

PART C – Decision under Appeal

The decision under appeal is the Ministry of Social Development and Social Innovation (the ministry) reconsideration decision dated March 15, 2017 that found that the appellant did not meet two 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 she has a severe physical impairment and a severe mental impairment that, in the opinion of a medical practitioner, is likely to continue for at least two years. However, the ministry was not satisfied that the evidence establishes that:

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

PART D – Relevant Legislation

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

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

PART E – Summary of Facts

The evidence before the ministry at the time of the reconsideration decision included the Person With Disabilities (PWD) Application comprised of the applicant information and self-report dated November 15, 2016, a physician report (PR) dated July 16, 2016 completed by a general practitioner (GP) who has known the appellant for one year and has seen her 11 or more times in that time, and an assessor report (AR) dated November 14, 2016 completed by a chiropractor who has known the appellant for 4 years and has seen her 11 or more times in the last year.

The information at reconsideration also included the following:

- 1) Excerpts from a report by a physician who is a surgeon regarding an examination on June 11, 2014;
- 2) Letter dated October 20, 2015 from a physician who is a specialist in physical medicine and rehabilitation;
- 3) Excerpts (select pages) from a Work Capacity Evaluation Re: Assessment and Cost of Future Care Recommendations by an Occupational Therapist (OT) dated November 27, 2015; and,
- 4) Request for Reconsideration dated March 3, 2017 with attached typed statement.

Diagnoses

In the PR, the appellant was diagnosed by the GP with thoracic outlet syndrome left neck and arm with an onset of 2009, and neck and arm pain. There was no diagnosis of a mental disorder. In the AR, when asked to describe the mental or physical impairments that impact the appellant's ability to manage daily living activities, the chiropractor wrote "moderate to severe neck pain and stiffness, left arm numbness, chest pains, reduced strength in left arm and headaches. These symptoms and weakness significantly compromise ability to perform daily duties- especially caring for babies and doing housework; general daily living activities."

Daily Living Activities (DLA)

In the PR, the GP report included:

- In terms of health history, the appellant "...experiences neck, scalp and frontal headaches every night. (illegible) neck pain worse as day progresses, same with left side of neck. Permanent numbness and left arm, left elbow pain. Pain is chronic and she is on different daily meds to alleviate."
- The appellant has been prescribed medications that interfere with her ability to perform DLA, with "potential for sedation" and she "has been using meds since 2009 on persistent basis."
- For functional skills, the appellant is able to walk 2 to 4 blocks unaided on a flat surface, climb 2 to 5 stairs unaided, and lift 2 to 7 kg. (5 to 15 lbs.)
- The appellant has no difficulties with communication, "as reported by patient."
- There are significant deficits with cognitive and emotional function in the areas of executive, memory, emotional disturbance, motivation, motor activity, and attention or sustained concentration. The GP also wrote "as reported by patient."
- The appellant is periodically restricted with the personal care DLA and the meal preparation DLA. Regarding the periodic restrictions, the GP wrote: "unable to bend, difficulty with self care, unable to sustain repetitive actions."
- The appellant is not restricted with the management of medications DLA, the management of finances DLA, and the social functioning DLA.
- The appellant is continuously restricted with the basic housework DLA, the daily shopping DLA, the mobility inside and outside the home DLA, and the use of transportation DLA. Asked to provide additional comments regarding the degree of restriction, the GP did not comment.
- In the additional comments to the PR, the GP wrote that Thoracic outlet syndrome on the left side with associated muscle pains, significant pain in the left arm, neck and head, which impairs her daily activities. She is not able to care for her infants independently on a physical level.

