

PART C – Decision under Appeal

The decision under appeal is the Ministry of Social Development and Social Innovation (the “ministry”) reconsideration decision of February 2, 2017, which found that the appellant did not meet three of five statutory requirements of section 2 of the *Employment and Assistance for Persons With Disabilities Act* (“EAPWDA”) for designation as a person with disabilities (“PWD”). The ministry found that the appellant met the age requirement and that in the opinion of a medical practitioner the appellant’s 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 that
- as a result of those restrictions, the appellant requires the significant help or supervision of another person, an assistive device, or the services of an assistance animal.

PART D – Relevant Legislation

EAPWDA, section 2

Employment and Assistance for Persons with Disabilities Regulation (“EAPWDR”), section 2

PART E – Summary of Facts

The information before the ministry at the time of reconsideration included the following:

- The appellant's PWD application form consisting of the appellant's self-report form dated September 26, 2016 ("SR"), a physician's report ("PR") and an assessor's report ("AR") both completed by the appellant's general practitioner (the "physician") dated September 14, 2016.
- The appellant's Request for Reconsideration ("RFR") form signed by the appellant on January 25, 2017
- Letter from the appellant's advocate to another doctor (the "doctor") requesting further information and the doctor's response (the "January 2017 Form").

Diagnoses

- In the PR the physician (who has been the appellant's general practitioner for 3+ years and has seen her 11 or more times in the past 12 months, diagnosed the appellant with fibromyalgia, sacroiliitis (left hip), bursitis (bilateral hips) and depression/anxiety, all with a date of onset in 2013 and degenerative disc disease, date of onset in 2012.
- For Section B – Mental or Physical Impairment in the AR, the physician states that the appellant's physical or mental impairments that impact her ability to manage DLA are fibromyalgia, sacroiliitis (left hip), bursitis (bilateral hips), depression/anxiety, degenerative disc disease and irritable bowel syndrome (IBS).

Physical Impairment

- In terms of physical functioning the physician reported in the PR that the appellant can walk 2 to 4 blocks unaided on a flat surface on good days and not at all on a bad day. The physician indicates that the appellant can walk 2 to 5 steps on good days and none on bad days. The physician indicates that the appellant can lift under 5 pounds on a good day, is unable to lift on a bad day, and can remain seated for 1 to 2 hours.
- In the AR the physician indicates that the appellant is independent with walking indoors, walking outdoors, climbing stairs, standing, and lifting but on bad days she requires continuous assistance from another person or is unable to perform those tasks. The physician indicates that on bad days the appellant is unable to walk indoors or outdoors or that it takes her twice as long. On bad days the appellant can climb less than 5 steps and it takes her twice as long. On bad days she can stand for less than 30 minutes and can lift less than five pounds. The physician indicates that with respect to carrying and holding the appellant requires continuous assistance from another person explaining that any extra weight puts pressure on her hips. The physician comments that the appellant's impairments are episodic in nature and that she has good and bad days. The physician indicates that the appellant has periods of time spent in bed (1-3 days per week) and that daily required activities take twice as long. The physician also comments that the appellant's mobility is greatly reduced and she is in constant pain and discomfort.
- In the SR the appellant states that her fibromyalgia causes her pain in her whole body, (arms, legs, hands etc.) and that her sleep is often disrupted even on medication. She states that her bursitis and sacroiliitis make it so that any weight and pressure causes extreme pain and when it is bad she is confined to bed and that it is very difficult to move even in bed, making movement and tasks such as going to the bathroom, walking, lifting over 5 pounds very difficult and impossible at times. She states that she has flare-ups and during those times she is totally dependent or goes without daily needs. She describes the pain during flare-ups like ripping and tearing in one or both hips at a time and nothing can alleviate it. The appellant

states that the degenerative disc disease causes pain in her back, daily pain during flare-ups and that laying in bed can be difficult as the pain takes her breath away and wakes her up so she must sit up at night and does not sleep.

