

PART C – Decision under Appeal

The decision under appeal is the Ministry of Social Development and Social Innovation (the ministry) reconsideration decision dated June 22, 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 Persons With Disabilities (PWD) Application comprised of the appellant's information dated December 8, 2015 and no self-report completed, a physician report (PR) dated March 14, 2016, and an assessor report (AR) dated March 16, 2017 and both completed by a general practitioner (GP) who has known the appellant since October 2014 and has seen her 3 times in the last year.

The evidence also included the following additional documents:

- 1) Consultation Report dated May 31, 2012 regarding an MRI of the appellant's head and cervical spine;
- 2) Consultation Report dated September 30, 2012 regarding an MRI of the appellant's thoracic and lumbar spine;
- 3) Letters dated February 21, 2013 from a physician specializing in neurology and electromyography;
- 4) Outpatient Clinic Noted dated April 15, 2013;
- 5) Consultation Report dated May 1, 2013 regarding a CT scan of the appellant's lumbar spine;
- 6) Letters dated June 3, 2013 and July 5, 2013 from a physician specializing in physical medicine & rehabilitation/ electromyography;
- 7) Medical Imaging Report dated March 12, 2014 regarding a thyroid ultrasound;
- 8) Letters dated October 3, 2014 and May 8, 2017 in which the ministry denied the appellant's PWD application;
- 9) Imaging Report dated November 10, 2014 regarding a lumbar epidural injection;
- 10) Medical Imaging Report dated November 26, 2014 a CT scan of the appellant's head;
- 11) Emergency Department Visit Information Report dated November 26, 2014;
- 12) Letter dated December 18, 2014 from a physician specializing in physical medicine & rehabilitation/ electromyography;
- 13) Medical Imaging Report dated February 1, 2015 regarding an MRI of the lumbar spine;
- 14) Letters dated March 2, 2015 and March 11, 2015 from a physician specializing in endocrinology and metabolism;
- 15) Letter dated April 13, 2015 from a physician specializing in physical medicine & rehabilitation/ electromyography;
- 16) Consultation Report dated April 18, 2015 regarding an abdominal and pelvic ultrasound;
- 17) Letters dated May 21, 2015, June 15, 2015 and July 6, 2015 from the neurosurgeon;
- 18) Imaging Report dated June 16, 2015 regarding an epidural injection at L4, L5 and S1;
- 19) Medical Opinion Report dated September 28, 2015 by a physician specializing in physical medicine and rehabilitation;
- 20) Letter dated December 21, 2015 from a physician specializing in physical medicine & rehabilitation/ electromyography;
- 21) Letter dated January 12, 2016 from a physician specializing in urology;
- 22) Letter dated February 29, 2016 and July 14, 2016 from a physician specializing in endocrinology and metabolism;
- 23) Letter dated June 13, 2016 from a physician specializing in physical medicine & rehabilitation/ electromyography;
- 24) Imaging Report dated November 26, 2016 regarding a CT scan of the appellant's lumbar spine;
- 25) Letter dated January 19, 2017 from a physician specializing in physical medicine & rehabilitation/ electromyography; and,
- 26) Request for Reconsideration dated June 8, 2017 with handwritten reasons dated June 7, 2017.

Diagnoses

In the PR, the GP diagnosed the appellant with severe neuroforaminal stenosis L5-S1, with an onset in 2012. Asked to describe the mental or physical impairments that impact the appellant's ability to manage daily living activities (DLA), the GP left this section of the AR incomplete.

Physical Impairment

In the PR and the AR, the GP reported:

- With respect to the health history, "chronic pain due to MVA [Motor Vehicle Accident] 2012 with L5 herniation causing lower extremity weakness and urinary incontinence. Unable to walk long distances due to weakness/ poor balance, trouble bending/ picking up objects."
- The appellant does not require any prostheses or aids for her impairment.
- In terms of functional skills, the appellant can walk 2 to 4 blocks unaided on a flat surface, climb 5 or more steps unaided, and with no limitation to remaining seated. The GP indicated that the appellant's limitation with lifting is unknown and commented "does not lift."
- The appellant is not restricted with her mobility inside the home and is continuously restricted with her mobility outside the home. The GP did not comment regarding the degree of restriction.
- The appellant is assessed as being independent in all aspects of her mobility and physical ability, specifically with walking indoors, walking outdoors, climbing stairs, standing, lifting and carrying and holding. The GP did not provide further comments.
- In the section of the AR relating to assistance provided, the GP did not identify any of the assistive devices as being used by the appellant to help her compensate for her impairment.
- The appellant does not have an assistance animal.
- For additional information to the AR, the appellant wrote: "great difficulty sitting/ rising from toilet; teeth breaking from clenching; legs not steady or strong; pain continuous; ...cannot bend over or down; cannot lift myself up without help."

