

## PART C – Decision under Appeal

The decision under appeal is the Ministry of Social Development and Social Innovation (the ministry) reconsideration decision dated June 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 information and self-report dated October 2016, a medical report (MR) and an assessor report (AR) both dated November 25, 2016 and completed by a general practitioner (GP) who has known the appellant since approximately 1992 and "from 2008 to 2014 has seen her more than 100 times" and the GP wrote: "know this patient well."

The evidence also included the following additional documents:

- 1) Outpatient Clinic Report dated November 18, 2008;
- 2) Outpatient Clinic Report dated April 27, 2009;
- 3) Radiological Consultation Report dated October 15, 2009;
- 4) Outpatient Clinic Report dated September 9, 2010;
- 5) Outpatient Clinic Report dated April 11, 2011;
- 6) Radiological Consultation Report dated June 30, 2011;
- 7) Outpatient Clinic Report dated May 2, 2012;
- 8) Consultation Report for MRI scan of the lumbar spine dated June 19, 2014;
- 9) Request for Reconsideration dated June 12, 2017 and attached letters from her mother and her son and an incomplete Shelter Information form.

### **Diagnoses**

In the PR, the GP diagnosed the appellant with lumbar disc herniation with radiculopathy, with an onset in 2005, and Hepatitis C discovered in January 2003. The GP noted that the appellant is "not receiving chemotherapy for Hep C. Has received past adequate treatment (non surgical) ... from 2009 to 2011 with non-enduring responses." There is no diagnosis of a condition within the mental disorders category of the diagnostic codes. Asked to describe the mental or physical impairments that impact the appellant's ability to manage daily living activities (DLA), the appellant wrote: "almost constant back pain caused by bilateral neural spinal stenosis resulting in inability to sit, stand, or concentrate, which creates overall financial and psychological turmoil."

### **Physical Impairment**

In the MR and the AR, the GP reported:

- With respect to the health history, regarding the "Hep C- near cleared the virus based on 2013 testing with chemically elevated LFT's [liver function tests]; has not pursued interferon therapy, etc. since. Needs constant LFT surveillance. Currently is asymptomatic but chronic Hep C could be scarring her liver leading to cirrhosis; higher risk Hep to cellular CA [carcinoma cancer]." Regarding the lumbar disc disease: "well documented with CT (September 22, 2008) and MRI (June 16, 2014) with L5, S1 post disc protrusion hitting the L5, S1 nerve roots/ severe foraminal stenosis. Non-enduring nerve root blocks October 13, 2009 and June 30, 2011. Has displayed consistent left-sided nerve root L5-S1 symptoms and signs of radicular burning pain, reduced straight leg raising ability, absent left ankle jerk. Her movement, sitting ability, and resulting pain is severe and restricts all ADL's- sitting, dressing, bathing, light housework."
- 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 2 to 5 steps unaided, lift under 2 kg. (under 5 lbs.), and remain seated less than 1 hour. The GP noted "needs frequent breaks and wiggles in the seat."
- The appellant is periodically restricted with her mobility inside the home and with mobility outside the home. Regarding "periodic," the appellant wrote: "when the spinal neural stenosis makes itself be felt (every day, sometimes every few days), I am unable to do anything."
- The appellant is assessed as requiring periodic assistance from another person with walking indoors, walking outdoors, climbing stairs and standing and the GP noted: "with pain flares due

to more sustained activity. Need help with railing and intermittent use of cane.” The appellant requires continuous assistance from another person with lifting and with carrying and holding, and the GP wrote: “cannot lift or carry more than 5 to 7 lbs. due to back and leg pain.”

- In the section of the AR relating to assistance provided, the GP indicated that a cane is used “occasionally” by the appellant to help compensate for her impairment.
- The appellant does not have an assistance animal.

In the MRI Consultation Report dated June 19, 2014, the physician indicated an impression of:

- Subacute anterosuperior endplate fracture of L4 vs. a Schmorl’s node. In the absence of trauma, a bone mineral density study should be performed
- Multi-level spondylosis of the lumbar spine, primarily characterized by disc bulge at L5-S1 which contacts the left S1 nerve root.

