

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 1 March 2017, which 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 as 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 has a severe mental or severe physical impairment; the appellant's severe mental or physical impairment, in the opinion of a prescribed professional, directly and significantly restricts her ability to perform daily living activities (DLA) either continuously or periodically for extended periods; and as a result of those restrictions, she requires help to perform those activities.

The ministry found that the information provided did establish that the appellant 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 14 October 2016. The Application contained:
 - A Physician Report (PR) dated 26 September 2016, completed by the appellant's general practitioner (GP) who has known the appellant since August 1996 and seen her 2-10 times (8) in the past 12 months.
 - An Assessor Report (AR) dated 8 September 2016, completed by the appellant's physiotherapist who has known the appellant 2.5 years and seen her 2-10 times in the past 12 months.
 - A Self Report (SR) dated 6 October 2016 completed by the appellant.
2. 14 Medical reports attached to the application (see below).
3. A 26-page handwritten reconsideration submission by the appellant dated 2 February 2017 finished 12 February 2017, in which the appellant provides details of her medical conditions, medications history, work history and personal life history.

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

- Right knee pain – onset 2011
- Left shoulder pain – onset 2015
- Anxiety – onset 1984

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:

“With respect to anxiety, she struggles with large numbers of people and public places. Because of history of molestation and several rapes she is very leery of people/men in particular such that she avoids them.”

The GP indicates that the appellant had significant deficits with emotional disturbance. The GP comments: “Has considerable anxiety related to symptoms consistent with PTSD.”

The GP indicates no restrictions to social functioning.

The GP provides the additional comment: “The conditions described impair her physically as well as emotionally.”

AR:

The physiotherapist has not completed an assessment of impacts to cognitive, emotional and social functioning.

In the AR in relation to use of public transit, the physiotherapist indicates that the appellant is independent and provides the comment: “client reports anxiety using public transit.”

SR:

The appellant writes: “I was molested, raped, 4 bad relationships all abusive. I have a lot of

flashbacks. I can't handle shopping in malls or shopping with lots of people."

Severity of physical impairment

PR:

Under Health History, the GP writes:

"Physically she is very limited. Her R knee pain and L shoulder pain result in her having difficulty walking on uneven terrain and can't lift more than 20 lbs. She is in constant pain. Has difficulty doing house-related chores such as cleaning and laundry. As well, with marked dysmenorrhea, she is sidelined for five days each month."

The GP indicates that the appellant requires and aid for her impairment, specifically that she has a custom knee brace.

For functional skills, the GP indicates that the appellant can walk 4+ blocks unaided, climb 5+ steps unaided, lift 2 to 7 kg. (5 to 15 lbs.) with 15 circled, and remain seated less than 1 hour.

The GP indicates that the appellant not restricted with: mobility inside or outside of the home, meal preparation, management of medications, use of transportation, and management of finances.

The GP indicates that the appellant is continuously restricted with: personal self-care, basic housework and daily shopping. The GP comments: "Difficulty washing hair. Can only do bits of housework at a time. Difficulty with shopping relates to anxiety in large places with people."

The GP indicates that the assistance needed with DLA is "assistance with housekeeping".

AR:

The physiotherapist indicates that the appellant is independent in all DLA (see below).

The physiotherapist provides the following additional comments: "client notes previously active with hikes and walking dog outdoors. Client notes walking dog is quite difficult and stays on easy terrain due to concerns for her knee."

SR:

The appellant writes: "I was in a bad car accident in Mar. 2011. I had reconstructive knee surgery. I had an allergic reaction to the flu shot. Oct. 21/2015. I had to have the flu shot to keep working at the hospital. I had my arm swell up to 24" and now have frozen shoulder syndrome in my left arm. I sprained my ankle fell and rebroke my ribs. I keep spraining my ankle. My right knee hurts all the time. The worst menstrual cycles all the time. I can't lift more than 20 lbs. max. My left arm can't reach things. It throbs all the time. I'm bedridden for 5 days every month. The worst menstrual pain (front & back labour) every month. My knee hurts all the time, really weak. I'm in physiotherapist for life for my knee. I have a weak shoulder, knee and ankle. I fell the other day and rebroke my ribs an old injury from domestic violence. I was molested, raped, 4 bad relationships all abusive. I have a lot of flashbacks. I can't handle shopping in malls or shopping with lots of people. I can only do little bits of housework at a time then I sit down a lot. Can't sit too long or stand too long. Life is very tough. I hate waking up every morning! I don't know how much pain I'm going to be in! Shaving my armpit is severely painful! My arm doesn't move like that! Getting in & out of the tub is a chore! I was hit by lightning" ... "I have had 35 occupations I can't do any of them. When I work five hours I sleep 12 hours. I was held hostage twice." ... "I need some assistance please."

