

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 May 11, 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 August 22, 2016 the ministry received the appellant's PWD application comprised of a Physician Report (PR) and an Assessor Report (AR) completed by the appellant's General Practitioner (the "Physician") on August 15, and the appellant's Self-report (SR) dated July 25, 2016.

The appellant's request for PWD designation was denied on December 8, 2016. On January 10, 2017 the appellant requested a reconsideration, and on May 2, 2017 the appellant submitted her signed request for reconsideration form. The appellant also provided the following:

- Statement setting out the appellant's reconsideration information (RFR)
- Hospital assessment information October 13, 2015 (the "2015 Assessment")
- Mental Health Assessment completed by a RPN dated March 20, 2017 (the "Mental Health Assessment") with a progress note from October 13, 2015 (the "2015 Progress Note")

On May 18, 2017, the tribunal received the appellant's Notice of Appeal.

Summary of relevant evidence

Diagnoses

In the PR, the Physician diagnoses the appellant with epilepsy (onset July 2012).

Physical Impairment

The 2015 Progress Note indicates that the appellant reported the onset of seizure activity about three years earlier. It also notes that the appellant had not had a "full" seizure for some time, but had residual spasms in her right hand/arm and "twitches" in the right side of her face. It indicates that the appellant completed her paperwork using her left hand but placed the pen in her right hand to sign the documents.

In the Health History portion of the PR, the Physician indicates that the appellant has right arm weakness, has had no seizures since New Year's. The Physician also indicates that the appellant has no other disability but that her right arm is not working and she had to learn to use her left hand.

In the PR for Functional Skills, the Physician indicates that the appellant is able to walk 4+ blocks unaided on a flat surface, can climb 5+ steps unaided, has no limitations with respect to lifting, and no limitation with remaining seated.

In the AR the Physician indicates that the appellant is independent with walking indoors, walking outdoors, climbing stairs and standing, but requires continuous assistance from another person with lifting and carrying and holding, indicating that these tasks takes significantly longer because she has to use just her left hand and she is right-handed. He states that she has to use her left hand even to write.

In the SR, the appellant states that she has severe spasms in her dominant (right) hand/arm and suffers from limited strength, stamina, and severely limited motor function in her right hand. The appellant states that her seizures can occur as frequently as every half hour.

In the RFR, the appellant states that she has constant fatigue, shortness of breath, heart racing and palpitations, hypertension interspersed with dizzy spells and weakened immune system that causes frequent bouts of cold/flu outbreaks that in turn result in asthma attacks and wheezing.

Mental Impairment

In the 2015 Progress Note, the appellant reported that she had always “swallowed” her emotions rather than dealing with them. She was recommended to seek supportive counselling to explore past issues.

In the PR, 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, and hearing are good, but that her writing is poor as she has to use her left hand. The Physician indicates that the appellant has moderate impact in the area of bodily functions and no impact in the other listed areas of cognitive and emotional functioning. The Physician comments that the appellant has to use her non-dominant hand for all DLA, which is very difficult.

In the RFR, the appellant states that she has had chronic depression since childhood, which escalated to suicidal tendencies as diagnosed by the Physician in February 2017 and referrals to community mental health programs. The appellant states that it is difficult to obtain psychiatric treatment as she lives in a small community and has no transportation. The appellant states that she suffers from insomnia and interrupted sleep, restlessness, constant fatigue, severe depression, anxiety and stress, which also cause increased isolation and feeling alone and unimportant.

The Mental Health Assessment indicates that the Physician referred the appellant for assessment of her depression. The appellant reported depressive symptoms on and off since her teenage years. The appellant stated that she was not anxious, just tired and bland, with her sleep averaging 6-10 hours per night. The 2017 Assessment indicates that the appellant was experiencing an increase in depressive symptoms, and was waitlisted for an appointment with a psychiatrist.

DLA

In the PR the Physician indicates that the appellant has not been prescribed any medications that interfere with her ability to perform DLA. In the PR the Physician indicates that the appellant has continuous restrictions with DLA of personal self-care, meal preparation, basic housework and daily shopping but is not restricted with management of medications, mobility inside the home, mobility outside the home, use of transportation, management of finances or social functioning. The Physician comments that the appellant has to use her left hand, which takes more time to do things.