In her self-report, the appellant wrote:

- She is afflicted with constant pain due to a bilateral spinal neural stenosis of L4, L5, and S1.
- She has opted to no longer use narcotics she had been prescribed to alleviate the pain.
- The situation was worsened 2 years ago when she was pushed down, fell backward, and injured her already damaged vertebrae.
- She is Hep C positive and the status of her liver is uncertain.
- She experiences irradiating pain from the tip of her toes to the back of her neck. She has weakness, discomfort, and an inability at times to even walk from her bed to the bathroom.

In her Request for Reconsideration, the appellant wrote:

- She has bilateral neural stenosis L4, L5, S1, and Hep C.
- She is unable to sit, stand, carry on normal life.
- She finds herself lying in bed like a dead creature.
- She stopped taking narcotic pain killers prescribed for years.
- She needs to start Interferon to fight Hep C.
- She cannot take care of herself now and her son has come to stay with her, to help her move from her bed.

In the letter dated June 12, 2017, the appellant’s mother wrote:

- Her daughter is struggling for survival after a long period of physical and spiritual disease.
- The appellant is unable to manage a regular normal life and she is unable to assist her any more. She is concerned that the situation is getting worse but she is unable to help her daughter financially.

### ***Mental Impairment***

In the MR and the AR, the GP reported:

- The appellant no difficulties with communication.
- The appellant has significant deficits with cognitive and emotional function in the areas of emotional disturbance and attention or sustained concentration. The GP wrote: “due to her chronic pain, decreased affect, anxious and depressed mood. Her pain then reduces her sustained concentration and multi-tasking abilities.”
- The appellant is not restricted with social functioning. The appellant noted that she has isolated herself, always in a state of emotionally accentuated depression due to the inability to financially and physically support herself.
- The appellant has a good ability to communicate in all aspects, specifically speaking, reading, writing and hearing.
- With respect to daily impacts to the appellant’s cognitive and emotional functioning, the GP

assessed the appellant with major impacts in bodily functions and motivation. There are moderate impacts in consciousness, emotion and other emotional or mental problems, and minimal impacts in consciousness, attention/concentration, executive, and psychotic symptoms. The GP commented: “chronic pain negatively impacting mood with depression and anxiety symptoms (decreased motivation, decreased concentration, decreased multi-tasking, low mood, fairly overwhelmed). Thus executing sustained mental activities and retaining information is difficult.”

- Regarding the appellant’s social functioning, the appellant is independent in all aspects, specifically with making appropriate social decisions, developing and maintaining relationships (the GP notes: “but family and friends are tired of her chronic pain issues and complaints”), interacting appropriately with others, dealing appropriately with unexpected demands, and securing assistance from others. There was no explanation or description provided by the GP.
- The appellant has very disrupted functioning with her immediate social network (note: “due to pain, has become withdrawn and isolating”) and marginal functioning with her extended social network.
- When asked to describe the support/supervision that would help maintain the appellant in the community, the GP wrote: “is getting help from parents for rent, food, transportation; they are elderly and not in a position to continue this support” and “at risk of falling due to back and leg complaints.”
- For additional comments, the GP wrote: “could refer to mental health program for psychological support.

In her self-report, the appellant wrote that she experiences both physical and emotional imbalance.

### ***Daily Living Activities (DLA)***

In the MR and the AR, the GP reported:

- The appellant has been prescribed medication that interferes with her ability to perform DLA with “sedation main side effect.” The anticipated duration is “long-term for neuropathic pain.”
- The appellant is not restricted with the management of medications DLA. The appellant is periodically restricted with the personal self care DLA, the meal preparation DLA, the daily shopping DLA, the mobility inside and outside the home DLA, and the use of transportation DLA. The appellant is continuously restricted with the basic housework DLA and the management of finances DLA.
- For additional comments regarding the degree of restriction, the appellant wrote: “well, at times I cannot even walk to the bathroom.”
- Regarding the “periodic” restrictions, the appellant wrote: “when the spinal neural stenosis makes itself be felt,(every day, sometimes every few days) I am unable to do anything.”
- For additional comments to the MR, the GP wrote: “her chronic neuropathic pain left –sided, into left foot (S1 root distribution) has impacted all aspects of her ADL’s and IADLs and is permanent. Although I will be re-seeking surgical opinion, she will have chronic pain and functional deficits. Toileting, dressing, fixing a meal, even walking to the bus, etc. takes at least 2 to 3 times the normal time to complete compared to an able-bodied individual. The pain has been unresponsive to NSAIDs, nerve stabilizers, narcotics, epidural blocks. It is present with all mobility tasks and is severe and permanent.”
- The appellant requires periodic assistance with walking indoors and with walking outdoors “...with pain flares due to more sustained activity. Need help with railing and intermittent use of cane.”
- The appellant is independent and does not require assistance with all of the tasks for the medications DLA.

