

PART C – Decision under Appeal

The decision under appeal is the Ministry of Social Development and Social Innovation (the ministry) reconsideration decision dated March 7, 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

With the consent of both parties, the hearing was conducted as a written hearing, pursuant to section 22(3)(b) of the *Employment and Assistance Act*.

The evidence before the ministry at the time of the reconsideration decision included the appellant's Persons With Disabilities (PWD) Application comprised of the appellant's information and self-report dated June 16, 2016, a physician report (PR) and an assessor report (AR) both dated October 29, 2016 and completed by a general practitioner (GP) who has known the appellant for 5 years and has seen her 11 or more times in the past 12 months.

The evidence also included the appellant's Request for Reconsideration dated February 20, 2017 with a second copy of the PWD Application with some amendments made by the GP ("Amended Application").

Diagnoses

In the PR, the GP diagnosed the appellant with Irritable Bowel Syndrome (IBS)/ rapid transit, secondary malabsorption, and hypothyroidism, with no date of onset provided. There was no diagnosis of a condition within the mental disorders category. Asked to describe the mental or physical impairments that impact the appellant's ability to manage daily living activities (DLA), the GP did not provide comments.

Physical Impairment

In the PR and the AR, the GP reported:

- With respect to the health history, the appellant has "significant daily symptoms of pain/diarrhea; symptoms compounded by right hemicolectomy October 2015 for suspected cancer colon (negative pathology) and remote iced gastrostomy; recurrent electrolyte abnormalities and weight loss."
- 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, climb 5 or more steps unaided, with no limitation on how much she can lift or how long she can remain seated, with no comments added.
- The appellant is not restricted with mobility inside the home and she has periodic restrictions with mobility outside the home. The GP commented regarding the periodic restrictions that the appellant experiences "episodic abdominal pain and diarrhea."
- The appellant is assessed as being independent with walking indoors and with lifting. The appellant takes significantly longer than typical with walking outdoors, climbing stairs, standing, and carrying and holding. The GP wrote: "recurrent abdominal pain and diarrhea."
- 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, and the appellant does not have an assistance animal.

In her self-report, the appellant wrote:

- She is unable to stand some days for more than 5 minutes, lift a gallon of milk without pain in abdomen or bleeding from bowel.
- Some days walking is difficult.
- She now relies on others to do her lifting and carrying.
- She is in constant pain.
- There are days when she cannot stop vomiting long enough to take Gravol.
- She has "good" days and it is those time she ensures her home is clean and sanitized.
- Muscle aches, spasms, joint pain, lower back pain and extreme fatigue are with her every

morning as she wakes to the intense need to vacate her bowel. Chest pains and bleeding problems are secondary when dehydration sets in.

- There are all-too-frequent times when she has soiled herself trying to get to the bathroom after having just left it.

In the Amended Application, the assessment by the GP was different in the following ways:

- The appellant is continuously, rather than periodically, restricted with mobility outside the home.
- Additional comments are provided that the appellant "...has been assessed by gastroenterologist: diagnosis of significant malabsorption/ hypovitaminosis D confirmed. Recurrent admissions for condition."

Mental Impairment

In the PR and the AR, the GP reported:

- The appellant has no difficulties with communication and no significant deficits with cognitive and emotional function.
- The appellant is not restricted in her social functioning.
- The appellant has a good ability to communicate in all aspects, specifically with speaking, reading, writing and hearing.
- With respect to daily impacts to the appellant's cognitive and emotional functioning, the GP wrote "N/A" or not applicable to the appellant.
- Regarding the impacts to the appellant's social functioning, the GP indicated that the appellant is independent in all aspects, specifically: making appropriate social decisions, developing and maintaining relationships, interacting appropriately with others, dealing appropriately with unexpected demands and securing assistance from others.
- There was no assessment for how mental impairment impacts the appellant's relationships with her immediate or extended social networks.