In the AR, the Physician indicates that the appellant is independent with all aspects of DLA but that she takes significantly longer than typical with dressing, grooming, bathing, toileting, feeding self, laundry, basic housekeeping, carrying purchases home, meal planning, food preparation, cooking, and safe storage of food. The Physician comments that the appellant is using her non-dominant hand, which takes time.

With respect to social functioning, the Physician indicates that the appellant has good functioning with respect to her immediate and extended social networks.

In the SR, the appellant states that she cannot use her right hand at all, which makes most of her living activities take much longer. She states that she cannot really chop food or peel fruit or vegetables with one hand. She states that she has difficulty lifting food from the cupboard to counters because she can only use her left hand. She states that she cannot afford healthy food and is not

motivated to eat. She states that shopping and putting groceries is very difficult with one hand. Due to her seizures, her driver's license was taken away. She states that housekeeping, personal hygiene, and self-care tasks are very difficult because she can only do tasks one-handed. The appellant also states that her mental and emotional skills are not so good because she is coping with anxiety, agitation, and depression. She states that she has low motivation for interacting with friends, family, strangers, or the public and asking for help is difficult for her to do.

In the RFR, the appellant states that her lack of energy, combined with the loss of use of her dominant arm and hand make DLA including dressing, personal hygiene, cooking and cleaning difficult if not impossible.

Need for Help

In the PR, the Physician indicates that the appellant's friend occasionally helps with DLA if they visit.

In the AR, the Physician indicates that the appellant has help from friends. The appellant does not have an Assistance Animal.

The Mental Health Assessment indicates that the appellant has been placed on a wait list for consultation with a psychiatrist.

Additional information provided

In her Notice of Appeal dated May 18, 2017, the appellant states that her case manager has set up a specialized assessment, which is needed for a proper appeal.

The day before the hearing, the appellant provided the following:

- Written submission with her argument as to why the reconsideration decision was not reasonable (the "Submission")
- Letter from the Physician dated August 31, 2017 providing additional information regarding the impacts of the appellant's impairment (the "Physician Letter"). The Physician states that the appellant has a severe physical impairment due to right hand weakness and impact to her psychological function due to depression. The Physician indicates that the appellant is significantly restricted from performing DLA on a daily basis due to her right hand weakness that is constant and never gets better. The Physician indicates that the appellant's DLA of washing, getting dressed, and feeding are restricted
- Copy of the Mental Health Assessment
- Employability Assessment completed by a Vocational Rehabilitation Specialist dated June 20, 2017 (the "Employability Assessment")
- The Employability Assessment indicates that the appellant receives periodic assistance from her roommates but they are often not home or gone most of the day. The Employability Assessment indicates that the appellant requires weekly, long term counseling to assist her with symptoms of depression and anxiety, as well as accommodations and ongoing support for symptoms of depression, anxiety and mobility issues. The Vocational Rehabilitation Specialist recommends that the appellant share the Employability Assessment with the Physician and re-apply for PWD designation, that she attend long-term counseling, have an assessment with an Occupational Therapist for exercises that may help improve the functionality of her right upper extremity, access employment services/supports.
- Mayo Clinic internet printout about depression
- Appellant's statement dated August 30, 2017 indicating that her day to day life has become increasingly restrictive, that dressing is a painfully slow process, that she snacks rather than

cooks as her roommates are not always home to help her open bottles, cans and/or packages. She states that shopping is a grave and exhaustive chore as it involves getting out of the house, to the store, focusing on what she needs, and getting it back home. The appellant states that having always been very outgoing and independent, she now feels isolated and useless as she cannot accomplish simple tasks such as peeling a potato, or enjoy hobbies such as writing or crocheting. The appellant states that she rarely sees friends, has no family or partner, and hates to constantly impose on her roommates (the "Tribunal Statement")

- Copy of the RFR
- *Interpretation Act* [RSBC 1996] CHAPTER 238, sections 8 and 9

At the hearing, the appellant provided the following additional documentation:

- Letter from the owner of the townhouse in which the appellant resides, undated (the "Owner"), indicating that the appellant has been a roommate there for one year and he has seen her struggle with her right arm and hand on a daily basis. The Owner states that the appellant "...has no use of her right, dominant hand, the simple task of opening a tin, can or packet of any kind, is such a struggle for her, that I feel frustrated for her". The Owner states that even opening the front door is a dilemma for her, learning to write with her left hand is a challenge and she struggles with her keys, unlocking the door, and has to bring in items one at a time, before being able to close the door.
- Typed letter from the advocate providing his interpretation of the Physician's letter dated August 31, 2017

At the hearing, the appellant's advocate stated that the appellant has had a sharp decline in the use of her dominant hand and increased depressive symptoms. The advocate explained that they tried to obtain the new information provided earlier but were unable to do so.