- In the January 2017 Form, the doctor agrees that the appellant's condition has worsened in the last two months: suffering from bad days every day, and struggling to get out of bed. The doctor indicates agreement to statements indicating that the appellant is only able to walk up to 10 minutes at a time before she has to stop, that she has to use a handrail at all times when climbing stairs, that she is only able to lift or carry under 5 pounds maximum, and that she is only able to sit and stand for under 30 minutes maximum.

Mental Impairment

- In the PR the physician indicates that the appellant has significant deficits with cognitive and emotional function in the areas of memory, emotional disturbance, and motivation. The physician indicates that the appellant has poor short-term memory, lack of motivation and depression due to limitations.
- In the AR the physician indicates that the appellant has moderate impact in the area of emotion, minimal impact in the areas of attention/concentration, memory and motivation and no impact in the remaining areas of bodily functions, consciousness, impulse control, insight and judgment, executive, motor activity, language, psychotic symptoms, other neuropsychological problems and other emotional or mental problems. The physician comments that the appellant has had ongoing depression for three years (feeling down, no motivation, managed with medication), anxiety (feelings anxious daily, unsure of triggers, managed with medication) and poor short-term memory.
- In the AR the physician indicates that the appellant's ability to communicate in all areas is good.
- In the SR, the appellant states that her anxiety is difficult but controlled with medication and her memory and concentration are progressively getting worse.
- In the January 2017 Form the doctor agrees that the appellant's depression and anxiety has worsened in the past two months. The doctor provides check marks indicating that the doctor agrees with the appellant's statements that she has moderate impacts to her daily functioning in the areas of bodily functions (sleep disturbance), attention/concentration and memory and major impacts to the areas of emotion, motivation, and motor activity (agitation/tension).

DLA

- In the PR the physician does not indicate whether the appellant has been prescribed any medication and/or treatments that interfere with her ability to perform DLA.
- In the AR, the physician indicates that the appellant is independent with all DLA on good days. With respect to personal care, on bad days, the physician indicates that the appellant requires continuous assistance and takes significantly longer than typical with dressing (unable on bad day because of pain), grooming and bathing (fibromyalgia -2x longer), and transfers (in/out of bed) 2x longer due to pain, and transfers (on/off bed) takes significantly longer than typical. With respect to basic housekeeping the physician indicates that the appellant is independent on good days but on bad days she requires continuous assistance and takes significantly longer than typical with laundry (lighter loads, no lifting) and basic housekeeping (requires breaks twice as long).
- With respect to shopping, the physician indicates that the appellant requires continuous assistance with going to and from stores and carrying purchases home, noting that the appellant is unable to move on a bad day and that she can only carry 5 pounds from her car to the kitchen. The physician also indicates that it takes the appellant significantly longer than typical with shopping.

