PART C – Decision under Appeal

The decision under appeal is the Ministry of Social Development and Social Innovation (the ministry) reconsideration decision dated April 27, 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 undated information with no self-report completed, a physician report (PR) dated October 25, 2016 and an assessor report (AR) dated October 16, 2016 and both completed by a general practitioner (GP) who has known the appellant for 6 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 18, 2017 with attached letter from the appellant to the GP dated April 12, 2017, as well as a Questionnaire completed by the GP and dated April 17, 2017 (Questionnaire #1).

Diagnoses

In the PR, the GP diagnosed the appellant with deafness and fibromyalgia (FM), with no dates of onset provided. There was no diagnosis of a condition within the mental disorders diagnostic category of the PR. Asked to describe the mental or physical impairments that impact the appellant's ability to manage daily living activities (DLA), the GP wrote: "functionally deaf- cannot communicate verbally."

Physical Impairment

In the PR and the AR, the GP reported:

- With respect to the health history, the appellant is "deaf, requires non-verbal communication."
- The appellant does not require any prostheses or aids for her impairment.
- In terms of functional skills, the appellant has no limitations. She can walk 4 or more blocks unaided on a flat surface, climb 5 or more steps unaided, with no limitations in lifting or remaining seated.
- The appellant is not restricted with her mobility inside the home and she is periodically restricted with mobility outside the home with "FM flares." Regarding the degree of restriction, the GP wrote: "episodic flares of joint pain make walking difficult. Deafness causes constant issues with communication, but patient has good coping strategies."
- For additional comments, the GP wrote that the appellant is "functionally deaf. Communicates by writing."
- The appellant is assessed as being independent with some aspects of mobility and physical ability, specifically: walking indoors, standing, lifting, and carrying and holding. The appellant requires periodic assistance from another person with walking outdoors and climbing stairs, 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.
- For additional information, the GP wrote "high functioning, communicates in writing. Episodic flares of knee/hand pain make fine motor skills and walking difficult."

In the Questionnaire #1, the GP indicated:

- When considering the impact of the appellant's medical condition on her daily life, if the appellant has a severe physical or mental impairment, or both, the GP is asked to explain. The GP wrote: "physical- deafness, FM; mental- depression and anxiety."
- Asked if the appellant needs to take frequent rest breaks during the day, the GP wrote: "any time she is out of the house."
- Asked if the appellant's level of activity is significantly reduced due to her impairment, the GP wrote "yes."

Mental Impairment

In the PR and the AR, the GP reported:

- The appellant has sensory difficulties with communication.
- The appellant has no significant deficits with cognitive and emotional function.
- The appellant is not restricted with social functioning.
- For additional comments, the GP wrote that the appellant is "functionally deaf. Communicates by writing."
- The appellant has a good ability to communicate with reading and writing, but is unable to communicate with speaking and hearing. The GP noted: "deaf."
- With respect to daily impacts to the appellant's cognitive and emotional functioning, the GP reported that there is a major impact in the area of language (e.g. expression or comprehension problems- e.g. inability to understand, extreme stuttering, mute, racing speech, disorganization of speech) and there are no impacts in all other listed aspects. The GP did not provide comments.
- Regarding the section of the AR assessing impacts to the appellant's social functioning, which relates to those with an identified mental impairment, including brain injury, the GP left the assessment incomplete with no comments.
- For additional information, the GP wrote "high functioning, communicates in writing."

In her letter to the GP attached to her Request for Reconsideration, the appellant wrote:

- She moved to the area in October 2015 to be near her children
- Since she moved, she has been seeing a counselor.
- One of her children moved in with her due to her child's suicide attempt. As a result, she now feels extremely stressed/anxious/ depressed.
- She has very limited support system and she is entirely reliant on her children.
- Deaf counselors are her main support.

In the Questionnaire #1, the GP indicated:

- When considering the impact of the appellant's medical condition on her daily life, if the appellant has a severe physical or mental impairment, or both, the GP is asked to explain. The GP wrote: "…mental- depression and anxiety."