In the letter dated July 14, 2016, the physician specializing in endocrinology and metabolism wrote:

- There is an impression of multi-nodular goiter and subclinical hyperthyroidism.
- She is asymptomatic and does not require any treatment, with monitoring every 6 months.

In the Imaging Report dated November 26, 2016 regarding a CT scan of the appellant's lumbar spine, the impression is of:

- Multi-level disc and facet degeneration, not significantly changed from the prior MRI in 2015.
- Resultant moderate to severe neural foraminal narrowing at L5-S1.

In the letter dated January 19, 2017, the physician specializing in physical medicine & rehabilitation/ electromyography wrote:

- With regard to the appellant's complaints of low back pain, she reports that her symptoms are slowly worsening but she did not identify any critical restrictions and limitations or other associated symptoms.
- Reviewing her initial symptoms and her response to injections in the past, his recommendation was to defer any further injections until the appellant's symptoms become more impairing.

In her Request for Reconsideration, the appellant wrote:

- She believes there may have been a lack of communication between the GP and the ministry.
- The attached Medical Opinion Report (dated September 28, 2015) indicated a type II whiplash associated disorder affecting the cervical, thoracic and lumbar spine and included the following findings: The physical examination identified mildly reduced range of motion of the spine along

with some soft tissue tenderness in the affected regions. The extensive imaging of the cervical, thoracic and lumbar spines identified multi-level degenerative changes. The appellant complained of leg weakness and bilateral thigh pains and the assessment by the neurologist provided no unifying diagnosis. The appellant did not have convincing nerve root tension signs and suggested generalized soft tissue pain as the more predominant feature to her limb symptoms.

- The appellant feels her legs are like ‘two tree stumps’ and she experiences heaviness and reports a walking tolerance of about one block. Her legs then feel heavier, her low back pain progresses, and she needs to sit down.

Mental Impairment

In the PR and the AR, the GP reported:

- The appellant has no difficulties with communication.
- The appellant has no significant deficits with cognitive and emotional function.
- There is no assessment of restrictions to the appellant’s social functioning, although the GP commented: “does not go out as much and decreased social interaction secondary to decreased stamina.”
- The appellant has a good ability to communicate in all aspects, specifically speaking, reading, writing and hearing.
- With respect to the section relating to daily impacts to the appellant’s cognitive and emotional functioning, the GP did not provide an assessment and marked it as “N/A” or not applicable to the appellant.
- Regarding the appellant’s social functioning, the appellant is independent in all aspects, specifically with 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 explanation or description provided by the GP.
- The appellant has good functioning with her immediate and extended social networks.

In her Request for Reconsideration, the appellant attached a Medical Opinion Report (dated September 28, 2015), which included the finding by the physician that the appellant appeared depressed and that she would likely meet the DSM-5 criteria for major depressive disorder based on her described symptoms of longstanding difficulties with disrupted sleep, low interest, low energy, low concentration, altered appetite and psychomotor agitation.

Daily Living Activities (DLA)

In the PR and the AR, the GP reported:

- The appellant has not been prescribed any medication and/or treatments that interfere with her ability to perform DLA.
- The appellant is not restricted with the management of medications or the management of finances DLA, nor with her mobility inside the home. The appellant is periodically restricted with the personal self care DLA, the meal preparation DLA, the basic housework DLA, the daily shopping DLA, and the use of transportation DLA. The appellant is continuously restricted with her mobility outside the home.
- Regarding the “periodic” restrictions, the GP wrote: “needs help with large shopping trips, cannot use tubs only walk-in showers, cooks in stages, can’t vacuum or sweep, does not drive, needs seat on bus.”
- In the AR, the appellant is assessed as independent with walking indoors and with walking outdoors, not requiring the assistance of another person or the use of an assistive device, with no indication that her mobility takes her significantly longer than typical.

- The appellant is independent and does not require assistance with all of the tasks for several DLA, specifically: the personal care DLA, the basic housekeeping DLA, the meals DLA, the pay rent and bills DLA, and the medications DLA.
- 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 and carrying purchases home. The comment provided is that the appellant does not drive, she cannot take public transit safely, she cannot carry any noticeable weighted purchases and she is limited walking distances.
- For the transportation DLA, the appellant is independent with getting in and out of a vehicle (note: “difficulty getting in and out of vehicle”), and with using transit schedules and arranging transportation. She requires periodic assistance from another person with the task of using public transit. The comment provided is that the appellant feels unsafe and pain on transit “due to choppy and lurching of bus” and “getting on and off bus quickly and safely is always challenge.”
- For additional comments to the AR, the appellant wrote: “...difficulty getting in and out of bed as well as adjusting myself while in bed; cannot stand long enough to complete a prepared meal.”