- The physician comments that the appellant's DLA take significantly longer due to extreme pain in her hips and fibromyalgia daily that causes fatigue daily. She comments that on good days the appellant has pain and limited mobility but on bad days, which occur 1-2x per month, lasting for 3 consecutive days, she is unable to manage her DLA and stays in bed.
- With respect to meals, the physician indicates that on bad days the appellant requires continuous assistance and that it takes her significantly longer than typical with meal planning (will just eat snacks), food preparation and cooking, (unable to stand/sit to meal prep/cook) and that on good days it takes her 2x longer and she requires breaks.
- With respect to paying rent and bills the physician indicates that these tasks are managed online. With respect to medications the physician indicates that this DLA is managed on good and bad days. With respect to transportation the physician indicates that the appellant requires continuous assistance and takes significantly longer than typical getting in and out of a vehicle on bad days, explaining that it takes the appellant 2x longer than typical.
- The physician comments that DLA take 2x longer on a good day, that driving more than 60 minutes is difficult on the appellant's hips and that all DLA's are avoided on bad days as the appellant stays in bed. The physician comments that on bad days the appellant eats what she can grab, as she is unable to prepare meals.
- The physician indicates that the appellant is independent with all aspects of social functioning and that she has good functioning with respect to her immediate and extended social networks.
- In the SR the appellant states that her fibromyalgia and IBS require frequent bathroom trips and in public she needs a bathroom every time – immediately. She states that getting ready for the day: bathing, washing and drying her hair is tiring, and takes a long time. She states that her hands hurt and get tired writing. She states that her bursitis and sacroiliitis make going to the toilet or getting food and drinks, walking up stairs, hills and lifting more than 5 pounds very painful. She states that walking is good but limited and impossible at times. She states that even on good days it takes her a long time to finish tasks and she needs a lot of breaks throughout the day. She states that outings are short due to tiredness and pain and that driving is short due to pressure on her hips.
- In the January 2017 Form, the doctor indicates that he agrees with the appellant's statement that due to her physical and mental impairments she is unable to do the following aspects of DLA: laundry (unable to carry laundry basket); carrying purchase home (unable to carry/lift anything 5 pounds or over); meal planning, food preparation, and cooking (due to limitations she is relying on easy, quick foods, not making herself meals). The doctor also indicates agreement with the appellant's statement that on bad days/flare ups (lasting 1-3 days, 1-2 times per month), she is unable to do the following DLA: basic housekeeping, shopping, and bathing, commenting that this has recently become more frequent.

Help

- In the PR the physician reports that the appellant does not require any prosthesis or aids for her impairment.
- In the AR the physician indicates that the appellant receives help from family and friends. The appellant does not use assistive devices or have an assistance animal.

Additional information provided

In her Notice of Appeal dated February 21, 2017, the appellant states that her conditions are worsening and she can't hold down even a part-time job.

Prior to the hearing the appellant provided a submission dated March 10, 2017 (the "Submission") stating that she feels that the reconsideration decision is wrong because her hips are extremely bad, which make it difficult and sometimes impossible to work even her part time job. The appellant states that it is impossible to meet the requirement of needing assistive devices as there aren't any devices available that could possibly help her. She states that during a flare-up she is bedridden and in debilitating pain from the slow tearing feeling in either one or both of her hips, which make it impossible for her to be on her feet. The appellant states that she needs to qualify for a PWD designation as she does not know from hour to hour, day to day, if she will be able to move, never mind hold down a job. The appellant states that a flare-up has lasted months at a time and could come back right away or later on, she never knows.

In the Submission, the appellant states that even though she is on medications for depression and sleeping pills she wakes up all night in pain from the pressure, and her mood is very affected from living in chronic pain. She states that a checklist of DLA that she can or cannot perform is not enough considering her circumstances as she either can't do them at all or she does them in excruciating, debilitating pain. The appellant states that without PWD she does not know how she can go on as she lives on her own and has no financial backup and requires medications for the rest of her life. She states that the physician has made referrals to specialist but that wait times are up to one year.

The ministry provided an email dated April 3, 2017 indicating that it was relying on the reconsideration decision.

Admissibility of New Information

The ministry did not object to the Submission. The panel has admitted the Submission as it is evidence in support of information and records that were before the ministry at the time of reconsideration, in accordance with section 22(4) of the *Employment and Assistance Act*. In particular, the Submission corroborates the information at reconsideration respecting the appellant's reports of her impairment and her ability to perform DLA.

With the consent of both parties, the hearing was conducted as a written hearing pursuant to section 22(3)(b) of the *Employment and Assistance Act*.

PART F – Reasons for Panel Decision

The issue on this appeal is whether the ministry's decision to deny the appellant designation as a PWD was reasonably supported by the evidence or was a reasonable application of the applicable enactment in the circumstances of the appellant. In particular, was the ministry reasonable in determining that the appellant does not have a severe physical or mental impairment, that in the opinion of a prescribed professional the appellant's impairment does not directly and significantly restrict her from performing DLA either continuously or periodically for extended periods, and that as a result of those restrictions the appellant does not require help to perform DLA?