In the AR, the chiropractor reported:

- The appellant is assessed as having a good ability to communicate with speaking and hearing and a poor ability with reading (note: “looking down very difficult”) and with writing, with a comment: “...looking down with neck for any length of time excruciating, neck and left arm.”
- There are major impacts to cognitive and emotional functioning in the areas of emotion, attention/concentration, and motivation. There is a moderate to major impact in bodily functions (note: “sleep” and “major”). There are moderate impacts in four areas: executive, motor activity, and other emotional or mental problems (note: “irritability, frustrated”). There is a moderate to minimal impact in psychotic symptoms. There are minimal impacts in the areas of consciousness, impulse control, insight and judgment, memory, language, and other neuropsychological problems. The chiropractor added comments that the appellant “has difficulty coping with chronic pain.”
- The appellant requires periodic assistance with walking indoors, walking outdoors, and climbing stairs, with no further comments provided. The appellant requires continuous assistance with lifting and carrying and holding, with a comment: “due to left arm weakness and associated neck and upper back pain.”
- The appellant is independently able to perform every task of the pay rent and bills DLA (including banking, budgeting, and pay rent and bills), and the medications DLA (including filling/refilling prescriptions, taking as directed and safe handling and storage).
- For the personal care DLA, the appellant is independent with the task of feeding self and she requires periodic assistance from another person with dressing, grooming, bathing, toileting (note: “rare occasions due to body pain”), and regulate diet. She takes significantly longer than typical with transfers in/out of bed (note: “takes 2 to 3 times as long”) and transfers on/off of chair (note: “patient has to be cautious”).
- For the basic housekeeping DLA, the appellant requires continuous assistance from another person with doing laundry (note: “really aggravates her spine”) and she takes significantly longer with housekeeping, with the comment: “vacuuming is impossible.”
- Regarding the shopping DLA, the appellant is independent with reading prices and labels, making appropriate choices and paying for purchases. She takes significantly longer than typical with going to and from stores, with the comment by the chiropractor that the appellant “takes at least twice as long,” and also with carrying purchases home, with the comment: “...usually brings help to carry.”
- For the meals DLA, the appellant is independent with meal planning and safe storage of food and requires continuous assistance from another person with food preparation and cooking, with the comment by the chiropractor: “cutting vegetables, especially harder vegetables, difficult; looking down is very aggravating.”
- Regarding the transportation DLA, the appellant takes significantly longer with getting in and out of a vehicle, with the comment: “pivoting and climbing out of vehicles- takes longer- 2 times.” The tasks of using public transit and using transit schedules and arranging transportation are marked as not applicable.
- For social functioning, the appellant is independent with making appropriated social decisions, developing and maintaining relationships, interacting appropriately with others, and securing assistance from others. The appellant requires periodic support/supervision with dealing appropriately with unexpected demands and the chiropractor wrote: “patient feels she is already under tension and depending on demands, may be more difficult.”
- The appellant has marginal functioning with both her immediate and her extended social networks.
- Asked to describe the support/supervision required that would help to maintain the appellant in the community, the chiropractor wrote” family support and financial support.”

In her self-report, the appellant wrote:

- Her pain dictates the functionality of her day. As the day progresses, her pain increases.
- She finds it extremely challenging to care for her infants without help from her family and friends. Anything repetitive or strenuous causes her immense pain.
- Housework is extremely challenging and causes her symptoms to flare-up.
- She is on multiple medications and she finds daily duties extremely challenging and it upsets her that she requires assistance.
- She finds it challenging to travel for long periods of time.
- She is in chronic pain and she needs help daily to care for herself and her children. She receives help with her children Monday to Friday 6 hours a day from her mother and more when it is required.
- Simple tasks significantly take more time, e.g. tying shoes takes 2 to 3 times longer, brushing hair and getting dressed takes 2 to 3 times longer.

