

PART C – Decision under Appeal

The decision under appeal is the reconsideration decision of the Ministry of Social Development and Social Innovation (the ministry) dated 07 April 2017 that denied the appellant designation as a person with disabilities (PWD). The ministry determined that the appellant did not meet all of the required criteria for PWD designation set out in the *Employment and Assistance for Persons with Disabilities Act*, section 2. Specifically, the ministry determined that the information provided did not establish that the appellant has a severe physical or mental impairment that in the opinion of a prescribed professional,

(i) directly and significantly restricts her ability to perform daily living activities (DLA) either continuously or periodically for extended periods; and,

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

The ministry determined that the appellant satisfied the other 2 criteria: she has reached 18 years of age; and her impairment in the opinion of a medical practitioner is likely to continue for at least 2 years.

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 reconsideration consisted of the following:

1. The appellant's PWD Designation Application dated 30 October 2016. The Application contained:
 - A Medical Report (MR) dated 17 November 2016 completed by a specialist in nephrology (nephrologist) who has known the appellant since April 2016 and seen her 2-10 times in the past 12 months. A clinical summary is attached.
 - An Assessor Report (AR) dated 15 November 2016, completed by a registered social worker (SW) who works at a health authority kidney care clinic attended by the appellant.
 - A Self Report (SR) completed by the appellant.
2. The appellant's Request for Reconsideration dated 10 March 2017, requesting an extension pending scheduled extensive bloodwork.

In the MR, the nephrologist diagnoses the medical conditions related to the appellant's impairment as:

- Chronic kidney disease (onset April 2016)
- Anemia (onset April 2016),
- Perforated ulcer (onset September 2015).

The panel will first summarize the evidence from the MR and the AR as it relates to the PWD criteria at issue in this appeal.

Severity of physical impairment

MR:

Under Health History, the nephrologist refers to an attached clinical summary as of 17 November 2016. This summary lists current problems, including biopsy-proven crescentic HSP/IgA nephropathy, and the current medication list, including an immune suppression drug. The expected regime for that drug was a tapering from a high dose to a low maintenance dose, with the appellant stopping her use of the drug in May 2017.

The nephrologist answers "Yes" to the question as to whether the appellant has been prescribed any medication that interfere with her ability to perform DLA, explaining that she is on a high dose of [an immune suppression drug] that exacerbates anxiety and causes muscle weakness. The nephrologist indicates that the duration of this medication is until May 2017.

Regarding functional skills, the nephrologist writes, "Family or alternate physician more appropriate to complete this section."

The nephrologist indicates that it is unknown how far the appellant can walk unaided on a flat surface, how many stairs she can climb, what her limitations are in lifting, and how long she can remain seated.

Under Additional Comments, the nephrologist writes, "Chronic kidney disease and anemia both impair energy and function, resulting in fatigue." The nephrologist notes that the immune suppression medication increases anxiety, worsens sleep, and diminishes muscle strength.

AR:

The SW describes the appellant's impairment as: "Chronic kidney disease, fatigue and exhaustion, sleeping difficulties, shortness of breath, weakness, anxiety and panic attacks."

Under Additional Information, the SW writes [A=appellant]:

"A has been diagnosed with a chronic kidney disease. The impairment to her kidneys results in frequent, reportedly week long episodes of exhaustion and weakness. This has severely impacted her life. A also experiences daily anxiety and sleep disturbances, which in turn exacerbate her physical symptoms and often leave her short of breath. All of this culminates in a restriction in her ability to carry out activities of daily living with the largest impact occurring during episodes of exhaustion and weakness. In addition, these impairments markedly limited A's ability to seek and maintain gainful employment. A's illness is progressive and she will eventually require renal replacement treatment."

As to mobility and physical ability, the SW assesses the appellant as requiring periodic assistance from another person for walking indoors, walking outdoors, climbing stairs, standing, lifting, and carrying and holding. In making these assessments, the SW explains [A=appellant]:

"During episodes when A is fatigued and ill due to kidney function her children assist her to the washroom. A does not leave her house during episodic fatigue and exhaustion. When A is experiencing exhaustion she cannot climb stairs. [As to standing,] she is bedridden when exhaustion is being experienced. When A is experiencing exhaustion she requires assistance from her children in lifting, carrying and holding."

