

PART C – Decision under Appeal

The decision under appeal is the Ministry of Social Development and Social Innovation (the ministry) reconsideration decision dated March 3, 2017 which found that the appellant did not meet three of the five statutory requirements of Section 2 of the *Employment and Assistance for Persons with Disabilities Act* for designation as a person with disabilities (PWD). The ministry found that the appellant met the age requirement and that her impairment is likely to continue for at least two years. However, the ministry was not satisfied the evidence establishes that:

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

PART D – Relevant Legislation

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

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

PART E – Summary of Facts

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*.

The evidence before the ministry at the time of the reconsideration decision included the appellant's Persons With Disabilities (PWD) Application comprised of the appellant's information and self-report dated October 19, 2016, a physician report (PR) dated October 14, 2016 and an assessor report (AR) dated October 18, 2016, both completed by a general practitioner (GP) who has known the appellant for more than 15 years and has seen her 2 to 10 times in the past 12 months.

The evidence also included the following documents:

- 1) Letter dated September 16, 2016 from the GP;
- 2) Handwritten doctor's notes regarding an appointment on December 11, 2015; and,
- 3) Requests for Reconsideration dated February 28, 2017 with the appellant's typed Reasons attached.

Diagnoses

In the PR, the GP diagnosed the appellant with osteoarthritis (OA) of her right hip, with an onset in 2015. There was no diagnosis of a mental disorder. Asked to describe the mental or physical impairments that impact the appellant's ability to manage daily living activities (DLA), the GP left this section of the AR blank.

Physical Impairment

In the PR and the AR, the GP reported:

- With respect to the health history, the appellant has "daily unrelenting severe right hip pain aggravated by walking, prolonged sitting and prolonged standing. Right hip pain radiated down right leg. Unable to walk for more than 200 meters."
- The appellant does not require any prostheses or aids for her impairment.
- In terms of functional skills, the appellant can walk 2 to 4 blocks unaided on a flat surface, climb 5 or more steps unaided, lift 2 to 7 kg. (5 to 15 lbs.), and remain seated 1 to 2 hours.
- The appellant has no restrictions with mobility inside the home and continuous restrictions with mobility outside the home. Regarding the degree of restriction, the GP wrote: "right hip pain severe enough to affect some of her activities of daily functions such as ability to dress herself."
- In the additional comments to the PR, the GP wrote: "chronic disabling symptoms from right hip severe osteoarthritis. Difficulty with ambulation less than 200 meters. Unable to sit for prolonged period of time (less than 2 hours). Unable to stand more than 10 minutes."
- The appellant is assessed as being independent in all areas of mobility and physical ability, with comments regarding walking outdoors "no more than 200 meters" and with respect to standing "no more than 10 minutes."
- In the section of the AR relating to assistance provided, none of the listed assistive devices are identified by the GP who wrote "N/A", or not applicable.

In her self-report, the appellant wrote that:

- Since October 2015, she has been diagnosed with OA of the right hip, which provides limitations with hip flexion in walking more than 100 to 200 meters, standing more than 10 minutes, sitting no more than 2 hours, and lifting.
- Her condition also includes chronic symptoms of right leg-lock from a sitting to standing position.
- She continues to attend physiotherapy every 10 days to 2 weeks and she sees an orthopedic

surgeon from time to time.

In her Request for Reconsideration, the appellant wrote:

- With OA, there is no cure and the condition is progressive.
- She has many physical limitations with hip flexion: walking no more than 1 block, standing no more than 10 minutes at one time, sitting for no more than 2 hours/ prolonged sitting is not possible due to radiated pain throughout right leg, right hip and lower back (pelvic, tailbone area), and lifting no more than 5 to 8 lbs.
- She has chronic symptoms of “leg-lock” whereby her leg simply locks and she cannot move for anywhere from 5 to 20 minutes or more in severe cases. This occurs from a sitting to standing position and happens frequently.
- She gets very tired very quickly.
- Visitations to an orthopedic surgeon are also necessary from time to time.
- She cannot walk past 100 meters unaided. By no means can she walk 4 blocks and she walks very slowly.
- Climbing 5 to 10 steps is the maximum and using a handrail is a must. Under 5 steps, she can climb unaided but slowly. More than 5 steps, she needs the handrail or the assistance of another person.
- Lifting 15 lbs. is very difficult. It is very difficult to lift heavy boxes or anything over the 5 to 8 lbs. limit. She can only lift no more than 8 lbs. or pain radiates through her chest and spinal chord as well as through her pelvic area, tail bone and into her right hip with OA.
- Although she is not in a wheelchair and does not (at this time) require a cane to walk, she requires support from another person to walk more than 100 meters.
- There is an additional consideration of nerve damage throughout her chest, spinal chord, and nerve irritation into her right leg due to her hip OA.