Ability to perform DLA

General

PR:

The GP indicates that the appellant has not been prescribed any medications that interfere with her ability to perform DLA.

The GP indicates that the appellant has no difficulties with communications.

The GP does not indicate whether the appellant's impairment directly restricts her ability to perform DLA. He assesses the appellant as being restricted on a continuous basis for personal self-care, basic housework and shopping. He indicates that the appellant is not restricted for all other DLA.

The GP indicates no restrictions to social functioning and has not provided any comment in the corresponding section of the form.

AR:

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

The physiotherapist indicates that the appellant is independent in all DLA.

Section 2(1)(a) DLA

Prepare own meals

PR:

The GP indicates that the appellant is not restricted in relation to meal preparation.

AR:

The physiotherapist indicates that the appellant is independent in independent in all meals activities.

Manage personal finances

PR:

The GP indicates that the appellant is not restricted in relation to management of personal finances.

AR:

The physiotherapist indicates that the appellant is independent in all of the activities related to management of personal finances, with the comment "financial stress" in relation to pay rent and bills.

Shop for personal needs

PR:

The GP indicates that the continuously restricted in relation to shopping DLA, and notes that "Difficulty with shopping relates to anxiety in large places with people."

AR:

The physiotherapist indicates that the appellant is independent in all shopping DLA. The

physiotherapist comments: "client notes financial difficulty paying for purchases" in relation to the paying for purchases DLA and "unable to carry groceries > 20 lbs." in relation to the carrying purchases home DLA.

Use public or personal transportation facilities

PR:

The GP indicates that the appellant is not restricted in relation to use of transportation.

AR:

The physiotherapist indicates that the appellant is independent in all transportation DLA, with the comment "client reports anxiety using public transit" in relation to the using public transit DLA.

Perform housework to maintain the person's place of residence

PR:

The GP indicates that the appellant is continuously restricted in relation to housework, and provides the comment: "Can only do bits of housework at a time."

AR:

The physiotherapist indicates that the appellant is independent in all basic housekeeping DLA. The physiotherapist comments: "Requires more time, slow and frequent rest breaks" in relation to basic housekeeping.

Move 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 5 to 15 lbs. (15 is circled) and can remain seated for less than 1 hour.

The GP also indicates that the appellant is not restricted with mobility inside of the home or mobility outside of the home.

AR:

The physiotherapist indicates that the appellant is independent in all mobility and physical ability DLA, including walking indoors and outdoors, climbing stairs, standing, lifting, and carrying and holding. The physiotherapist comments: "Slow walking up and down stairs. If there's >12 steps then uses rail. Able to lift and carry 20 lbs. but reported heavy and visible signs of discomfort."

The physiotherapist provides the following additional comments: "client notes previously active with hikes and walking dog outdoors. Client notes walking dog is quite difficult and stays on easy terrain due to concerns for her knee."

Perform personal hygiene and self-care

PR:

The GP indicates that the appellant is continuously restricted with personal self-care, and comments: "Difficulty washing hair."

AR:

The physiotherapist indicates that the appellant is independent in all personal care DLA. The physiotherapist comments: "Requires extra time for dressing and often uncomfortable" in relation to the dressing and "unable to do desired grooming (i.e. desired hairstyle)" in relation to the grooming.

Manage personal medication

PR:

The GP indicates that the appellant is not restricted in her management of medications.

AR:

The physiotherapist indicates that the appellant is independent in all medications DLA.

Section 2(1)(b) DLA

The following DLA are applicable to a person who has a severe mental impairment:

Make decisions about personal activities, care or finances

PR:

The GP indicates that the appellant has no restrictions with communication, social functioning, management of finances and medications.

AR:

The sections of the AR relating to cognitive and emotional functioning and social functioning have not been completed.

Relate to, communicate or interact with others effectively

The GP indicates no problems with communication and no restrictions to social functioning.