At the hearing, the appellant stated that her right hand is getting worse and although she has sensation in her hand, she cannot move it or grip anything. The appellant stated that her depression and fatigue cause her to sleep 9-12 hours per day and she rarely gets up before lunch. It is hard to dress and do anything with just one hand and learning to write with her left hand was a huge effort. The appellant states that she has to bring items into her home one at a time and that some tasks just do not get done because all of her tasks take so much longer than typical. She stated that on a bad day she sometimes does not even get out of bed. She states that her depression was not initially reported to the Physician because she was dealing with her right hand issues but that the Physician is now aware of her psychological issues and referred her for the Mental Health Assessment.

Admissibility of New Information

The ministry objected to the new evidence as the minister did not have an opportunity to review the new information prior to arriving at the reconsideration decision.

The panel has admitted the new information in accordance with section 22(4) of the *Employment and Assistance Act* as it is oral and written testimony in support of the information and records that were before the minister when the reconsideration decision was made. In particular, the new information tends to support information regarding the appellant's diagnosed impairments of epilepsy, loss of right hand mobility and depression and the impacts of those impairments on her DLA,

The panel has accepted 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 PR 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 she has a severe physical impairment due to the loss of mobility and use of her right hand. The appellant's advocate argues that the ministry has not correctly interpreted the Physician's information, as the minister has not considered the combination of the appellant's non-functioning dominant hand and her depression.

In the Submission, the advocate indicates that in the PR, the Physician indicates that the appellant has right arm weakness and she has had to learn to use her left hand and that in the Physician's Letter he indicates that she has a severe physical impairment due to weakness in her right arm. The advocate notes that the Vocational Rehabilitation Specialist states that the appellant reports right arm spasms that are sporadic, typically 2-3 every 3 days, and are sometimes triggered by stress, and that in the Tribunal Statement, the appellant reports that the immobility of her right, dominant arm has become permanent, even without the spasms occurring. The appellant's position is that the information provided demonstrates that she has a severe physical impairment and applying the *Interpretation Act* in a broad and liberal manner would result in a finding that she qualifies for PWD designation.

The appellant argues that throughout the reconsideration decision, the ministry repeatedly relies on the term “physical functioning” rather than “physical impairment” in assessing the severity of the appellant’s disabilities. The appellant argues that the legislative language of the EAPWDA requires that a severe physical or mental impairment be established and that the term “physical functioning is not a defined term in the legislation. The appellant’s position is that the ministry’s reliance on “physical functioning” overemphasizes the significance of functional restrictions such as walking, climbing stairs, and lifting rather than considering the severity of the appellant’s physical impairment in its entire context. The appellant argues that the ministry overemphasizes that the appellant has a functional left hand and places inadequate weight on the combination of the appellant’s non-functioning right hand and her serious depression, the totality of which results in the appellant suffering a severe impairment, which she copes with as best she can by using her non-dominant left hand.

The ministry’s position is that the PR, AR and other medical documentation do not establish a severe physical impairment. The ministry notes that the Physician’s assessment of the appellant’s functional skills in the PR is not indicative of a severe physical impairment. In particular, the ministry notes that the Physician does not describe restrictions to the functionality of the appellant’s left arm/hand and determined that the appellant has some ability to lift and carry with her left arm/hand. The reconsideration decision indicates that as the appellant has functionality with the use of her left arm/hand, it is difficult to establish that she requires continuous assistance from another person with lifting and carrying/holding. The ministry also notes that the Physician does not describe how much longer than typical the appellant takes with lifting and carrying/holding and that he indicates that she is independent with the majority of listed areas of mobility and physical ability.

The PR indicates that the appellant can walk 4+ blocks unaided, can climb 5+ steps unaided, has no limitations with lifting and no limitation with remaining seated. While the Physician confirms that the appellant has right arm/hand weakness and has to use her left hand, he does not indicate, in the PR that she has limitations with respect to lifting. In the AR, the Physician indicates that the appellant requires continuous assistance with lifting and carrying and holding and that she takes significantly longer than typical, as she has to use her left hand. However, the Physician does not describe how much longer than typical it takes her with lifting and carrying and holding. In addition, the information in the PR and the AR is not consistent with respect to the appellant’s restrictions with lifting and carrying and holding and the Physician has not provided any information to explain the inconsistency.