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 periodic restrictions to her mobility outside the home. The appellant is not restricted with personal self care, meal preparation, management of medications, basic housework, daily shopping, mobility inside the home, use of transportation, and management of finances.
- The appellant is periodically restricted with mobility outside the home with "FM flares." Regarding the degree of restriction, the GP wrote: "episodic flares of joint pain make walking difficult. Deafness causes constant issues with communication, but patient has good coping strategies."
- For additional comments, the GP wrote that the appellant is "functionally deaf. Communicates by writing."
- 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 meals DLA,

the pay rent and bills DLA, the medications DLA and the transportation DLA.
- Regarding the basic housekeeping DLA, the appellant requires periodic assistance from another person with doing laundry and basic housekeeping. The GP commented: "flares of FM impact ability to perform fine motor tasks and walking distances."
- For the shopping DLA, the appellant is independent with the tasks of reading prices and labels, making appropriate choices, paying for purchases, and carrying purchases home. The appellant requires periodic assistance from another person with going to and from stores.
- For additional information, the GP wrote "high functioning, communicates in writing. Episodic flares of knee/hand pain make fine motor skills and walking difficult."

In the Questionnaire #1, the GP indicated:
- Asked if it takes the appellant significantly longer than normal to perform DLA as a direct result of her physical and mental limitations and, if so, how much longer it typically takes her to do routine tasks, the GP wrote: "deafness prevents verbal communication. Must write out all communications. This makes any ADL's [DLA] requiring communication difficult and takes at least 3 to 4 times longer."
- Asked if the appellant needs to take frequent rest breaks during the day, the GP wrote: "any time she is out of the house."
- Asked if the appellant's level of activity is significantly reduced due to her impairment, the GP wrote "yes."
- Asked how often the appellant is significantly restricted in performing DLA, the GP wrote: "constantly."
- Asked if the appellant's impairment significantly restricts her ability to perform a range of DLA on a continuous basis or periodically for extended periods and, if so, to give examples, the GP wrote: "continuous. Difficulty shopping/ asking for help from others. Pain with prolonged walking/ standing."
- Asked if, as a result of her health restrictions, the appellant requires significant help with DLA, the GP wrote; "yes, frequently requires the help of others."

Need for Help

The GP reported 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 she does not have an assistance animal.

Additional information

In her Notice of Appeal dated May 11, 2017, the appellant expressed her disagreement with the ministry's reconsideration decision and she wrote that the ministry found discrepancies in her PWD application; however, she and her physician have a language barrier. She is fairly new as a patient to her physician and he has become aware of new aspects of her disability through the course of this process.

Prior to the hearing, the appellant provided the following additional documents:

1) Questionnaire dated May 24, 2017 ("Questionnaire #2"), in which the GP indicated:
    - He agreed that due to a communication barrier and the relatively short period of time as physician/patient, aspects of the appellant's disabilities have only come to light during the application process;
    - Taking into consideration the appellant's FM, her need to manage pain, take frequent rest breaks, and her difficulty with prolonged walking and standing, he feels that the appellant is severely impaired and negatively impacted on a daily and continuous basis;
    - Taking into consideration the appellant's deafness, he feels that the appellant is severely

impaired and negatively impacted on a daily and continuous basis;
- Asked to provide further detail regarding the appellant's anxiety and depression and the resulting negative impact and whether it is a severe impairment, the GP wrote: "The history regarding this is still unclear. It is clearly a severe problem; however, the treatment requires a history-taking that is very difficult given communication barriers. [The GP] would suggest a dedicated psychological or psychiatric referral";
- As a result of the appellant's physical disabilities, she is significantly restricted in her DLA continuously or periodically for extended periods;
- For extra details regarding the appellant's limitations or restrictions in mobility, physical ability, and functional skills, the GP wrote: "Pain is episodic in nature but very disabling. Deafness and communication barriers continuous;"
- Asked how long the appellant is able to stand and walk, the GP wrote: "at her best- no limitations. During exacerbations, she would be limited to less than 10 minutes, or unable;"
- As the GP [previously] acknowledged that the appellant requires assistance with several DLA, including shopping, housekeeping and laundry, the GP is asked if the appellant requires significant assistance/help on a daily basis as a result of her significant restrictions and the GP wrote: "appropriate communication devices and aids as needed for deafness;"

2) Letter dated January 3, 2017 from a physician who is a specialist in allergy, asthma & clinical immunology.