AR:

The physiotherapist indicates that the appellant had no difficulties with communications and in the AR. The physiotherapist comments: "no issues".

Help required

PR:

The GP indicates that the appellant requires an aid for her impairment; specifically that she has a custom knee brace.

The GP indicates that the assistance needed with DLA is "assistance with housekeeping".

AR:

The physiotherapist indicates that appellant receives help from family for DLA, with the comment: "client reports mom and brother can help with odd task (i.e. picking up items or walking dog) when necessary.

The physiotherapist indicates that the appellant requires cane and braces to compensate for her impairment, with the comments: "cane is only used for rough terrain. Client uses custom knee brace made Jan 2014 following motor vehicle accident March 2011.

The physiotherapist indicates that the appellant does not have an assistance animal.

Medical reports

1. Specialist consultation report dated 16 February 2017, confirming orbital floor fracture and left zygomatic buttress fracture.
2. Specialist consultation report dated 14 November 2014, indicating symptoms suggesting possible transient compression of peripheral nerves, possible during sleep, there is no sign of any conduction abnormality.
3. Post-surgical exam report dated 19 March 2014, indicating that despite a fall following surgery the ligament is holding out quite well.
4. Post-surgical exam report dated 31 July 2014, indicating that the appellant has had a good result from knee surgery and there is no need for further follow up.
5. CT scan report dated 06 December 2016.
6. X-ray report dated 28 October 2016.
7. Re-referral report of surgeon dated 30 August 2016, indicating mild quadriceps atrophy, normal range of motion and no increased instability in the right knee. Surgical intervention is not necessary. The left shoulder has limited range of motion. She does not have classical frozen shoulder but definitely has restricted range of motion due to capsular contraction. Her left shoulder should recover uneventfully over time.
8. GP chart notes dated 28 November 2016.
9. Nerve study result dated 19 November 2014.
10. X-ray report dated 3 February 2014.
11. X-ray report dated 12 April 2016.
12. Ultrasound report dated 13 July 2016.
13. Ultrasound report dated 26 October 2016.
14. X-ray report dated 28 October 2016.

Reconsideration submissions

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

- Following a car accident in March 2011 she worked with a concussion, torn MCL, ACL and meniscus for 2 months before finding out she could get medical EI.
- She ended up abusing regular pain meds, i.e. Advil, Tylenol, Aleve and Motrin. She was taking 4 of each, every 4 hours and damaged her liver. Now most pain meds don't work. She has had to learn to live with the pain and is very limited.
- She was subjected to physically and sexually abusive behavior by several adults during her childhood and early adult life. Bringing up her past is hard.
- She can't keep up with housework at all. Her mom has been making her bed for over a year.
- Her physical impairments include:
 - A fractured jaw (in 2 places), chipped tooth, loss of 28 lbs. since the fall. She has been on a soup diet. She fell 7 feet from a hammock. She has shooting pains from her eye socket to every part of her left cranium. It is painful and is the most limited part of her life. She has severe nerve damage in the side of her face.
 - Her left elbow is stuck to her rib cage; she can't raise it. Her arm is in pins & needles most of the time, especially ring and pinky fingers.
 - She rebroke her ribs in a fall when she first made the application.
 - She sleeps with her knee brace on and wears it every day. She is impacted by changes in weather and barometric pressure. She has 3 canes and uses a walking stick.
 - She sleeps 12 hours per day now and needs to heal. She has never had a chance to heal. She needs someone to clean her house.
 - She has a bad left ankle, bad right knee, bad left shoulder, left bad broken numb upper mandible.

- She went to doctors and hospitals 62 times in 2016.
- She has just seen a plastic surgeon and has frozen jaw syndrome. It will heal on its own.

Notice of Appeal

In her Notice of Appeal, dated 11 March 2017, the appellant gives as Reasons for Appeal, "I'm sincerely injured. I am very limit. I miss working very much. I wish I could work again." The appellant has also included:

- A 7-page handwritten appeal submission dated March 10, 2017, in which she describes her medical conditions as well as the pain and difficulty she experiences as a result of these conditions. Much of this submission reiterates and expands on the contents of the reconsideration submission, detailing the injuries to the left side of her head, left shoulder, right knee, and dysmenorrhea. She also describes nightmares and flashbacks associated with past abuse. She further explains that she has a new gynecologist and is expecting to have surgery. She states that she has exhausted every resource and can't pay her bills. The appellant indicates that her friend is coming in twice a week to help her with housework.
- A 1-page list of exercises and physiotherapy goals signed by the physiotherapist (undated).