- For the personal care DLA, the appellant is independent with feeding self and regulating diet and requires periodic assistance with the tasks of dressing, grooming, bathing, toileting, transfers in/out of bed and transfers on/off chair. The GP wrote: “takes at least 2 to 3 times longer to perform these activities due to back and .... leg pain, with pain flares needs help of friend or family member.”
- Regarding the housework DLA, the appellant requires periodic assistance with the tasks of laundry and housekeeping, and the GP noted: “capable of light activity only and not sustained.”
- Regarding the shopping DLA, the appellant is independent with the tasks of reading prices and labels, making appropriate choices, and paying for purchases, and requires periodic assistance from another person with going to and from stores (note: “it takes 2 to 3 times normal time frame”) and carrying purchases home (note: “if greater than 5 lbs., needs assistance” and “friends and family help carry groceries”).
- For the meals DLA, the appellant is independent with meal planning, food preparation, and safe storage of food and requires periodic assistance with cooking. The GP noted: “with pain flares, per patient, her parents assist.”
- Regarding the pay rent and bills DLA, the appellant is independent with banking and budgeting and requires continuous assistance with paying rent and bills, and the GP noted she “cannot afford therefore needs to borrow money from parents.”
- For the transportation DLA, the appellant requires periodic assistance from another person with the tasks of getting in and out of a vehicle, using public transit, and using transit schedules and arranging transportation. The GP noted: “...due to back and leg pain.”
- For additional comments, the GP wrote: “...due to longevity and consistency of her symptoms, plus the fact that she is getting older and more de-conditioned, her medical degenerative disc and stenosis impacts are permanent” and she will “re-see opinion from orthopedic and pain specialists but they will be reluctant to operate due to symptom longevity. She will continue to have chronic pain despite surgical intervention or pharmaco therapy trials. Even if her pain can be reduced to a small degree, she might “enjoy” life more but will remain restricted with her ADLs and IADL’s.”

In her self-report, the appellant wrote that she has not been able to work for over 4 years.

In the letter dated June 13, 2017, the appellant’s son wrote:

- His mother is physically and mentally unfit to care for her own basic needs. Her condition has become detrimental to her health and well-being, and it continues to negatively impact herself and her family.
- The appellant has no way of providing for herself and everyone in her family has done everything they can do. They are not able to care for her financially and she is incapable.

***Need for Help***

The GP reported in the AR that help required for DLA is provided by family and friends and the GP wrote “...for rent, food, transportation assistance with ADL’s. The GP commented regarding help required but not available that the appellant “...might need volunteer drivers to take to appointments, etc.” The GP identified the occasional use of a cane as an assistive devices being used by the appellant, and she does not have an assistance animal.

***Additional information***

In her Notice of Appeal dated July 8, 2017, the appellant expressed her disagreement with the ministry’s reconsideration decision and she wrote that she is Hep C positive with bilateral neural spinal stenosis, which impairs her severely. She cannot lead a normal life due to the medical issues she has been cursed with.