In her self-report, the appellant wrote:

- She dare not drive for fear of fainting or forgetting what she is doing or where she is going. She now relies on others for getting her to doctor's appointments.
- Fighting depression has become a full-time preoccupation, and sleep without medications is impossible.
- Headaches compound already confused thinking.
- The ringing in her ears has impaired her ability to hear.
- She no longer trusts what she is seeing and she cannot remember if she has done something or just thought she did. This is not from taking medications, it just happens.

In the Amended Application, the assessment by the GP was different in the following ways:

- In her social functioning, the appellant requires continuous support/supervision with "other," described as "isolated by condition."
- The appellant has very disrupted functioning in both her immediate social network (partner, family, friends) and in her extended social network (neighborhood contacts, acquaintances, storekeepers, public officials, etc.)
- Asked to describe the support/supervision required to help maintain the appellant in the community, the GP wrote: "assistance with home care/ shopping."

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; however, the GP noted that the anticipated duration of the medications/treatments is “lifelong likely.”
- The appellant is not restricted in several DLA, specifically: personal self care, meal preparation, management of medications, mobility inside the home, management of finances, and social functioning.
- The appellant is periodically restricted with the DLA of basic housework, daily shopping, mobility outside the home, and use of transportation. Regarding the periodic nature of the restrictions, the GP wrote: “episodic abdominal pain and diarrhea.”
- When asked to describe the nature and extent of assistance required, the GP wrote: “NIL.”
- The appellant is independent with walking indoors and takes significantly longer than typical with walking outdoors due to “recurrent abdominal pain and diarrhea.”
- The appellant is independent with every task of every DLA with the exception of the task of using public transit, which takes her significantly longer than typical due to “episodic abdominal pain and diarrhea,” as part of the transportation DLA.

In her self-report, the appellant wrote that getting up from a chair is a struggle some days.

In the Amended Application, the GP changed the assessments in the following ways:

- The appellant is continuously restricted with the meal preparation DLA, the basic housework DLA, the daily shopping DLA, mobility outside the home, and the use of transportation DLA.
- Regarding the basic housekeeping DLA, the appellant requires continuous assistance from another person with the tasks of laundry and housekeeping.
- For the shopping DLA, the appellant remains independent with the tasks of reading prices and labels, making appropriate choices, and paying for purchases, and now requires continuous assistance from another person with going to and from stores and carrying purchases home, with a note by the GP “amendments.”
- Regarding the meals DLA, the appellant remains independent with the tasks of meal planning and safe storage of food, and now requires continuous assistance from another person with food preparation and cooking. There is no explanation or description provided by the GP.
- Regarding the transportation DLA, the appellant remains independent with the tasks of getting in and out of a vehicle and using transit schedules and arranging transportation, and now requires continuous assistance from another person with the task of using public transit, with the same comment by the GP: “episodic abdominal pain and diarrhea.”

Need for Help

With respect to the assistance provided by other people, the GP reported in the PR that the appellant requires “NIL” assistance with DLA. In the AR, the GP did not identify any category of people who provide help with DLA and wrote “lives alone,” and did not identify any of the listed assistive devices as routinely used by the appellant. In the Amended Application, the GP indicated that friends help with DLA, with no additional comments. In the Amended Application, the GP also indicated that the help required to maintain the appellant in the community is assistance with home care/shopping.

Additional information

In her Notice of Appeal dated March 15, 2017, the appellant expressed her disagreement with the ministry’s reconsideration decision and wrote that the ministry has not been provided with accurate and complete information. She would like the chance to point out the lack of “back-up” information to

her doctor and have him provide what is required.