The SW adds: "On a monthly basis, A experiences episodes of exhaustion and weakness related to chronic kidney disease."

Severity of mental impairment

MR:

The nephrologist indicates that the appellant has no difficulties with communications.

As to whether there are any significant deficits with cognitive and emotional functioning, the nephrologist indicates "Unknown."

AR:

The degree to which the SW assesses the appellant's mental impairment restricts or impacts her functioning in the following areas is:

- Major impact: bodily functions, emotion, and motivation.
- Moderate impact: attention/concentration and other emotional or mental problems.
- Minimal impact: memory.
- No impact: consciousness, impulse control, insight and judgment, executive, motor activity, language, psychotic symptoms, and other neuropsychological problems.

The SW comments:

"A wakes up 'at least' 5 times a night to use the washroom and due to anxiety. A reports that her anxiety restricts her daily function and disturbs her sleep on an everyday basis. A has lost interest and motivation to engage socially due to fatigue and feeling ill. Her concentration is impacted on a daily basis and limits her ability to stay focused. These daily impacts markedly restrict A's ability to maintain consistent employment."

Ability to perform DLA

MR:

Asked whether the appellant's impairments directly restrict her ability to perform DLA, the nephrologist indicates "Unknown."

AR:

The SW provides the following assessments of the assistance the appellant requires in performing DLA:

- Personal care – periodic assistance from another person required for dressing, bathing, and toileting; independent for grooming, feeding self, regulating diet, transfers in/out of bed and transfers on/off chair.
- Basic housekeeping – periodic assistance from another person required for laundry and basic housekeeping.
- Shopping – periodic assistance from another person required for going to and from stores and carrying purchases home; independent for reading prices and labels, making appropriate choices, and paying for purchases.
- Meals – periodic assistance from another person required for food preparation and cooking; independent for meal planning and safe storage of food.
- Pay rent and bills – independent for banking, budgeting and paying rent and bills.
- Medications – periodic assistance from another person required for filling/refilling prescriptions; independent for taking as directed and safe handling and storage.
- Transportation – periodic assistance from another person required for getting in and out of a vehicle; N/A for using public transit and using transit schedules and arranging transportation.

In providing these assessments for each task requiring periodic assistance from another person, the SW provides commentary explaining that during episodes of exhaustion and weakness, the appellant remains in bed, or cannot bathe, do shopping, etc. and her children assist her.

More generally, the SW writes [A=appellant]:

"A experiences episodes of exhaustion and weakness which restrict her ability to engage in housework, dressing, bathing, toileting, and shopping. During these episodes, A requires assistance from her children. This occurs on a monthly basis. Moreover, A experiences anxiety and panic attacks daily and nightly, which leave her short of breath. When this occurs, A is unable to carry on with activities and must sit down to work on her breathing. This disrupts her sleep and engagement in activities. A's anxiety began when she was diagnosed with progressive kidney disease.

A requires periodic assistance with food preparation, cooking, filling and refilling prescriptions, and transportation. This assistance is required during episodes of exhaustion and weakness related to kidney disease. A reports week-long periods of this on a month to month basis. Her children assist with these activities during these periods of exhaustion and weakness. A's ability to function in activities of daily living is markedly restricted. This also affects her ability to seek gainful employment."

As to the support/supervision required for social functioning, the SW assesses the appellant as independent in all listed areas: making appropriate social decisions, ability to develop and maintain relationships, interacting appropriately with others, ability to deal appropriately with unexpected demands, and ability to secure assistance from others.

The SW assesses the appellant's relationship with her immediate and extended social networks as good functioning, noting "but A's anxiety and irritability does create relationship tension." The SW further comments, "Although A maintains social relationships, she reports periodic tension and stress due to her anxiety and irritability."

Help required

MR:

The nephrologist indicates that the appellant does not require any prostheses or aids to compensate for her impairment.

AR:

The SW indicates that the help required for the appellant's daily living activities is provided by family. If help is required but there is none available, the SW writes:

"If A's children were not available to assist, A would attempt to contact her sister or friends. If in an emergency, A would call the ambulance. If additional support services were needed, A would discuss this with the social worker at the [health authority] kidney care clinic."