The relevant legislation is as follows:

EAPWDA:

Persons with disabilities

2 (1) In this section:

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

"daily living activity" has the prescribed meaning;

"prescribed professional" has the prescribed meaning.

(2) The minister may designate a person who has reached 18 years of age as a person with disabilities for the purposes of this Act if the minister is satisfied that the person is in a prescribed class of persons or that the person has a severe mental or physical impairment that

(a) in the opinion of a medical practitioner or nurse practitioner is likely to continue for at least 2 years, and

(b) in the opinion of a prescribed professional

(i) directly and significantly restricts the person's ability to perform daily living activities either

(A) continuously, or

(B) periodically for extended periods, and

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

(3) For the purposes of subsection (2),

(a) a person who has a severe mental impairment includes a person with a mental disorder, and

(b) a person requires help in relation to a daily living activity if, in order

to perform it, the person requires

- (i) an assistive device,
- (ii) the significant help or supervision of another person, or
- (iii) the services of an assistance animal.

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

EAPWDR section 2(1):

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

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

- (i) prepare own meals;
- (ii) manage personal finances;
- (iii) shop for personal needs;
- (iv) use public or personal transportation facilities;
- (v) perform housework to maintain the person's place of residence in acceptable sanitary condition;
- (vi) move about indoors and outdoors;
- (vii) perform personal hygiene and self care;
- (viii) manage personal medication, and

(b) in relation to a person who has a severe mental impairment, includes the following activities:

- (i) make decisions about personal activities, care or finances;
- (ii) relate to, communicate or interact with others effectively.

(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

Severe Physical Impairment

The ministry's position, as set out in its reconsideration decision, is that the information provided is not evidence of a severe physical impairment. The ministry's position is that the information provided demonstrates that the appellant experiences limitations to her physical functioning due to her medical condition on good days and is further restricted when she experiences flare ups (bad days). The ministry found that as the appellant's flare ups are episodic in nature normally lasting 1 to 3 days, 1 to 2 times per month and can vary from as little as 1 day per month to as much as 6 days per month, the overall assessments speak to a moderate rather than a severe physical impairment.

The ministry also states that the physician does not indicate that the appellant requires any aids or prosthesis for her impairment but that in the January 2017 Form the doctor indicates that the appellant requires a handrail at all times when climbing stairs. However, the ministry's position is that a handrail is not an assistive device as defined in the EAPWDA section 2(1).

The appellant's position is that she has severe fibromyalgia, bursitis and sacroiliitis, and degenerative disc disease that causes her severe pain, functional limitations, sleep disturbance and fatigue. The appellant's position is that her flare-ups are getting worse and she does not know how she can function if she does not receive PWD designation.

Panel Decision

A diagnosis of a serious medical condition does not in itself determine PWD eligibility or establish a severe impairment. An "impairment" is a medical condition that results in restrictions to a person's ability to function independently or effectively.

To assess the severity of an impairment one must consider the nature of the impairment and the extent of its impact on daily functioning as evidenced by functional skill limitations and the degree to which performing DLA is restricted. The 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 prescribed professional. The panel notes that employability is not a criterion for designation with PWD.

The PR indicates that the appellant can walk 2 to 4 blocks unaided on a flat surface on good days and not at all on a bad day. The physician indicates that the appellant can walk 2 to 5 steps on good days and none on bad days. The physician indicates that the appellant can lift under 5 pounds on a good day and no lifting on a bad day and can remain seated for 1 to 2 hours.