The hearing

At the hearing, the appellant's brother described how his sister is very limited in what she can do. He stated that he assists with shopping, meals, lifting, and household chores. He described the situation as frustrating on all levels, trying not to step on her toes and give her independence. The situation is very difficult for the appellant; she is in a lot of pain and did not sign up for a life like this.

At the hearing the appellant introduced a one page letter from her GP dated 30 March 2017 and 10 colour images of the appellant's face (printed on standard printer paper) that she explained were taken after her October 2016 fall from a hammock.

The GP's letter states that the appellant fell from a hammock in October 2016 and struck the left side of her face on the ground. She has 2 subtle fractures and facial numbing, which have been confirmed by a Plastic & Reconstructive surgeon. He describes the appellant's reports of "persistent and troublesome symptoms" that have "added to her already considerable difficulties with functioning." He reports that the appellant describes constant headaches with spasms, marked difficulty eating, and ongoing facial numbness. As well, he indicates that the headaches are exacerbated by bending and activity; the appellant is unable to do housework and meal preparation is extremely difficult. He further states that the appellant has reported aggravation of her left shoulder in the fall and it is now less functional. The appellant is waiting for intake by the Head Injury Clinic. The GP reports that the appellant is "reportedly much less functional having had these persistent symptoms from a recent facial fracture."

At the hearing, the appellant explained that she has difficulties with range of motion and coordination. She is in pain and her face hurts all the time. She is woken up at night by pain and spasms. She is eating baby food and soup with toast. She cannot open her mouth or pucker her lips. She has frozen shoulder from the flu shot 1.5 years ago. She injured her knee in a car accident 6 years ago and had a reconstruction surgery 3 years ago. The knee was better until she fell and stretched everything. She explains that she cannot stand to cook or do dishes. She has a friend helping her with chores, including cat litter. She cannot bend over. She is proud and it is hard for her to ask for help. She has taken too much pain medication in the past and believes that

this has caused liver damage so that pain medications no longer work for her. She cannot do anything anymore and has no leisure activities except 25 minutes of dog paddle at the pool, which requires her to use the walls and rails for support. She wears her knee brace all the time and had a difficult time with the snow in the winter. She has had a difficult time adjusting to being home all the time and misses her old life; she feels her dreams have been crushed.

The appellant explained that very shortly after submitting her PWD application she fell 5-7 feet from a hammock, striking her head and shoulder. It was the worst pain of her life. She did not go to the hospital but went home and saw her doctor later. She also stated that she has a new gynecologist and is expecting to have surgery.

The ministry relied on its reconsideration decision.

Admissibility of new information

The ministry made no objection to the admission of the new evidence provided by the appellant at the hearing, including the GP's letter and the images of the appellant.

The panel finds that the letter from the GP, the images and the testimony of the appellant and her brother at the hearing is in support of the information and records before the ministry at reconsideration as it tends to substantiate or corroborates the information that was before the minister at reconsideration. The information provided by the appellant and her brother confirm that the appellant is in pain and receives assistance from family, including her brother as indicated in the PWD Application and the appellant's reconsideration submission. The information in the GP's March 2017 letter and the pictures provided by the appellant, while not before the ministry at reconsideration, supports information provided by the appellant and a specialist at reconsideration that the appellant incurred facial fractures in October 2016 after falling from a hammock. The panel therefore admits this information as evidence under section 22(4) of the *Employment and Assistance Act*.

PART F – Reasons for Panel Decision

The issue in this appeal is whether the ministry decision that determined that the appellant did not meet three 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 has a severe mental or severe physical impairment;
- that the appellant's severe mental or physical impairment, in the opinion of a prescribed professional, directly and significantly restricts her ability to perform daily living activities (DLA) either continuously or periodically for extended periods; and
- as a result of those restrictions, she requires help to perform those activities.

The ministry determined that the appellant satisfied the other 2 criteria: 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 impairment

The legislation requires that for PWD designation, the minister must be "satisfied" that the person has a severe mental or physical impairment. The legislation makes it clear that the determination of severity is at the discretion of the minister, taking into account all of the 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. 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.