At the hearing, the appellant stated:

- She stopped going to see the doctor because she had been prescribed huge amounts of narcotics for her pain and she finally decided she could not take them anymore. She could not move. She stopped taking everything.
- She lost her life because she basically lies on her back in bed and cannot take care of herself.
- Her son has come to take care of her. He observed that she had not been washing herself, had not been making herself food. He was emotionally distraught on discovering her condition and appealed to her to take enough medication to be able to function.
- She started work as a teenager and has worked all over the world, lived a very active life, and enjoyed remarkable stamina.
- Now she is “like a potato” in bed, crying all the time and hiding from the rest of the world.
- Her pain is really bad, it shoots from the bottom of her leg to her head, she can only lie on her back, close her eyes, and wait for the pain to pass.
- She cannot sit or stand for any length of time. Something is “really wrong” with her.
- With her lumbar disc disease, she is waiting to hear about the possibility of an operation because, otherwise, she will end up being paralyzed.
- For her type of Hep C, there is a 90% chance of success/ cure after treatment for 6 months with Interferon and she is looking at starting the treatment.
- She has not been able to work. She cannot do much. She also suffered a series of unfortunate events, including being thrown down some stairs and fracturing her vertebrae at L4, that made matters worse.
- She was getting evicted again because she could not pay the rent and her son came to help. He does everything for her. He does the laundry because she cannot.
- Her mind is functioning but, psychologically, she is unstable.
- She had to start the narcotics again so that she can get into the shower and go to the washroom.
- Whereas she was using a cane occasionally before, she would need to use it all the time now, but she does not walk very much. Inside the house, she leans on the walls and counters to move about.
- The PWD application was done a year ago when she had pain flare-ups and needed periodic assistance, but now the pain is constant and she needs help every day. She added comments to the MR and the AR regarding her ability to perform DLA after the GP completed the reports.
- She still has flare-ups that are like an electric shock that goes up her leg and causes her to lose her breath, but these flares happen every day. She thinks it is caused by the friction of the spine against the nerve and, when the flare occurs, she “cannot even think.” She will be getting another nerve block injection that creates a buffer between the nerve and the bone and alleviates the pain for a while.
- She is undergoing blood and other medical tests since she returned to the doctor and they will see what can be done. Sometimes one hand swells up like a balloon and they do not know what the problem is. She currently has a number of things going wrong with her body.
- In a year, her situation has worsened and she cannot do anything on her own anymore.

The ministry relied on the reconsideration decision as summarized at the hearing. At the hearing, the ministry clarified that the PWD designation involves a consideration of the applicant’s ability to perform DLA, while the Persons with Persistent Multiple Barriers to employment (PPMB) status relates to the inability to work.

***Admissibility of Additional Information***

The ministry did not object to the admissibility of the additional information provided by the appellant in her oral testimony. The panel considered the appellant's oral testimony as being in support of, and tending to corroborate, the impact from medical conditions referred to in the PWD application and the Request for Reconsideration, which were before the ministry at reconsideration. Therefore, the panel admitted this additional information in accordance with Section 22(4)(b) of the *Employment and Assistance Act*.

## 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 lumbar disc herniation with radiculopathy and Hepatitis C. The ministry considered that the GP wrote that the Hep C “currently is asymptomatic” and, regarding her lumbar disc, that she “...has displayed consistent left-sided nerve root L5-S1 symptoms and signs of radicular burning pain, reduced straight leg raising ability, absent left ankle jerk” and that “...her movement, sitting ability, and resulting pain is severe.” The appellant stated at the hearing that she is considering treatment for her Hep C and that, in the period of time since the PWD application was completed, she has cut back on the narcotics she is taking for pain management and her condition has become much worse. The panel notes that the MRI Consultation Report completed in June 2014, confirmed a “subacute anterosuperior endplate fracture of L4” and “multi-level spondylosis of the lumbar spine, primarily characterized by disc bulge at L5-S1 which contacts the left S1 nerve root,” but there were no further medical reports available on the appeal. The appellant stated that she has returned to her doctor’s care and she is currently undergoing a number of tests to update her medical conditions.

