PART C – Decision under Appeal

The decision under appeal is the reconsideration decision of the Ministry of Social Development and Social Innovation (the ministry) dated 17 February 2017 that denied the appellant designation as a person with disabilities (PWD). The ministry determined that the appellant did not meet all of the required criteria for PWD designation set out in the *Employment and Assistance for Persons with Disabilities Act*, section 2. Specifically, the ministry determined that the information provided did not establish that the appellant's severe physical impairment, in the opinion of a prescribed professional,

(i) directly and significantly restricts her ability to perform daily living activities (DLA) either continuously or periodically for extended periods; and,

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

The ministry determined that the appellant satisfied the other 3 criteria: she has a severe physical, though not a severe mental, impairment; she has reached 18 years of age; and her impairment in the opinion of a medical practitioner is likely to continue for at least 2 years.

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 reconsideration consisted of the following:

1. The appellant's PWD Designation Application dated 19 July 2016. The Application contained:
   - A Physician Report (PR) dated 12 December 2015 (sic), completed by the appellant's general practitioner (GP) who has known the appellant for 1.5 years and seen her more than 11 times in the past 12 months.
   - An Assessor Report (AR) dated 06 December 2016, signed by the same GP who writes, "This section of the Report has been filled in by the patient as per instructions received." In addition, a ministry telephone log dated 14 December 2016 states "The [GP] advised that it was an unusual situation whereby the patient had attended her medical appointment with [the AR] completed by herself. He understood that typically a social worker completes [the AR]. The physician stated that he reviewed what the applicant had written in [the AR] and agreed to the information provided."
   - The appellant chose not to complete a Self Report.
   - 4 Medical reports attached to the application (see below).

2. A reconsideration submission by the appellant dated 17 February 2017, with an accompanying statement by the GP dated 07 February 2017 that he finds the additional details described to be credible. Also attached is letter from a Registered Clinical Counsellor (RCC) describing behavioural and clinical concerns that preclude the appellant from employment.

In the PR, the GP diagnoses the medical conditions related to the appellant's impairment as:

- Arthritis (worst in knees) – onset 2005
- Anxiety – onset 1972
- Depression – onset 1972
- COPD - emphysema – onset 1986.

The panel will first summarize the evidence from the PR and the AR as it relates to the PWD criteria at issue in this appeal.

Severity of mental impairment

PR:

Under Health History, the GP writes:

> "[The appellant] has severe anxiety since a young age. She has managed this throughout her life but is her main underlying condition. In recent years the addition of her knees worsening and increasing SOB 2^{o} to COPD have combined to become disabling. A big barrier to treatment is [the appellant's] anxiety around taking medication and inability to swallow pills for the most part."

The GP indicates that the appellant has significant deficits with cognitive and emotional function in the areas of emotional disturbance, motivation, impulse control, and attention or sustained concentration. The GP comments: "[secondary to] depression & anxiety."

AR:

The degree to which the appellant assesses how her mental impairment restricts or impacts her functioning in the following areas is shown below:

- Major impacts: none
- Moderate impacts: bodily functions, emotion, motivation, and other emotional or mental problems
- Minimal impacts: consciousness and attention/concentration.

The appellant writes: “coughing too hard I break ribs, so I get medication to try not to cough so hard. I am also going to a counsellor to get help with anxiety.”

Ability to perform DLA

General

PR:
The GP indicates that the appellant has not been prescribed any medications and/or treatments that interfere with her ability to perform DLA.

The GP indicates that the appellant had no difficulties with communications and in the AR the appellant assesses her ability to communicate as good for speaking, reading, writing, and hearing.

The GP indicates that the appellant’s impairment directly restricts her ability to perform DLA. He assesses the appellant as being restricted on a continuous basis for meal preparation, mobility outside the home and social functioning. He indicates that the appellant is not restricted for personal self care, management of medications, basic housework, daily shopping, mobility inside the home, use of transportation, and management of finances.

Regarding social functioning, the GP explains, “By herself a lot. ‘I don’t want to see people.’” Regarding the degree of restriction, the GP adds, “Lack of concentration, & motivation fluctuates but is always there.”