Severity of mental impairment

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 noted that the GP had diagnosed the appellant with anxiety disorders and indicated significant deficits with cognitive and emotional functioning in the area of emotional disturbance, with the GP writing, "has considerable anxiety related symptoms consistent with PTSD." The ministry noted that the GP had indicated no restrictions with social functioning in the PR and no assistance with making decisions about personal activities, care or finances; or relating to, communicating or interacting with others effectively. The ministry further noted that the GP did not complete the AR and does not assess the appellant's cognitive and emotional functioning or social functioning.

The panel notes that physiotherapist who completed the AR indicated that the appellant had no difficulties with communications and assesses her ability to communicate as good for speaking, reading, writing, and hearing, with the comment "no issues". The physiotherapist indicates that the appellant is independent in all DLA and comments: "client reports anxiety using public transit".

In her reconsideration and appeal submissions, the appellant reports bad dreams, flashbacks and anxiety related to past abuses she has suffered. The appellant reports: "I was molested, raped, 4 bad relationships all abusive. I have a lot of flashbacks. I can't handle shopping in malls or shopping with lots of people."

The panel considers it appropriate that in the reconsideration decision the ministry acknowledged that given the appellant's history, she likely experiences deficits in some areas due to anxiety but that there is not enough evidence to establish severe impairment of mental functioning. The panel notes that despite the provision of some information provided by the GP in the PR, the sections of the AR relating to assessment of impacts to the appellant's cognitive, emotional and social functioning were not completed. The panel finds that the ministry reasonably concluded that there was not enough evidence to establish a severe mental impairment.

Severity of physical impairment

In the reconsideration decision, the ministry found that it was not satisfied that the information provided establishes a severe physical impairment. The ministry noted that the GP had identified the appellant's medical conditions as right knee pain and left shoulder pain. The ministry further noted that the GP assessed the appellant as being able to walk 4+ blocks unaided, climb 5 steps unaided, lift 15 lbs. and remain seated for less than an hour and indicated that mobility inside and outside of the home is not restricted. The ministry's reconsideration decision included a discussion of the appellant's dysmenorrhea, but noted the absence of details to clarify what the appellant is unable to do during these periods. The ministry also noted that the physiotherapist indicated in the AR that the appellant is independent in all activities requiring mobility and physical ability, with comments: "slow walking up and down stairs, if there's > 12 steps then uses rail. Able to lift and carry 20 lbs. but reported too heavy and visible signs of discomfort." The ministry further noted that the physiotherapist did not indicate any mental or physical impairment that impact the appellant's ability to manage DLA. The ministry further noted that the GP and physiotherapist report that the appellant requires a custom knee brace, and that the physiotherapist has indicated that the appellant uses a cane for rough terrain.

The appellant and her brother both report that the appellant suffers from significant pain and requires assistance with several DLA, including shopping, housekeeping and meal preparation. The GP indicates that the appellant is continuously restricted in the DLA of personal self-care, housekeeping and shopping in the PR. In the letter provided at the hearing, written after the October 2016 fall from the hammock, which was not available at reconsideration, the GP indicates that the appellant has difficulty with housekeeping and meal preparation. In the PR, the GP notes: "Difficulty washing hair. Can only do bits of housework at a time. Difficulty with shopping relates to anxiety with large places and people." However, in the AR the physiotherapist indicates that the appellant is independent in all DLA provides the following additional comments: "client notes previously active with hikes and walking dog outdoors. Client notes walking dog is quite difficult and stays on easy terrain due to concerns for her knee."

The panel considers that in the reconsideration decision the ministry acknowledged that there are some restrictions in the appellant's physical functioning due to knee and shoulder but that the information provided in the assessments of physical functioning and the appellant's ability to manage activities requiring mobility and physical ability does not establish a severe physical impairment. The panel notes that despite the GP's indication of some restrictions in the PR (self-care and basic housework) and March 2017 letter (housework and meal preparation), the physiotherapist indicates that the appellant is independent in all areas but requires more time for housework and cannot carry more than 20 lbs. when shopping. The panel finds that the ministry reasonably concluded that the information provided did not establish a severe physical impairment.

Direct and significant restrictions in the ability to perform DLA

At issue is the degree of restriction in the appellant's ability to perform the DLA listed in section 2(1)(a) and (b) of the EAPWDR applicable to a person with a severe mental or physical impairment. 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 not established in this appeal. In the reconsideration decision, the ministry found that the information provided did not establish that the appellant has a severe physical or 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. The panel has also found above that the ministry was reasonable in determining that the information provided, including that related to the impacts on physical and mobility functioning, did not establish a severe physical impairment.

