

PART C – Decision under Appeal

The decision under appeal is the Ministry of Social Development and Social Innovation (the ministry) reconsideration decision dated May 9, 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 Persons With Disabilities (PWD) Application comprised of the appellant's information dated February 29, 2016, with a self-report attached, a physician report (PR) and an assessor report (AR) both dated December 22, 2016 and completed by a general practitioner (GP) who has known the appellant for 11 months and has seen her 2 to 10 times in the past 12 months.

The evidence also included the appellant's Request for Reconsideration dated April 23, 2017 with attached written submission, a Questionnaire dated April 13, 2017 completed by the GP, a letter dated April 24, 2017 from the appellant's housing manager, and a letter dated April 20, 2017 from the appellant's roommate.

Diagnoses

In the PR, the GP diagnosed the appellant with systemic amyloidosis (tissue proven in 2016), renal disease with an onset in April 2014, back pain/arthritis with an onset in 2013, severe sleep apnea with an onset in 2015, status post total thyroidectomy for amyloidosis goiter with an onset in December 2016, and anxiety disorder with an onset in 2014 to 2015. Asked to describe the mental or physical impairments that impact the appellant's ability to manage daily living activities (DLA), the GP wrote: "(a) knee problem, thyroid, asthma, kidney problem; (b) emotional abuse, stress and anxiety, depression."

Physical Impairment

In the PR and the AR, the GP reported:

- With respect to the health history, the "systemic amyloidosis- biopsy proven on thyroidectomy tissue has an adverse effect on multiple organs of the body, including synovitis of joints, heart, kidney. The cumulative effect causes severe degree disability including reduced mobility tolerance, shortness of breath with exertion, interrupted sleep. "
- The appellant does not require any prostheses or aids for her impairment.
- In terms of functional skills, the appellant can walk 1 to 2 blocks unaided on a flat surface, lift 2 to 7 kg. (5 to 15 lbs.), and remain seated 1 to 2 hours. The GP noted "variable" regarding her ability to climb stairs unaided.
- The appellant is not restricted with her mobility inside the home and she is restricted with mobility outside the home, with no indication whether the restriction is continuous or periodic and no further comments by the GP.
- For additional comments, the GP wrote: "just had total thyroid removed and ended up in intensive care unit due to complications. Very medically complicated case and awaits further specialist consults and direction from heart, lung, blood and endocrine doctors."
- The appellant is assessed as being independent with some aspects of mobility and physical ability, specifically: walking indoors, climbing stairs and lifting. The appellant takes significantly longer than typical with walking outdoors (note: "takes double the time"), standing (note: "limited to 1 hour maximum"), and carrying and holding (note: "depends on circumstance").
- 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.
- For additional information, the GP wrote "her mobility limitation is secondary to synovitis knees and not helped by assistive devices. She has multi-organ serious medical problems that are currently actively being pursued."

In the Questionnaire, the GP agreed:

- When considering that the appellant is experiencing reduced mobility, shortness of breath with exertion and interrupted sleep, she has a severe physical, but not mental, impairment and the

GP wrote: "...short of breath stairs...muscle pains interrupt sleep."

- When considering that the appellant takes double the time to do any physical activities, she has a severe physical, but not mental, impairment and the GP wrote: "as above."
- When considering that the appellant has restricted mobility outside the home, she has a severe physical impairment. The GP did not expand on the nature and extent of the restriction as requested in the Questionnaire.

In her self-report, the appellant wrote:

- She has a knee problem and cannot stand for more than 1 hour. This is because of arthritis. It affects her ability to sometimes walk, and this is getting worse.
- She has thyroid gland problems and she is in the middle of doing tests to see if it will get worse or it can be cured.
- She has asthma and she feels it is getting worse due to weather change and stress.
- She has kidney problems and whenever she does physical activities, or has stress, it aggravates the problem.
- Sometimes when she is in severe pain, she cannot go up and down the stairs.
- Walking on flat ground hurts her back.