In the handwritten notes regarding an appointment on December 11, 2015, a doctor wrote:

- The appellant has ongoing right hip pain, which started in early fall 2015 and has progressively become worse.
- The appellant complained of a locking sensation specifically going from sitting to standing and walking greater than 100 meters.
- The appellant had an injection of cortisone with some temporary relief.
- Physiotherapy has helped to give some relief for 4 to 5 days but no long-term change.
- The main areas of impairment at this time are walking more than 100 to 200 meters and sitting to standing.
- The appellant had some improvement in ROM [range of motion] of hip from lost weight; however, this improvement is progressively getting worse and the appellant may require surgery at a later date if the symptoms become too severe.

Mental Impairment

In the PR and the AR, the GP reported:

- The appellant has no difficulties with communication.
- The appellant has no significant deficits with cognitive and emotional function.
- The appellant is not restricted with her social functioning.
- The appellant has a good ability to communicate in all areas, specifically: speaking, reading, writing, and hearing.
- With respect to daily impacts to the appellant’s cognitive and emotional functioning, the GP assessed the appellant with a moderate impact in the area of motor activity, and no impact in any of the other listed areas. The GP commented: “difficulty walking, not greater than 200 meters. Difficulty getting in and out of vehicles.”

- The appellant is independent in all aspects of social functioning, specifically: making appropriate social decisions, developing and maintaining relationships, interacting appropriately with others, dealing appropriately with unexpected demands, and securing assistance from others.
- The appellant has good functioning in both her immediate and extended social networks.

Daily Living Activities (DLA)

In the PR and the AR, the GP reported:

- The appellant has not been prescribed any medication and/ or treatments that interfere with her ability to perform DLA.
- The appellant is continuously restricted with the personal care DLA and with mobility outside the home, and is periodically restricted with basic housework. Regarding the periodic restrictions, the GP wrote: “right hip and leg pain aggravated by physical activities, hence periodic impairment.”
- The appellant is not restricted with meal preparation, management of medications, daily shopping, mobility inside the home, use of transportation, management of finances and social functioning.
- The appellant is independent with walking indoors and walking outdoors, but no more than 200 meters.
- The appellant is independent with all of the tasks of the DLA, with the exception of the task of dressing as part of the personal care DLA, for which the GP commented: “difficulty putting shoe/sock on.” The GP also commented for all DLA: “takes longer time to accomplish these independent activities above. Needs to take multiple rest breaks.” For the task of getting in and out of a vehicle, as part of the transportation DLA, the GP noted: “difficulty getting in and out of vehicle.”

In her self-report, the appellant wrote that:

- Severe right hip OA provides limitations with hip flexion in putting on shoes.
- She is unable to sit for prolonged times, making any activity, including getting in and out of motor vehicles, difficult and more challenging.
- Because of these limitations, she is unable to work.

In her Request for Reconsideration, the appellant wrote:

- The doctor’s notes state that she cannot work.
- She has many physical limitations with hip flexion and needs assistance from another person to tie her shoes and put on a pair of socks. She must lean on a desk or wall to put on under garments or pants.
- Getting in and out of a motor vehicle is also physically challenging due to hip flexion, severe right hip OA.
- She needs assistance for walking more than 100 meters.
- General or day-to-day activities prove to be difficult and a challenge with severe OA.
- She requires additional time to perform certain simple daily tasks and depends on what task is being completed. If something takes 1 hour, she can take anywhere from 1 to 2 hours to perform, or double the time.