In her Request for Reconsideration, the appellant wrote:

- Although she has been assessed as able to walk up to 4 blocks unaided, climb up to 5 steps, and lift 15 lbs. without assistance, this is a rarity as she is not able to do these things on a daily basis. She is unable to do repetitive movements as they cause extreme pain and swelling in her neck, chest wall, scapula, shoulder, arm, hand, and numbness in her fingers.
- She is unable to read for more than 30 minutes at a time as the pain her neck causes severe headaches and swelling to the point where she cannot even move her head from side to side.
- When she does these activities, it causes debilitating pain that requires medication and time for recuperation. She has been prescribed muscle relaxers, pain and anti-inflammatory medication. While on these medications, she requires assistance with her daily living duties, e.g. cooking, cleaning, caring for her children.
- She has a very difficult time dealing with daily situations due to the severity of her pain. Most days, she finds it hard to interact with her loved ones, friends and family.
- She rarely goes out in public because it is both physically challenging and mentally exhausting.
- She often requires assistance when she is out in public.
- Her daily cognition differs as it not only correlates with the level of pain she is in, but it also has a lot to do with her prescribed medications. It is extremely difficult to function cognitively when taking these medications.

Need for Help

The GP reported in the PR that the appellant requires an aid for her impairment, specifically that she “has been using taping and braces in the past.” When asked to describe the assistance that the appellant requires with DLA, the GP wrote: “help with care of infants, self care, housework, continuous.”

In the AR, the chiropractor reported that the help required for DLA is provided by family and friends. For a description of help required where none is available, the chiropractor wrote: “assistance with child care would be required. A home care nurse would help with other responsibilities.” The chiropractor indicated that kinesio-taping “would be helpful to stabilize neck and upper back/ chest posture. Best provided through a registered physiotherapist.”

Additional Information

In her Notice of Appeal dated March 28, 2017, the appellant expressed her disagreement with the ministry's reconsideration decision and wrote:

- The GP is her new physician and he has not been managing her clinical file since the onset of her disability. She has multiple specialists she has been seeing who have addressed the severity of her disability.
- She requires assistance on a daily basis, averaging 6 to 7 hours a day.
- Her mother had to quit her job to assist her physically and mentally with daily living situations and the care of her children, for example: bathing, cooking, housekeeping, laundry, and assisting her with travel to therapy and specialist appointments.
- Coping with chronic pain and the effects of her medication require constant care.
- It takes her 2 to 3 times longer to do simple tasks on a good day. This is not the case every day.
- Every day she requires assistance and she has more bad pain days than she does good.
- She is unable to function effectively physically and cognitively due to her condition and the anxiety it causes takes a significant toll on her mental ability to cope

At the hearing, the appellant stated that:

- She had a motor vehicle accident (MVA) in 2009 that caused a permanent condition.
- She had seen her previous doctor from birth until 2014 when he left his medical practice due to his own health condition. She had difficulty finding another doctor because of her ongoing dealings with ICBC regarding the MVA. She went to medical clinics until she found her current doctor in 2015. He does not have the advantage of reviewing her previous medical records and her full medical history.
- Her chiropractor is helping her but he also has not been treating her since the beginning and does not see how it has gotten worse over time.
- On a cognitive level, it is challenging to take care of her children. Her mother had to quit her job to help her care for the children.
- With any repetitive movements, she experiences numbness from the tips of her fingers, through her elbow and into her arm and chest wall.
- A typical day involves getting up early when her children wake, she does her stretches and changes diapers and then goes upstairs where her parents reside. Her mother helps her throughout the day.
- Her mother does 90% of the cleaning while she just "tidies up here and there."
- She cannot look down and can usually only sit for 20 to 40 minutes. She can only sit for an hour on a "good day."
- When she wakes up she may feel pretty good, her fingers may not be numb, and then by lunch she may be in excruciating pain and, after dinner, she just wants to be left alone because she does not know how to deal with the pain.
- If she had been treated fairly by ICBC and receiving consistent therapy, instead of "yo-yo" decisions about the treatment she was eligible for, she may not have developed the chronic pain condition that she will likely have for the rest of her life.
- Some days she can breathe through the pain and it is okay, but those days are rare.
- The pain affects her emotionally as well.
- Sometimes she experiences severe headaches where she needs to lie still in a dark room.
- She had returned to school and was pursuing her education when she was involved in a second MVA in 2015 and this flared everything up.
- The impact of her condition on her walking ability is due to the jolt experienced when taking steps. She feels pain from the base of her skull, along her arm and into her chest, and her

body compensates with the movement. It feels like someone is driving a spike into her arm from her elbow to her fingers.