The SW does not indicate that the appellant requires any of the listed equipment or devices to compensate for her impairment and indicates that she does not have an assistance animal.

Self Report

In her SR, the appellant describes her disability as chronic severe kidney disease. She was hospitalized in April 2016 and biopsies were performed as well as extensive bloodwork. She was diagnosed with HSP/IgA nephropathy, a progressive condition. She has been on many medications that have affected her in a negative way on an everyday basis. The disease has caused her blood pressure to be very high and she is anemic, causing her to be extremely fatigued. There are more days than not that she has a hard time functioning – getting out of bed is a chore as she has absolutely no energy.

In describing how her disability has affected her daily living, the appellant writes that her disease has affected her life tremendously. She is a single mom with three adult children who are very scared they're going to lose their mother. She never knows how she is going to feel when she gets up. Her sleeping pattern is completely broken. She sleeps for maybe a half hour and then wakes up. She doesn't remember sleeping through the night since she became ill. She was put on chemo medications and many others.

She goes on to explain that she feels exhausted every day but tries to pretend that she feels okay when her children are around. Her energy level is very low, so everyday chores don't get done like they used to, and she has to rest, sit or lay down when she feels tired. Her breathing always feels compromised. She also has to be near a washroom at all times. She gets very nauseated at times, so her eating habits fluctuate. Her fatigue gives her depression and anxiety, as she can't do things that she normally would. She used to be able to be up early and go all day and night, but now she can go only an hour or so and then extreme exhaustion comes over her. She adds that her eyes swell up over the night so a lot of the day she has to ice them before she can go anywhere. She has become very irritable because of this disease. Getting up and thinking about getting dressed and ready for the day gives her anxiety. A lot of the time she doesn't leave the house and she is in her pajamas for the day. Her appetite is up and down as well and her body is starting to become itchier because of the disease.

Notice of Appeal

In her Notice of Appeal, received by the Tribunal on 18 April 2017, the appellant gives as Reasons for Appeal that she believes that she has not had a chance to have follow-up reports of her current condition provided regarding her recent sickness. Her condition is deteriorating. After seeing her specialist she would like her doctor [her GP] to re-evaluate her.

Submissions on Appeal

Before the hearing, the Tribunal received on 08 May 2016 the following submissions from the appellant:

1. A medications list for the appellant, current as of 06 April 2017. The panel notes that for the immune suppressant drug, it is the only one listed with a start date (from 24 January 2017), though the "to" date is not given, with the advisory, "Do not stop suddenly."
2. A "To whom it may concern letter," undated, from a friend of the appellant. She writes that she and the appellant have been good friends for 10 years. When they met the appellant was a vibrant woman who was full of life, kind and generous and was involved with her kids in school and all the kids would come to her home. If ever there was a problem the appellant was there to help. The friend also writes that in the last few years, especially this last year, she has watched the appellant's health decline, especially when the appellant was diagnosed with kidney disease. They used to take her dogs for a walk and now the appellant cannot go walking anymore due to fatigue. The friend stops by to see if the appellant needs anything and the appellant is lying down in bed or on the couch. She has noticed that the appellant has lost weight and her face and hands and feet are swollen. The friend writes that the appellant has had severe migraines, and her daughter has had to take her to the hospital. The appellant used to clean her home and yard every day but now she has let everything go because she has no energy or has had little sleep due to her intense headaches.
3. A letter to the panel dated 02 May 2017 from the appellant's daughter. The daughter writes that she is currently living with her mother and has been caring for her for almost a year now. In September 2016, the daughter enrolled in University and since then she has missed multiple days of school because she has had to drive her mother to appointments, hospital visits and helping with simple errands. Her mother does not have enough energy to complete simple daily tasks including grocery shopping, caring for the animals, and/or keeping up with household chores. The daughter writes that since her mother became sick, she is acting depressed and not how she was before she became sick. She and her brothers all believe that the appellant can't be left unattended, or she will not be able to complete daily tasks. The daughter also thinks the appellant's disease is progressing, and while there are plenty of issues she finds the following the most worrisome:
 - When the swelling in her body is at the maximum, she is not able to even sit or stand, let alone reposition herself.
 - Her headaches and the tension in her eyes have gotten to the point where she can't concentrate or even drive.
 - Her mother gets about 2-4 hours of sleep a night, if she is lucky.
 - The longest she has seen her walk around is approximately five minutes before needing to take a seat, or before her energy is gone.

