

PART C – Decision under Appeal

The decision under appeal is the Ministry of Social Development and Social Innovation (the ministry) reconsideration decision dated April 5, 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, though not a severe mental impairment, which, 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 dated September 19, 2016 and attached self-report, a physician report (PR) and an assessor report (AR) both dated September 26, 2016 completed by a general practitioner (GP) who has known the appellant for 8 months and has seen her 11 or more times in the last year, and the appellant's Request for Reconsideration dated February 17, 2017 with attached Medical Note (the "Medical Note") dated March 13, 2017 from the GP.

Diagnoses

In the PR, the appellant was diagnosed by the GP with degenerative disc disease of the lumbar spine and disc displacement, with an onset in 2013, and degenerative disc disease of the cervical spine with foraminal stenosis, with an onset in 2010. There was no diagnosis of a condition within the mental disorders diagnostic category of the PR. In the AR, when asked to describe the mental or physical impairments that impact the appellant's ability to manage daily living activities, the GP wrote: "neck and back pain secondary to intervertebral disc disorder."

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 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 crossed this section out and marked it as "N/A," or not applicable to the appellant.
- Regarding the section of the AR assessing impacts to the appellant's social functioning, the GP crossed this section out and marked it as "N/A," or not applicable to the appellant.

In her self-report, the appellant wrote that:

- She is a single mom living with chronic severe medical conditions that are impacting her life negatively.
- Since she came to Canada as a refugee, she has been very ill and her health has been deteriorating.
- She is very depressed and feeling fatigue all the time. She does not have any interest in doing activities as she is always tired.

In the Medical Note, the GP wrote:

- The appellant suffers from depression and symptoms suggestive of post traumatic stress disorder (PTSD). Her symptoms started after witnessing a violent act.
- She suffers nightmares, flash backs, insomnia, fatigue, memory problems, irritability, anxiety, and depressed mood.
- These symptoms cause her severe restriction in her social interactions.
- She rarely leaves her house and has a limited social circle.

Daily Living Activities (DLA)

In the PR and the AR, the GP reported:

- In terms of health history, the appellant "...suffers from chronic back and neck pain. She is unable to sit, stand or walk for more than 10 minutes due to back pain."
- The appellant has been prescribed medications that interfere with her ability to perform DLA, specifically pain medication that "helps her neck and back pain but causes significant drowsiness and sleepiness." The anticipated duration of the medications is stated by the GP to be "likely permanent medication for life."
- For functional skills, the appellant is able to walk less than 1 block unaided on a flat surface, climb 2 to 5 steps unaided, lift 2 to 7 kg. (5 to 15 lbs.), and remain seated for less than one hour.
- The appellant's impairment directly restricts her ability to perform DLA. The GP followed the instructions for the remainder of the application and did not provide a further assessment regarding restrictions in this section of the PR.
- The appellant is independent with walking indoors and takes significantly longer than typical with walking outdoors, with the explanation by the GP: "patient unable to walk for more than 10 minutes (one block) due to back pain."
- The appellant is independently able to perform every assessed task of the personal care DLA (including dressing, grooming, bathing, toileting, feeding self, regulate diet, transfers in/out of bed and transfers on/off of chair), the pay rent and bills DLA (including banking, budgeting), and the medications DLA (including filling/refilling prescriptions, taking as directed, and safe handling and storage).
- For the basic housekeeping DLA, the appellant takes significantly longer than typical with both doing laundry and housekeeping, with the explanation by the GP that "back and neck pain causes her to take longer than usual."
- Regarding the shopping DLA, the appellant is independent with reading prices and labels, making appropriate choices and paying for purchases. She requires periodic assistance from another person and takes significantly longer than typical with going to and from stores, with the comment by the GP that "brother helps with transportation," and also with carrying purchases home, with the comment: "brother helps with transportation." The GP added comments that "patient receives help from her brother in regards to shopping and transportation. She takes longer than usual to finish housework and laundry due to back pain. Medications... make her drowsy and impair her ability to perform house activities."
- For the meals DLA, the appellant is independent with meal planning and safe storage of food, and takes significantly longer than typical with food preparation and cooking, with the explanation from the GP that "due to back and neck pain, patient needs frequent breaks to sit and hence takes longer to finish those tasks."
- Regarding the transportation DLA, the appellant is independent with getting in and out of a vehicle, requires periodic assistance and takes longer with using public transit, and takes longer using transit schedules and arranging transportation. The GP commented: "patient unable to walk for longer than 10 minutes to bus stops. Brother helps occasionally with transportation."
- For additional comments, the GP wrote that the appellant "receives support from family members like brother and mother with transportation once a week. She also receives support from her mother with caring for her children 1 to 2 times a week."
- For additional information, the GP wrote that the appellant "is a single mother... and struggles to provide care for her children and to perform her DLA. She suffers from chronic low back pain and neck pain and is unable to tolerate medication due to side effects."