- She experiences nerve pain that she does not know how to describe other than to say it is like an electrical shock.
- She will be seeing the surgeon again but she has tried injections but they did not work. There is only a 50% chance of a cure to her condition with surgery and he was not willing to go ahead with that yet, since it is quite extensive.
- She currently goes for massage therapy once per week and she also goes to the chiropractor. She has a new family doctor who wants her to use a special form of physical therapy called Feldenkrais therapy that involves stretches and manipulations around the nerve.
- She applied for CPP disability benefits but she was not eligible because she has not worked since 2009. She is unreliable for employment because some days she cannot function. She cannot do things for long periods of time since she needs breaks. Her doctor told her not to go back to work. Everything she tries to do inflames her condition. She feels she would be an unstable employee.
- She only provided excerpts from the reports by the OT, the surgeon and the specialist in physical medicine and rehabilitation because these reports are very lengthy and she selected the most important parts to include.

The ministry relied on its reconsideration decision as summarized at the hearing.

Admissibility of Additional Information

The ministry did not object to the admissibility of the information in the appellant's Notice of Appeal or in her oral testimony. The panel considered the Notice of Appeal and the appellant's oral testimony as information that corroborates the extent of the appellant's impairment as a result of a medical condition diagnosed in the PWD application, which was before the ministry at reconsideration. Therefore, the panel admitted this additional information as being in support of information and records that were before the ministry at the time of the reconsideration, in accordance with Section 22(4)(b) of the *Employment and Assistance Act*.

The panel did not place weight on the excerpts from the reports from the OT, the surgeon and the specialist in physical medicine and rehabilitation as the panel does not have the benefit of the context of the entire report within which to consider the selected portions, and the information regarding the appellant's functioning is dated as being from 2014 and 2015.

PART F – Reasons for Panel Decision

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

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

Persons with disabilities

2 (1) In this section:

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

"daily living activity" has the prescribed meaning;

"prescribed professional" has the prescribed meaning.

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

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

(b) in the opinion of a prescribed professional

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

(A) continuously, or

(B) periodically for extended periods, and

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

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

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

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

(i) an assistive device,

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

(iii) the services of an assistance animal.

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

The EAPWDR provides as follows:

Definitions for Act

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

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

(i) prepare own meals;

(ii) manage personal finances;

(iii) shop for personal needs;

(iv) use public or personal transportation facilities;

(v) perform housework to maintain the person's place of residence in acceptable sanitary condition;

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

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

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

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

At reconsideration, the ministry was satisfied that the information provided is sufficient evidence of a severe physical impairment and a severe mental impairment.

Direct and Significant Restrictions in the ability to perform DLA

At reconsideration the ministry found that there was sufficient evidence of a severe physical impairment and a severe mental impairment; however, the determination that a person has a severe impairment does not itself determine eligibility for the PWD designation as Section 2(2)(b) of the

EAPWDA requires that a prescribed professional provide an opinion that an applicant's severe impairment directly and significantly restricts her ability to perform DLA, either continuously or periodically for extended periods. In this case, the GP and the chiropractor are the prescribed professionals. DLA are defined in Section 2(1) of the EAPWDR and are also listed in the PR and, with additional details, in the AR. Therefore, a prescribed professional completing these forms has the opportunity to indicate which, if any, DLA are significantly restricted by the appellant's impairment continuously or periodically for extended periods.

Regarding the appellant's physical functioning, the GP diagnosed her with thoracic outlet syndrome left neck and arm with an onset of 2009, with neck and arm pain. In the AR, when asked to describe the mental or physical impairments that impact the appellant's ability to manage DLA, the chiropractor wrote "moderate to severe neck pain and stiffness, left arm numbness, chest pains, reduced strength in left arm and headaches. These symptoms and weakness significantly compromise ability to perform daily duties- especially caring for babies and doing housework; general DLA." The GP wrote in the health history that the appellant's pain is chronic and she is on different daily medications to alleviate the pain. The appellant has been prescribed medications that interfere with her ability to perform DLA, with "potential for sedation" and she "has been using meds since 2009 on persistent basis."