The information provided in the AR indicates that the appellant is independent with all aspects of mobility and physical ability on good days, except carrying and holding but that she requires continuous assistance with all aspects of mobility and physical ability on bad days. The AR indicates that the appellant's impairments are episodic in nature and that she has good and bad days. The AR

indicates that the appellant has periods of time spent in bed (1-3 days per week) and that daily required activities take twice as long. The physician also comments that the appellant's mobility is greatly reduced and she is in constant pain and discomfort.

The information provided in the January 2017 Form indicates the doctor's agreement with the appellant's statements that her condition has worsened in the past two months and that she is now having more bad days and is less able to perform aspects of mobility and physical ability. However the January 2017 Form does not provide any information on the doctor's credentials or how long the doctor has known the appellant. While the advocate addresses the January 2017 Form to "Dr." it is not clear what type of practitioner the doctor is and whether or not the doctor meets the definition of a prescribed professional within the definitions set out in EAPWDA section 2. Neither the appellant nor the advocate provide any further information to explain why the doctor, rather than the physician, has completed the January 2017 Form and whether the appellant has changed medical practitioners from the physician to the doctor since the PWD application was completed in September 2016.

In addition, while the January 2017 Form indicates that the appellant is having bad days every day, the doctor has not provided any further information to indicate how long of a break the appellant needs after walking 10 minutes and whether the appellant is able to continue walking after a break. Nor has the doctor has not provided any further information to explain why the appellant's condition has worsened in recent months, whether her condition is expected to improve and/or what further investigations and or treatments are being attempted to see if the appellant's condition may improve.

Although the appellant indicates that referrals to specialists have been made, neither the physician nor the doctor have provided any information indicating what type of specialists the appellant has been referred to and/or when those assessments may take place.

The panel also notes that in the PR, the physician indicates that the appellant does not require any aids or prosthesis for her impairment while in the January 2017 Form the doctor indicates that the appellant requires a handrail at all times when climbing stairs. Section 2(1) of the EAPWDA defines an "assistive device" to mean a *device designed to enable a person to perform a DLA* which, because of a severe mental or physical impairment, the person is unable to perform. While the appellant may require a handrail for climbing stairs, the panel finds that the ministry's position that a handrail is not an assistive device as defined in the EAPWDA section 2(1) was a reasonable application of the applicable enactment in the circumstances of the appellant because it is not evident that a handrail was designed to enable a person to perform a DLA which that person is unable to perform due to a severe physical or mental impairment.

Given the absence of information regarding the doctor's qualifications and the lack of additional information provided by the doctor, as well as a lack of medical information to support the contention that the appellant's physical impairment is worsening, the panel finds that the ministry was reasonable in determining that the information provided does not establish that the appellant has a severe physical impairment.

The panel also notes that, while the appellant states in her Notice of Appeal that she cannot hold down even a part-time job, employability is not a criterion for PWD designation.

Severe Mental Impairment

The ministry's position is that while the PR indicates that the appellant has significant deficits with her cognitive and emotional functioning in the areas of memory, emotional disturbance, and motivation, the AR only indicates moderate impact in the area of emotion and minimal impacts in the areas of

attention/concentration, memory, and motivation. The ministry notes that in the January 2017 Form the doctor indicates that the appellant has three major impacts in the areas of emotion, motivation and motor activity (agitation/tension) and three moderate impacts in the areas of bodily functions (sleep disturbance) and attention/concentration, and memory. The ministry's position is that the information provided does not establish that the appellant has a severe mental impairment.

The appellant's position is that she has severe anxiety and depression with significant impact to her emotion, attention/concentration, memory, motivation, and motor activity. The appellant's position is that her condition has worsened in recent months and the information provided supports her position that she should be found eligible for PWD designation.

Panel Decision

The information provided has significant inconsistencies. For example the information provided by the physician does not indicate that the appellant has any major impacts to any areas of cognitive and emotional functioning yet the information from the doctor indicates that the appellant has major impact in the areas of emotion, motivation, and motor activity. While the appellant states that her condition has worsened in recent months, the SR indicates that her anxiety is difficult but controlled by medications and there is no information to indicate whether her medications have changed or what attempts, if any, have been made to further control her anxiety and depression and whether that has helped improve her memory and concentration.

