

PART C – Decision under Appeal

The decision under appeal is the Ministry of Social Development and Social Innovation (the ministry) reconsideration decision dated April 10, 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

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 December 4, 2016, a physician report (PR) dated December 6, 2016 and an assessor report (AR) dated December 12, 2016 and both completed by a general practitioner (GP) who has known the appellant for 10 years and has seen her 11 or more times in the past 12 months.

The evidence also included the appellant's Request for Reconsideration dated March 25, 2017.

Diagnoses

In the PR, the GP diagnosed the appellant with GERD [Gastroesophageal Reflux Disease], anxiety and chronic fatigue, all with an onset in 2016 and HTN [hypertension] with an onset in 2011. Asked to describe the mental or physical impairments that impact the appellant's ability to manage daily living activities (DLA), the GP did not comment.

Physical Impairment

In the PR and the AR, the GP reported:

- With respect to the health history, the appellant has “severe GERD causing difficulty breathing, choking, increase phlegm, coughing” and “chronic fatigue- constant tiredness, unable to do any physical work/ needs to rest frequently.”
- The appellant does not require any prostheses or aids for her impairment.
- Regarding the degree and course of impairment, the GP wrote that the appellant has been undergoing investigations to determine prognosis and treatment.
- In terms of functional skills, the appellant can walk 1 to 2 blocks unaided on a flat surface, climb 2 to 5 steps unaided, lift 2 to 7 kg. (5 to 15 lbs.), and remain seated less than 1 hour.
- It is unknown if the appellant is restricted with her mobility inside the home and she has been continuously restricted with mobility outside the home “for the past 3 months.” Regarding the degree of restriction, the GP wrote that the appellant “stays at home most of the time.”
- For additional comments, the GP wrote that the appellant is “suffering from chronic fatigue, low energy, difficulty concentrating, memory impairment. Needs to be reminded to finish tasks. Unable to sleep due to SOB [shortness of breath], cough” and “currently CT scan/ chest pending. Seen by ENT- diagnosed with severe GERD, on medications- minimal relief of the symptoms.”
- The appellant is assessed as being independent with some aspects of mobility and physical ability, specifically: walking indoors, standing, and carrying and holding. The appellant requires periodic assistance from another person with walking outdoors, climbing stairs, and lifting, with no explanation or description provided.
- In the section of the AR relating to assistance provided, there are no assistive devices identified as being routinely used by the appellant to help compensate for her impairment.
- The appellant does not have an assistance animal.

In her self-report, the appellant wrote:

- She feels constantly tired. She needs rest after walking and basic activities because she has difficulty breathing.
- She has difficulty sleeping because of breathing problems and phlegm.
- She feels weak. She needs to do everything slowly and she needs to take breaks and rest all the time.
- She cannot walk too far outside the house.

In her Request for Reconsideration, the appellant wrote:

- Her condition causes her to not only be chronically tired, but also causes pain, dizziness, weakness and nausea at times when she is on her feet for too long.
- There are also days when she is in bed for the majority of the day due to pain and feeling ill.
- She is currently waiting for a biopsy because there are two large growths on her thyroid.
- She recently received results from a CT scan that showed many small growths on her lungs and liver and she is waiting to see a specialist to determine how to proceed.
- She takes medicine that is supposed to help her stomach pain but it does not seem to alleviate the pain.
- She takes 3 different medications for high blood pressure, but on some days they do not work and her blood pressure goes up and gives her extreme throbbing headaches at the back of her head. These are the days when she is forced to stay in bed as the pain is debilitating.