In the reconsideration decision, the ministry reviewed the information provided in the PR and noted that while the GP reported restrictions to DLA, he did not provide additional comments in respect to the degree of restriction. The GP indicated in the PR that the appellant is continuously restricted with the basic housework DLA, the daily shopping DLA, the mobility inside and outside the home DLA, and the use of transportation DLA, but when asked to provide additional comments regarding the degree of restriction, the GP did not take the opportunity to provide comments. The GP also reported that the appellant is periodically restricted with the personal care DLA and the meal preparation DLA and, when asked to explain the periodic restrictions, the GP wrote: "unable to bend, difficulty with self care, unable to sustain repetitive actions." The GP indicated in the PR that the appellant is not restricted with the management of medications DLA, the management of finances DLA, and the social functioning DLA. In the additional comments to the PR, the GP wrote that the appellant has thoracic outlet syndrome on the left side with associated muscle pains, significant pain in the left arm, neck and head, which impairs her daily activities and the appellant is not able to care for her infants independently on a physical level. The panel notes that the ability to care for others is not a criterion in section 2(2) of the EAPWDA nor is it listed among the prescribed DLA in section 2 of the EAPWDR, which relates exclusively to the ability to care for self.

For the 'move about indoors and outdoors' DLA, the ministry reviewed the information provided by the GP that the appellant is able to walk 2 to 4 blocks unaided on a flat surface, climb 2 to 5 stairs unaided, and lift 5 to 15 lbs., with no indication that the lifting limit may be reduced on the appellant's left side. In her Request for Reconsideration, the appellant wrote that although she has been assessed as able to walk up to 4 blocks unaided, climb up to 5 steps, and lift 15 lbs. without assistance, this is a rarity as she is not able to do these things on a daily basis, and she is unable to do repetitive movements that cause extreme pain and swelling. In the AR, the chiropractor assessed the appellant as requiring periodic assistance with walking indoors and outdoors and with climbing stairs, without indicating how often she requires assistance and whether the assistance is required for activities beyond her functional skill limitations as assessed by the GP. At the hearing, the appellant stated that the impact of her condition on her walking ability is due to the jolt experienced when taking steps, and she feels pain from the base of her skull, along her arm and into her chest; however, there was no additional information provided on the appeal from a prescribed professional to indicate how often the appellant's functional skill limitations are reduced, and to what extent they are reduced.

In the reconsideration decision, the ministry reviewed the information provided in the AR and noted that while the chiropractor indicated that some assistance is required with tasks of DLA, the help required has not been reported to be extensive, nor was it established that periodic assistance is required for extended periods of time. For the personal care DLA, the chiropractor assessed the appellant as being independent with the task of feeding self and she requires periodic assistance from another person with dressing, grooming, bathing, toileting (note: "rare occasions due to body pain"), and regulate diet. There are no further comments provided by the chiropractor relating to these tasks of the personal care DLA and the panel finds that requiring help on "rare occasions" does not establish the need for periodic assistance for extended periods of time. In her self-report, the appellant wrote that her pain dictates the functionality of her day and as the day progresses, her pain increases. At the hearing, the appellant stated that when she wakes up she may feel pretty good, her fingers may not be numb, and then by lunch she may be in excruciating pain and, after dinner, she just wants to be left alone because she does not know how to deal with the pain. The appellant also stated that some days she can breathe through the pain and it is okay, but those days are rare. In her Notice of Appeal, the appellant wrote that she requires assistance every day and she has more bad pain days than she does good. In the absence of further information from a prescribed professional regarding the frequency of the 'good' and 'bad' days that the appellant experiences, or the length of time that she is unable to accomplish tasks of personal care, the panel finds that the ministry reasonably concluded that there was insufficient information to establish the need for periodic assistance for extended periods of time.