In her Request for Reconsideration, the appellant attached a Medical Opinion Report (dated September 28, 2015), which included the findings by the physician that:

- The appellant “continues to be independent with her self-care activities” and “she describes herself as being older than expected and now performs activities more slowly.”
- The appellant avoids heavier household duties such as vacuuming and cleaning the steps.

Need for Help

The GP reported in the AR that help required for DLA is provided by family and friends, with no further comments provided. The GP did not identify any assistive devices being used by the appellant, and she does not have an assistance animal.

Additional information

In her Notice of Appeal dated June 30, 2017, the appellant expressed her disagreement with the ministry’s reconsideration decision and she wrote that, in her opinion, she is disabled and she cannot support herself by any means.

Prior to the hearing, the appellant provided a written submission including argument on her behalf, that will be covered in Part F- Reasons for Panel Decision- below, and information that:

- She lives with constant pain and this affects her daily state of mind. The combination of pain and pain medications leaves her tired and in a groggy state.
- Daily challenges such as cooking and housework have to be done in stages, which is time-consuming, usually not complete and to inadequate standards.
- Public transportation is no longer her mode of transportation, or the last resort. Lurching causes her balance to falter and wreaks havoc with her back.
- Public washrooms are a huge problem without a raised toilet seat.
- Leaving her home for any length of time is not an option for her anymore. Accompaniment is a way of life to enable her to get her needs met.
- Her condition is progressive and chronic. She does try to keep a positive attitude.
- She has not had the opportunity to meet with the doctor who took over when the GP who completed the PR and the AR retired.

The ministry relied on the reconsideration decision as the ministry's submission on the appeal.

Admissibility of Additional Information

The ministry did not raise an objection to the admissibility of the additional information provided by the appellant in her written submission. The panel considered the information in the appellant's written submission 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 severe neuroforaminal stenosis with chronic back pain and L5 herniation causing lower extremity weakness and urinary incontinence. While the ministry wrote that the GP commented that the appellant is not able to "work" long distances and that employability is not a criterion of the PWD designation, the panel finds that, given comments by the GP in other parts of the

reports, the GP likely referred to the appellant's inability to "walk" long distances.

The ministry considered the additional medical reports and wrote that many of them are dated and do not provide a current assessment of the appellant's physical functioning. The Imaging Report dated November 26, 2016 reported regarding a CT scan of the appellant's lumbar spine, finding that there is multi-level disc and facet degeneration, not significantly changed from the prior MRI in 2015, and resultant moderate to severe neural foraminal narrowing at L5-S1. The Medical Opinion Report attached to the appellant's Request for Reconsideration is dated September 28, 2015, and indicated a type II whiplash associated disorder affecting the cervical, thoracic and lumbar spine and included findings of mildly reduced range of motion of the spine along with some soft tissue tenderness in the affected regions. The physician also commented that while the appellant complained of leg weakness and bilateral thigh pains, the assessment by the neurologist provided no unifying diagnosis, the appellant did not have convincing nerve root tension signs, and this suggested generalized soft tissue pain as the more predominant feature to her limb symptoms. In the most current letter dated January 19, 2017, the physician specializing in physical medicine & rehabilitation/electromyography wrote that the appellant reports that her symptoms of low back pain are slowly worsening but she did not identify any critical restrictions and limitations or other associated symptoms. Reviewing the appellant's initial symptoms and her response to injections in the past, the specialist physician's recommendation was to defer any further injections until the appellant's symptoms become more impairing.

A diagnosis of a serious medical condition or conditions does not in itself determine PWD eligibility or establish a severe impairment. An "impairment" is a loss or abnormality of psychological, anatomical, or physiological structure or functioning causing a restriction in the ability to function independently, effectively, appropriately, or for a reasonable duration. To assess the severity of an impairment, the ministry must consider the nature of the impairment and the extent of its impact on daily functioning.