Mental Impairment

In the PR and the AR, the GP reported:

- The appellant has cognitive difficulties with communication “decreased focusing secondary to anxiety.”
- The appellant has significant deficits with cognitive and emotional function in the areas of memory, emotional disturbance, motivation, and attention or sustained concentration, with no comments provided.
- The appellant is continuously restricted with social functioning “for the past 3 months” and she is “unable to socialize at present due to fatigue, depressive mood and difficulty coping with stress” and she “stays at home most of the time.”
- The appellant has a good ability to communicate in all aspects, specifically with speaking, reading, writing and hearing.
- With respect to daily impacts to the appellant’s cognitive and emotional functioning, the GP reported that there is a moderate impact in emotion and minimal impacts in the areas of attention/concentration, memory, and motivation. The GP comment: “severe anxiety affecting memory, concentration, ability to socialize.”
- Regarding the impacts to the appellant’s social functioning, the GP indicated that the appellant requires periodic support/supervision in all aspects, specifically: making appropriate social decisions, developing and maintaining relationships, interacting appropriately with others, dealing appropriately with unexpected demands, and securing assistance from others. There was no explanation or description provided.
- The appellant has marginal functioning in both her immediate and her extended social networks, with no other comments.
- Asked to describe the support/supervision required which would help maintain the appellant in the community, the GP wrote: “withdrawn from social life due to anxiety and depressive mood.”

In her self-report, the appellant wrote that she feels weak and very stressed.

Daily Living Activities (DLA)

In the PR and the AR, the GP reported:

- The appellant has not been prescribed medication and/or treatments that interfere with her ability to perform DLA.
- The appellant is not restricted with the DLA management of medications or the DLA management of finances. It is unknown if the appellant is restricted with personal self care and mobility inside the home.
- The appellant is restricted with the DLA meal preparation, basic housework, daily shopping,

mobility outside the home, use of transportation, and social functioning. The GP wrote “continuous for the past 3 months” and she “stays at home most of the time.”

- In the additional comments, the GP wrote that the appellant “needs help with some ADL’s.”
- The appellant is independent with walking indoors and requires periodic assistance from another person with walking outdoors, with no comments added.
- The appellant is independent with all of the tasks for the personal care DLA, the pay rent and bills DLA, and the medications DLA.
- Regarding the basic housekeeping DLA, the appellant requires periodic assistance from another person with doing laundry and basic housekeeping, with no comments provided.
- For the shopping DLA, the appellant is independent with the tasks of reading prices and labels, making appropriate choices, and paying for purchases, and she requires periodic assistance from another person with going to and from stores and continuous assistance with carrying purchases home.
- The GP provided additional comments that the appellant “needs help at times with housekeeping, laundry, shopping, and carrying objects (husband and the daughter help).”
- For the meals DLA, the appellant is independent with meal planning, food preparation, and safe storage of food, and requires periodic assistance from another person with cooking, with no explanation or description provided.
- Regarding the transportation DLA, the appellant is independent with the tasks of getting in and out of a vehicle and using transit schedules and arranging transportation and also requires periodic assistance from another person with using public transit.
- Additional comments are that the appellant “gets increased anxiety while on the bus or train.”

In her self-report, the appellant wrote:

- She needs to do everything slowly and she needs to take breaks and rest all the time.
- She has to do less around the house.

Need for Help

With respect to the assistance provided by other people, the GP reported in the PR that the appellant’s “husband helps with ADL’s” and, in the AR, that help required for DLA is provided by family. The GP did not identify any of the assistive devices as being used by the appellant, and the appellant does not have an assistance animal.

Additional information

In her Notice of Appeal dated April 27, 2017, the appellant expressed her disagreement with the ministry’s reconsideration decision and she wrote that there is an inaccurate assessment and she feels she is unable to work.

At the hearing, the appellant provided a note dated May 24, 2017 in which her GP wrote:

- Medical problems: pulmonary nodules under investigation; goiter causing SOB with nodules; chronic stomach pain- appointment with gastroenterologist pending.
- Anxiety- severe. Unable to sleep, socialize, poor concentration.
- Laryngopharyngeal reflux- unable to talk at times due to throat irritation.

