

## 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 June 28, 2017, which held that the appellant did not meet 3 of the 5 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 and duration requirements, but was not satisfied that:

- 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 those restrictions, the appellant requires an assistive device, the significant help or supervision of another person 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

On March 25, 2017 the ministry received the appellant's PWD application comprised of a Medical Report (MR) and an Assessor Report (AR) completed by the appellant's general practitioner (the "Physician") on January 20, 2017, and the appellant's Self-report (SR) dated January 26, 2017. The appellant also provided the following:

- Two notes from the appellant's former general practitioner one undated and one dated 14/2/14 (the "Physician's Notes")
- Letter from the Physician dated January 17, 2017
- Letter from a registered nurse (the "RN") dated January 26, 2017

The appellant's request for PWD designation was denied on May 10, 2017. On June 14, 2017 the appellant submitted her completed Request for Reconsideration (RFR) dated June 14, 2017 that set out her argument as to why the ministry's decision to deny her PWD designation was not reasonable.

On July 7, 2017, the tribunal received the appellant's Notice of Appeal.

### Summary of relevant evidence

#### Diagnoses

In the MR, the Physician indicates that the appellant has been diagnosed with rheumatoid arthritis, date of onset February 2000. Under Health History the Physician indicates that the appellant has general joint pain with swelling, stiffness of joints and that her hands are mostly affected. The Physician indicates that the appellant has been his patient for eight months.

In her letter, the RN indicates that the appellant has rheumatoid arthritis and migraine headaches that have been affecting her for years.

#### Physical Impairment

The notes from the appellant's former general practitioner dated 14/2/14 indicate that the appellant cannot do her job anymore because of pain from her rheumatoid arthritis.

In the MR for Functional Skills, the Physician indicates that the appellant is able to walk 1 to 2 blocks unaided on a flat surface, can climb 2 to 5 steps unaided, can lift 5 to 15 pounds and can remain seated 1 to 2 hours. Under Part F – Additional Information, the Physician indicates that the appellant's condition is largely managed with rheumatic medication but that does not prevent painful episodes.

In the AR, the Physician indicates that the appellant is independent with walking indoors, requires periodic assistance with walking outdoors, climbing stairs, and standing and requires continuous assistance with lifting and carrying and holding.

In his letter dated January 17, 2017 the Physician indicates that the appellant needs six months off work due to medical reasons.

The RN indicates that the appellant's rheumatoid arthritis and migraines have left her very weak and debilitated and that her rheumatoid arthritis affects her spine, hands, elbows and all joints. The RN indicates that the appellant applied for PWD approximately 4 years ago and has is now 90% worse. The RN indicates that the appellant sees a rheumatoid arthritis doctor every 8 months.

### Mental Impairment

In the MR, the Physician indicates that the appellant does not have any significant deficits with cognitive and emotional function.

In the AR, the Physician indicates that the appellant's ability to communicate with speaking, reading, writing and hearing is good. For Section B, question 4 Cognitive and Emotional Functioning the Physician indicates that the appellant has moderate to her daily functioning in the area of motor activity but no impact to the other listed aspects of daily functioning.

### DLA

In the MR the Physician indicates that the appellant has not been prescribed any medications that interfere with her ability to perform DLA.

In the AR, the Physician indicates that with respect to personal care the appellant is independent with grooming, toileting, feeding self, and regulating diet but requires periodic assistance from another person with dressing, bathing, transfers (in/out of bed) and transfers (on/off chair). He indicates that the appellant requires continuous assistance with laundry and basic housekeeping. With respect to shopping the Physician indicates that the appellant is independent with reading prices and labels, making appropriate choices and paying for purchases but requires continuous assistance from another person with going to and from stores and carrying purchases home. The Physician indicates that the appellant is independent with all aspects of meals, paying rent and bills and medications. He indicates that she requires periodic assistance with getting in and out of a vehicle and using transit schedules and arranging transportation and continuous assistance with using public transit.

The Physician indicates that the appellant is independent with all aspects of social functioning. When asked to describe how the mental impairments impact the appellant's relationships, the Physician indicates "N/A".

The RN indicates that the appellant cannot shop, walk or weight bear on her legs 90% of the time.

### Need for Help

In the MR, the Physician indicates that the appellant does not require any prosthesis or aids for her impairment. In the AR, the Physician indicates that the help required for DLA is provided by the appellant's family. When asked to describe what assistance would be necessary if help is required but not available, the Physician states "not known". The Physician indicates that the appellant uses a cane at times. The appellant does not have an Assistance Animal.