At the hearing, the appellant provided a one-page print-out from the online website Wikipedia for the topic "angioedema" and included a photograph of a child with eyes closed due to swelling.

At the hearing, the appellant and her advocate stated:
- Throughout her interactions with her doctor and the ministry, she has experienced language barriers. This has made the process more difficult for her. She is not able to contact the ministry to have them answer questions.
- In the recent Questionnaire #2 signed by the doctor, they are trying to show that the doctor is becoming more aware of her issues, and to bridge the gap.
- She has found the jargon used by the doctor to be difficult to understand at times since English is not her first language. When they are writing back and forth, using a pen and paper, she will often have to read and re-read to try to understand the language and often the doctor's writing is hard to read. She has to ask him to use basic language and she finds this very frustrating.
- The advocate started working with the appellant after the reconsideration decision and although they explored the idea of an interpreter they had to make due because of the short timeline of the proceeding. An interpreter often has to be booked 2 to 3 weeks in advance.
- She has issues with her knee and it is hard to communicate fully about her problems without an interpreter. Also, the appointments are only about 5 minutes long and it is only fair if an interpreter is there to help. With an interpreter, she can have a fluid conversation.
- She provided her letter to the doctor dated April 12, 2017 before he completed the first Questionnaire #1 dated April 17, 2017.
- Regarding her "flare-ups" in her condition, she has taken pictures to show her doctor and he gives her cream to put on her skin. The GP was aware of this condition when he completed the reports [PR and AR] for the PWD application.
- She has problems sleeping when these flare-ups occur, and sometimes they occur on her face. She uses visual information to communicate and sometimes people's reactions to the flare-ups on her face can be heart-wrenching.
- The flare-ups can be itchy and she feels lethargic. Sometimes they are on her knuckles and it makes it hard to use her hands for writing. She sometimes has to postpone meetings. She sometimes has to rest at home instead of going food shopping.

- These flare-ups happen on a weekly basis. They occur all over her body and she has swelling as shown in the photograph from the print-out from the website. They could be related to her FM. The allergy specialist said the flare-ups are a "rash" that has to do with FM. She can breathe with the flare-ups, so this is not a problem.
- The medication to deal with the flare-ups is expensive and she is not able to afford them.
- She was diagnosed with FM in 2007 and the flare-ups make it worse.
- She relies on her children. Her daughter moved in with her because she is not very happy. Her children help her with cleaning and things like that, for example, cooking.
- When she has her flare-ups, she cannot do anything and she has to depend on her children sometimes. All of her children speak her language as their first language and one of her children interprets for her if she cannot get an interpreter. He is busy with a school program he started a week ago. Her daughter is in school and she cannot bother her.
- Sometimes her FM impacts her and she is not able to do things around the house. She will ask her daughter to help her cook, clean, and do the laundry. Usually for about 24 to 48 hours she will need to rest until she regains the ability to do things.
- Transfers in/out of bed can take half an hour or an hour when she wakes up in lots of pain.
- The Questionnaires are specific to her FM. When she was first diagnosed in 2007, she was given medication that did not work. She tried taking hot baths. Since then, she has taken over-the-counter pain medications but she cannot afford them. Sometimes medications can make her feel depressed. She finds that swimming and exercise can help control her health issues.
- She receives counseling through a community association for the deaf.

The ministry relied on the reconsideration decision as summarized at the hearing. The ministry clarified that an interpreter can be made available for appointments with the ministry, usually on one week's notice.