The ministry wrote in the reconsideration decision that taking 2 to 3 times longer with some tasks of DLA is not representative of a significant restriction. The chiropractor assessed the appellant as taking significantly longer than typical with tasks of the personal care DLA (2 to 3 times longer for transfers in/out of bed and she "has to be cautious" with transfers on/off of chair), the housekeeping DLA ("vacuuming is impossible"), the shopping DLA (going to and from stores takes at least twice as long, and she "usually brings help" to carry purchases home) and the transportation DLA (getting in and out of a vehicle takes 2 times as long). In her self-report, the appellant wrote that "simple tasks significantly take more time, e.g. tying shoes takes 2 to 3 times longer, brushing hair and getting dressed takes 2 to 3 times longer." In her Notice of Appeal, the appellant wrote that It takes her 2 to 3 times longer to do simple tasks on a good day and this is not the case every day; however, there was no indication by the chiropractor of an assessment that the appellant has 'good' and 'bad' days or that he had conducted his assessment in the AR based on the appellant's good days.

In the reconsideration decision, the ministry wrote that the GP and the chiropractor have not provided sufficient information to establish that the appellant's impairment results in significant restrictions to her overall functioning. For the basic housekeeping DLA, the chiropractor reported that the appellant requires continuous assistance from another person with doing laundry and the chiropractor noted that laundry "really aggravates her spine." In her self-report, the appellant wrote that housework is extremely challenging and causes her symptoms to flare-up. As the GP assessed the appellant in the PR as able to lift 5 to 15 lbs., the panel finds that the ministry reasonably determined that further information is required to show a significant restriction and need for assistance with this task. For the meals DLA, the chiropractor reported that the appellant requires continuous assistance from another person with food preparation and cooking, with the comment by the chiropractor: "cutting vegetables, especially harder vegetables, difficult; looking down is very aggravating." The appellant wrote in her Notice of Appeal that she requires assistance on a daily basis, averaging 6 to 7 hours a day. In her self-report, the appellant wrote that she finds it extremely challenging to care for her infants without help from her family and friends, and she receives help with her children Monday to Friday 6 hours a day from her mother and more when it is required; as previously discussed, help with caring for others is not one of the criteria for PWD designation.

In terms of the appellant's mental functioning, the GP did not diagnose a mental disorder in the PR and while the GP indicated there are significant deficits with cognitive and emotional function in the areas several areas (executive, memory, emotional disturbance, motivation, motor activity, and attention or sustained concentration), the GP wrote "as reported by patient" and thereby indicated this is not his independent assessment. In the AR, when asked to describe the mental or physical impairments that impact the appellant's ability to manage DLA, the chiropractor did not refer to a mental impairment; however, the chiropractor reported that there are major impacts to the appellant's daily cognitive and emotional functioning in the areas of emotion, attention/concentration, and motivation, as well as a moderate to major impact in bodily functions (note: "sleep" and "major"), and moderate impacts in executive, motor activity, and other emotional or mental problems (note: "irritability, frustrated"). The chiropractor assessed a moderate to minimal impact in psychotic symptoms, with no description or explanation provided, and added comments that the appellant "has difficulty coping with chronic pain." In the absence of a mental health diagnosis from the GP, and considering the GP's comment that the impacts to cognitive and emotional functioning are as reported by the appellant, the panel finds that there is insufficient information to determine whether the impacts to functioning are as a result of a mental disorder per se.

Considering the two "social functioning" DLA that are specific to mental impairment – make decisions about personal activities, care or finances (decision making), and relate to, communicate or interact with others effectively (relate effectively), the ministry found that there is insufficient evidence to establish that the appellant is significantly restricted in her functioning. Regarding the decision making DLA, the chiropractor reported in the AR that the appellant independently manages all but one decision-making components of DLA, specifically: shopping (making appropriate choices and paying for purchases), meals (meal planning and safe storage of food), pay rent and bills (including budgeting) and medications (taking as directed and safe handling and storage). For the task of "regulate diet" as part of the personal care DLA, the chiropractor assessed the need for periodic assistance from another person with no explanation or description regarding the major disturbance to the appellant's eating behavior and how often she requires assistance to regulate her diet. The panel finds that the ministry reasonably determined that there is insufficient information provided by the chiropractor to allow the ministry to determine that the impairment restricts the ability to perform this task of the personal care DLA "periodically for extended periods," as required in the legislation. The chiropractor reported in the AR that the appellant is independent with her ability to make appropriate social decisions.