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 MR and the AR. The ministry wrote that the GP reported in the MR that the appellant is able to walk 1 to 2 blocks unaided on a flat surface, climb 2 to 5 steps unaided, lift under 5 lbs, and remain seated less than 1 hour, that she “needs frequent breaks and wiggles in the seat.” The GP reported that the appellant does not require an aid for her impairment, and that she walks indoors and outdoors, climbs stairs and stands with periodic assistance of another person, described as “...with pain flares due to more sustained activity needs help with railing and intermittent use of a cane.” Although the appellant wrote in her Request for Reconsideration that she stopped taking narcotic pain killers prescribed for years and she is unable to sit, stand, carry on normal life, that she finds herself lying in bed like a dead creature, the appellant stated at the hearing that she is starting to take some narcotic medication again so that at least she can function minimally. The appellant stated that her condition is much worse than at the time of the PWD application and whereas she only occasionally used a cane at that time, she would need a cane all the time now, although she does not walk outdoors much. There was no further information from the GP available on the appeal to confirm the appellant’s increased need for the use of an assistive device. The ministry considered that the GP indicated the appellant requires continuous assistance from another person with lifting and carrying and holding and noted that the GP specified that the assistance is required for weights in excess of 5 to 7 lbs.

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 MR and in the AR forms.

In the letter dated June 12, 2017, the appellant's mother wrote that her daughter is struggling for survival after a long period of physical and spiritual disease, she is concerned that the situation is getting worse, but she is unable to help her daughter financially.

Given the original assessments by the GP of physical functional skills in the moderate range and a lack of detail regarding exacerbations to the appellant's condition and the resulting need for assistance, and no further information from the GP available on the appeal, 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 significant deficits in cognitive and emotional functioning in the areas of emotional disturbance and attention or sustained concentration, and commented that this is "due to chronic pain" and that her pain "reduces her sustained concentration and multi-tasking abilities." The GP indicated two major impacts to daily cognitive and emotional functioning in the areas of bodily functions and motivation and commented that "chronic pain negatively impacting mood and depression and anxiety symptoms." Although the appellant stated at the hearing that her mind is functioning but, psychologically, she is unstable, the panel notes that there is no diagnosis of a condition within the mental disorders category of the diagnostic codes, and the GP draws a connection between the appellant's chronic pain, not a mental disorder, and these symptoms.

The ministry wrote that the GP reported the appellant has no difficulties with communication and all her ability in all areas is good. The ministry reasonably considered that the GP reported that the appellant is not restricted with social functioning and she is independent in all aspects. The ministry considered that although the GP assessed very disrupted functioning with the appellant's immediate social network and marginal function with her extended social network, the GP did not report a need for help to maintain the appellant in the community and wrote that she is "getting help from parents for rent, food, transportation; they are elderly and not in a position to continue this support." Although the GP wrote additional comments that she "could refer to mental health program for psychological support," there was no further information to indicate that this refer has been made or that the appellant is part of a mental health program.

Given the absence of a definitive diagnosis of a mental health condition and the lack of evidence of significant impacts to the appellant's cognitive and emotional and social functioning, the panel finds that the ministry reasonably determined that a severe mental impairment was not established under Section 2(2) of the EAPWDA.

### **Restrictions in the ability to perform DLA**

In the reconsideration decision, the ministry was not satisfied that the appellant has a severe physical or mental impairment that, in the opinion of the prescribed professional, directly and significantly restricts DLA either continuously or periodically for extended periods of time.

Section 2(2)(b) of the EAPWDA requires that a prescribed professional provide an opinion that an applicant's severe impairment directly and significantly restricts her ability to perform DLA, either continuously or periodically for extended periods. In this case, the GP is the prescribed professional. DLA are defined in Section 2(1) of the EAPWDR and are also listed in the MR and, with additional details, in the AR. Therefore, a prescribed professional completing these forms has the opportunity to indicate which, if any, DLA are significantly restricted by the appellant's impairment continuously or periodically for extended periods.