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

- 1) Written submission by the appellant dated April 17, 2017 along with the notes she provided to the GP in requesting changes to the PWD application. The appellant wrote:
 - She is not capable of working and she has no time frame on when she will be capable of working.
 - On March 30, 2017, she had another colonoscopy and, on March 8, her gastroenterologist suggested a surgical consult.
 - The episodes of diarrhea can last from 2 hours to 2 weeks and she has no warning of when an episode will commence. The 2-week episode is evacuating the bowel 10 to 15 times or more a day, every day for 2 weeks. A really good day, one in which she can accomplish something, she will evacuate the bowel 6 times in a 24-hour period.
 - Currently she has the bowel controlled with medications and, even then, she cannot be sure that she will not be in the washroom less than 15 times a day.
 - The side effects of the medication add to her current mental confusion.
 - As a result of the diarrhea episodes, her body fails to absorb needed vitamins, minerals and nutrients and she suffers dehydration.
 - A year ago, she spent 10 days in hospital to rebuild the losses that were affecting her organs. She has since seen an endourologist for kidney stones, hematologist for vitamin deficiencies, endocrinologist for lymphoid swelling and hypoparathyroid, and an ophthalmologist for problems with her vision.
 - She continues to be unstable on her feet. The few blocks she walks are well-planned with benches to sit on and washrooms close by. In her home, she relies on furniture and walls to keep her from falling. She needs both stair rails to get up the stairs.
 - She cannot lift anything over 5 lbs. due to abdominal pain and an attempt to lift a 3 liter jug of milk caused rectal bleeding.
 - Friends do all of her shopping and are supplying her food because she cannot afford to.
 - She gets confused and overwhelmed easily. She ceased driving, having gotten lost 2 blocks from her home. She cannot recall conversations, she needs reminders for appointments. She cannot concentrate.
 - Depression has become a common opponent, but her current health has her isolated.
 - She applied for disability because she cannot work.
 - Her notes to the GP also included that she tries to get out for a walk at least once a week, but pain and fatigue often prevent her from going further than half a block. Walking half a block used to take 3 minutes and now takes 15 minutes and, if she needs to pause to get her balance, can take longer.
 - Her notes to the GP also included that her anxiety levels have increased. Depression is a companion and she will allow herself to become unclean and fail to shower or change clothing; and,
- 2) A third copy of the PWD Application with further amendments made by the GP.

The ministry relied on the reconsideration decision and also provided a letter dated May 2, 2017 as a submission on the appeal. The ministry wrote that the additional information submitted by the appellant was reviewed and the ministry noted that this information was not before the reconsideration officer at the time of the reconsideration decision.

Admissibility of Additional Information

The ministry objected to the admissibility of the additional information provided by the appellant, and the panel considered the information in the appellant's written submission and notes as being, for the most part, consistent with and in support of the impacts from the medical conditions referred to in her self-report, which was before the ministry at reconsideration. Therefore, the panel admitted the appellant's written submission and notes in accordance with Section 22(4)(b) of the *Employment and Assistance Act*.

However, the panel did not admit the third copy of the PWD Application with the further amendments made by the GP as this assessment amounted, in many instances, to contradictions in the information before the ministry at reconsideration, and the panel finds that this new information was not in support of information before the ministry at reconsideration. For example, at reconsideration, the GP reported that there are no significant deficits in cognitive and emotional functioning and the section of the AR relating to daily impacts to cognitive and emotional functioning was not applicable to the appellant. In the new information provided at appeal, the GP indicated that the "patient reports" there are several areas of significant deficit and the "patient reports" many major impacts to cognitive and emotional functioning, indicating a marked change in the assessment and that the GP has no personal knowledge of the new symptoms reported.

PART F – Reasons for Panel Decision

The issue on appeal is whether the ministry's reconsideration decision, which found that the appellant is not eligible for designation as a PWD, was reasonably supported by the evidence or was a reasonable application of the applicable enactment in the circumstances of the appellant. The ministry found that the evidence does not establish that the appellant has a severe mental or physical impairment and that her DLA are, in the opinion of a prescribed professional, directly and significantly restricted either continuously or periodically for extended periods. Also, as a result of those restrictions, it could not be determined that the appellant requires the significant help or supervision of another person, the use of an assistive device, or the services of an assistance animal to perform DLA.

The criteria for being designated as a PWD are set out in Section 2 of the EAPWDA as follows:

Persons with disabilities

2 (1) In this section:

"assistive device" means a device designed to enable a person to perform a daily living activity that, because of a severe mental or physical impairment, the person is unable to perform;

"daily living activity" has the prescribed meaning;

"prescribed professional" has the prescribed meaning.