In the letter dated September 16, 2016, the GP wrote that the appellant has a permanent condition known as OA of the right hip and she is unable to work due to the physical limitations secondary to this medical condition, including impairment in walking, prolonged sitting, and prolonged standing.

Need for Help

In the PR, when asked to describe the nature and extent of assistance the appellant requires with DLA, the GP wrote "N/A," or not applicable. With respect to the assistance provided by other people, the GP reported that the appellant receives physiotherapy every ten days or so and sees an orthopedic surgeon from time-to-time. In the section of the AR for identifying assistance provided through the use of assistive devices, the GP wrote that this is not applicable to the appellant.

Additional information

In her Notice of Appeal dated March 15, 2017, the appellant expressed her disagreement with the ministry's reconsideration decision and attached several documents, including:

- 1) Letter dated March 8, 2017 in which the GP wrote that the appellant has a permanent and severe medical condition known as OA of the right hip and she is unable to work due to the severe physical limitations affecting her activities of daily living.
- 2) Letter dated March 10, 2017 in which the GP wrote:
 - The appellant has radiologically-proven advanced bilateral hip OA with the right side greater severity than the left. As a result, she has been suffering from significant and severe impairment of her activities of daily living.
 - He is providing clarification of his previous medical report as follows- the appellant is unable to walk for greater than 1 block distance (100 meters) unaided; she is unable to stand for more than 10 minutes, she is unable to sit for more than two hours because of resultant radiating pain down the right leg.
 - She requires assistance from her family in putting on socks and shoes because of severe hip pain. She requires behavioral modifications for her activities of daily living, such as leaning on walls to get dressed.
 - She requires the use of the handrail for climbing stairs and she has significant difficulty getting out of vehicles.
 - It takes her an inordinate amount of time for personal self care and basic housework.
 - Overall, her ability to function independently is much restricted despite proper physiotherapy and lifestyle modifications.
 - The impairment in her DLA is severe and her independence is jeopardized as a result;
- 3) Reasons for Appeal dated March 13, 2017;
- 4) Letter dated March 31, 2017 in which the appellant's parents wrote:
 - The appellant has been diagnosed with advanced and significant OA, which is a long-term serious medical condition where there is no cure, so it will only get progressively worse over time.
 - The appellant is physically restricted in her DLA and is deemed disabled, with lack of mobility.
 - The doctor and the orthopedic surgeons have advised the appellant not to have a hip replacement, due to her age.
 - The appellant is experiencing severe impairments, significant physical problems related to DLA and she needs daily assistance from another person in order manage.
 - She can only sit for short periods of time due to radiating pain in her leg. Upon standing from sitting, her right leg gets "leg lock."
 - Getting in and out of a car is very difficult, she has trouble putting on shoes and socks, and she cannot tie shoes.
 - They pick up things on the floor for her as she cannot bend down. Kneeling is impossible.
 - She cannot twist easily and needs to lean on a wall when getting dressed.
 - The appellant requires the use of a handrail in climbing a short flight of stairs.
 - She needs their assistance when walking and tends to walk very slowly.

- Performing basic housework is almost impossible for her.
 - These physical impairments take her a significantly longer time than a healthy person.
 - Her doctor indicated that she can no longer work.
 - The appellant requires assistance from them in order to function, i.e. walking, basic housework, etc. as her mobility has been drastically compromised.
 - As parents, they are very concerned at the deterioration in the appellant's health. She resides with them and they assist her with regular DLA; and,
- 5) Request for Tribunal Approval.

The ministry relied on the reconsideration decision as well as a letter dated April 11, 2017 as its submission on the appeal.

Admissibility of Additional Information

The ministry did not raise an objection in its submission to the admissibility of the appellant's additional documents. The panel considered the information from the appellant as being in support of, and tending to corroborate, the impact from medical conditions referred to in the PWD application and the Request for Reconsideration, which were before the ministry at reconsideration. Therefore, the panel admitted this additional information in accordance with Section 22(4)(b) of the *Employment and Assistance Act*.

The panel considered the ministry's letter and the appellant's Reasons for Appeal and Request for Tribunal Approval as argument, which the panel considered in Part F- Reasons for the Panel Decision.