The RN indicates that the appellant uses aides to help her sit, walk, and function on a daily basis.

### **Additional information provided**

In her Notice of Appeal dated July 7, 2017, the appellant states that the reconsideration decision was not reasonably supported by the evidence and/or was not a reasonable application of the legislation.

Prior to the hearing the appellant submitted a three-page argument prepared by her advocate (the "Submission").

At the hearing the appellant stated that although the Physician indicates that the AR was completed based on an office interview with the appellant and her file/chart information, the appellant states that the Physician did not speak to her about the information provided in the MR or AR. The appellant states that her previous family physician knew her well but he retired and the Physician has only known her eight months and she sees him every three months to renew her medication prescriptions.

The appellant stated that the Physician's information in the AR that she lives with family, friends or caregiver is not correct as she lives alone. The appellant stated that she has stiffness in all of her joints and her right arm/elbow is the worst and because she is right-handed that is very problematic. She states that she takes three muscle relaxants every day which "put her to sleep" so she disagrees with the Physician's statement in the MR that she has not been prescribed any medication that interferes with her ability to perform DLA. The appellant also states that while the Physician indicates that she uses a cane "at times" that is not accurate as she uses a cane every day as well as a raised toilet and foam grips for her utensils. On her worst days she uses a walker that has a seat so that she can sit and take breaks. The appellant stated that without a cane or walker for help, she could not walk one block, but with her cane she can walk 1-2 blocks. The appellant also stated that without a cane she cannot climb any stairs. She stated that with respect to lifting, she would shake a lot and drop items weighing 15 pounds and that her lifting is limited to closer to 5 pounds. The appellant stated that with respect to sitting she cannot sit more than 30 minutes and even with that she will have increased pain.

The appellant stated that because of the arthritis in her joints, she cannot straighten her right elbow or use it much and her writing is illegible unless she uses foam grips. She stated that her daughter does all of her laundry and shopping and her sister comes every other day and helps with housework.

The appellant's advocate presented the Submission and oral argument setting out the appellant's position as to why the reconsideration decision was not reasonably supported by the evidence and was not a reasonable application of the legislation.

### **Admissibility of New Information**

The ministry did not object to the new evidence.

The panel has admitted the appellant's oral testimony, as it is evidence in support of information and records that were before the ministry at the time of reconsideration, in accordance with section 22(4) of the *Employment and Assistance Act*. In particular, the information corroborates the RN information regarding the appellant's physical impairment and impacts to her function.

The panel has accepted the information in the Notice of Appeal, the advocate's oral testimony and the Submission as argument.

## PART F – Reasons for Panel Decision

### **Issue on Appeal**

The issue on appeal is whether the ministry's decision to deny the appellant 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. In particular, was the ministry reasonable when concluding it was not satisfied that

- a severe physical or mental impairment was established;
- 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 those restrictions, in the opinion of a prescribed professional, the appellant requires help, as it is defined in the legislation, to perform DLA?

### **Relevant Legislation**

#### **EAPWDA**

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 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).

## EAPWDR

### 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.

(3) The definition of "parent" in section 1 (1) applies for the purposes of the definition of "dependent child" in section 1 (1) of the Act.

### 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).

### **Panel Decision**

The legislation provides that the determination of severity of an impairment is at the discretion of the minister, taking into account all of the evidence including that of the appellant. However, the legislation is also clear that the fundamental basis for the analysis is the evidence from a prescribed professional respecting the nature of the impairment and its impact on daily functioning. While the legislation does not define "impairment", the MR and AR define "impairment" as 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." While this is not a legislative definition, and is therefore not binding on the panel, in the panel's opinion, it reflects the legislative intent and provides an appropriate analytical framework for assessing the degree of impairment resulting from a medical condition.

When considering the evidence provided respecting the severity of impairment, the ministry must exercise its decision-making discretion reasonably by weighing and assessing all of the relevant evidence and cannot simply defer to the opinion of a prescribed professional as that would be an improper fettering of its decision-making authority.

### **Severe Physical Impairment**

The appellant's position is that the evidence, when considered in its entirety and broadly as required *Hudson v Employment and Assistance Appeal Tribunal*, 2009 BCSC 1461 ("*Hudson*") demonstrates that the appellant satisfies the criteria for a severe physical impairment. In particular, the Submission indicates that the reconsideration decision generalizes the evidence and has not reasonably considered the Physician's evidence, stating that both the Physician and the former general practitioner focus more on the appellant's employability rather than her functional skills.