(2) The minister may designate a person who has reached 18 years of age as a person with disabilities for the purposes of this Act if the minister is satisfied that the person is in a prescribed class of persons or that the person has a severe mental or physical impairment that

(a) in the opinion of a medical practitioner or nurse practitioner is likely to continue for at least 2 years, and

(b) in the opinion of a prescribed professional

(i) directly and significantly restricts the person's ability to perform daily living activities either

(A) continuously, or

(B) periodically for extended periods, and

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

(3) For the purposes of subsection (2),

(a) a person who has a severe mental impairment includes a person with a mental disorder, and

(b) a person requires help in relation to a daily living activity if, in order to perform it, the person requires

(i) an assistive device,

(ii) the significant help or supervision of another person, or

(iii) the services of an assistance animal.

(4) The minister may rescind a designation under subsection (2).

The EAPWDR provides as follows:

Definitions for Act

2 (1) For the purposes of the Act and this regulation, "**daily living activities**" ,

(a) in relation to a person who has a severe physical impairment or a severe mental impairment, means the following activities:

(i) prepare own meals;

(ii) manage personal finances;

(iii) shop for personal needs;

(iv) use public or personal transportation facilities;

- (v) perform housework to maintain the person's place of residence in acceptable sanitary condition;
 - (vi) move about indoors and outdoors;
 - (vii) perform personal hygiene and self care;
 - (viii) manage personal medication, and
- (b) in relation to a person who has a severe mental impairment, includes the following activities:
- (i) make decisions about personal activities, care or finances;
 - (ii) relate to, communicate or interact with others effectively.

(2) For the purposes of the Act, "**prescribed professional**" means a person who is

(a) authorized under an enactment to practise the profession of

- (i) medical practitioner,
- (ii) registered psychologist,
- (iii) registered nurse or registered psychiatric nurse,
- (iv) occupational therapist,
- (v) physical therapist,
- (vi) social worker,
- (vii) chiropractor, or
- (viii) nurse practitioner, or

(b) acting in the course of the person's employment as a school psychologist by

- (i) an authority, as that term is defined in section 1 (1) of the Independent School Act, or
 - (ii) a board or a francophone education authority, as those terms are defined in section 1 (1) of the School Act,
- if qualifications in psychology are a condition of such employment.

Part 1.1 — Persons with Disabilities

Alternative grounds for designation under section 2 of Act

2.1 The following classes of persons are prescribed for the purposes of section 2 (2) [persons with disabilities] of the Act:

- (a) a person who is enrolled in Plan P (Palliative Care) under the Drug Plans Regulation, B.C. Reg. 73/2015;
- (b) a person who has at any time been determined to be eligible to be the subject of payments made through the Ministry of Children and Family Development's At Home Program;
- (c) a person who has at any time been determined by Community Living British Columbia to be eligible to receive community living support under the Community Living Authority Act;
- (d) a person whose family has at any time been determined by Community Living British Columbia to be eligible to receive community living support under the Community Living Authority Act to assist that family in caring for the person;
- (e) a person who is considered to be disabled under section 42 (2) of the Canada Pension Plan (Canada).

Severe Physical Impairment

In the reconsideration decision, the ministry was not satisfied that the information provided establishes a severe physical impairment. The ministry acknowledged that the appellant has been diagnosed with IBS/rapid transit with secondary malabsorption and hypothyroidism and the GP indicated she has significant daily symptoms of pain/diarrhea as well as electrolyte abnormalities and weight loss. In the Amended Application, the GP commented that the appellant had been assessed by a gastroenterologist and that a diagnosis of significant malabsorption/ hypovitaminosis D was

confirmed and the appellant had recurrent admissions [to hospital] for this condition. In her written submission, the appellant wrote that about a year ago, she spent 10 days in hospital to rebuild the losses that were affecting her organs and that she has since seen an endourologist for kidney stones, a hematologist for vitamin deficiencies, an endocrinologist for lymphoid swelling and hypoparathyroid, and an ophthalmologist for problems with her vision; however, there was no further information provided from the specialists to explain the impact to the appellant's functioning as a result of these conditions. The ministry wrote that although the GP indicated that the appellant experiences "episodic abdominal pain and diarrhea," the GP does not provide detail of the degree, nature, or frequency of the appellant's episodes in order to establish a severe physical impairment.