At the hearing, the appellant stated:

- Her doctor was busy and could only provide the May 24, 2017 note as an update.
- She is too weak to work. She has been sick for many years and is unable to work.
- She’s had a blood problem for 18 years- anemia- and had an operation for a woman problem and everything was taken out. A few years later, she had a breast operation for a tumor.
- She started getting severe headaches and discovered she had high blood pressure.

- Last year, she started having problems with her heart, issues with her breathing, and had no feeling in her left hand. She could not walk on her own.
- She's had many medical examinations and they found a small nodule on her throat and it is getting bigger. She has to sit when she sleeps.
- She has pains in her stomach every day. She thinks there is acid or infection in her stomach.
- In November, she thought she had pneumonia because of chest pain and her doctor thought it was the flu. She was sent to a specialist who had a biopsy done. He prescribed medication and sent her back to the GP. The biopsy indicated she does not have cancer.
- If she has a problem with eating/swallowing and breathing, she will have to have an operation for the 2 tumors in her throat. The scan is showing many small tumors in her lungs and liver. She is being sent to specialists for her lungs.
- Her husband helps her with her DLA when she is sick and cannot walk. She is taking pain killers and other medication and, afterwards, she feels better.
- She wants to be active, but she has to sit when she cooks because she cannot stand for long.
- When the PR and the AR were completed, in December 2016, she was very sick and could not have lifted more than 1 kg. She may have been confused by the difference between lbs. and kg. The GP filled out the reports in her presence. She told the GP that she was so sick at that time that she was not able to "do anything" because of pain.
- She feels also that she is not happy, that she feels emotional, and does not want to go outside. Her doctor has said she needs to avoid stress because it causes pain.
- The GP helped her write the Request for Reconsideration by translating for her.
- Every day she spends about 2 hours in bed resting because of a headache or pain. The number of times that she has to spend the majority of the day in bed "depends on [her] pain." The pain is worse at night.
- She has many restrictions because of pain and she cannot be independent.

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

Admissibility of Additional Information

The ministry did not object to the admissibility of the GP's note dated May 24, 2017 and did not raise an objection to the appellant's oral testimony. The panel considered the information provided by the GP in her note and the appellant in her oral testimony 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*.

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 his 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 was diagnosed by the GP with several medical conditions, specifically hypertension, severe GERD causing difficulty breathing, choking, increased phlegm and coughing, and chronic fatigue causing constant tiredness and the need to rest frequently. The ministry acknowledged that the appellant experiences limitations to her physical functioning due to fatigue and low energy, but the ministry

concluded that the combination of her functional skills, mobility, and physical abilities speaks to a moderate rather than a severe physical impairment.

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.

The ministry considered the impacts of the appellant’s diagnosed medical conditions on her daily functioning, beginning with the assessments provided in the PR and the AR. The ministry wrote that the GP reported in the PR that the appellant does not require an aid for her impairment and she is able to walk 1 to 2 blocks unaided on a flat surface, climb 2 to 5 steps unaided, lift 5 to 15 lbs. and remain seated less than 1 hour. The GP indicated that it is unknown if the appellant is restricted with her mobility inside the home and the appellant has been continuously restricted with mobility outside the home “for the past 3 months.” Regarding the degree of restriction, the GP wrote that the appellant “stays at home most of the time.” The appellant stated at the hearing that, when the PR and the AR were completed in December 2016, she was very sick. At that time, she told the GP that she was not able to “do anything” because of pain and she could not lift more than 1 kg. The appellant stated that when the GP asked her about her lifting ability, she may have been confused by the difference between pounds and kilograms.

At the hearing, the appellant provided a note dated May 24, 2017 in which her GP wrote that the appellant’s medical problems include pulmonary nodules under investigation, goiter causing SOB with nodules, chronic stomach pain with an appointment with gastroenterologist pending, and laryngopharyngeal reflux whereby she is unable to talk at times due to throat irritation. At the hearing, the appellant stated that the investigations so far showed many small tumors in her lungs and liver and she is being sent to a specialist for her lungs. The appellant stated that she will have to have an operation for the 2 tumors in her throat If she has a problem with eating/swallowing and breathing. The appellant stated she has pains in her stomach every day. The appellant stated that she feels better after taking pain killers and other prescribed medication.