In the written submission, the advocate wrote:

- The appellant cannot climb stairs without having to stop and rest after 5 or 6 steps and she has to stop and catch her breath every 5 or 6 meters when walking.
- Although the appellant does not use an actual cane, she does use an umbrella, or a shopping cart, etc. as a mobility aid.

In the letter dated April 24, 2017, the appellant's housing manager wrote:

- When one assesses the impact of the appellant's health conditions on her level of activity, she thinks the appellant is severely impaired in her overall functioning due to her physical and mental limitations.
- The appellant usually experiences difficulty in walking and standing for long hours, getting a decent sleep as she usually finds herself waking up in the middle of the night with severe leg pain, and stomach issues that prevent her from eating and digesting food.
- She has been the appellant's support worker for over a year, and she sees that the appellant's health is deteriorating.

In the letter dated April 2, 2017, the appellant's roommate wrote that the appellant has very delicate health as she suffers from asthma, kidney issues, and other complications.

Mental Impairment

In the PR and the AR, the GP reported:

- With respect to the health history, "...her anxiety and depression are exacerbated by her social isolation, lack of community, and financial stressors."
- The appellant no difficulties with communication. The GP underlined "lack of fluency in English" and wrote: "English is her third language and has challenges being understood."
- The appellant has significant deficits with cognitive and emotional function in the areas of language and emotional disturbance. The GP wrote: "she has emotional difficulty as above, related to fear, abuse from previous relationship and escape to shelter."
- The appellant is not restricted with social functioning.
- The appellant has a poor ability to communicate with speaking and reading, with the comment that "[she] is an immigrant," and she has a good ability to communicate with writing and hearing.

- With respect to daily impacts to the appellant's cognitive and emotional functioning, the GP left this section of the report blank.
- Regarding the appellant's social functioning, the appellant is independent with making appropriate social decisions and developing and maintaining relationships, and she requires periodic support/supervision with interacting appropriately with others, dealing appropriately with unexpected demands, and securing assistance from others. There was no explanation or description provided by the GP.
- The appellant has marginal functioning with her immediate social network (note: "socially isolated- no family- poor") and marginal functioning with her extended social network (note: "diminished by lack social and financial resources").
- When asked to describe the support/supervision that would help maintain the appellant in the community, the GP wrote: "depends on financial assistance- cannot work; needs agency....support" and "very vulnerable to do poorly if not supported; also has serious medical problems."

In the Questionnaire, the GP agreed that when considering that the appellant has cognitive and emotional difficulties... due to anxiety and depression, she has a severe physical or mental impairment, or both, and the GP wrote: "...her significant emotional difficulties- i.e. anxiety, depression- contribute to her disability and make coping with pain, weakness, shortness of breath, more challenging."

In her self-report, the appellant wrote:

- She has a lot of stress and anxiety because of all the disability problems.
- She received emotional abuse with her previous partner.
- The trouble in looking for a job caused a lot of depression and she felt alone, with no family.
- Her communication skill is average. English is her third language so she has difficulty understanding others, and presenting her ideas is often challenging.

In the letter dated April 24, 2017, the appellant's housing manager wrote:

- The appellant often feels sad and worried about her challenges in life.
- The appellant has days when she is very down.

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 any listed DLA, with the exception of unspecified restriction to her mobility outside the home. The appellant is not restricted with the personal self care DLA, the meal preparation DLA, the management of medications DLA, the basic housework DLA, the daily shopping DLA, mobility inside the home, the use of transportation DLA, and the management of finances DLA.
- The appellant is independent with walking indoors and takes significantly longer with walking outdoors, as she "takes double the time."
- The appellant is independent and does not require assistance with all of the tasks for the personal care DLA, the basic housekeeping DLA, the meals DLA, the pay rent and bills DLA, and the medications DLA.
- Regarding the shopping DLA, the appellant is independent with the tasks of reading prices and labels, making appropriate choices, and paying for purchases, and takes significantly longer with going to and from stores (note: "decreased mobility as before") and carrying purchases home (note: "decreased mobility, legs").