Moving about indoors and outdoors

PR:
The GP indicates that the appellant is able to walk 4+ blocks unaided on a flat surface, can climb 5+ steps unaided, is limited to lifting 15 to 35 lbs. and can remain seated for less than 1 hour (“back pain”).

AR:
The appellant assesses her mobility and physical ability as follows:

- Walking indoors – independent but continuous assistance from another person required or unable.
- Walking outdoors – independent but continuous assistance from another person required or unable (“Stop and rest after one block”).
- Climbing stairs – independent.
- Standing – independent but continuous assistance from another person required or unable

('for short periods").
- Lifting – independent.
- Carrying and holding – independent.

The appellant comments: "Walking up hills, I cough and get sick. Climbing stairs I stop about every five and get my breath."

Daily living activities

AR:
The appellant assesses the assistance she requires to perform DLA as follows:
- Personal care – independent in all aspects.
- Basic housekeeping – independent in all aspects.
- Shopping – independent for going to and from stores, reading prices and labels, making appropriate choices, and paying for purchases; periodic assistance from another person required for carrying purchases home.
- Meals – independent in all aspects.
- Pay rent and bills – independent in all aspects.
- Medications – independent in all aspects.
- Transportation – independent in all aspects.

The appellant provided no additional explanation, description or commentary.

Social functioning

AR:
The appellant assesses the support/supervision required as follows:
- Independent for making appropriate social decisions, ability to develop and maintain relationships, and interacting appropriately with others.
- Requires periodic support/ supervision for ability to deal appropriately with unexpected demands and ability to secure assistance from others.

The appellant assesses how her mental impairment impacts her relationship with her immediate social network and her extended social network as marginal functioning.

The appellant provides no additional comments, including the identification of any safety issues.

Help required

PR:
The GP indicates that the appellant does not require any prostheses or aids for her impairment.

The GP writes that the appellant needs assistance for DLA from "Support groups/worker."

AR:
The appellant does not indicate that she requires any of the listed equipment or devices to compensate for her impairment and indicates that she does not have an assistance animal.

The appellant indicates that she is provided assistance from friends ("Some times I can get help"). Asked whether help is required but none is available, she writes, "Need my car on the road."

Medical reports

1. Cardiology clinic report, from an exercise treadmill test lab on 12 August 2014. In reviewing the appellant's medical history, the cardiologist noted that she had previous admissions to hospital with suicide attempts, most recently in 2011. The cardiologist stated that he has a low suspicion of any cardiac ischemia, though referenced the need for further tests. He noted the most important intervention for this patient is smoking cessation.

2. Diagnostic imaging report, dated 01 May 2015. Conclusions: Stable lung and pleural findings compared with six months prior. No compelling feature of malignancy. Emphysematous vascular change.

3. Respiratory therapy note, dated 21 September 2015. Conclusions include 1) Expiratory spirogram and flow volume loop are compatible with the diagnosis of moderate airway obstruction without significant response to bronchodilator but does not satisfy the criteria for COPD given the post bronchodilator ratio FEVI to forced vital capacity of greater than or equal to 0.70. 2) Comparison with previous spiralgram of October 1, 2010 there have been further reductions in flow rates and calculated lung volumes with a drop iFEVI from 2.16 to 1.92L.

4. Diagnostic imaging study, bilateral knees, dated 18 November 2015. Findings: Slight narrowing of the medial knee joint spacing of both knees slightly more pronounced on the right. Mild genu varus deformities. No significant degenerative spurring. No joint effusion.