The panel notes that employability is not a criterion for designation as PWD but that the Employability Assessment does provide additional information regarding the appellant’s mobility and physical ability. In the Employability Assessment, the Vocational Rehabilitation Specialist indicates that the appellant demonstrated reduced grip and was functionally limited in her ability to handle and manipulate objects with her right hand using medium manual dexterity. However, the Employability Assessment also indicates that the appellant demonstrated the ability to bilaterally and unilaterally lift between floor to waist, waist to shoulder and floor to shoulder level on an occasional basis within the Sedentary Strength category as defined by the National Occupational Classification. The Employability Assessment indicates that the appellant was not limited in her ability to sit, stand or walk throughout the assessment. The Employability Assessment also indicates that the appellant demonstrated the ability to kneel on a sustained and intermittent basis and to squat on a repetitive basis with progressive loads.

The Vocational Rehabilitation Specialist recommended that the appellant share the Employability Assessment with the Physician and complete a new PWD application taking all of the information into account.

The appellant did not complete a new PWD application but instead provided the Physician Letter, in which the Physician provides further information stating that the appellant has a severe physical impairment due to right hand weakness, that the weakness is constant, never gets better, and that she takes a long time due to inability to use her right hand. However, the Physician does not provide additional information describing how long the appellant takes with various tasks and he does not provide further information regarding her functional limitations.

While the appellant clearly has limited use of her right hand, she has the use of her left hand and the information regarding her ability with respect to lifting and carrying and holding is inconsistent. The panel does not accept that the ministry placed undue emphasis on the appellant's functional left hand as the reconsideration decision indicates that the ministry considered all of the information before it at the time of reconsideration. The additional information provided in the Physician Letter does not provide any significantly different information than that in the PR or the AR and the Employability Assessment indicates a significant level of independence and functional ability.

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

Severe Mental Impairment

The appellant states that the medical evidence demonstrates that she has a severe mental impairment as the Mental Health Assessment confirms that she is experiencing an increase in depressive symptoms and as the Physician, in the Physician Letter, now confirms that she has impairment in her psychological function due to depression. The appellant states that her self-reports of impact from her depression are supported by the Vocational Rehabilitation Specialist, who notes that she has severe symptoms of anxiety and depression with major impact on her functioning. The appellant's advocate argues that the ministry has not correctly interpreted the Physician's information, as the minister has not considered the combination of the appellant's non-functioning dominant hand and her depression.

The ministry's position is that the information provided is not evidence of a severe mental impairment. In particular, the reconsideration indicates that the Physician, in the PR, indicated that the appellant did not have any difficulties with communication and no significant deficits with cognitive and emotional functioning. The ministry notes that in the AR, the Physician indicates that the appellant has moderate impacts to cognitive and emotional functioning in the area of bodily functions, but no impacts to the remaining 13 listed areas of cognitive and emotional functioning. The ministry's position is that restrictions to the functionality of the appellant's right hand are not indicative of impairment of mental functioning. The reconsideration decision also notes that the Physician indicates that the appellant is independent with all listed areas of social functioning, and has good functioning with both her immediate and extended social networks.

The reconsideration decision also indicates that the ministry considered the Mental Health Assessment, which indicates that the appellant was experiencing increased depressive symptoms, but that her level of suicide risk was mild. The ministry notes that the RPN does not describe the severity of impacts to emotion, fatigue, interest, concentration, or appetite in the Mental Health Assessment. The ministry's position is that the Mental Health Assessment may represent a temporary exacerbation to symptoms of depression and that when considered with the information in the PR and the AR, it is difficult to establish a severe impairment of mental functioning.

In the PR, the Physician does not make a diagnosis of depression and the information provided indicates no impacts to significant deficits with cognitive and emotional function. The AR indicates

moderate impact in the area of bodily functions only and no impact to the remaining 13 areas of cognitive and emotional function. In the AR the Physician indicates that the appellant has good functioning with respect to her immediate and extended social networks. While the Mental Health Assessment indicates that the Physician referred the appellant for assessment of increasing depressive symptoms, the Mental Health Assessment indicates that the appellant reported that she is not anxious, but just tired and bland. The appellant reported sleeping an average of 6-10 hours per night with occasional daytime naps, that her interest varies, that her appetite was reduced and that she was writing a column for a local paper and finds it difficult to meet deadlines.