- For the transportation DLA, the appellant is independent with using transit schedules and arranging transportation and takes significantly longer than typical with getting in and out of a vehicle and using public transit. There is no explanation or description provided.

In the Questionnaire, the GP agreed:

- When considering that the appellant is taking longer going to and from stores, carrying purchases home, getting in and out of a vehicle, and using public transit, she has a severe physical or mental impairment, or both, and she needs support or supervision in completing these activities. The GP wrote: “social worker, friends, HandiDart.”
- The appellant’s impairment periodically restricts her ability to perform a range of DLA, and the GP wrote: “combination of results and symptoms from kidney, lung disease limit her ability.”
- As a result of her health restrictions, the appellant requires periodic to continuous help with DLA- either by taking much longer than typical to complete routine tasks, needing other people for ongoing help, or needing to use an assistive device. The GP wrote: “she has severe medical problems with kidney failure, asthma, thyroid surgery 2016, abnormal biochemistry with decreased calcium.”

In her self-report, the appellant wrote:

- She has problems reaching up and down and she cannot stand in the shower for too long.
- Standing for too long at the sink, counter and stove hurts her leg. If she has to cook meals, she is standing for a long time and it puts pressure on her leg and back.
- Sometimes she has difficulty remembering when, and if, she took medication.
- Cleaning the floor hurts her back and legs because she has to bend, and she gets the same pain when she tries to clean the bathroom. This pain also progresses when she has to carry laundry and vacuum the house.
- It becomes painful for her when she walks around stores and stands very long to make good choices.
- Walking to the bus and carrying groceries puts a lot of pressure on her leg, which causes a lot of pain.
- When she is in pain, it is hard to get into and out of bed.
- When she has to walk to the bus stop and get into and off the bus, her leg hurts and swells up, which will take about 2 days to heal.
- It is hard for her to manage her finances because she has a small budget and she usually forgets to stay within it and uses her credit card.

In the letter dated April 2, 2017, the appellant’s roommate wrote:

- The appellant needs her support most of the time.
- She and the other roommate do the appellant’s daily chores.
- Sometimes it is hard for the appellant to go out or do her weekly grocery or even do the daily chores as she suffers with knee problems as well.

In the letter dated April 24, 2017, the appellant’s housing manager wrote that when the appellant does things on her own, she often takes considerably longer than normal to complete routine tasks, if she can do them at all.

Need for Help

The GP reported in the AR that help required for DLA is provided by health authority professionals and community service agencies and the GP wrote “she needs friends, community and increased financial support.” The GP did not identify any of the assistive devices as being used by the appellant, and she does not have an assistance animal.

Additional information

In her Notice of Appeal dated May 12, 2017, the appellant expressed her disagreement with the ministry's reconsideration decision and she wrote that she has multiple health issues that are severe, they affect her daily life and daily activities and, as a result, she requires assistance and/or it takes her significantly longer.

Prior to the hearing, the appellant provided a second written submission and a copy of the court decision in the case of *Hudson v. B.C. (Employment and Assistance Appeal Tribunal)*, 2009 BCSC 1461

At the hearing, the appellant stated:

- She has many health issues. She has asthma, kidney failure, arthritis, and IBS [Irritable Bowel Syndrome].
- Sometimes she is okay, and sometimes she cannot function.
- If she gets a bad sleep, she feels the pain in her knees and it can also be difficult to breathe.
- She cannot go out to socialize. She cannot walk far.
- Her roommates help her sometimes to go shopping.
- Her medical conditions are affecting her daily life.
- She does not have a good social life, it is hard to look for a job, and she has difficulty sleeping.

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 additional documents and did not raise an objection to the appellant's oral testimony. The panel considered the appellant's 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*.

The panel considered the written submission and the *Hudson* decision as argument on the appellant's behalf, discussed in Part F- Reasons for Panel Decision- below.

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 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 evidence does not establish that the appellant has a severe mental or physical impairment and that her DLA are, in the opinion of a prescribed professional, directly and significantly restricted either continuously or periodically for extended periods. Also, it could not be determined that, as a result of those 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.