The appellant's position is that the ministry has not reasonably considered the RN's information in conjunction with the Physician's information and that if the ministry had considered the evidence in its entirety and in a broad way, it would have concluded that the appellant's medical regime does not prevent painful episodes, that the appellant needs periodic assistance with walking outdoors, climbing stairs and standing and that lifting, carrying and holding are restricted to such a degree that she needs continuous assistance. The appellant's position is that all of the information, particularly that of the RN which indicates that she cannot shop, walk, or weight bear on her legs 90% of the time, confirms that she has a severe physical impairment.

The ministry's position is that the information provided does not establish a severe physical impairment. The reconsideration decision indicates that it considered all of the information including

the appellant's information regarding her impairment in the RFR and the letter from the RN. The ministry notes that both the Physician and the appellant's former general practitioner primarily focus on the appellant's employability and that employability is not set out as an eligibility criterion of the PWD legislation.

The reconsideration decision reviews the functional skills indicated by the Physician and notes that the Physician indicates that the appellant requires continuous assistance with lifting and carrying and holding. The ministry notes that the Physician indicates that the appellant requires periodic assistance with walking outdoors, climbing stairs, and standing, but that no narrative is provided to explain the type, degree or the frequency of the assistance that the appellant requires. The ministry's position is that it is unable to establish that the appellant is restricted to a significant degree. The reconsideration decision notes that the Physician indicates that the appellant does not require the use of any prosthesis or aids to manage her physical functioning although he also notes that she uses a cane "at times" but does not provide further information to explain the degree or the frequency in which the appellant relies on a cane to manage her physical mobility. The ministry's position is that the functional skill limitations described by the appellant's medical practitioner do not describe a severe degree of physical impairment. Therefore, the minister is not satisfied that the information provided is evidence of a severe physical impairment.

The appellant argues that the reconsideration decision generalizes the evidence by stating that the Physician and the former general practitioner focus on employability. However, the panel finds that the only information provided from the former general practitioner comprises two notes that both indicate that the appellant cannot do her job anymore because of her pain and rheumatoid arthritis. While the MR and AR provide information regarding the appellant's functional skills, DLA, and help needed, the only other information provided by the Physician is the letter dated January 17, 2017 in which the Physician addresses the appellant's employability. The reconsideration decision then continues to explain why the ministry did not find that the Physician's information described a severe degree of physical impairment, noting that there was no narrative from the Physician regarding the degree, or frequency of periodic assistance needed or the degree and frequency of the appellant's reliance on her cane. The panel finds that while the reconsideration decision does start out noting its review of the information regarding the appellant's employability, the reconsideration further explains the ministry's position by pointing to specific portions of information from the Physician regarding the appellant's functional skills, so the panel does not agree that the reconsideration decision generalizes the evidence.

The appellant argues that the Physician confirms that she routinely uses a cane to assist her mobility but in the AR, the Physician indicates the appellant uses a "cane at times". There is no further information from the Physician to explain how frequently "at times" means and given the high level of independent functioning described, this information does not confirm that the appellant routinely uses a cane, particularly when in the MR the Physician indicates that the appellant does not require the use of any prosthesis or aids for her impairment.

The appellant states that the information provided by the Physician is not sufficient as he did not conduct an office interview with her and is incorrect with respect to her living situation. In addition, the appellant argues that the Physician in the MR indicates that she does not require any prosthesis or aids but then in the AR does note that she requires a cane "at times". The appellant argues that she in fact requires a cane all the time and a walker at times, so the appellant argues that the ministry ought to have relied on the RN information and taken the information all into consideration so that when read in a broad way it demonstrates that she has a severe physical impairment. While the RN indicates that the appellant cannot walk, shop or weight bear on her legs 90% of the time, the RN does not speak to the functional skills questions set out in the MR. While the RN indicates that the



appellant uses an aide to help her sit, walk, and function on a daily basis the RN does not address specify the type of aide or provide any further narrative to indicate that the information provided by the Physician is not accurate, other than indicating that the Physician does not know the appellant. Furthermore, the appellant did not provide any information from the Physician correcting the statements and information that she states is not accurate.