In the reconsideration decision, the ministry reviewed the information provided in the MR and noted that the GP indicated that the appellant has been prescribed medications that interfere with her ability to perform DLA, specifically pain medication that has sedation as its main side effect. The ministry wrote that the GP indicated in the MR that the appellant is restricted continuously with the basic housework DLA and the management of finances DLA. The ministry reasonably considered that the comment by the GP in the AR that the appellant "...cannot afford and needs to borrow money from parents" is not related to an impairment of functioning, but to financial issues. The appellant's son wrote in his letter dated June 13, 2017, that his mother is physically and mentally unfit to care for her own basic needs and everyone in her family has done everything they can do and they are not able to care for her financially. The ministry wrote that while there are a number of DLA that the GP indicated are periodically restricted, the comments regarding degree of restriction that "well, at times I cannot even walk to the bathroom," and regarding the 'periodic' nature: "when the spinal neural stenosis makes itself be felt, (every day, sometimes every few days) I am unable to do anything," were not provided by the GP as the prescribed professional and cannot be considered as such. The comments by the appellant are considered part of her self-report and not the opinion of a prescribed professional, unless specifically endorsed by the prescribed professional. The appellant acknowledged at the hearing that she added these comments after the GP completed the report.

Section 2(2) of the EAPWDA requires that a severe impairment directly and significantly restricts the appellant's ability to perform the prescribed DLA either continuously or periodically for extended periods. The direct and significant restriction may be either continuous or periodic. If the restriction is periodic, it must be for an extended time. Inherently, any analysis of periodicity must also include consideration of the frequency. All other things being equal, a restriction that only arises once a year is less likely to be significant than one which occurs several times a week. Accordingly, in circumstances where the evidence indicates that a restriction arises periodically, it is appropriate for the ministry to require evidence of the duration and frequency of the restriction in order to be "satisfied" that this legislative criterion is met.

The ministry wrote that the appellant is assessed by the GP in the AR as requiring periodic assistance from another person with many tasks of DLA, including several of the tasks of the personal care DLA. The GP wrote that "takes at least 2 to 3 times longer to perform these activities due to back and ...leg pain, with pain flares needs help of friend or family member." Although the appellant stated at the hearing that she had to start taking pain medication again in order to be able to get out of bed and to take a shower and go to the washroom and that the "pain flares" occur every day, there was no further information on the appeal from the prescribed professional to confirm that the flares of pain occur every day. The appellant also stated at the hearing that her son has come to help her and that he does everything around the house, including her laundry. In the AR, the GP reported that the appellant requires periodic assistance with the tasks of laundry and housekeeping, and she is "...capable of light activity only and not sustained." The GP also indicated that the appellant requires periodic assistance with the physical tasks of the shopping DLA, commenting that going to and from stores takes 2 to 3 times longer than normal, and that she requires assistance for carrying heavier groceries, over 5 lbs. in weight.

At the hearing, the appellant stated that her son makes the meals, and in the AR the GP assessed the appellant as being independent with the tasks of meal planning, food preparation and safe storage of food, and requiring periodic assistance with cooking during "pain flares" that are not described by the GP with respect to frequency. The GP also indicated that the appellant requires periodic assistance from another person with tasks of the transportation DLA, with getting in and out of a vehicle, using public transit, and using transit schedules and arranging transportation "...due to back and leg pain." The ministry concluded that the frequency and duration of these periods are not

described by the GP in order for the ministry to determine that the restrictions represent a significant restriction to the appellant's overall functioning.

The ministry also considered the additional comments made by the GP in the AR that "...due to longevity and consistency of her symptoms, plus the fact that she is getting older and more de-conditioned, her medical degenerative disc and stenosis impacts are permanent," she will "continue to have chronic pain despite surgical intervention or pharmacotherapy trials," and "even if her pain can be reduced to a small degree, she might "enjoy" life more but will remain restricted with her ADLs and IADL's." The GP did not elaborate on the frequency or duration of the restrictions to the appellant's DLA to allow the ministry to determine that a need for periodic assistance is for extended periods of time.

In her self-report, the appellant wrote that she has not been able to work for over 4 years. At the hearing, the appellant stated that she has not been able to work since she "cannot do much," she was getting evicted again because she could not pay the rent and her son came to help her. The panel notes that employability is not a criterion in section 2(2) of the EAPWDA nor is it listed among the prescribed daily living activities in section 2 of the EAPWDR.

Given the GP's report of periodic restrictions and the need for periodic assistance from another person with tasks of DLA without a description of how often the appellant experiences exacerbations in her condition, or "pain flares," 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 friends and she occasionally uses a cane as an assistive device, 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.