The information in the Employability Assessment is somewhat inconsistent. On the one hand, it indicates that the appellant has major depression with major impact to motivation. However, she was assessed with mild impact to her functioning of attention/concentration and executive function and moderate impact to her memory. The Employability Assessment indicates that the appellant reported poor relationships with respect to her immediate and extended social networks.

The new information in the Physician Letter indicates that the appellant has impairment in her psychological function due to depression, but the Physician has not provided any further information regarding the severity of impairment. The Physician has also not provided any further information regarding the impact to the appellant's relationships and the information in the AR and the Employability Assessment is completely different in this regard.

The PR indicates that the appellant has not been prescribed any medication that interferes with her ability to perform DLA. The Employability Assessment indicates that the appellant was prescribed medication for depression but stopped taking it and that depression can be greatly improved with medication. The appellant states that she stopped taking the medication because it bothered her stomach and that the medication issue has yet to be worked out.

While the appellant's depressive symptoms may have increased since the time the PR and AR were completed, the additional information provided in the Physician Letter does not indicate a severe mental impairment. The inconsistencies between the Employability Assessment and the information from the Physician, even considered in a broad and liberal manner as required by the Interpretation Act, make it difficult to determine the severity of the appellant's mental impairment.

The panel finds that based on all the information the ministry reasonably concluded that the cumulative impact to cognitive and emotional functioning 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.

In the Submission, the advocate states that the appellant should not suffer due to the under-reporting, which led to a negative result of the original application. The advocate states that there was a misunderstanding of the process whereby the appellant wasn't thinking about her "worst day". The appellant has since provided her RFR and Tribunal Statement. The appellant's position is that the information provided, when considered in a broad and liberal manner, demonstrates that she has restrictions with DLA. In particular, the appellant points out that in the PR, the Physician indicates that she has restrictions with personal self-care, meal preparation, basic housework, and daily shopping. The appellant also relies on the Physician Letter, in which he states that the appellant is restricted in washing, getting dressed, and feeding, that her right hand weakness is constant and never gets better. The appellant also points out that the Vocational Rehabilitation Specialist states that the appellant is limited on a daily basis by her inability to use her right arm, which prevents her from performing many DLA.

The ministry's position is that the information provided by the Physician is not sufficient to establish significant restrictions to DLA. The ministry notes that in the PR, the Physician indicates that the appellant is continuously restricted with personal self-care, meal preparation, basic housework, and daily shopping as she has to use her left arm/hand which takes more time to do things. However the ministry states that the Physician has not described how much longer than typical the appellant takes in performing the DLA that are restricted and the information suggests that the appellant is capable of completing those DLA with her left hand. The ministry notes that in the AR, the Physician indicates that the appellant is independent with all aspects of DLA but takes significantly longer than typical with dressing, grooming, bathing, toileting, feeding self/regulating diet, laundry, basic housekeeping, all aspects of meals and carrying purchases home. However, the ministry states that the Physician does not describe how much longer than typical the appellant takes with her DLA. The ministry finds that although the appellant is slower than typical with some areas of DLA, she is able to perform all listed activities by using her left arm/hand. The ministry's position is that it is difficult to establish significant restrictions to DLA.

The panel notes that the information provided in the PR and the AR makes it difficult to obtain a clear picture of the appellant's restrictions with DLA. While the Physician indicates in the PR that the appellant is continuously restricted with DLA of personal self-care, meal preparation, basic housework and daily shopping, in the AR the Physician indicates that the appellant is independent with all listed aspects of DLA. While the Physician indicates in the AR that the appellant takes significantly longer than typical with dressing, grooming, bathing, toileting, feeding self/regulating diet, laundry, basic housekeeping and carrying purchases home, he does not provide any information on how much longer than typical the appellant takes and does not indicate that she requires either periodic or continuous assistance from another person with DLA, only commenting that she is using her non-dominant hand and it takes time.

The appellant's reports of her restrictions and difficulties performing DLA are much more significant than indicated by the Physician and while the advocate argues that the appellant should not suffer because of under reporting her symptoms, the ministry can only assess the PWD application based on the information in the application.

The Employability Assessment indicates that it takes the appellant significantly longer, up to 10 times as long each day with dressing, grooming, bathing, toileting, feeding self, transfers (in/out of bed) and

transfers (on/off chair), secondary to loss of mobility with right arm. However, the Vocational Rehabilitation specialist does not provide further information to indicate whether the tasks take twice as long, five times as long, or 10 times as long and/or how often the tasks take that much longer than typical.