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 and physiotherapist. This does not mean that other evidence should not be considered, 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 the reconsideration decision, the ministry found that the information provided did not establish that the appellant's ability to manage DLA is significantly restricted either continuously or periodically for extended periods of time and that as a result she requires significant assistance from others to complete them. In the reconsideration decision, the ministry first reviewed the information provided by the GP in the PR. The ministry notes that the GP indicates continuous assistance with personal self-care, basic housework and daily shopping, with the comment: "Difficulty washing hair. Can only do bits of housework at a time. Difficulty with shopping relates to anxiety with large places and people." The ministry concluded that the GP's indication of continuous assistance in these areas is not supported by his assessment of her physical, mobility and social functioning. The ministry concluded that it would be more accurate to conclude that the appellant requires periodic assistance in these areas but that information relating to frequency and duration of such assistance was not provided. The ministry found that it was unable to determine that the appellant required either continuous assistance or periodic assistance for extended period to perform the restricted DLA.

The ministry then turned to the assessments provided in the AR, where it is reported that the appellant is able to manage all DLA without assistance. The ministry examined the comments provided by the physiotherapist in relation to these DLA, noting that the comments indicated that the appellant took more time to complete some of the activities. The ministry concluded that it was not able to establish that these activities take the appellant significantly longer than normal to perform. The ministry noted that it had considered the PR, AR and SR and that the assessments provided in the PWD application did not correlate with her submission.

On the basis of this and the other evidence discussed above, the ministry acknowledged that as a result of her medical conditions the appellant encounters some restrictions in her ability to manage DLA. However, the ministry found that the information provided by the GP and physiotherapist was not enough evidence to confirm that the appellant's impairment significantly restricts her ability to perform DLA either continuously or for extended periods.

The panel notes that 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) have been assessed by the GP in the PR as unrestricted. The physiotherapist has indicated in the AR that the appellant had no difficulties with communications and in the AR, assesses her ability to communicate as good for speaking, reading, writing, and hearing, with the comment “no issues”. The physiotherapist indicates that the appellant is independent in all DLA and comments: “client reports anxiety using public transit”. The sections of the AR relating to assessment of impacts to the appellant’s cognitive, emotional and social functioning have not been completed. The panel further notes that DLA listed in section 2(1)(a) of the EAPWDR applicable to a person with a severe physical or severe mental impairment (prepare own meals; manage personal finances; shop for personal needs; use public or personal transportation facilities; perform housework to maintain the person’s place of residence in acceptable sanitary condition; move about indoors and outdoors; perform personal hygiene and self-care; and manage personal medication) have been assessed by the physiotherapist in the AR as independent with some comments about the appellant requiring extra time for some tasks. The panel notes that there is no information from, or endorsed by, a prescribed professional describing how much longer a task might take. The GP in the PR indicates that the personal self-care and basic housekeeping DLA are continuously restricted. In the March 20 letter, which was not before the ministry at reconsideration, the GP indicates that the appellant has difficulty with housekeeping and meal preparation.

The panel notes the inconsistencies in the PR, AR and the appellant’s submissions. The panel finds it reasonable that the ministry would prefer the information provided by the prescribed professionals in relation to their assessments of the appellant’s degree of restriction with respect to DLA. The panel concludes that the ministry’s determination that this criterion was not met is reasonable; the panel therefore finds that the ministry was reasonable in concluding that there is not enough evidence to establish that DLA were restricted continuously or periodically for extended periods.

Help required

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. 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, 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 family and friends as well as the use of her knee brace and cane, the ministry reasonably determined that direct and significant restrictions in the appellant’s ability to perform DLA have not been established. As such, 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.

The panel notes that in the reconsideration decision the ministry refers to the need to establish *significant help* from an assistive device, another person or an assistance animal in order to satisfy this criterion. The panel notes that this does not accurately reflect the legislation, in which significant assistance relates to assistance or supervision of another person but does not relate to an assistive device or service animal. This incongruity does not impact the panel’s decision as the panel has found the ministry’s decision that the appellant has not established that DLA are significantly restricted to be reasonable.

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 not successful on appeal.