In her self-report, the appellant wrote that:

- She is unable to be fully active because of her medical conditions.
- Carrying or lifting anything is a challenge as she cannot lift due to the joint pain.
- A simple task of going to the grocery store is difficult as she cannot carry the grocery bags.

In the Medical Note, the GP wrote:

- The appellant's neck and back pain, as well as her depression and PTSD, severely affect and cause significant restrictions of her ability to perform her DLA inside and outside the house.
- The appellant takes twice the time that is usually required to perform DLA like dressing, bathing, walking, carrying and lifting.
- She is restricted to lifting not more than 10 lbs. at all times.
- The appellant receives continuous assistance from family members to perform activities like carrying, lifting, basic housekeeping, and cooking, as well as transportation.

Need for Help

The GP reported in the PR that the appellant does not require an aid for her impairment. In the AR, the GP indicated that the help required for DLA is provided by family. The GP indicated that the appellant "would benefit from lumbar support belt."

Additional Information

In her Notice of Appeal dated April 20, 2017, the appellant expressed her disagreement with the ministry's reconsideration decision and wrote that she suffers from PTSD and depression from a long time ago when a family member was killed. She was taking medicine in her country of origin but she was ashamed to tell her doctor until friends saw her in a very bad situation.

At the hearing, the appellant provided a letter dated May 26, 2017 in which a psychiatrist wrote:

- The appellant was referred for PTSD with mood and anxiety symptoms.
- She reported seeing a family member's body at the hospital following his violent death.
- She reported a notable change in her mood following her family member's death. She described lack of confidence and isolating herself most of the time. She reported her mood as 1/10, with some improvement noted on medication. She reported she frequently wakes up at night, and has thoughts of hopelessness, worthlessness, and guilt. She denied suicide ideation.
- She reported recurrent episodes of anxiety every second day, startle reaction to noise, irritable and angry, with poor attention.
- She reported being forgetful and stopped the program [immigrant settlement and integration] as she was not able to participate in complex conversations. She can converse in simple English.
- She lives with her parents and her young children and gets help from her extended family with child care.
- The diagnosis is major depressive disorder, recurrent, and features suggestive of PTSD, and generalized anxiety disorder is ruled out.
- The appellant's functioning both at home and at the program [immigrant settlement and integration] is markedly affected by unresolved mood and anxiety.
- She has poor attention, concentration, subjective memory complaints, and unresolved mood that would impair her ability to function at a workplace.
- There is future risk of deterioration in mood and anxiety with impact on functioning. There are current thoughts of self-harm, while protective factors include her children.
- Recommendations are for trial of medications, and advice regarding lifestyle changes with daily routine, socialization, and activity.

At the hearing, the appellant's advocate stated:

- She helps newcomers to Canada and she encouraged the appellant to get involved in her organization. When she started talking to the appellant, she was concerned about what she heard, particularly when she found out that she is the mother of young children.
- The appellant said to her that she hates her life and does not want to live.
- She asked the appellant if she talked to her family doctor about these feelings and the appellant panicked. She said she cannot talk to her doctor because then everyone will know that she has mental health issues.
- The appellant was able to ask for a referral to a psychiatrist but it is usually at least 4 months to get an appointment. She was able to get the appellant in earlier because of a cancellation.
- She attended with the appellant at the psychiatrist appointment to help with language interpretation and she was shocked by what the appellant had experienced. She did not know that the appellant had applied for disability until she saw the denial letter.
- All of the appellant's family, including her siblings, goes to the same doctor and the appellant does not want them to know that she is depressed.
- The appellant has anger inside her and she finds it very hard to say that she cannot do something. As a mother, she wants to be considered as knowing everything and being able to do everything, not as needing help from anyone.
- Her colleague likely helped the appellant complete her self-report and it would have been submitted to the ministry.