The Employability Assessment indicates that the appellant is unable to complete laundry most days of the month and that with respect to basic housekeeping, she is only able to wipe and lightly wash dishes, and takes up to 3 times longer each day of the month. The Vocational Rehabilitation Specialist states that the appellant is unable to perform tasks that require two hands and that periodic support is required and provided by the Owner. The Employability Assessment indicates that the appellant is independent with driving short distances but is unable to travel longer distances secondary to loss of mobility in her right arm and is unable to go to and from any stores at least 12 days out of each month secondary to symptoms of depression and fatigue. Periodic support is required but not available. Carrying purchases home takes significantly longer and she requires periodic support with carrying her groceries. While the information from the Vocational Rehabilitation Specialist is more consistent with the appellant's statements about her restrictions than the information in the PR and the AR, the Vocational Rehabilitation Specialist does not indicate how the assessment of restrictions to DLA was completed. The Vocational Rehabilitation Specialist specifies results of functional capacity testing for the purposes of functional abilities but does not indicate whether she tested and/or observed the appellant completing her DLA or whether the information was based on self-reports from the appellant.

The additional information from the Physician in the Physician Letter states that the appellant is restricted with washing, getting dressed and feeding but he does not provide any further information to clarify the information provided in the PR or the AR and no information with respect to how much longer it takes the appellant to perform the DLA with which she is restricted and he does not provide any further information on assistance needed. The Physician does not provide any information or comment on the information provided in the Employability Assessment and as the information between the Physician and the Employability Assessment is quite different, it is difficult to get a clear picture of the appellant's restrictions with DLA.

In addition, in the SR, the appellant states that her driver's license was taken away from her due to her seizures, yet in the Employability Assessment, the Vocational Rehabilitation Specialist indicates that the appellant is independent to drive short distances but is unable to travel longer distances. This information is also inconsistent which makes it difficult to determine the appellant's restrictions with respect to the aspect of DLA relating to use of transportation.

The information provided by the Physician indicates that the appellant has good functioning with respect to her immediate and extended social networks whereas the Employability Assessment indicates that the appellant has poor relationships and that she requires periodic support developing and maintaining relationships and securing assistance from others and requires continuous support with interacting appropriately with others and dealing appropriately with unexpected demands. The information provided by the Vocational Rehabilitation Specialist is not consistent with the information provided by the Physician, who has been the appellant's general practitioner since approximately November 2015, and the Physician did not provide any additional information to clarify these inconsistencies or changes in the level of the appellant's restrictions to her social functioning.

Section 2(2) of the EAPWDA specifies that for the purposes of the legislation a "prescribed professional" is one of the following: medical practitioner, registered psychologist, registered nurse or registered psychiatric nurse, occupational therapist, physical therapist, social worker, chiropractor or nurse practitioner. While the Vocational Rehabilitation specialist provides more information regarding

the time that it takes the appellant to perform DLA, the Vocational Rehabilitation Specialist does not meet the definition of a prescribed professional, so the panel finds that the ministry has reasonably determined that the independence with which the prescribed professional reports 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 the loss of use of her right hand makes all tasks much harder, and it takes her longer to perform them. The appellant's position is that she also requires assistance and counseling due to her depression. She requires additional funds and community supports to address her mental health. In the Submission, the advocate states that depression is very complicated with varying symptoms and episodes and that at times the appellant is barely functioning and unable to leave the house to attend to errands, so she needs significant help, which is not often available.

The reconsideration decision indicates that the Physician has not indicated that the appellant requires any prostheses or aids for her impairment, and is provided assistance by friends. The ministry's position is that because it has not been established that DLA are significantly restricted, it cannot be determined that help is required.

In the PR, the Physician states that friends occasionally help with DLA if they visit. In the AR, the Physician indicates that the appellant gets help from friends but does not provide any description of help needed or requirements for any assistive devices. The Physician indicates that the appellant does not require any prosthesis or aids for her impairment and that she does not have an Assistance Animal.

In the letter from the Owner, he describes his observations of the appellant and how she struggles to complete some tasks but he does not provide information regarding any help that he provides, or the frequency or duration of help.

While the appellant clearly takes longer with some tasks due to the loss of use of her right hand, 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.