional details, in the AR. Therefore, the prescribed professionals completing these forms have the opportunity to indicate which, if any, DLA are significantly restricted by the appellant's impairments either continuously or periodically for extended periods, and to further elaborate so that the nature and extent of the restrictions to DLA are clear.

As mentioned above, the ministry argues in its reconsideration decision that when the GP says "Patient states daily" in the RRFR with regard to how significantly the appellant's DLA are impacted, it suggests the daily frequency of restriction is based on a self assessment by the appellant rather than one made by the GP. The appellant's advocate argues that this is unreasonable given all of the other information available. The panel notes that when a prescribed professional makes an assessment, states an opinion or makes an observation in a medical report it is usually assumed to be the prescribed professional's opinion unless it is qualified by the prescribed professional in some way. As the GP has qualified an observation regarding the frequency of significant restrictions to the appellant's DLA in the RRFR with the phrase "Patient states ..." the panel finds that it is not unreasonable for the ministry to assume that the words were added to indicate that not only is the opinion expressed the patient's assessment, observation or opinion, but that it might not necessarily reflect the assessment of the prescribed professional, or, at the very least, that it is an observation which the prescribed professional has not been able to independently confirm. Otherwise, why would the phrase be included?

In its reconsideration decision, the ministry also notes discrepancies between the assessments made by the GP in the PR and the AR. The ministry also notes that the GP states that the appellant is independent in all but two of the DLA categories. In those two areas where the appellant is not independent, the ministry points out that GP states that she needs periodic assistance with those DLA but does not describe the frequency and duration of the periodic assistance required. Therefore, the ministry argues, it can not be established that there are significant restrictions to DLA.

The panel notes that the GP reported that the appellant is periodically restricted in performing all DLA except for financial management in the PR. Specifically, the GP reported that the appellant is periodically restricted with respect to personal self care, meal preparation, management of medications, basic housework, daily shopping, mobility inside and outside the home, use of transportation, and social functioning without explicitly noting the frequency and duration of the restriction in the section of the PR where the prescribed professional is prompted to explain the nature of the periodic restriction with respect to each activity. In the AR on the other hand, the GP assessed the appellant as independently able to perform every task of all listed DLA except for basic housekeeping (excluding laundry) and all aspects of shopping except for making appropriate choices. In the RRFR the GP stated that the appellant was restricted in completing the following DLA: meal preparation, housework, shopping, using public and private transport, moving about indoors and out of doors and that she has difficulty with financial management. Again duration and frequency is not explained.

The prescribed professional is instructed in the PR to describe the extent of the restrictions on DLA in the comments section of the PR. The additional commentary provided by the GP in this section of the PR is "Difficulty reading, writing and travelling". There is no additional information identifying the extent of restrictions on other DLA identified as being subject to periodic restrictions, such as personal self care, meal preparation, etc.

In addition, as discussed in more detail in the reasons for decision under the heading "Restrictions in

the Ability to Perform DLA”, the evidence as to whether or not there are limitations to the appellant’s physical functioning is not consistent: in the RRRFR the GP says that a large number of DLA are restricted without identifying the degree of restriction, in the PR the GP states that almost all DLA are periodically restricted without further elaboration, while in the AR the GP states that the appellant is able to perform almost all DLA independently.

At the hearing, the appellant’s witness stated that the appellant sometimes asks for help tidying up the kitchen, which suggests that the appellant might have difficulty with some aspects of housekeeping, but there is no information provided in the PR, the AR or the RRRFR regarding the nature of the periodic restrictions that the appellant experiences with respect to personal self care, other housekeeping activities, meal preparation, etc.

The panel finds that the ministry reasonably concluded that there is not enough evidence from the prescribed professional to establish that the appellant’s impairment *significantly* restricts her ability to manage her DLA either continuously or periodically for extended periods, thereby not satisfying the legislative criterion of Section 2(2)(b)(i) of the EAPWDA.

Help to perform DLA

Section 2(2)(b)(ii) of the EAPWDA requires that, *as a result of direct and significant restrictions* in the ability to perform DLA, a person requires help to perform those activities. Help is defined in subsection (3) as the requirement for an assistive device, the significant help or supervision of another person, or the services of an assistance animal in order to perform a DLA.

In its reconsideration decision, the ministry states that it cannot be determined that significant help is required because it has not been established that DLA are significantly restricted.

While the GP stated in the December 2016 RRRFR that appellant uses a cane for ambulation outside the home and that she uses grab bars in the bathroom, and the testimony of the appellant and her witness at the hearing confirm that the appellant sometimes requires assistance with DLA in the home and transportation to appointments, such help must be required *as the result of direct and significant restrictions* in the applicant’s ability to perform DLA.

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

Conclusion

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