Reconsideration submissions

In her submission, in terms of the criteria at issue in this appeal, the appellant writes that:

- The biggest limitation she faces is to her mobility. Both her COPD and the condition of her knees restrict what she can do. Although she can walk for blocks, she can't walk that far without stopping as her COPD makes her winded after a block and a half and she has to stop and recuperate before going on. In addition her right knee gives out particularly in the wintertime when it is wet and raining.
- When she filled out the AR for the GP to look at and sign off on, she didn't notice that one of the options was that a task takes her "Significantly longer than typical." Because of her condition, all her mobility tasks takes significantly longer than typical. In addition to the above limitations, she also takes significantly longer than typical to climb stairs. While she can climb five stairs without stopping, she has to stop and recuperate after five stairs. Coming downstairs is worse on her knees and she has to grab the wall.
- Other tasks take her significantly longer than typical because of her condition. For example she has to stop and rest when she does the dishes and other household tasks like sweeping. She can do a task for about 5 to 7 minutes and then she must stop. She has to stop when she does the dishes because of her knees and the pain in her back.
- Because of her conditions, she avoids lifting. Her best estimate is that she can manage a

10 bag of sugar but that's the maximum.
- "I have struggled with depression and anxiety. I see a psychologist about once a month. I get frustrated and overwhelmed. I avoid people and tend to isolate."

In his letter, the RCC notes the following behavioural and clinical concerns which appear to preclude the appellant from employment at this time:

- Unable to walk more than five minutes at a time without needing to rest;
- Unable to bend down without extreme acute pain in legs;
- Cannot lift more than 10 pounds and cannot carry items any distance;
- Metal plate in right arm creates severe pain in arm and shoulder, disrupting sleep and interfering with ability to perform physical tasks;
- Depressive feelings and anxiety episodes overwhelm her daily, lasting up to 2 hours at a time;
- Ability to concentrate is disrupted during anxiety attacks or depressive moods;
- Socially withdrawn and unable to tend to others;
- Frequently loses appetite and/or vomits immediately after eating;
- Easily out of breath which she attributes to COPD; and
- Breathing difficulties are further aggravated by anxiety.

Notice of Appeal

In her Notice of Appeal, dated 06 March 2017, the appellant gives as Reasons for Appeal, "My severe disability does directly and significantly affects and limits what I can do every day. Because of these limitations, I need help."

Submission on appeal

Prior to the hearing, the appellant's advocate faxed a submission to the Tribunal, dated 20 March 2017. This submission contained no new information and went to argument (see Part F, Reasons for Panel Decision, below).

The hearing

At the hearing, the appellant's son described how watching his mother's struggles with depression and COPD breaks his heart. He stated that his mother's suicidal tendencies are his biggest worry. He was also concerned that his mother would often fall either due to her knees giving out or as a result of a blackout from over-exertion. She has fallen about four times in the past year, once hitting her head. He is also seen her suffer serious dizzy spells after bending down and then standing up too quickly.

The appellant recalled that when she was in her late 20s she had the top lobe of a lung removed, but still, 30 years later, her condition is not any better. It is a daily struggle to move about too much. She has a plate in her arm, and this and her knees ache all the time when it is damp outside, and she does not sleep well because of the pain. When asked to clarify her assessment for walking indoors and outdoors, the appellant stated that she gets no help, that she has to do virtually everything herself, but it takes her longer to do things. She can walk 1 to 1 ½ blocks and

then she has to stop and rest or she will throw up.

She stated that her son comes to see her about once per week, helping her with shoveling snow, carrying groceries and lifting anything heavy.

The appellant stated that when she first started the PWD application process, she went to an advocacy organization for help. When she went there, there was no room available for her to sit down with someone to give her assistance. All anyone would do for her was give her some instructions, one of which she thought was for her to fill out the AR section of the application to take to her doctor to sign off. This is why her application was completed in this way.

The balance of the appellant's presentation followed the argument set out in her advocate's appeal submission.

Admissibility of new information

The ministry did not take a position on the admissibility of the new information provided at the hearing, leaving it up to the panel to make a determination in this respect.

With the exceptions noted below, the panel finds that the testimony of the appellant and her son at the hearing is in support of the information and records before the ministry at reconsideration, as the information provided tends to go to the severity of her physical impairment, already established at reconsideration. The panel therefore admits this information as evidence under section 22(4) of the *Employment and Assistance Act.*

The panel does not admit as evidence the testimony of the appellant and her son regarding the help he provides his mother, as there was no reference in the information before the ministry of the type or frequency of such help.

The panel accepts the son's feelings and concerns about his mother's mental health condition as argument in support of the appellant's application.