While the Physician indicates in the AR, that the appellant requires continuous assistance with lifting and carrying and holding, the MR indicates that the appellant's limitations with lifting are 5 to 15 pounds so that information is not consistent. In addition, the letter from the RN does not address the appellant's functional skills by providing information regarding limitations with lifting or other information regarding carrying and holding, other than to indicate that she needs assistance with shopping. In the AR the Physician indicates that the appellant requires periodic assistance with walking outdoors, climbing stairs and standing but this is inconsistent with the information in the MR that indicates the appellant can walk 1 to 2 blocks unaided and can climb 2 to 5 steps unaided and inconsistent with the information provided by the appellant.

While the evidence must be read in a broad way, the inconsistencies within the Physician's information in the MR and the AR make it difficult to obtain a clear picture of the appellant's functional and skills. When considering the Physician's information in the MR and the AR and the letter from the RN, the information is vastly different, so the panel finds that the ministry reasonably determined that the information provided is not evidence of a severe physical impairment. While the appellant states that she uses a cane every day and uses a walker at times, the Physician does not provide any information that the appellant uses or needs a walker and the RN only notes that the appellant uses an aide, but does not specify the type of aide. Although the appellant submits that when read together it is clear that she relies heavily on her cane to manage her physical ability the panel finds that when read together the information raises inconsistencies that make it difficult to determine the appellant's functional skills.

The panel also notes that while the RN indicates that the appellant sees a rheumatoid arthritis specialist every 8 months, there is no information provided by the specialist to provide any information regarding the impact of the appellant's impairment on her function skills so the fact that the appellant sees a specialist does not confirm the severity of her impairment. In addition, in the MR, the Physician, under Section F – Additional Comments, while indicating that the appellant's medication does not prevent painful episodes, he indicates that her condition is largely managed with rheumatic medications.

Based on the foregoing, the panel therefore finds that the ministry reasonably determined that a severe physical impairment has not been established.

### Severe Mental Impairment

The appellant did not argue that she has a severe mental impairment.

The ministry's position is that a mental diagnosis has not been provided and the Physician reports that the appellant does not have deficits to cognitive and emotional functioning. The ministry notes that in assessing the impact of cognitive and emotional function on daily living the Physician indicates that the appellant has one impact in the area of motor activity, but no impact on daily living in all other areas of cognitive and emotional functioning. The Physician indicates that the appellant has no difficulties with communication and the appellant's ability to communicate is good in all areas. The ministry's position is that the information provided does not indicate that the appellant has a severe mental impairment.

As there is no diagnosis of a mental impairment, only moderate impact to one aspect of cognitive and emotional function in the area of motor activity, no impact in all other areas of cognitive and emotional function, and the appellant did not argue that she has a severe mental impairment, the panel finds that the ministry reasonably concluded that the information provided is not indicative of a severe impairment of mental functioning.

#### Restrictions in the ability to perform DLA

Section 2(2)(b)(i) of the EAPWDA requires that the minister be satisfied that in the opinion of a prescribed professional, a severe mental or physical impairment directly and significantly restricts the appellant's ability to perform DLA either continuously or periodically for extended periods. While other evidence may be considered for clarification or support, the ministry's determination as to whether or not it is satisfied that the legislative criteria are met, is dependent upon the evidence from prescribed professionals. The term "directly" means that there must be a causal link between the severe impairment and the restriction. The direct restriction must also be significant. Finally, there is a component related to time or duration – the direct and significant restriction may be either continuous or periodic. If periodic, it must be for extended periods. Inherently, any analysis of periodicity must also include consideration of how frequently the activity is restricted. All other things being equal, a restriction that only arises once a year is less likely to be significant than one that 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.

DLA are defined in section 2(1) of the EAPWDR and are listed in both the MR and the AR sections of the PWD application with the opportunity for the prescribed professional to check marked boxes and provide additional narrative. DLA, as defined in the legislation, do not include the ability to work.

The appellant's position is that the information provided, when read in its entirety and in a broad way, establishes that she has a severe impairment that directly and significantly restricts her DLA continuously or periodically for extended periods.

The appellant argues that the information from the Physician indicates that she needs periodic or continuous assistance for five out of six aspects of Mobility and Physical ability. She also argues that the fact that the Physician indicates her need for periodic or continuous assistance in three activities of DLA confirms that those DLA are significantly restricted and that the legislation seeks the prescribed professionals opinion, not the ministry's opinion.