At the hearing, the appellant stated:

- She is very tired. She takes medications, including medications to help her sleep, for depression and for pain and for her diabetes.
- She has not seen her husband since her child was born in 2014. He is not supporting her and her children financially. She is living by herself with her children. When he comes to Canada, he does not check on her and the children. She gets help from her parents, her siblings, and her sister-in-law.
- Her husband does not support her so strangers give her a hand. Sometimes her sister-in-law will come and stay with her for support.
- She is afraid to answer the phone because that is how she found out that her family member was killed. She saw his body in the hospital with evidence of his violent death and that picture is in front of her face.
- Her parents or her sister-in-law will pick up the children from daycare and this helps her.
- She did not say anything to the doctor about being depressed. She was afraid to say anything.
- Her depression and PTSD affect her basic life. She is isolated. She had been taking English classes but she stopped. She has no friends.
- Her mother and her sister-in-law have to remind her to take her medication if she forgets.
- When she takes a shower or bath, her mother or sister-in-law stays behind the door to be close to her because she fainted one time. She had not slept well and got dizzy and fainted.
- It takes her longer to do her laundry and housekeeping because of her depression. The landlady of her house saw that she does not have the energy to clean. Her sister-in-law has to come to help.
- She explained to the psychiatrist the ways that her conditions impact her DLA and he increased the dose of her medication.
- She does not want to say all the things she cannot do. Her ethnic community is small and she does not want people to know. She keeps inside and protects her privacy. She feels like a dead person because she cannot express the feelings she is having inside.
- She is embarrassed to say that she cannot go shopping by herself.

- The psychiatrist recommended lifestyle changes but she has not done them because they are “too hard.” He recommended that she walk for half an hour and to start talking and not isolate. He asked what she got enjoyment from and she said spending time with her children so he said to spend more time with her children. She depends on her parents to help with the children.
- The psychiatrist recommended counseling but she cannot communicate well in English and she is afraid to communicate with a counselor in her language, for fear that there would be no confidentiality.

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 letter from the psychiatrist and did not raise an objection regarding the appellant’s oral testimony. The panel considered the letter and the oral testimony on behalf of the appellant as information that corroborates the extent of the appellant’s impairment as a result of a medical condition diagnosed in the Medical Note, 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 considered the information in the appellant’s Notice of Appeal as argument on her behalf, discussed in Part F- Reasons for Panel Decision- below.

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 physical impairment, though not a severe mental 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 it could not be determined, as a result of those restrictions, 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. Prior to and at the hearing, the appellant argued that she also has a severe mental impairment. The panel considers it relevant to consider the severity of the appellant's mental impairment to determine how this impairment needs to be factored in when addressing the "Direct and significant restrictions in the ability to perform DLA" criterion discussed below.

Severe Mental Impairment

In the reconsideration decision, the ministry was not satisfied that the information provided was sufficient evidence to establish that the appellant has a severe mental impairment. The ministry considered that the GP did not diagnose a mental health condition in the PWD application and reported that the appellant has no significant deficits with cognitive and emotional functioning. The ministry considered that the GP indicated in the PWD application that the section of the AR to assess impacts to cognitive and emotional functioning is not applicable to the appellant and she has no difficulties with communication.

The ministry compared the evidence of the GP in the PWD application with that found in the Medical Note, which indicated that the appellant suffers from depression and symptoms suggestive of PTSD, that she “suffers night mares, flash backs, insomnia, fatigue, memory problems, irritability, anxiety and depressed mood” and “severe restriction in her social interactions,” and noted that this is a marked difference in the GP’s assessment. In her self-report, the appellant wrote that she is very depressed and feeling fatigue all the time, she does not have any interest in doing activities as she is always tired. The appellant could not remember if her self-report had been submitted to the GP to allow the GP to consider her information, or to the ministry, although the advocate stated at the hearing that the self-report was likely submitted directly to the ministry. The panel finds that, in the absence of an explanation for the change in the GP’s assessment, the ministry reasonably concluded that it is difficult to determine the extent of the appellant’s mental impairment.

In her Notice of Appeal dated April 20, 2017, the appellant wrote that she suffers from PTSD and depression from a long time ago when a family member was killed and that she was ashamed to tell her GP. At the hearing, the appellant’s advocate stated that she encouraged the appellant to talk to her family doctor and to seek a referral to a psychiatrist because of concerns about her mental health. At the hearing, the appellant provided a letter dated May 26, 2017 in which a psychiatrist confirmed a diagnosis of major depressive disorder and features suggestive of PTSD and ruled out generalized anxiety disorder. The psychiatrist wrote that the appellant’s functioning both at home and at the program [immigrant settlement and integration] is markedly affected by unresolved mood and anxiety, and she has poor attention, concentration, subjective memory complaints, and unresolved mood that would impair her ability to function at a workplace. The psychiatrist did not provide detail of the degree of impact to the appellant’s daily cognitive and emotional functioning in the areas of attention/concentration, memory or mood. The panel also notes 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. The psychiatrist made recommendations for trial of medications, and advice regarding lifestyle changes with daily routine, socialization, and activity. The appellant stated at the hearing that she has not followed these recommendations because they are “too hard.”