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 systemic amyloidosis, renal disease, back pain/arthritis, severe sleep apnea, and status post total thyroidectomy for amyloidosis goiter. The ministry considered that the GP wrote that the "...the cumulative effect causes severe degree disability including reduced mobility tolerance, shortness of breath with exertion, interrupted

sleep,” and noted that the GP does not describe the nature or severity of the impacts to mobility, the degree of exertion causing shortness of breath, or the severity of sleep interruption.

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 loss or abnormality of psychological, anatomical, or physiological structure or functioning causing a restriction in the ability to function independently, effectively, appropriately, 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 is able to walk 1 to 2 blocks unaided on a flat surface, climb 5 or more steps unaided, lift 5 to 15 lbs., remain seated 1 to 2 hours, and that the GP noted “variable” regarding her ability to climb stairs unaided. Although the appellant wrote in her self-report, that “sometimes,” when she is in severe pain, she cannot go up and down the stairs, she does not specify how often she cannot climb stairs. The ministry considered that the GP indicated the appellant is independent with climbing stairs, as well as with walking indoors and lifting. The ministry wrote that the GP reported the appellant takes significantly longer than typical with walking outdoors, standing, and carrying and holding, and reasonably concluded that taking double the time for walking, standing up to 1 hour maximum, and the comment “depends on circumstance” for carrying and holding, are not indicative of a severe impairment.

Considering the Questionnaire, the ministry wrote that the GP circled the words “severe physical” and “yes,” indicating agreement that the appellant has a severe physical impairment; however, the narrative detail provided by the GP does not establish a severe impairment of physical functioning. The GP wrote “short breath stairs” but does not describe how many stairs the appellant can climb unaided. The ministry wrote that taking twice as long as typical in performing acts of mobility and physical ability is not considered indicative of a severe impairment of physical functioning, and the panel notes that the GP only specified “double the time” with respect to walking outdoors as the appellant’s ability with carrying and holding “depends on circumstance” and with standing is “limited to 1 hour maximum.” In the written submission, the advocate argued that when considered as a whole, it is clear that the GP paints a picture of an individual who suffers from multiple, complex health impairments that the GP stated more than once to be “severe” in his opinion. The advocate argued that by dismantling the GP’s statements piece by piece, the ministry has caused ambiguities when attempting to determine whether the GP’s statements went far enough. The advocate argued that the *Hudson* decision established that when the Tribunal is faced with ambiguities in the interpretation of the EAPWDA, it must be resolved in the appellant’s favor, and that the Tribunal should interpret the EAPWDA with a benevolent purpose in mind.

For the ministry to be “satisfied” that an impairment is severe, the panel considers it reasonable for the ministry to expect that the information provided by the medical practitioner and prescribed professional presents a comprehensive overview of the nature and extent of the impacts of the medical conditions on daily functioning, including by providing the explanations, descriptions or examples in the spaces provided in the PR and in the AR forms.

In the PR, the GP reported that the appellant does not require any prostheses or aids for her impairment, she is not restricted with her mobility inside the home, and while she is restricted with mobility outside the home, there is no indication whether the restriction is continuous or periodic and no further comments are provided by the GP. The advocate wrote in the written submission that while the appellant does not use an actual cane, she does use an umbrella, or a shopping cart, etc. as a mobility aid; however, despite being given an opportunity in the Questionnaire, this information

was not confirmed by the GP. The GP wrote in the AR that the appellant's "mobility limitation is secondary to synovitis knees and not helped by assistive devices." In the Questionnaire, although the GP agreed that, when considering that the appellant has restricted mobility outside the home, she has a severe physical impairment, the GP did not expand on the nature and extent of the restriction as requested. In her self-report, the appellant wrote that she has a knee problem and cannot stand for more than 1 hour, and her arthritis sometimes affects her ability to walk. At the hearing, the appellant stated that sometimes she is "okay" and sometimes she cannot function, although she did not clarify how often she has good days or bad days. The appellant stated that she cannot walk "far," but she did not clarify the distance she can walk.