The ministry considered the impacts of the appellant's diagnosed medical conditions on her daily functioning, beginning with the assessments provided in the PR and the AR. The ministry wrote that the GP reported in the PR that the appellant is able to walk 2 to 4 blocks unaided on a flat surface, climb 5 or more steps unaided, her ability to lift is unknown with a note that she "does not lift," and she has no limitation with remaining seated. The ministry considered that the GP reported that the appellant does not require an aid for her impairment, and that she is independently able to manage all areas of mobility and physical ability, including lifting and carrying and holding. In the PR, the GP assessed the appellant as being continuously restricted with her mobility outside the home and the appellant wrote in her written submission that she needs to be accompanied when leaving her home for any length of time. In the Medical Opinion Report, the physician wrote that the appellant feels her legs are like 'two tree stumps' and she experiences heaviness and reports a walking tolerance of about one block. However, the GP's assessment in the AR indicated that the appellant remains independent with walking both indoors and outdoors, with no indication of taking longer or requiring the assistance of another person or an assistive device.

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 her written submission provided on the appeal, the appellant wrote that she lives with constant pain and the combination of pain and pain medications leaves her tired and in a groggy state. The GP reported that, at the time of completing the PR (March 14, 2016), the appellant had not been

prescribed any medication and/or treatments that interfere with her ability to perform DLA. The appellant wrote in her submission that she had not had the opportunity to meet with the doctor who took over the practice when the GP who completed the PR and the AR retired, and there were no further medical reports provided on the appeal.

Given the assessments by the GP in the PR and the AR of independent physical functioning in the moderate range of functional skills limitations, and no further information from the GP provided 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 no significant deficits in cognitive and emotional functioning and there are no impacts indicated to her daily functioning. While the physician reported in the Medical Opinion Report dated September 28, 2015 that the appellant appeared depressed and that she would likely meet the DSM-5 criteria for major depressive disorder based on her described symptoms, the panel notes that there is no diagnosis of a condition within the mental disorders category of the diagnostic codes in the PR, and the GP did not refer to the described symptoms of longstanding difficulties with disrupted sleep, low interest, low energy, low concentration, altered appetite and psychomotor agitation.

The ministry wrote that the GP reported the appellant has no difficulties with communication and her ability to communicate is good in all areas. In the PR, the GP did not assess restrictions to the appellant's social functioning, although he commented: "does not go out as much and decreased social interaction secondary to decreased stamina." However, in the AR the GP reported that the appellant is independent in all aspects of social functioning, with good functioning in both her immediate and her extended social networks.

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 PR 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 PR and wrote that the GP indicated that the appellant is restricted continuously with her mobility outside the home and she is periodically restricted in her ability to perform personal self care, meal preparation, basic housework, daily shopping, and use of transportation. The ministry considered that the GP's description of the periodic nature of the restrictions was that the appellant "needs help with large

shopping trips; cannot use tubs only walk-in showers; cooks in stages; can't vacuum or sweep; does not drive, needs seat on bus" and that no further information was provided by the GP to explain the frequency and duration in which the appellant is periodically restricted.

For additional comments to the AR, the appellant wrote: "...difficulty getting in and out of bed as well as adjusting myself while in bed; cannot stand long enough to complete a prepared meal." In her written submission provided on the appeal, the appellant wrote that daily challenges such as cooking and housework have to be done in stages, which is time-consuming, usually not complete and to inadequate standards, and that public transportation is no longer her mode of transportation, or is the last resort. However, the panel notes that, when assessing the appellant's ability to perform these DLA in the AR, the GP reported that the appellant is independent with all of the tasks of the personal care DLA, the meals DLA, and the basic housework DLA, and that the appellant does not take longer or require the assistance of another person. For the shopping DLA and the use of transportation DLA, although the GP indicated that the appellant requires periodic assistance with some tasks (going to and from stores, carrying purchases home, and using public transit), the comments provided do not clarify how often or for how long the appellant requires assistance with these tasks. The appellant explained in her written submission that she had not had the opportunity to meet with the doctor who took over when the GP who completed the PR and the AR retired, and there was no additional information provided on the appeal from a prescribed professional regarding the appellant's ability to perform DLA.

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 also reasonably considered that the GP reported in the PR that the appellant is not restricted in her ability to perform the management of medications or management of finances DLA, and she is not restricted with her mobility inside the home. In the AR, the GP indicated that the appellant is able to perform all of the tasks of these DLA and her mobility inside and outside the home independently. In the Medical Opinion Report, the physician noted that, at the time of the report in 2015, the appellant "continues to be independent with her self-care activities" and "she describes herself as being older than expected and now performs activities more slowly" and that the appellant avoids heavier household duties such as vacuuming and cleaning the steps. In her In her Notice of Appeal, the appellant wrote that, in her opinion, she is disabled and she cannot support herself by any means. 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 independence with most DLA and the need for periodic assistance with a few tasks of DLA without a description by the prescribed professional of how often and for how long the appellant requires assistance, 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 the appellant wrote that she relies on a raised toilet seat 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.