In her self-report also completed in December 2016, the appellant wrote that she feels constantly tired, and she needs rest after walking and basic activities because she has difficulty breathing. The appellant wrote that she needs to do everything slowly and she needs to take breaks and rest all the time and she cannot walk too far outside the house. The ministry considered that the GP reported in the AR that the appellant is independent with walking indoors, standing and carrying/holding, and requires periodic assistance with walking outdoors, climbing stairs, and lifting. Given an opportunity in the May 24, 2017 note to update the functional skills assessments, or to provide more information about the frequency of the appellant’s need for assistance, the GP did not discuss specific limitations resulting from the appellant’s medical conditions.

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.

Additional information was provided by the appellant in her Request for Reconsideration, that not only is she chronically tired, but her condition also causes pain, dizziness, weakness and nausea at times when she is on her feet for too long. The appellant wrote that there are also days when she is in bed for the majority of the day due to pain and feeling ill. Asked to clarify at the hearing how often this

occurs, the appellant stated that every day she spends about 2 hours in bed resting because of a headache or pain. The number of times that she has to spend the majority of the day in bed “depends” on the degree of her pain, which is worse at night.

The GP wrote in the health history of the PR that the appellant is unable to do any physical work. At the hearing, the appellant stated that she is too weak to work; she has been sick for many years and is unable to work. An emphasis was placed on the appellant’s inability to work, and the panel finds that the ministry reasonably determined that employability is not a consideration for eligibility for PWD designation as employability is not a criteria 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 assessments by the GP of functional skills in the moderate range, the lack of a description of the frequency of the need for periodic assistance with areas of mobility and physical ability, as well as the emphasis placed on the appellant’s inability to work, 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 considered that the GP reported that the appellant has significant deficits in some areas of cognitive and emotional functioning, specifically memory, emotional disturbance, motivation and attention or sustained concentration, with the comment by the GP: “severe anxiety affecting memory, concentration, ability to socialize.” However, the ministry also considered that the GP indicated that there was one moderate impact to daily functioning in the area of emotion and minimal impacts in the other areas of deficit.

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 panel finds that the ministry reasonably concluded that there is insufficient evidence to establish that the appellant is significantly restricted. Regarding the ‘decision making’ DLA, the GP reported in the AR that the appellant independently manages several decision-making components of DLA, specifically: personal care (regulate diet), shopping (making appropriate choices and paying for purchases), meals (meal planning and safe storage of food), pay rent and bills (including budgeting), medications (taking as directed and safe handling and storage), and transportation (using transit schedules and arranging transportation). For making appropriate social decisions, while the GP indicated that there is a need for periodic support/supervision from another person, there is no explanation or description provided by the GP to allow the ministry to determine that the assistance is required in this aspect periodically for extended periods of time. Regarding the DLA of ‘relating effectively’, the GP reported that the appellant is continuously restricted in social functioning “for the past 3 months” and commented: “unable to socialize at present due to fatigue, depressive mood, and difficulty coping with stress” and “stays at home most of the time.” In assessing the need for assistance with aspects of social functioning, the GP indicated that the appellant requires periodic support/ supervision with developing and maintaining relationships and interacting appropriately with others, with no indication of the frequency or duration of the appellant’s need for periodic support/ supervision to allow the ministry to determine that the periodic support/supervision is required for extended periods of time. The GP indicated that the appellant has marginal functioning in both her immediate and extended social networks, with no comment to describe the impact, particularly as the GP reported that the appellant receives help from her family, specifically her husband and her daughter. When asked to describe the support/ supervision required which would help maintain the appellant in the community, the GP wrote: “withdrawn from social life due to anxiety and depressive mood.” In the PR, the GP reported that the appellant has

cognitive difficulties with communication as a result of decreased focusing secondary to anxiety; however, the ministry considered that the GP also assessed the appellant in the AR as having a good ability to communicate in all aspects.