The advocate argued that the supporting documents of the appellant's roommate and her housing manager had critical clarification to the GP's information and these were not fully considered by the ministry. However, the appellant's housing manager wrote in her letter that she thinks the appellant is severely impaired in her overall functioning due to her physical and mental limitations. In support of this opinion, she wrote that the appellant usually experiences difficulty in walking and standing for long hours, getting a decent sleep due to severe leg pain, and stomach issues that prevent her from eating and digesting food, and the panel notes that there are no details provided to define "long hours" of walking and standing for which the appellant has "difficulty." The appellant's roommate wrote in her letter that the appellant has very delicate health as she suffers from asthma, kidney issues, and other complications, but does not provide detail of the appellant's functional limitations as a result of these conditions. At the hearing, the advocate argued that all of the appellant's conditions, both physical and mental combined, constitute a severe impairment when considered overall. However, Section 2(2) of the EAPWDA requires that the evidence establish that a person has either a severe mental or a severe physical impairment, or both a severe mental and a severe physical impairment.

Given the original assessments by the GP of physical functional skills in the moderate range and a lack of detail regarding exacerbations to her condition, with no reported need for assistance with her mobility and physical ability, the panel finds that the ministry reasonably determined that there is not sufficient evidence to establish that the appellant has a severe physical impairment under Section 2(2) of the EAPWDA.

Severe Mental Impairment

In the reconsideration decision, the ministry was not satisfied that the information provided was sufficient evidence of a severe mental impairment. The ministry considered that while the GP reported that the appellant has significant deficits in cognitive and emotional functioning in the areas of language and emotional disturbance, the GP does not indicate any specific daily impacts- whether minimal, moderate or major- to cognitive and emotional functioning. The ministry wrote that the GP reported the appellant has no difficulties with communication and the panel notes that her poor ability with speaking and reading reported by the GP in the AR relates to being "an immigrant" and not to a mental impairment per se. The ministry reasonably considered that the GP reported that the appellant is not restricted with social functioning and, although he indicated that there is a need for periodic support/supervision in some aspects, there is no explanation or description to allow the ministry to determine that the periodic assistance is required for extended periods.

In the Questionnaire, the GP agreed that when considering that the appellant has cognitive and emotional difficulties... due to anxiety and depression, she has a severe physical or mental impairment, or both, and the GP wrote: "...her significant emotional difficulties- i.e. anxiety, depression- contribute to her disability and make coping with pain, weakness, shortness of breath, more challenging." The ministry wrote that the GP indicated that the appellant has significant emotional difficulties due to anxiety and depression, but he does not describe impacts or deficits to

areas outside of “emotion.” In her self-report, the appellant wrote that she has a lot of stress and anxiety because of all the disability problems and she experienced emotional abuse with her previous partner. The appellant’s housing manager wrote in her letter that the appellant often feels sad and worried about her challenges in life and she has “days” when she is very down. The housing manager does not provide clarification regarding the frequency or duration of the appellant’s good or bad days.

Given the lack of evidence of significant impacts to the appellant’s cognitive and emotional functioning and the absence of a description of the need for periodic support/supervision with aspects of her social 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.

The advocate argued in the written submission that the *Hudson* case established that the appellant is not required to show that every one of the DLA must be affected and, in this case, the GP identified at least 3 areas of activities where the appellant is directly impaired, namely shopping, transportation, and social functioning. 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. 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.

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 in the PR that the appellant is restricted with mobility outside the home but the GP does not describe the extent of the appellant’s restrictions with mobility outside the home. The ministry considered that that GP assessed the appellant as not restricted with mobility inside the home or any of the listed DLA, specifically: the personal self care DLA, the meal preparation DLA, the management of medications DLA, the basic housework DLA, the daily shopping DLA, , the use of transportation DLA, and the management of finances DLA.