PART F – Reasons for Panel Decision

The issue in this appeal is whether the ministry decision that determined that the appellant did not meet two of the five statutory requirements of Section 2 of the *EAPWDA* for designation as a person with disabilities (PWD) is reasonably supported by the evidence or is a reasonable application of the legislation in the circumstances of the appellant. Specifically, the ministry determined that the information provided did not establish that the appellant's severe physical impairment, in the opinion of a prescribed professional,

(i) directly and significantly restricts her ability to perform daily living activities (DLA) either continuously or periodically for extended periods; and,

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

The ministry determined that the appellant satisfied the other 3 criteria: she has a severe physical, though not a severe mental, impairment; she has reached 18 years of age; and her impairment in the opinion of a medical practitioner is likely to continue for at least 2 years.

The following section of the EAPWDA applies to this appeal:

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 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.

The following section of the EAPWDR applies to this appeal:

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, or

(b) acting in the course of the person's employment as a school psychologist by

(i) an authority, as that term is defined in section 1 (1) of the *Independent School Act*, or

(ii) a board or a francophone education authority, as those terms are defined in section 1 (1) of the *School Act*,

if qualifications in psychology are a condition of such employment.

Severity of mental impairment

Panel decision

In the reconsideration decision, the ministry found that it was not satisfied that the information provided is evidence of a severe mental impairment. In its analysis of the evidence, the ministry began by noting that the GP had diagnosed the appellant with anxiety and depression, with the GP writing, "[The appellant] has severe anxiety since a young age. She has managed this throughout her life but is her main worsening condition. In recent years the addition of her knees worsening and increasing SOB 2^{o} to COPD have combined to become disabling." The ministry then went on to note that the GP had reported deficits to cognitive and emotional functioning in the areas of emotional disturbance, motivation, impulse control, and attention or sustain concentration, noting "[secondary to] depression & anxiety."

The panel is of the view that a diagnosis of a serious medical condition or the identification of mental or physical deficits does not in itself determine severity of impairment. An "impairment" is more than a diagnosed medical condition. An impairment is a medical condition that results in restrictions to a person's ability to function independently, appropriately, effectively or for a reasonable duration. To assess the severity of impairment one must consider the nature of the impairment and the degree of impact on daily functioning.

The panel therefore considers it appropriate that in the reconsideration decision the ministry went on to consider the impacts of the appellant's mental health conditions on daily functioning, referring first to the impacts assessed in the AR. Here, the ministry noted that no major impacts have been identified. The ministry acknowledged that some moderate impacts have been noted and it is reported that the appellant will be seeing a counsellor to help with her anxiety. The ministry found,

however, that most areas of cognitive and emotional functioning have been identified as having minimal to no impact on daily functioning. Further, with regard to communication, there is no indication of any difficulties.

Later in the reconsideration decision, under the criterion of direct and significant restrictions in the ability to perform DLA, the ministry examined the impact of the appellant's mental impairment on social functioning, noting that the GP assessed the appellant as restricted on a continuous basis. The panel notes, however, that this assessment does not address the degree of impairment. The ministry also noted that it is reported that the appellant requires periodic support/supervision with dealing appropriately with unexpected demands and securing assistance from others. As the ministry noted, no information is provided to explain the frequency, the degree, or the duration of the assistance that she requires. Without such information, the panel recognizes that it would be difficult for the ministry to determine the degree to which the appellant's mental health condition restricts her daily functioning. In addition the ministry noted that the appellant is able to manage independently all other areas of social functioning, while having marginal functioning with both her immediate and her extended social networks.

The legislation makes it clear that the determination of severity is at the discretion of the minister, taking into account all of the evidence. However, the legislation is also clear that the fundamental basis for the analysis is the evidence from a medical practitioner and a prescribed professional – in this case, the appellant's GP. The legislation requires that for PWD designation, the minister must be "satisfied" that the person has a severe mental or physical impairment.

For the minister to be "satisfied" that the person's impairment is severe, the panel considers it reasonable for the ministry to expect that the information provided by the medical practitioner and prescribed professional presents a comprehensive overview of the nature and extent of the impacts of the person's medical conditions on daily functioning, not only with the "check mark" assessments sought in the PR and AR forms, but through providing the explanations, descriptions or examples in the spaces provided. In this case, the GP completed the PR and while the appellant filled in the AR, the GP endorsed it by reviewing it and signing it as containing his "findings and considered opinion at this time."