The daughter concludes by writing that her mother is a kind, caring individual, but her stamina is almost completely gone. She used to enjoy activities such as spending time with family, and going on nature walks, but now her disease has taken over her mentally and physically.

The hearing

The appellant did not attend the hearing. After confirming that the appellant was notified of the hearing, the hearing proceeded in accordance with section 86(b) of the Employment and Assistance Regulation.

The ministry stood by its position at reconsideration.

Admissibility of new information

The panel finds that the information in the letters from the appellant's friend and her daughter are in support of the information before the ministry at reconsideration, as this information tends to corroborate the information provided by the appellant in her SR. The panel therefore admits this information as evidence pursuant to section 22(4) of the *Employment and Assistance Act*.

With the exception noted below, the panel finds the medications list is in support of the information before the ministry at reconsideration, as it tends to corroborate the clinical summary attached to the MR, showing that the appellant has been prescribed a wide range of medications. While admitting this list as evidence, the panel notes that without any interpretive information provided by a medical practitioner, this list has little substantive relevance, as the panel does not have the expertise to assess the possible interactions or side effects of these medications on the appellant's daily functioning. The panel notes that the indicated change in the prescription for the immune suppressant drug differs from the information before the ministry at reconsideration that indicated the planned tapering of this medication, with the prescription ending in May 2017. Accordingly, the panel finds that the information regarding this medication is not admissible.

PART F – Reasons for Panel Decision

The issue in this appeal is whether the ministry decision that determined that the appellant did not meet three of the five statutory requirements of Section 2 of the *EAPWDA* for designation as a person with disabilities (PWD) is reasonably supported by the evidence or is a reasonable application of the legislation in the circumstances of the appellant. Specifically, the ministry determined that the information provided did not establish that the appellant has a severe physical or mental impairment that, in the opinion of a prescribed professional,

(i) directly and significantly restricts her ability to perform daily living activities (DLA) either continuously or periodically for extended periods; and,

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

The ministry determined that the appellant satisfied the other 2 criteria: she has reached 18 years of age; and her impairment in the opinion of a medical practitioner is likely to continue for at least 2 years.

The following section of the *EAPWDA* applies to this appeal:

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 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.

The following section of the *EAPWDR* applies to this appeal:

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.

Severity of impairment

General considerations

The legislation is clear that the determination of severity of impairment is at the discretion of the minister, taking into account all of the evidence. The legislation requires that for PWD designation, the minister must be "satisfied" that the person has a severe mental or physical impairment.

For the minister to be "satisfied" that the person's impairment is severe, the panel considers it reasonable for the ministry to expect that the information provided by the independent and professional medical practitioner and prescribed professional (in this case the nephrologist and the SW) permits the minister to form a comprehensive overview of the nature and extent of the impacts of the person's medical conditions on daily functioning. It is therefore reasonable for the minister to expect that the MR and the AR include explanations, descriptions or examples in the spaces provided.

Physical impairment

In the reconsideration decision, the ministry determined that the appellant does not have a severe physical impairment. In reaching this conclusion, the ministry noted that the diagnosis of a severe medical condition does not in itself determine PWD eligibility or establish a severe impairment. To assess the severity of the physical impairment the ministry must consider the nature of the impairment and the extent of its impact on daily functioning, as evidenced by limitations/restrictions in mobility, physical ability, and functional skills. Considering the focus of the legislation on restrictions and help required, the panel considers this a reasonable approach for the ministry to take when analyzing the information provided regarding severity of physical impairment.

Consistent with this approach, the ministry considered the MR and noted that the nephrologist has indicated that it is unknown how far the appellant can walk unaided, how many stairs she can climb unaided, how much weight she can lift, and how long she can remain seated. The ministry also noted that the nephrologist has indicated that, "Chronic kidney disease and anemia both impair energy and function, resulting in fatigue," and that the immune suppression medication diminishes muscle

strength. The ministry found that this statement did not describe the severity of the impacts to muscle strength due to medication and that in any event the anticipated duration of the immune suppression medication is until May 2017, indicating a temporary prescription.