Admissibility of Additional Information

The ministry did not object to the admissibility of any of the additional documents and did not raise an objection to the appellant's oral testimony. The panel considered the information provided by the GP in the Questionnaire #2 dated May 24, 2017 and the appellant's oral testimony, for the most part, 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 did not admit the letter from the specialist, the print-out relating to angioedema, and the appellant's oral testimony relation to this condition as there was no evidence before the panel that this condition was related to the medical conditions diagnosed and referred to in the PWD application and at reconsideration, specifically deafness and FM. While the appellant stated at the hearing that the physician who is a specialist in allergy, asthma & clinical immunology told her the flare-ups are a rash that has to do with FM, this was not confirmed in his letter and was not referred to by the GP in either the PR or the AR or the original Questionnaire #1 dated April 17, 2017 although the appellant stated the GP was aware of this condition. Therefore, the panel finds this information is not in support of information or records that were before the ministry at reconsideration.

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 FM and deafness and that the GP reported that she "requires non-verbal communication."

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 has difficulties with communication caused by sensory issues and the ministry concluded that this is related to the diagnosis of deafness. The ministry noted that, for additional comments to the PR, the GP wrote that the appellant is "functionally deaf" and she "communicates by writing." The ministry considered that the GP reported that the appellant is unable to speak and hear due to deafness and described the appellant's ability to read and write as "good." In the additional comments to the AR, the GP wrote: "high functioning, communicates in writing." The ministry considered that the GP commented regarding the degree of periodic restrictions with mobility outside the home: "…deafness causes constant issues with communication, but patient has good coping strategies." The ministry acknowledged that relying on non-verbal communication skills presents difficulties for the appellant; however, the ministry wrote that the GP described her as "high functioning" and with "good coping strategies" and, therefore, deafness in itself does not establish the presence of a severe physical impairment.

Considering Questionnaire #1, the ministry wrote that while some helpful information is provided to better understand the nature of the appellant's impairment, there are discrepancies between the assessments provided in the PWD application and in the Questionnaire #1. In Questionnaire #1, the GP listed deafness and FM as being a severe physical impairment and the GP indicated that the appellant needs to take frequent rest breaks "any time she is out of the house," although it is not clear whether the breaks are required due to the impact from deafness or FM. The ministry wrote that no information was provided to explain the discrepancy and, therefore, the ministry was unable to determine which description of the appellant's basic physical functioning and mobility reflects the severity of her impairment.

In Questionnaire #2, the GP agreed that, due to a communication barrier and the relatively short period of time as physician/patient, aspects of the appellant's disabilities have only come to light during the application process. The GP indicated that, taking into consideration the appellant's deafness, he feels that the appellant is severely impaired and negatively impacted on a daily and continuous basis. For extra details regarding the appellant's limitations or restrictions in mobility, physical ability, and functional skills, in Questionnaire #2 the GP wrote: "…deafness and communication barriers continuous." However, the GP concluded in the PR that while deafness causes constant issues with communication, the appellant has "good coping strategies" and that she is "high functioning, communicates in writing." There is no information provided by the GP in Questionnaire #2 to explain which facts about the appellant's deafness have come to light that caused the GP to revise his previous conclusion that the appellant was highly functioning by communicating through writing and that she has good coping strategies. In Questionnaire #1, the GP wrote regarding the appellant's communication ability that: "deafness prevents verbal communication. Must write out all communications. This makes any ADL's [DLA] requiring communication difficult and takes at least 3 to 4 times longer."

At the hearing, the appellant also described her communication as taking longer as a result of her need to communicate through writing or by arranging an interpreter. She stated that her appointment with her GP never last more than five minutes and, because they have to write notes back and forth in order to communicate, she will often have to read and re-read his notes to try to understand the

language and decipher his writing. In addition, the appellant stated she has found the jargon used by the doctor to be difficult to understand at times since English is not her first language. She stated that due to the extra time required to write notes back and forth with her GP, there was not enough time to adequately complete the PR and the AR. The appellant also stated at the hearing that she relies on her children, they all speak her language, and that one of her children interprets for her if she cannot get an interpreter. The appellant stated that an interpreter often has to be booked 2 to 3 weeks in advance.