Regarding the DLA of relating effectively, the GP reported in the PR that the appellant is not restricted in her social functioning, and the chiropractor reported in the AR that the appellant is independent in her ability to develop and maintain relationships and interact appropriately with others. While the chiropractor indicated that the appellant has marginal functioning in both her immediate and extended social networks, there was no explanation provided. Asked to describe the support/supervision required that would help to maintain the appellant in the community, the chiropractor wrote "family support and financial support." The GP reported that the appellant has no difficulties with communication "as reported by patient," and the chiropractor assessed her as having a good ability to communicate with speaking and hearing and wrote that her poor ability with reading and writing relates to experiencing physical pain, or her physical rather than mental impairment. In her Request for Reconsideration, the appellant wrote that she is unable to read for more than 30 minutes at a time as the pain her neck causes severe headaches and swelling to the point where she cannot even move her head from side to side.

The GP indicated that the appellant has been prescribed medications that interfere with her ability to perform DLA, specifically with "potential for sedation" and she "has been using meds since 2009 on persistent basis." In her Request for Reconsideration, the appellant wrote that she has been

prescribed muscle relaxers, pain and anti-inflammatory medication and, while on these medications, she requires assistance with her daily living duties, e.g. cooking, cleaning, and caring for her children. The appellant wrote that most days, she finds it hard to interact with her loved ones, friends and family and she rarely goes out in public because it is both physically challenging and mentally exhausting. At the hearing, the appellant stated that some days she can breathe through the pain and it is okay, but those days are rare. She stated that the GP does not have the advantage of reviewing her previous medical records and her full medical history and her chiropractor is helping her but he also has not been treating her since the beginning and does not see how her condition has gotten worse over time. However, there was no additional information provided on the appeal from a prescribed professional to describe the deterioration in the appellant's functioning and the consequent impact on her ability to perform DLA, or to provide the missing detail regarding her need for periodic assistance with some tasks of DLA. Section 2(2)(b) of the EAPWDA requires that a prescribed professional provide an opinion that an applicant's severe impairment directly and significantly restricts her DLA, either continuously or periodically for extended periods. There is no discretion provided to the ministry to rely on information regarding impacts to DLA that has not been confirmed as being in the opinion of a prescribed professional.

Given the absence of evidence of significant restrictions to those DLA that relate to a person with a severe mental impairment, the lack of information from the chiropractor about the frequency of the appellant's need for periodic assistance with some tasks of DLA, and whether the assessment in the AR relates to a good or a bad day of functioning, 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 direct and significant restrictions in the ability to perform DLA, a person requires help to perform those activities. Help is defined in subsection (3) as the requirement for an assistive device, the significant help or supervision of another person, or the services of an assistance animal in order to perform a DLA.

While the appellant benefits from the help provided by her family, especially her mother, and friends, and the chiropractor indicated that kinesio-taping "would be helpful to stabilize neck and upper back/ chest posture," the panel finds that the ministry reasonably determined that as direct and significant restrictions in the appellant's ability to perform DLA have not been established, it cannot be determined that the appellant requires help to perform DLA as a result of those restrictions, as defined by section 2(3)(b) of the EAPWDA.

Conclusion

Having reviewed and considered all of the evidence and relevant legislation, the panel finds that the ministry's reconsideration decision which determined that the appellant was not eligible for PWD designation pursuant to Section 2(2) of the EAPWDA was reasonably supported by the evidence, and therefore confirms the decision. The appellant's appeal, therefore, is not successful.