The PR and the AR indicate that the impacts to the appellant's cognitive and emotional functioning are minimal to moderate. In addition, the physician indicates that the appellant does not have any difficulties with communication and has good functioning with respect to her immediate and extended social networks. While the January 2017 Form indicates that the appellant has major impacts to three areas of cognitive and emotional function, the lack of any further explanation from the doctor regarding these impact leaves considerable inconsistencies between the medical evidence. The panel finds that the ministry was reasonable in determining that the information provided does not establish that the appellant has a severe mental impairment.

Significant Restrictions to DLA

The ministry's position, as set out in the reconsideration decision, is that the information provided by the physician and the doctor has discrepancies regarding the appellant's ability to manage laundry, cooking, food preparation, and carrying purchases home. The reconsideration decision states that the physician indicates that the appellant has been a patient in her practice for 3 plus years and she has seen the appellant 11 or more times in the 12 months preceding the date the PWD application was completed, but there is no information to indicate how long the doctor has been the appellant's practitioner, making it difficult to determine whether the doctor has had an opportunity to develop an opinion based on a history of contact, experience, observations and knowledge of the appellant. The ministry's position is that since the appellant has been the physician's patient for 3 plus years, more weight has been given to her assessment.

The ministry's position is that based on the physician's assessment, the appellant has bad days/flare ups lasting 1 to 3 days, 1 to 2 times per months, during which she is unable to perform basic housekeeping, shopping and bathing. The ministry acknowledges that the appellant has certain limitations resulting from flare ups/bad days but as the frequency and duration of these periods are described as little as 1 day per month to as much as 6 days per month, the minister determines that they do not represent a significant restriction to the appellant's overall level of functioning.

The appellant's position is that she has a severe physical and mental impairment that causes her to be in constant pain every day and that as a result every DLA is a struggle on bad days/flare ups, which are becoming more frequent, with constant bad days in the past two months. The appellant's position is that even on good days it takes her longer to complete tasks and on bad days she is unable to do anything. The appellant's position is that the information provided by the physician and the doctor, in combination with the SR demonstrates that her DLA are directly and significantly restricted.

Panel Decision

The legislation – s. 2(2)(b)(i) of the EAPWDA – requires that the minister be satisfied that in the opinion of a prescribed professional, a severe mental or physical impairment directly and significantly restricts the appellant's ability to perform DLA either continuously or periodically for extended periods. The term "directly" means that there must be a causal link between the severe impairment and the restriction. The direct restriction must also be significant. Finally, there is a component related to time or duration. The direct and significant restriction may be either continuous or periodic. If it is periodic it must be for extended periods. Inherently, any analysis of periodicity must also include consideration of the frequency. All other things being equal, a restriction that only arises once a year is less likely to be significant than one, which occurs several times a week. Accordingly, in circumstances where the evidence indicates that a restriction arises periodically, it is appropriate for the ministry to require evidence of the duration and frequency of the restriction in order to be "satisfied" that this legislative criterion is met.

The panel notes that the AR indicates that on good days the appellant is independent with all listed aspects of DLA but that many of them will take her up to 2x longer to complete due to pain, decreased mobility, and fatigue. The AR indicates that on bad days, the appellant requires continuous assistance from another person with dressing, grooming, bathing, transfers (in/out of bed), laundry, basic housekeeping, going to and from stores, carrying purchases home, meal planning, food preparation, cooking, and getting in and out of a vehicle. The AR indicates that the appellant has 1-2 bad days per month that last for 1-3 consecutive days.