In her self-report, the appellant wrote that she feels weak and very stressed. At the hearing the appellant stated that she feels that she is not happy and she feels emotional, although she did not elaborate. The appellant stated that she does not want to go outside and her doctor has said she needs to avoid stress because it causes pain. The appellant stated that she is too weak to work, that she has been sick for many years and is unable to work. As previously discussed, employability is not a consideration for eligibility for PWD designation.

Given the absence of evidence to establish that the appellant is significantly restricted with the two DLA specific to a severe mental impairment, and the lack of evidence of significant impacts to the appellant's cognitive and emotional functioning, the panel finds that the ministry reasonably determined that a severe mental impairment was not established under Section 2(2) of the EAPWDA.

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 information provided in the PR and noted that the GP indicated that the appellant has not been prescribed any medications or treatments that interfere with her ability to perform DLA. The ministry wrote that the GP indicated that it is unknown whether there are restrictions with the personal care DLA and the appellant's mobility inside the home, and the appellant has no restrictions with the management of medications and management of finances DLA. The ministry wrote that the GP indicated the appellant's impairment has continuously restricted her ability to perform meal preparation, basic housework, daily shopping, mobility outside the home, and use of transportation "for the past 3 months."

When asked to describe the nature and extent of assistance required, the GP wrote in the PR: "husband helps with ADL's" and the appellant "needs help with some ADL's." The ministry wrote that the GP indicated in the AR that continuous assistance is required from another person with one task of the shopping DLA, specifically carrying purchases home. The ministry considered that, in the AR, the GP reported that the appellant requires periodic assistance with several tasks of DLA (laundry, basic housekeeping, going to and from stores, cooking, and using public transit), with the comments: "needs help at times with housekeeping, laundry, shopping, and carrying objects (husband and the daughter help)" and "gets increased anxiety while on the bus or train." The appellant stated at the hearing that she wants to be active, but she has to sit when she cooks because she cannot stand for long. The ministry wrote that while the GP indicated that there is a need for periodic assistance from another person, the GP does not describe the frequency or duration of the periodic assistance required from another person to establish that the periodic assistance is required for extended

periods of time. The ministry wrote that a restriction that only arises once a month is less likely to be significant than one that occurs several times a week.

Asked to clarify at the hearing how often this occurs, the appellant stated that every day she spends about 2 hours in bed resting because of a headache or pain. The number of times that she has to spend the majority of the day in bed “depends” on the degree of her pain, which is worse at night. Although the appellant stated at the hearing that she has many restrictions because of pain and she cannot be independent, the GP reported in the AR that the appellant is independent in all other tasks of DLA. In her self-report, the appellant wrote that she needs to do everything slowly and she needs to take breaks and rest all the time. The appellant wrote that she has to do less around the house.

At the hearing, the appellant stated that her husband helps her with her DLA when she is sick and cannot walk. She is taking pain killers and other medication and, afterwards, she feels better. Regarding the ‘move about indoors and outdoors’ DLA, the appellant is assessed by the GP as independent with walking indoors and requires periodic assistance from another person with walking outdoors, while able to walk 1 to 2 blocks unaided. The appellant also stated at the hearing that she feels that she is not happy and does not want to go outside, and her doctor has said she needs to avoid stress because it causes pain. As previously discussed, the panel finds that the ministry reasonably determined that there is not sufficient evidence of significant restrictions in the two social functioning DLA specific to a severe mental impairment, and no further information was provided on the appeal.

Given the appellant’s reported independence with many tasks of DLA and the lack of a description by the GP of the extent of periodic assistance required for some tasks of DLA, as well as the absence of evidence of significant restrictions to those DLA that relate to a person with a severe mental impairment, 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.

While the GP reported that the appellant receives help from family and her “husband helps with ADL’s,” 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.