The ministry considered that the GP reported that the appellant has no limitation with her functional skills, being able to walk 4 or more blocks unaided on a flat surface, climb 5 or more steps unaided, and no limitations with lifting or how long she is able to remain seated. The ministry wrote that the GP reported that the appellant does not require any prostheses or aids for her impairment. The ministry wrote that the GP indicated the appellant is independent with walking indoors, standing, lifting, and carrying and holding and that the periodic assistance required for climbing stairs and walking outdoors is not described by the GP. The ministry also noted that the GP assessed an unaided ability to walk 4 or more blocks and to climb 5 or more stairs and the discrepancy of an assessment of the need for periodic assistance makes it difficult to assess the appellant's abilities. The panel notes that although the GP also reported In the PR that the appellant is periodically restricted with mobility outside the home with "FM flares," the GP's comment regarding the degree of restriction, that "episodic flares of joint pain make walking difficult" does not describe how often the appellant experiences these exacerbations of her condition and the extent to which her functional skills are reduced as a result. Also the additional information provided by the GP in the AR that "…episodic flares of knee/hand pain make fine motor skills and walking difficult" does not explain the frequency of the episodic flares or the extent of the restrictions during these flares.

Considering Questionnaire #1, the ministry wrote that the GP noted that the appellant requires frequent rest breaks during the day anytime she is outside of the house and she has difficulty with prolonged walking and standing. The ministry wrote that this statement is not supported by the GP's assessments of the appellant's basic functioning, mobility, and physical ability in the PWD application. The ministry concluded that no information had been provided to indicate that a re-assessment had been completed or that the appellant's condition had worsened and the ministry was, therefore, unable to determine which description was reflective of the severity of her impairment.

In Questionnaire #2, the GP indicated that, taking into consideration the appellant's FM, her need to manage pain, take frequent rest breaks, and her difficulty with prolonged walking and standing, he feels that the appellant is severely impaired and negatively impacted on a daily and continuous basis. For extra details regarding the appellant's limitations or restrictions in mobility, physical ability, and functional skills, the GP wrote: "pain is episodic in nature but very disabling." Asked how long the appellant is able to stand and walk, the GP wrote: "at her best- no limitations. During exacerbations, she would be limited to less than 10 minutes, or unable." While information is provided to show that the appellant's functioning during an exacerbation of her condition is significantly restricted, being limited to less than 10 minutes or unable to stand or walk, the panel finds that the GP does not provide information about how often or for how long these exacerbations occur.

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.

When asked to clarify at the hearing, the appellant referred to flare-ups of another medical condition and stated that sometimes her FM impacts her and she is not able to do things around the house and she will need to rest, usually for about 24 to 48 hours, until she regains the ability to do things. The panel notes that the GP was given several opportunities, in the PR, the AR, and in Questionnaires #1 and #2, to provide more information about the frequency of exacerbations in the appellant's FM and her need for assistance and the GP did not provide this clarifying information.

Given the original assessments by the GP of physical functional skills with no limitation, the lack of a description of the frequency of the exacerbations to her FM and the need for periodic assistance with some areas of mobility and physical ability, as well as the assessment of the appellant's high functioning with written communication, although communication takes her longer, 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 no significant deficits in cognitive and emotional functioning and, although he indicated that language has a major impact on her daily functioning, there is no impact in all other areas of functioning. The GP did not provide comments to explain the nature of this impact to cognitive and emotional functioning. The ministry noted that the GP did not complete the section of the AR to assess impacts to social functioning and the GP indicated in the PR that the appellant has no restrictions to social functioning. The ministry acknowledged that the GP reported in the Questionnaire #1 that the appellant experiences depression and anxiety.

In her letter to the GP attached to her Request for Reconsideration, the appellant wrote that she has been seeing a counselor since October 2015. She wrote that one of her children moved in with her due to her child's suicide attempt and, as a result, the appellant now feels extremely stressed/ anxious/ depressed. The appellant wrote that she has very limited support system and she is entirely reliant on her children.

Asked in Questionnaire #2 to provide further detail regarding the appellant's anxiety and depression, the resulting negative impact, and whether it is a severe impairment, the GP wrote: "The history regarding this is still unclear. It is clearly a severe problem; however, the treatment requires a history-taking that is very difficult given communication barriers" and the GP suggested a dedicated psychological or psychiatric referral. At the hearing, the appellant stated that her daughter moved in with her because her daughter is not very happy. The appellant stated that she receives counseling through a community association for the deaf, but there was no further information regarding her mental functioning from the counselor, or as a result of psychological or psychiatric referrals.