Page 2 of the January 2017 Form seems to be relatively consistent with the information provided in the AR in that the doctor agrees that on bad days/flare ups (lasting 1-3 days, 1-2 times per month), the appellant is unable to do the DLA of basic housekeeping, shopping and bathing. While the doctor comments that the bad days are becoming more frequent recently, the doctor does not provide further information to indicate how often the bad days are occurring and when they started to become more frequent. As well, the information provided on the January 2017 Form is not internally consistent as on page one the doctor indicates agreement with the appellant's statement that she is now having bad days every day during the last two months. The doctor does not provide any further information to clarify the frequency or duration of the appellant's bad days so the information provided is unclear. In addition the information provided in the AR and the January 2017 Form about the frequency of the bad days is inconsistent with the appellant's information in the Submission, in which she states that a flare-up has lasted months at a time.

The panel notes that the ministry has given more weight to the information provided by the physician as the physician has known the appellant for 3 plus years and seen the appellant 11 or more times in the 12 months preceding completion of the PWD application, whereas the January 2017 Form does not provide any information on how long the doctor has known the appellant. The panel notes that there is no requirement in section 2(2) of the EAPWDA that a prescribed professional must have a minimum amount of contact with the appellant in order to render an opinion. However, in this case there is no information provided by the doctor about the type of practitioner the doctor is and how

long the doctor has known the appellant. In addition the information provided by the doctor on the January 2017 Form is simply a response as to whether the doctor agrees with statements made by the appellant, no additional notes or comments were provided. There is no information provided to indicate whether the doctor completed an assessment of the appellant or is simply agreeing with the appellant's subjective self-reports of her symptoms.

While there may not be any requirement that a prescribed professional have a minimum amount of contact the panel finds that the ministry is entitled to consider all the information provided and to weigh the information provided which would include an assessment of how well the prescribed professional has reached her or his opinion of the appellant. In this case, given the lack of information provided by the doctor, the panel finds that the ministry was reasonable in determining that more weight should be accorded to the information provided by the physician.

The panel finds that while the information provided indicates that the appellant has episodic difficulties with some aspects of some DLA, based on all of the information provided, the panel finds that the ministry was reasonable in determining that the evidence is insufficient to show that the appellant's ability to perform her DLA is significantly restricted either continuously or periodically for extended periods as required by EAPWDR section 2(2)(b).

Help with DLA

The ministry's position is that as it has not been established that DLA are significantly restricted, it cannot be determined that significant help is required from other persons.

The appellant's position is that she has severe physical and mental impairments, is in constant pain and needs help with DLA.

Panel Decision

The PR indicates that the appellant does not require any prosthesis or aids for her impairment. The AR indicates that family and friends provide the help required for DLA. The AR indicates that the appellant does not have an Assistance Animal.

While the AR indicates that the appellant requires continuous assistance from another person with many aspects of DLA on bad days and that family and friends provide help, there is no further information explanation the frequency or duration of help provided. In the SR the appellant states that during flare-ups she is totally dependent on other or goes without her needs being met. The January 2017 Form does not provide any further information on help needed, despite the statements indicating that the appellant's condition has worsened. Although the panel finds that the appellant requires some help with some tasks, a finding that a severe impairment directly and significantly restricts a person's ability to manage her DLA either continuously or periodically for an extended period is a precondition to a person requiring "help" as defined by section 2(3)(b) of the EAPWDA.

As the panel finds that the ministry was reasonable in determining that the appellant does not have a severe impairment that directly and significantly restricts her ability to manage her DLA either continuously or periodically for an extended period of time, the necessary precondition is not satisfied.

Accordingly, the panel finds that the ministry's decision that the appellant did not satisfy the legislative criteria of EAPWDA section 2(3)(b) was reasonable.

Conclusion

Having reviewed and considered all of the evidence and the relevant legislation, the panel finds that the ministry's decision finding the appellant ineligible for PWD designation is reasonable based on the evidence and is a reasonable application of the legislation in the circumstances of the appellant. The panel therefore confirms the ministry's decision and the appellant is not successful in her appeal.