Because the nephrologist's assessments of the appellant's physical ability is "unknown," the ministry considered the SW's assessments of mobility and physical ability as reported in the AR. The ministry noted that the SW assessed the appellant as requiring periodic assistance from another person with all listed areas of mobility and physical ability, noting her comments regarding episodic fatigue and exhaustion (see Part E above for the detailed comments).

The ministry noted that throughout the AR, the SW describes periods of exhaustion and weakness due to kidney disease. Under mobility and physical ability, the SW describes these episodes as monthly ("On a monthly basis"). Elsewhere, in assessing her ability to perform DLA, the SW stated that "[The appellant] reports week long periods of [exhaustion/weakness] on a month-to-month basis." The ministry stated that the use of the term "[The appellant] reports" in this statement suggests the statement is based on the appellant's self-report as opposed to the assessment of the SW.

The panel wondered about the logic of the above ministry statement, because a SW would have to rely on a discussion with an applicant (i.e. a "self-report") to make an assessment regarding any episodic pattern of impairment. However, at the hearing the ministry representative explained that the "[The appellant] reports" language would signal to a reconsideration officer, who would wonder why the SW would not be more definitive, to look for corroborating information for an assessment worded this way. Given this explanation, the panel considers it understandable that the ministry would seek confirmation elsewhere in the application that the appellant has a week long period of exhaustion/weakness each month. The ministry noted that no such description was provided by the nephrologist in the MR. The panel also notes that neither the appellant's SR nor the letters submitted by her friend and her daughter described this episodic pattern of impairment.

In the AR, a footnote describes periodic assistance as "refers to the need for significant help for an activity some of the time as would be the case where a person required help due to the episodic nature of the impairment." The panel notes that all of the impacts on daily physical functioning assessed by the SW in the AR are assessed in terms of the appellant requiring periodic assistance from another person, frequently described as when the appellant experiences episodes of exhaustion and weakness. To determine the severity of how the appellant's medical conditions impact her daily functioning in these circumstances, the panel considers it reasonable for the ministry to expect that the information from her prescribed professionals would provide a clear and definitive picture of how often and for how long she experiences these episodes of exhaustion and weakness.

Given the uncertainty attached to the SW's description of these episodes being week long and once a month, the panel finds that the ministry reasonably concluded that it is difficult to establish the frequency and duration of the areas of exhaustion/weakness, and therefore that it is difficult to establish the frequency and duration of periods during which she requires periodic assistance from another person with activities of mobility and physical ability.

Given that the nephrologist had indicated "unknown" regarding the appellant's functional skills and the uncertainty surrounding the SW's assessments of the frequency and duration of periodic help required for activities of mobility and physical ability, the panel finds the ministry was reasonable in determining that severe physical impairment has not been established.

Mental impairment

In the reconsideration decision, the ministry also determined that the appellant does not have a severe mental impairment. In making this determination the ministry first reviewed the information provided by the nephrologist in the MR, noting that she had not assessed the appellant with any difficulties with communication and had indicated that it was unknown whether she has significant deficits with cognitive and emotional functioning. The ministry also noted that under additional comments the nephrologist referred to the immune suppressant medication, writing, "increases anxiety, worsens sleep..." In this connection, the ministry noted that the use of the immune suppressant prescription drug is temporary. Given the lack of information provided by the nephrologist, the panel finds that the ministry reasonably concluded that it is difficult to establish a severe impairment of mental functioning based on the nephrologist's assessments.

The ministry then turned to the AR, noting that the SW, in describing the nature of the appellant's impairment, had included "anxiety and panic attacks." The ministry also quoted the SW's commentary under cognitive and emotional functioning regarding the appellant waking at least 5 times a night to use the washroom and due to anxiety; that she has lost interest and motivation to engage socially due to fatigue and feeling ill; that her concentration is impacted on a daily basis and limits her ability to stay focused; and that these impacts markedly restrict her ability to maintain consistent employment.

In addressing this latter comment, the ministry stated that for the purposes of determining eligibility for PWD designation, employability or ability to work is not taken into consideration. The panel finds this statement by the ministry reasonable, as the legislation focuses on severity of impairment, the degree to which the impairment restricts the ability to perform prescribed DLA, and the resulting need for help in performing these DLA, with no mention of employability.