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), and medications (taking as directed and safe handling and storage). At the hearing, the appellant stated that her mother and her sister-in-law have to remind her to take her medication if she forgets, but this has not been confirmed in the opinion of a prescribed professional, as required. With the transportation component (using transit schedules and arranging transportation), the GP indicated that this task takes the appellant significantly longer than

typical and her brother helps “occasionally” with transportation. For making appropriate social decisions, the GP did not provide an assessment in the AR.

Regarding the DLA of ‘relating effectively’ with others, the GP did not provide an assessment of the various aspects of social functioning in the AR and marked this section as not applicable to the appellant. In the Medical Note, the GP wrote that the appellant’s symptoms of nightmares, flash backs, insomnia, fatigue, memory problems, irritability, anxiety, and depressed mood cause the appellant “severe restriction in her social interactions” and “she rarely leaves her house and has a limited social circle.” In the letter dated May 26, 2017, the psychiatrist wrote that the appellant described lack of confidence and isolating herself most of the time. Although the GP and the psychiatrist describe restrictions to the appellant’s ability to relate to others in documents submitted to the ministry after reconsideration, there is no detail provided in those documents as to whether the restrictions are continuous or periodic, and whether there is any associated need for support/supervision. At the hearing, the appellant stated that she is isolated, she had been taking English classes but she stopped, and she has no friends. In the PR, the GP reported that the appellant has no difficulties with communication and assessed the appellant as having a good ability to communicate in all aspects, specifically speaking, reading, writing and hearing.

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 specific 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.

Direct and Significant Restrictions in the ability to perform DLA

In the reconsideration decision, the ministry was satisfied that the appellant has a severe physical 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 is the prescribed professional.

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 AR and wrote that the GP indicated that the appellant takes significantly longer with managing the tasks of the basic housekeeping DLA, going to and from stores, carrying purchases home, food preparation and cooking, and transportation, and that the GP noted “...due to back and neck pain, patient needs frequent breaks to sit and hence takes longer to finish those tasks,” without indicating how much longer it takes the appellant. The ministry considered the GP’s information in the Medical Note that the appellant takes “twice the time that is usually required to perform activities of daily living like dressing, bathing, walking, carrying and lifting,” while in the PWD application the GP assessed the appellant as independent with dressing, bathing, walking indoors, carrying and holding. Although the appellant stated at the hearing that either her mother or her sister-in-law stays behind the door to be

close to her when she takes a shower or bath because she fainted one time due to lack of sleep related to her depression, this need for supervision was not reflected in the GP's assessment.

In the AR, the GP assessed the appellant as taking longer with walking outdoors described by the GP as "unable to walk for more than 10 minutes (one block) due to back pain" and requiring continuous assistance with lifting as "she has severe back pain and is unable to lift more than 10 lbs." The GP does not clarify if the need for assistance with lifting is for heavier weights, in excess of 10 lbs. In the Medical Note, the GP indicated that the appellant receives continuous assistance from family members to perform activities like carrying, lifting, basic housekeeping, and cooking, as well as transportation. The appellant stated at the hearing, that it takes her longer to do the laundry and housekeeping because of her depression, that she does not have the energy to clean and her sister-in-law has to come to help. The ministry wrote that, in terms of the assistance that the appellant requires with DLA, the GP indicated in the PWD application that she requires periodic assistance with areas of shopping and using public transit, noting "...receives support from family members like brother with transportation once a week," and there was no reported need for assistance for basic housekeeping or cooking and only occasional assistance with transportation.

The ministry wrote that the GP reported in the PWD application that the appellant is independently able to manage the personal care DLA, areas of shopping and meals, the paying rent and bills DLA, the medications DLA, and areas of the transportation DLA, and concluded that this degree of independence does not establish significant restrictions in the overall ability to perform DLA. The panel finds that, in the absence of an explanation for the discrepancy in the GP's assessments in the AR and in the Medical Note, the ministry reasonably concluded that it is difficult to determine the extent of the appellant's impairment. The GP also wrote that the appellant receives support from her mother with caring for her children 1 to 2 times a week, and the panel notes that the appellant's ability to care for her children is not a consideration for PWD designation.

At the hearing, the appellant's advocate stated that the appellant finds it very hard to say that she cannot do something and that she needs help from anyone. The appellant stated that she does not want to say all the things she cannot do. However, the appellant also stated that she talked about her restrictions to the psychiatrist, and the panel notes that there was no detail provided in the letter dated May 26, 2017 regarding restrictions to the appellant's ability to perform DLA and her associated need for assistance from another person. 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 regarding her ability to perform DLA was provided from a prescribed professional on the appeal.

Given the GP reported that the appellant is independent with most tasks of DLA and the discrepancy between the assessments made by the GP of the extent of 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 she “would benefit from lumbar support belt,” 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.