A diagnosis of a serious medical condition or conditions does not in itself determine PWD eligibility or establish a severe impairment. An "impairment" is a medical condition that results in restrictions to a person's ability to function independently or effectively or for a reasonable duration. To assess the severity of an impairment, the ministry must consider the nature of the impairment and the extent of its impact on daily functioning.

In her written submission, the appellant wrote that the episodes of diarrhea can last from 2 hours to 2 weeks, and the 2-week episode results in evacuating of the bowel 10 to 15 times or more every day. A really good day, one in which she can accomplish something, she will evacuate the bowel 6 times in a 24-hour period. The appellant wrote that she has no warning of when an episode will commence and there was no additional information provided on the appeal from the GP or a specialist to indicate the frequency of these episodes over a given period.

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 or other 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.

The ministry considered the assessments by the GP in the original PWD application and noted that, in the Amended Application, there were no changes made to the GP's assessment of the appellant's functional skills or her mobility and physical abilities. While the GP indicated in the Amended Application that the appellant is continuously, rather than periodically, restricted with mobility outside the home, the GP did not amend his notation that the appellant experiences "episodic abdominal pain and diarrhea," and the ministry reasonably concluded that the degree of restriction remains uncertain. The ministry wrote that the GP reported in the PR that the appellant is able to walk 1 to 2 blocks unaided, climb 5 or more steps unaided, and she has no limitations to lifting or remaining seated. The ministry wrote that although the GP indicated that the appellant takes significantly longer, due to recurrent abdominal pain and diarrhea, to walk outdoors, climb stairs, stand, and carry/hold there is no information to describe how much longer the appellant takes to perform these activities.

In her notes to the GP, the appellant wrote that she tries to get out for a walk at least once a week, but pain and fatigue often prevent her from going further than half a block. Walking half a block used to take 3 minutes and now takes 15 minutes and, if she needs to pause to get her balance, can take longer. In her written submission on the appeal, the appellant wrote that she continues to be unstable on her feet and the few blocks she walks are well-planned with benches to sit on and washrooms close by. In her home, she relies on furniture and walls to keep her from falling. She needs both stair rails to get up the stairs and she cannot lift anything over 5 lbs. due to abdominal pain. In both the original AR and the Amended Application, the GP reported no need for the assistance of another person or an assistive device, particularly aids such as a cane or walker for her mobility, or with her physical activities such as lifting.

In her self-report, the appellant wrote that, some days, walking is difficult and she is unable to stand some days for more than 5 minutes or lift a gallon of milk without pain in her abdomen or bleeding from her bowel. The appellant wrote that she relies on others to do her lifting and carrying and, while she is in constant pain, there are also “good” days and that is when she ensures her home is clean and sanitized. The information from the appellant indicated that she has good days and bad days, experiencing exacerbations in her condition that reduce her functioning; however, the ministry reasonably concluded that the GP does not provide sufficient detail of the degree, nature, or frequency of the appellant’s episodes in order to establish a severe impairment of her physical functioning.

Given the lack of detail from the GP or a specialist of the extent of restriction to the appellant’s functioning during an exacerbation of her condition and the frequency of these episodes, and an assessment by the GP of no limitation with her functional skills, other than unaided walking in the moderate range, 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 evidence of a severe mental impairment. The ministry wrote that there was no diagnosis of a mental disorder and the GP did not suggest in the narrative of his report that the appellant may have a mental condition. The ministry wrote that the GP reported that the appellant does not have any significant deficits to, or impacts upon, her cognitive or emotional functioning and, therefore, a severe mental impairment cannot be established. In the PR, the GP also reported that the appellant has no difficulties with communication and she is not restricted in her social functioning.