PART F – Reasons for Panel Decision

The issue on appeal is whether the ministry's reconsideration decision, which found that the appellant is not eligible for 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. The ministry found that the evidence does not establish that the appellant has a severe mental or physical impairment and that her DLA are, in the opinion of a prescribed professional, directly and significantly restricted either continuously or periodically for extended periods. Also, as a result of those restrictions, it could not be determined that the appellant requires the significant help or supervision of another person, the use of an assistive device, or the services of an assistance animal to perform DLA.

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

Persons with disabilities

2 (1) In this section:

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

"daily living activity" has the prescribed meaning;

"prescribed professional" has the prescribed meaning.

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

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

(b) in the opinion of a prescribed professional

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

(A) continuously, or

(B) periodically for extended periods, and

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

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

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

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

(i) an assistive device,

(ii) the significant help or supervision of another person, or

(iii) the services of an assistance animal.

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

The EAPWDR provides as follows:

Definitions for Act

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

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

(i) prepare own meals;

(ii) manage personal finances;

(iii) shop for personal needs;

(iv) use public or personal transportation facilities;

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

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

(a) authorized under an enactment to practise the profession of

- (i) medical practitioner,
- (ii) registered psychologist,
- (iii) registered nurse or registered psychiatric nurse,
- (iv) occupational therapist,
- (v) physical therapist,
- (vi) social worker,
- (vii) chiropractor, or
- (viii) nurse practitioner, 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.

Part 1.1 — Persons with Disabilities

Alternative grounds for designation under section 2 of Act

2.1 The following classes of persons are prescribed for the purposes of section 2 (2) [persons with disabilities] of the Act:

- (a) a person who is enrolled in Plan P (Palliative Care) under the Drug Plans Regulation, B.C. Reg. 73/2015;
- (b) a person who has at any time been determined to be eligible to be the subject of payments made through the Ministry of Children and Family Development's At Home Program;
- (c) a person who has at any time been determined by Community Living British Columbia to be eligible to receive community living support under the Community Living Authority Act;
- (d) a person whose family has at any time been determined by Community Living British Columbia to be eligible to receive community living support under the Community Living Authority Act to assist that family in caring for the person;
- (e) a person who is considered to be disabled under section 42 (2) of the Canada Pension Plan (Canada).

Severe Physical Impairment

In the reconsideration decision, the ministry was not satisfied that the information provided establishes a severe physical impairment. The ministry acknowledged that the appellant had been diagnosed by her long-time GP with severe OA of the right hip, and noted that the appellant's information about "leg-lock," fatigue, and nerve damage in her chest and spinal chord have not been confirmed by her GP and, therefore, cannot be considered. The ministry wrote that the GP described unrelenting severe right hip pain that is aggravated by walking, prolonged sitting, and prolonged

standing and that the pain radiates down the appellant's right leg and also reported that the appellant does not require an aid for her impairment. The ministry argued in its submission that if the appellant's mobility restrictions were significant, it would be expected that she would require a basic assistive aid, such as a cane or walker with a seat to enable her to stop and sit as needed, and the GP does not mention assistive aids in the additional information.

The ministry considered the appellant's functional skill limitations and wrote that the evidence does not sufficiently describe or portray a severe impairment. The ministry noted that as the appellant is independent in most areas of her DLA and the GP did not include detail in respect of how impaired the appellant is with day-to-day functioning, or how much longer it takes the appellant to complete her DLA, the ministry does not have sufficient information to conclude that a severe functional impairment had been demonstrated. The ministry argued in its submission that while the GP wrote that the appellant is unable to work due to her physical limitations, a PWD application is not intended to assess employability or vocational abilities.

A diagnosis of a serious medical condition or conditions 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 or for a reasonable duration. To assess the severity of an impairment, the ministry must consider the nature of the impairment and the extent of its impact on daily functioning.