In her appeal submission, the appellant's advocate argues that other information should be taken into account regarding the severity of the appellant's mental impairment. This includes the appellant's statement at reconsideration that she isolates due to her long-term anxiety and depression, the RCC's statement regarding the disruptive nature of the appellant anxiety and depression episodes which happen regularly for extended periods and that her breathing difficulties are worsened by her anxiety, and the reference in the 2014 cardiologist report of suicide attempts resulting in admission to hospital. The panel notes that the latter reference was provided without context and is not current, relating to suicide attempts the latest being in 2011. The panel further notes that the RCC is not a prescribed professional, and therefore finds that therefore the ministry reasonably placed greater weight on the considered opinion of the GP, who identified no major impacts.

On the basis of the foregoing, the panel finds that the ministry reasonably determined that the information provided did not establish a severe mental impairment.

Direct and significant restrictions in the ability to perform DLA

Panel decision

At issue is the degree of restriction in the appellant's ability to perform the 8 DLA listed in section 2(1)(a) of the EAPWDR applicable to a person with a severe mental or physical impairment. In the reconsideration decision, the ministry found that the information provided established that the appellant has a severe physical impairment, but not a severe mental impairment. The panel has found above that the ministry was reasonable in determining that the information provided, including that related to the impacts on social functioning, did not establish a severe mental impairment. Accordingly, the 2 DLA (the "social functioning" DLA) listed in section 2(1)(b) of the EAPWDR applicable to a person with a severe mental impairment (make decisions about personal activities, care or finances and relate to, communicate or interact with others effectively) are not at issue in this appeal.

In the reconsideration decision, the ministry found that it was not satisfied that the appellant's severe physical impairment directly and significantly restricts DLA continuously or periodically for extended periods.

The panel notes that, according to the legislation, the direct and significant restriction in the ability to perform DLA must be a result of a severe impairment, a criterion established in this appeal. The legislation – section 2(2)(b)(i) of the EAPWDA – requires the minister to assess direct and significant restrictions of DLA in consideration of the opinion of a prescribed professional, in this case the appellant's GP. This does not mean that other evidence should not be factored in as required to provide clarification of the professional evidence, but the legislative language makes it clear that a prescribed professional's evidence is fundamental to the ministry's determination as to whether it is "satisfied." And for the minister to be "satisfied," it is reasonable for the ministry to expect that a prescribed professional provides a clear picture of the degree to which the ability to perform DLA is restricted in order for the ministry to determine whether the restrictions are "significant."

In accordance with these considerations, in the reconsideration decision the ministry first reviewed the information provided by the GP in the PR. The ministry noted that the GP reported that the appellant is continuously restricted in her ability to perform meal preparation, mobility outside the home, and social functioning. The ministry noted that in describing the degree of the restriction, the GP states, "lack of concentration [and] motivation fluctuates but is always there." The ministry went on to state that no information is provided to explain the frequency in which the appellant is significantly restricted and to what degree it impacts her ability to manage DLA. In her appeal submission, the appellant's advocate takes issue, justifiably in the panel's view, with the ministry faulting the GP for failing to explain the frequency of the appellant's restrictions, as by definition in a footnote in the PR "continuous" means or all or most of the time. Nevertheless, the panel considers it appropriate that the ministry would point out that these assessments and comments do not describe the degree of restriction.

The ministry goes on to note that in the PR the GP reports that the appellant requires assistance from "support groups/worker," but no information is provided to explain the type or frequency of this

assistance. The ministry further noted that the GP had assessed the appellant as unrestricted in her ability to perform all other DLA, including personal care, management of medications, basic housework, daily shopping, mobility inside the home, use of transportation, and management of finances.

The ministry then turned to the assessments provided in the AR, where it is reported that the appellant requires periodic assistance from another person with carrying purchases home within the DLA of shopping. In this regard, the ministry noted that there is no explanation as to the type or frequency of the assistance that she requires. The ministry further noted that these assessments indicate that she is independently able to manage all areas of daily living, including personal care, basic housekeeping, shopping, meals, paying rent and bills, medications, and transportation.