The ministry also noted the impacts to cognitive and emotional functioning as assessed by the SW, including major impacts in the areas of bodily functions, emotion, and motivation; and moderate impacts in the areas of attention/concentration and other emotional/problems..

In discussing the SW's assessments of the impacts to the appellant's cognitive and emotional functioning, the ministry found that the cumulative impact to cognitive emotional functioning is not considered indicative of a severe impairment of mental functioning. The ministry noted that the nephrologist does not describe any deficits with cognitive and emotional functioning. Considering that the nephrologist had also not diagnosed any mental health condition, making it difficult for the ministry to attribute any of these impacts to a diagnosed mental condition or deficit, the panel finds that the ministry was reasonable in reaching this conclusion.

The ministry also noted that the SW assessed the appellant as independent in all listed areas of social functioning and as having good functioning with both her immediate and extended social networks; in addition, the SW does not describe any support/supervision required to help maintain the appellant in the community and there is no indication of any safety issues regarding social functioning.

Given that the nephrologist has not diagnosed any mental health condition or identified any cognitive and emotional deficits, and taking into account the SW's assessments regarding the appellant's degree of independence with social functioning, the panel finds that the ministry was reasonable in determining that a severe mental impairment has not been established.

Direct and significant restrictions in the ability to perform DLA

Panel decision

The panel notes that, according to the legislation, the direct and significant restriction in the ability to perform DLA must be the result of a severe impairment, a criterion not established in this appeal. The legislation – section 2(2)(b)(i) of the EAPWDA – requires the minister to assess direct and significant restrictions of DLA in consideration of the opinion of a prescribed professional, in this case the appellant's nephrologist and SW. This does not mean that other evidence should not be 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." And for the minister to be "satisfied," it is reasonable for the ministry to expect that a prescribed professional provides a clear picture of the extent to which the ability to perform DLA is restricted, as assessed in terms of the nature and duration of help required, in order for the ministry to determine whether the restrictions are "significant."

In its decision, the ministry reviewed in detail the assessments and commentary provided by the SW in the AR regarding the assistance required for the appellant to manage her DLA. (See Part E above for the panel's summary). In the AR, the SW assessed the appellant as requiring periodic assistance from another person for the DLA of moving about indoors and outdoors, and requiring the periodic assistance of another person for 3 of 8 tasks of personal care, 2 of 2 tasks of basic housekeeping, 2 of 5 tasks of shopping, 2 of 4 tasks of meals, 1 of 3 tasks of medications, and 1 of 3 tasks of transportation. The SW assessed the appellant as independent for paying rent and bills and for all aspects of social functioning.

The panel notes that the SW has not assessed the appellant as requiring continuous assistance of another person, the use of an assistive device, or that she takes significantly longer than typical to perform a task.

In discussing the assessments of the appellant requiring the periodic assistance from another person, the ministry noted the SW's reference throughout the AR of the appellant experiencing periods of exhaustion and weakness due to kidney disease. The ministry again called attention to the SW's comment that "[The appellant] reports week long periods of [exhaustion/weakness] on a month to month basis," and the use of the phrase "The appellant] reports" as an indication that the statement is based on the appellant's self-report as opposed to the assessment of the SW. As discussed above in Part E under severity of physical impairment, the panel finds that the ministry was reasonable in concluding that it is difficult to establish the frequency and duration of periods during which the appellant requires the periodic assistance from another person with DLA – in other words, it is difficult to determine whether the periodic help required is for extended periods, as required by the legislation.

As a severe impairment has not been established, and considering that the lack of a definitive opinion by the prescribed professional regarding the frequency and duration of periodic assistance, the panel finds that the ministry was reasonable in determining that it has not been established that the appellant has a severe impairment that significantly restricts her ability to perform DLA continuously or for extended periods. The panel therefore finds that the ministry was reasonable in finding that this legislative criterion has not been met.

Help required

Panel decision

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 appellant benefits from help from her children, since 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 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, was reasonably supported by the evidence. The panel therefore confirms the ministry's decision. The appellant is thus not successful on appeal.