In her self-report, the appellant wrote that fighting depression has become a full-time preoccupation, and sleep without medications is impossible. She wrote that headaches compound already confused thinking and the ringing in her ears has impaired her ability to hear. She no longer trusts what she is seeing and she cannot remember if she has done something. In her notes to the GP, the appellant wrote that her anxiety levels have increased and, in her written submission, that depression has become a common opponent, and her current health has her isolated. She gets confused and overwhelmed easily, cannot recall conversations, needs reminders for appointments, and she cannot concentrate.

Although given an opportunity In the Amended Application, the GP did not provide a diagnosis of a mental disorder and did not confirm the appellant’s reference to depression and anxiety. Rather, the GP noted that the appellant requires continuous support/supervision in an “other” category of social functioning as she is “isolated by condition,” indicating this impact relates to her physical health diagnoses and not to a mental health condition per se. The ministry reasonably determined that the section of the AR is for those with an identified mental impairment or brain injury and the appellant was not diagnosed with either. The GP did not amend his assessment that there are no restrictions to the appellant’s social functioning and while he indicated that the appellant has very disrupted functioning in both her immediate social network (partner, family, friends) and in her extended social network, the GP also reported in the Amended Application that the appellant receives help from her friends, which contradictions make it difficult for the ministry to find an impairment of social functioning.

Given the absence of a mental health diagnosis or identification of areas of significant deficit to cognitive and emotional functioning and the lack of impacts to the appellant's social functioning due to 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 there are periodic restrictions to the appellant's ability to do basic housework, daily shopping, mobility outside the home and use of transportation, and the GP wrote that the appellant has episodic abdominal pain and diarrhea without indicating the nature, degree or frequency of the associated restrictions. The ministry wrote that while the GP amended his assessment in the Amended Application to indicate that there are continuous restrictions to meal preparation, basic housework, daily shopping, mobility outside the home, and use of transportation, the GP did not amend his report that abdominal pain and diarrhea are episodic and, without further explanation or description, the ministry cannot determine that the restrictions the appellant faces are now continuous. The panel finds that the ministry reasonably considered that the request to describe the degree of restriction with DLA remained unanswered by the GP in the Amended Application, thereby not providing the needed clarification. While the GP initially indicated in the PR that the appellant is periodically restricted with some DLA, the panel notes that when asked to describe the nature and extent of assistance required, the GP wrote: "NIL" and did not change this assessment in the Amended Application of no requirement for assistance with DLA. Regarding the appellant's social functioning and the report that the appellant is "isolated by condition," the GP noted in the Amended Application that assistance with home care and shopping would help to maintain the appellant in the community.

The ministry wrote that the GP reported in the AR that the appellant can complete every listed DLA independently minus using public transportation, which takes significantly longer due to noted episodic abdominal pain and diarrhea. The ministry wrote that although the GP made amendments in the Amended Application to indicate that the appellant requires continuous assistance with the tasks of laundry, basic housekeeping, going to and from stores, carrying purchases home, food preparation and cooking, there is no explanation by the GP to indicate the reason for the change to continuous assistance as the narrative still described "episodic" abdominal pain and diarrhea and did not describe the frequency of the episodes.

In her self-report, the appellant wrote that getting up from a chair is a struggle some days and, due to depression, she will allow herself to become unclean and fail to shower or change clothing; however, the GP reported independence in all aspects of the personal care DLA and this assessment was not

changed in the Amended Application. In her submission, the appellant wrote with respect to her ability to perform DLA that friends do all of her shopping and are supplying her food because she cannot afford to. The appellant wrote that she is not capable of working and she has no time frame on when she will be capable of working, and she applied for disability because she cannot work. The panel notes that employability is not a criterion in section 2(2) of the EAPWDA nor is it listed among the prescribed DLA in section 2 of the EAPWDR.

Given the lack of a consistent description by the GP, as the prescribed professional, of the extent of restrictions and the need for assistance for some tasks of DLA, and the emphasis placed by the appellant on her inability to work, 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 in the Amended Application that the appellant receives help from friends, 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.