The panel notes that in reviewing these DLA assessments, the ministry did not address the detailed assessments relating to the DLA of moving about indoors and outdoors. In the PR, GP reported that the appellant can walk 4+ blocks unaided on a flat surface and can climb 5+ steps unaided. In the AR, the panel finds the assessments contradictory and confusing, with it being reported that for walking indoors, walking outdoors, and standing the appellant is independent and requires continuous assistance from another person or unable. At the hearing, the appellant explained that this meant that she took significantly longer than typical when walking, but this explanation was not before the ministry at reconsideration. There is a comment, however, that for walking outdoors the appellant stops and rests after one block and “Walking up hills, I cough and get sick. Climbing stairs I stop about every five and get my breath.” Overall, given the appellant’s moderate range of unaided mobility, the inconsistent assessment in the AR, and a lack of detail regarding how much longer than typical it takes her, the panel finds it reasonable that the ministry would take these assessments as indicating a moderate degree of restriction with respect to this DLA of moving about indoors and outdoors.

The reconsideration decision then addressed the information provided regarding social functioning. The panel has discussed above the reported restrictions in this area under severity of mental impairment.

The reconsideration decision then addressed the appellant's (GP-endorsed) reconsideration submission in which she reported that as a result of her medical conditions her ability to manage activities of mobility takes significantly longer than typical – she has to “stop and rest when [she does] the dishes and other household tasks like sweeping,” and she is able to do a task for 5 – 7 minutes before she must stop and rest. On the basis of this and the other evidence discussed above, the ministry acknowledged that as a result of her medical conditions the appellant experiences restrictions in her ability to manage DLA. However the ministry found these limitations described by the appellant and the GP are more in keeping with a moderate degree of restriction. The panel notes that there is no information from, or endorsed by, a prescribed professional describing how much longer a task might take. For instance, for washing the dishes, she might go for 5 – 7 minutes before taking a break, but there is no indication as to how long that break might take, whether 5 minutes, or an hour, or whether she might resume the task only on the next day. The panel finds that it is unreasonable to expect the ministry to deduce from the information provided that any DLA involving mobility is significantly restricted; the panel therefore finds that the ministry was reasonable in concluding that these DLA are restricted to a moderate degree.

The ministry concluded that as the majority of the appellant's DLA are performed independently or require little help from others, information from the appellant's prescribed professional does not establish that impairment significantly restricts DLA either continuously or periodically for extended periods. In her appeal submission, the appellant's advocate takes issue with the use of the term "majority" of DLA, citing *Hudson* 2009 BCSC 1461, a decision that the advocate argued established that the significant restrictions on an applicant's ability to perform a daily living activity must be established vis-à-vis at least two activities. In the panel's view, as the legislation speaks to impairment that "directly and significantly restricts the person's ability to perform daily living activities *[plural]*" and since not *any* of the DLA have been shown to be significantly restricted, the panel finds that ministry was reasonable in determining that the information provided did not establish that the criterion set out in section 2(2)(b)(i) of the EAPWDA had been met

Help required

Panel decision

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

Section 2(2)(b)(ii) of the EAPWDA requires that, as a result of being directly and significantly restricted in the ability to perform DLA either continuously or periodically for extended periods, a person must also require help to perform those activities. That is, the establishment of direct and significant restrictions under section 2(2)(b)(i) is a precondition of meeting the need for help criterion. 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.

While the appellant benefits from help from her son and from counseling by the RCC, the ministry reasonably determined that direct and significant restrictions in the appellant's ability to perform DLA have not been established, the panel finds that the ministry reasonably concluded that under section 2(2)(b)(ii) of the EAPWDA it cannot be determined that the appellant requires help to perform DLA.

Conclusion

The panel finds that the ministry's reconsideration decision, which determined that the appellant was not eligible for PWD designation, was reasonably supported by the evidence. The panel therefore confirms the ministry's decision. The appellant is thus not successful on appeal.