The ministry's position is that a severe impairment has not been established. The reconsideration decision notes that the Physician indicates that the appellant requires continuous assistance with basic housekeeping, going to and from stores, carrying purchases home, and using public transit and periodic assistance with areas of personal care and transportation but no information is provided to explain the type, frequency or duration of the assistance that the appellant requires. The ministry's position is that it is unable to establish that the appellant's ability to manage these areas of daily living is restricted to a significant degree, particularly when the Physician indicates that the appellant is independently able to manage all other DLA including areas of personal care, shopping, meals, paying rent and bills, and medications.

The ministry notes that the RN indicates that the appellant cannot shop, walk, or weight bear on her legs 90% of the time and that she uses aides to help her sit, walk, and function on a daily basis, but no additional information is provided to explain the type of assistance the appellant requires to manage her DLA, or the aids that she uses to manage her physical functioning.

The ministry also notes that the Physician indicates that the appellant is independent with social functioning, noting "N/A" where asked to describe the appellant's relationships.

The ministry acknowledges that the appellant experiences some limitations resulting in her need for assistance to manage DLA but as the majority of her DLA are performed independently or the degree of the assistance that she requires remains unclear, the information from the prescribed professional does not establish that the appellant's impairment significantly restricts DLA either continuously or periodically for extended periods.

The appellant argues that as the RN indicates that the appellant cannot shop, walk or weight bear on her legs 90% of the time and uses aids to help her sit, walk, and function on a daily basis, that when read together it is clear that she relies heavily on her cane to manage her physical mobility. The appellant also argues that *Hudson* directed that it is sufficient if either the medical practitioner or the prescribed professional confirms that direct and significant restrictions to a person's ability to perform DLA and there is no statutory requirement for confirmation from both the medical practitioner and the prescribed professional. However, the panel notes that the information from the Physician and the RN is very different and when reading all of the information together it is extremely difficult to obtain a clear picture of the degree of the appellant's restrictions to DLA or help needed. The Physician's information in the MR and the AR indicate quite a high level of independent functioning whereas the RN indicates a much more restricted level of functioning but when read together it is very difficult to obtain a clear picture of the appellant's functioning or restrictions to DLA.

The appellant argues that the legislation seeks the prescribed professional's opinion not the ministry's position but as noted above the ministry must be satisfied that the prescribed professional's opinion meets the legislative criteria. Given the inconsistencies in the information and the lack of information explaining the inconsistencies and providing further information regarding the nature, frequency and duration of periodic assistance needed, the panel finds that the ministry was reasonable in determining that the information provided by the prescribed professionals does not meet the legislative criteria.

Based on the above analysis, the panel finds that the ministry has reasonably determined that the independence with which the prescribed professionals report that the appellant manages her DLA does not confirm that the appellant has a severe impairment that significantly restricts her ability to perform DLA continuously or periodically for extended periods.

#### Help to perform DLA

Section 2(2)(b)(ii) of the EAPWDA requires that, *as a result of direct and significant restrictions in the ability to perform DLA*, a person requires help to perform those activities. 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 DLA.

The appellant's position is that she requires help with DLA because of her severe physical impairment. The appellant's position is that she requires help with shopping, laundry and housework and that she relies heavily on her cane and uses a walker.

The ministry argues that because it has not been established that DLA are significantly restricted, it cannot be determined that help is required.

In the MR, the Physician indicates that the appellant does not require any prosthesis or aids for her impairment. In the AR, the Physician indicates that the help required for DLA is provided by the appellant's family. When asked to describe what assistance would be necessary if help is required but not available, the Physician states "not known". The Physician indicates that the appellant uses a cane at times. The appellant does not have an Assistance Animal.

The information provided by the RN indicates that the appellant cannot shop, walk, or weight bear on her legs 90% of the time and that she uses aides to help her sit, walk, and function on a daily basis. However the information from the RN does not provide any further information about help needed, the type of aides required. Although the appellant has provided oral testimony that she uses a cane daily, a walker periodically and foam utensil grips daily there is no information from either the Physician or the RN confirming this information.

Given that confirmation of direct and significant restrictions with DLA is a precondition of the need for help criterion and as the panel found that the ministry reasonably determined that direct and significant restrictions in the appellant's ability to perform DLA have not been established, the panel also finds that the ministry reasonably concluded that it cannot be determined that the appellant requires help to perform DLA as required by section 2(2)(b)(ii) of the EAPWDA.

### 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 and is a reasonable application of the applicable enactment, and therefore confirms the decision. The appellant is not successful on appeal.