Therefore, the ministry reasonably considered the impacts of the appellant's diagnosed medical condition on her daily functioning, beginning with the assessments provided in the PR and in the AR. In the PR, the GP diagnosed the appellant with OA of her right hip and, in the health history, wrote that the appellant has "daily unrelenting severe right hip pain aggravated by walking, prolonged sitting and prolonged standing. Right hip pain radiated down right leg. Unable to walk for more than 200 meters." The panel notes that the handwritten notes regarding an appointment on December 11, 2015 indicate that the appellant complained of a "locking sensation"; however, given an opportunity to provide additional information in his letter dated March 10, 2017, the GP did not confirm the appellant's suggestion at reconsideration that she has nerve damage throughout her chest, spinal chord, and nerve irritation into her right leg due to her hip OA.

The GP reported in the PR that the appellant can walk 2 to 4 blocks unaided on a flat surface, climb 5 or more steps unaided, lift 5 to 15 lbs., and remain seated 1 to 2 hours. The appellant is assessed by the GP as being independent in all areas of mobility and physical ability, with comments regarding walking outdoors "no more than 200 meters" and with respect to standing "no more than 10 minutes." In the letter dated March 10, 2017, the GP provided clarification of his previous medical report and wrote that the appellant is unable to walk for greater than 1 block distance (100 meters) unaided, she requires the use of the handrail for climbing stairs, and she is unable to sit for more than two hours because of resultant radiating pain down the right leg. In her Request for Reconsideration, the appellant wrote that she cannot walk past 100 meters unaided and by no means can she walk 4 blocks, she can climb under 5 steps unaided slowly but she needs the handrail or the assistance of another person for more than 5 steps, she cannot lift more than 5 to 8 lbs., and lifting 15 lbs. is very difficult. The appellant wrote that although she is not in a wheelchair and does not (at this time) require a cane to walk, she requires support from another person to walk more than 100 meters. Although the GP changed his assessment of the appellant's ability to walk unaided from 2 to 4 blocks to 1 block, he did not modify his original assessment that no mobility aid or assistive device is required by the appellant, and the panel finds the ministry's rationale that if the appellant's mobility restrictions were significant, it would be expected that she would require a basic assistive aid, such as a cane or walker, to be reasonable.

For the ministry to be “satisfied” that an 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 medical conditions on daily functioning, including by providing the explanations, descriptions or examples in the spaces provided in the PR and in the AR forms.

In her self-report, the appellant wrote that because of her physical limitations, she is unable to work. In the letters dated September 16, 2016 and March 8, 2017, the GP wrote that the appellant has a permanent condition known as OA of the right hip and she is unable to work due to the physical limitations secondary to this medical condition, including impairment in walking, prolonged sitting, and prolonged standing. Both the appellant and the GP placed an emphasis on her inability to work due to the limitations to her functioning and the panel finds that the ministry reasonably determined that employability is not a criterion in section 2(2) of the EAPWDA nor is it listed among the prescribed daily living activities in section 2 of the EAPWDR.

Given the GP’s report of a moderate level of functional skills, and the emphasis on the appellant’s employability, as well as the assessment of independent mobility and physical ability, the panel finds that the ministry reasonably determined that there is not sufficient evidence to establish that the appellant has a severe physical impairment under Section 2(2) of the EAPWDA.

Severe Mental Impairment

In the reconsideration decision, the ministry was not satisfied that the information provided was sufficient evidence of a severe mental impairment. The ministry noted that the GP reported no mental disorder and no significant deficit with cognitive and emotional functioning.

The ministry reasonably considered that there was no diagnosis by the GP of a mental disorder and the GP reported no significant deficits to the appellant’s cognitive and emotional functioning. While the GP assessed the appellant with a moderate impact to her cognitive and emotional functioning in the area of motor activity, the GP commented: “difficulty walking, not greater than 200 meters” and “difficulty getting in and out of vehicles,” which the panel finds relates to the appellant’s physical functioning and not to an impairment of mental functioning. The GP reported that the appellant is not restricted with her social functioning and she is independent in all aspects, and she has a good ability to communicate.

Given the absence of a diagnosis of a mental disorder and the evidence of no impacts to the appellant’s cognitive, emotional, and social functioning, the panel finds that the ministry’s conclusion that a severe mental impairment was not established under Section 2(2) of the EAPWDA was reasonable.