The ministry wrote that the appellant is assessed by the GP in the AR as independent with all of the tasks for the personal care DLA, the basic housekeeping DLA, the meals DLA, the pay rent and bills DLA, and the medications DLA. For those tasks of the shopping DLA (going to and from stores and carrying purchases home) and the transportation DLA (getting in and out of a vehicle and using public transit) that take the appellant significantly longer than typical, there is no explanation or description provided by the GP of how much longer it takes the appellant and the ministry reasonably concluded that it is difficult to determine that the restrictions are significant.

In the Questionnaire, the GP agreed that when considering that the appellant is taking longer going to and from stores, carrying purchases home, getting in and out of a vehicle, and using public transit, she has a severe physical or mental impairment, or both, and she needs support or supervision in completing these activities, specifically: “social worker, friends, HandiDart.” The ministry wrote that the narrative detail provided by the GP does not establish a significant restriction to DLA as the GP

does not describe how much longer than typical the appellant takes with these activities. The GP indicated that the appellant's impairment periodically restricts her ability to perform a range of DLA, and the GP wrote: "combination of results and symptoms from kidney, lung disease limit her ability," with no narrative detail of the extent of periodic restrictions. The ministry considered that the GP wrote "difficulty doing public transit. Needs HandiDart or friend to drive" and reasonably concluded that, although the appellant has "difficulty," the GP does not describe the nature or degree of restriction with using public transit.

The GP agreed in the Questionnaire that, as a result of her health restrictions, the appellant requires periodic to continuous help with DLA- either by taking much longer than typical to complete routine tasks, needing other people for ongoing help, or needing to use an assistive device and wrote: "she has severe medical problems with kidney failure, asthma, thyroid surgery 2016, abnormal biochemistry with decreased calcium." The panel finds that the ministry reasonably concluded that the GP does not describe the "periodic to continuous help" required with particular DLA and does not expand upon the information as provided in the PWD application.

In her self-report, the appellant provided information that she performs many tasks of DLA without assistance, although she finds them difficult and she experiences pain. The appellant wrote that she cannot stand in the shower for "too long," which the GP described as up to a maximum of an hour. If she has to cook meals, she is standing for a "long time" and it puts pressure on her leg and back. "Sometimes" she has difficulty remembering when, and if, she took medication. Cleaning the floor hurts her back and legs because she has to bend, and she gets the same pain when she tries to clean the bathroom. This pain also progresses when she has to carry laundry and vacuum the house. It becomes painful for her when she walks around stores and standing "very long" to make good choices. Walking to the bus and carrying groceries puts a lot of pressure on her leg, which causes a lot of pain. When she is in pain, it is hard to get into and out of bed. When she has to walk to the bus stop and get into and off the bus, her leg hurts and swells up, which will take about 2 days to heal. It is hard for her to manage her finances because she has a small budget and she usually forgets to stay within it and uses her credit card.

The advocate argued in the written submission that the supporting documents, including that from the appellant's roommate and her housing manager, provide critical clarification to the GP's opinion that the appellant requires significant support in her DLA. In the letter dated April 2, 2017, the appellant's roommate wrote that the appellant needs their support "most of the time" and she and the other roommate do the appellant's daily chores. The appellant's roommate wrote that "sometimes" it is hard for the appellant to go out or do her weekly grocery or even do the daily chores as she suffers with knee problems. In the letter dated April 24, 2017, the appellant's housing manager wrote that when the appellant does things on her own, she "often" takes considerably longer than normal to complete routine tasks, if she can do them at all. The panel finds that the information from the appellant's roommate and her housing manager does not clarify the GP's information to establish how much longer it takes the appellant with tasks of DLA or how often she requires assistance.

At the hearing, the appellant stated that "sometimes" she is okay, and "sometimes" she cannot function. If she gets a bad sleep, she feels the pain in her knees and it can also be difficult to breathe. The appellant stated that her roommates help her "sometimes" to go shopping, she does not have a good social life, and it is hard to look for a job. The panel 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.

Given the GP's report of the appellant's independence with most tasks of DLA, the lack of a description by the GP of how much longer it takes the appellant with some tasks of DLA or how often

she experiences exacerbations in her condition, 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 by health authority professionals and community service agencies, 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.