Given the lack of evidence of significant impacts to the appellant's cognitive and emotional functioning, the absence of evidence of significant impacts to her social functioning, and the GP's assessment in Questionnaire #2 that an additional referral to a psychologist or a psychiatrist is necessary to determine the severity of the appellant's mental impairment, 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 the appellant's mobility outside the home is periodically restricted and that the appellant is not restricted in any other listed DLA. The ministry noted that the GP wrote: "episodic flares of joint pain make walking difficult" and "deafness causes constant issues with communication, but patient has good coping strategies" and, in the panel's opinion, reasonably determined that this is problematic because no information is provided about how often the appellant has flare-ups or how long they last and that it is difficult to establish that the appellant's restriction is both significant and periodic for extended periods.

The ministry considered the assessment by the GP in the AR that the appellant is independent with all of the tasks for the personal care DLA, the meals DLA, the pay rent and bills DLA, the medications DLA and the transportation DLA, and requires periodic assistance with the tasks of doing laundry and basic housekeeping, and with the task of going to and from stores when shopping. The ministry wrote that although the GP commented: "flares of FM impact ability to perform fine motor tasks and walking distances," there was no information provided about how often the appellant experiences a flare-up, what is meant by "distances," and the need for assistance does not correlate with the assessment of no limitations to her physical functional skills.

Considering the information in Questionnaire #1, the ministry wrote that the GP indicated that the appellant is "constantly" restricted from performing DLA, she continuously has difficulty with shopping and asking for assistance from others due to pain with prolonged walking and standing, and any activities requiring communication take at least 3 o 4 times longer. The ministry wrote that the GP does not indicate how long the appellant is able to stand and walk, which makes it difficult to determine what is meant by "prolonged" and to determine the significant of the restrictions. The panel notes that the GP does not specify which DLA require communication and therefore take longer.

In Questionnaire #2, the GP agreed that, due to a communication barrier and the relatively short period of time as physician/patient, aspects of the appellant's disabilities have only come to light during the application process. The GP agreed that, as a result of the appellant's physical disabilities, she is significantly restricted in her DLA continuously or periodically for extended periods. The panel notes that the GP did not specify the DLA or whether the restrictions are continuous or periodic and, if periodic, how often they occur to allow the ministry to determine that the restrictions are periodic for extended periods. The statement in Questionnaire #2 is that it was acknowledged by the GP previously that the appellant requires assistance with several DLA, specifically shopping,

housekeeping and laundry, and the GP is asked if the appellant requires significant assistance/help on a daily basis as a result of her significant restrictions and the GP wrote: "appropriate communication devices and aids as needed for deafness." Given an opportunity in Questionnaire #2 to provide more information about the frequency and duration of exacerbations in the appellant's FM and the extent of the appellant's need for assistance, the GP did not provide this clarifying information and, instead, referred to aids required for her deafness.

At the hearing, the appellant stated that when she has her FM flare-ups, she cannot do anything and she sometimes has to depend on her children. The appellant stated that sometimes her FM impacts her and she will ask her daughter to help her cook, clean, and do the laundry. Usually she will need to rest for about 24 to 48 hours until she regains the ability to do things. The appellant stated that transfers in/out of bed can take half an hour or an hour when she wakes up in lots of pain. The panel notes that the GP, as the prescribed professional, assessed the appellant as being independent with all tasks of the DLA personal care, including transfers in/out of bed and transfers on/off of chair. The appellant stated that she has taken over-the-counter pain medications in the past but she currently cannot afford them. Sometimes medications can make her feel depressed and she finds that swimming and exercise can help control her health issues.

Given the appellant's reported independence with most tasks of DLA and the lack of a description by the GP of the extent of periodic assistance required for some tasks of DLA, or detail of which DLA involving communication take the appellant significantly longer, 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 the appellant stated she is reliant on her children, 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.