Restrictions in the ability to perform DLA

In the reconsideration decision, the ministry was not satisfied that the appellant has a severe physical or mental impairment that, in the opinion of the prescribed professional, directly and significantly restricts DLA either continuously or periodically for extended periods of time.

According to the legislation, Section 2(2)(b) of the EAPWDA, the ministry must assess direct and significant restrictions to DLA in consideration of the opinion of a prescribed professional, in this case the appellant’s GP. This does not mean that the other evidence is not 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.” Therefore, the prescribed professional completing the assessments has the opportunity to indicate which, if any, DLA are significantly restricted by the appellant’s impairments either continuously or periodically for extended periods.

In the reconsideration decision, the ministry reviewed the GP's assessment of continuous restrictions in the appellant's ability to perform her personal care and mobility outside the home and periodic restrictions with housework and noted that the GP reported no restrictions in all other DLA. The ministry acknowledged the continuous restrictions with personal care; however, the ministry pointed out that the GP indicated the appellant only requires periodic assistance with the task of dressing, having difficulty putting on shoes and socks and the GP does not report that the appellant takes significantly longer with any of the other aspects, or that she uses any assistive devices. The panel notes that while the GP also commented in the AR "takes longer time to accomplish these independent activities above" (personal care, basic housekeeping, shopping) and "needs to take multiple rest breaks," the ministry reasonably determined that, as there is no indication by the GP of how much longer it takes the appellant, there is insufficient evidence that it takes the appellant significantly longer than typical.

The appellant wrote in her Request for Reconsideration that she requires additional time to perform certain simple daily tasks and that the amount of time depends on what task is being completed. In the letter dated March 10, 2017, the GP wrote that it takes the appellant an "inordinate amount of time" for personal self care and basic housework and "overall her ability to function independently is much restricted" and is "severe," and the panel finds that the ministry reasonably reviewed the examples provided by the GP and determined that, when collectively considering the information as a whole, there is insufficient evidence that the impairment significantly restricts the appellant's ability to perform DLA either continuously or periodically for extended periods. As noted by the appellant's parents in their letter dated March 31, 2017, the appellant's condition of advanced OA is a long-term medical condition and it will only get progressively worse over time, and the appellant's OA may, therefore, begin to affect her ability to perform her DLA more significantly. Conversely, the appellant may become eligible for hip replacement surgery, which the appellant's parents wrote is not recommended by the orthopedic surgeons at this time "due to her age."

The ministry referred to the appellant's comment in her Request for Reconsideration that she must lean on a desk or wall to put on clothing items, and the GP also wrote in the letter dated March 10, 2017 that the appellant requires behavioral modifications for her DLA, such as leaning on walls to get dressed. The panel finds that the ministry reasonably concluded that leaning on household objects does not fall within the definition in Section 2(1) of the EAPWDA of use of an assistive device, or "a device designed to enable a person to perform DLA that, because of a severe mental or physical impairment, the person is unable to perform."

The appellant's parents mentioned the appellant's inability to work as a result of her medical condition and both the appellant and the GP placed an emphasis on the impact to the appellant's inability to work due to the limitations to her physical functioning. As previously discussed, the panel finds that the ministry reasonably concluded that employability is not a criterion in section 2(2) of the EAPWDA nor is it listed among the prescribed daily living activities in section 2 of the EAPWDR.

Given the emphasis placed on the appellant's employability and the assessment by the GP of independence with her ability to perform DLA, with the exception of taking longer with tasks of the DLA personal care and basic housekeeping, the panel finds that the ministry reasonably determined that the evidence is insufficient to show that the appellant's overall ability to perform her DLA is significantly restricted either continuously or periodically for extended periods, pursuant to Section 2(2)(b)(i) of the EAPWDA.

Help to perform DLA

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.

The GP indicated in the PR that the appellant does not require assistance with DLA and, in the AR, that she receives help through physiotherapy and does not require the use of an assistive device. While the appellant's parents wrote in their letter that they assist her with regular DLA, as 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 also 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 pursuant to Section 2(2) of the EAPWDA, was reasonably supported by the evidence. The panel therefore confirms the ministry's decision. The appellant's appeal, therefore, is not successful.