

## PART C – Decision under Appeal

The decision under appeal is the Ministry of Social Development and Poverty Reduction (the Ministry) reconsideration decision dated September 15, 2017, which found that the Appellant did not meet four 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. However, the Ministry was not satisfied that the evidence establishes that:

- the Appellant's impairment is likely to continue for at least two years;
- 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.

The ministry also found that the appellant is not one of the prescribed classes of persons who may be eligible for PWD designation on the alternative grounds set out in Section 2.1 of the EAPWDA and the appellant did not appeal the decision on this basis.

## PART D – Relevant Legislation

*Employment and Assistance for Persons with Disabilities Act* (EAPWDA), Section 2

Employment and Assistance for Persons with Disabilities Regulation (EAPWDR), Section 2

## PART E – Summary of Facts

The evidence before the Ministry at the time of the reconsideration decision included the PWD Application comprised of the applicant information and self report (SR) dated May 1, 2017, a medical report (MR) dated May 30, 2017 and completed by the Appellant's general practitioner (GP) who has known the Appellant since 2002 and who has seen the Appellant 11 or more times in the past year, and an assessor report (AR) dated May 30, 2017 completed by the GP.

The evidence also included a request for reconsideration (RFR) signed on August 21, 2017 stating that the Appellant is asking for reconsideration because:

- she has been extremely sick and that she has depression and anxiety which has “made (her) diabetes out of control and has caused neuropathy”;
- she is waiting to see a rheumatologist as her GP suspects or believes that her burning skin sensation might be caused by fibromyalgia; and
- she is having a hard time with DLA.

### ***Diagnoses***

In the MR, the GP diagnosed the Appellant with general anxiety disorder with an onset of 2006, peripheral neuropathy (chronic pain) with an onset of January 2017, and insulin dependent type 1 diabetes with an onset of August 1998. No additional comments are provided in the diagnosis section of the MR.

Where asked in the MR whether the Appellant's impairment is likely to continue for two years or more, the GP ticked the “No” box, and where asked what the estimated duration of the impairment was and whether there were any remedial treatments that might resolve or minimize the impairment, the GP did not provide an answer.

### ***Physical Impairment***

In the MR, the GP did not provide any information in the section of the MR asking for an indication of the severity of the medical conditions relevant to the Appellant's impairment. In terms of functional skills, the GP reported that the Appellant can walk 2 - 4 blocks unaided on a flat surface, can climb more than 5 steps unaided, can lift 15 - 35 lbs., and has no limitation with respect to how long she can remain seated. In the section of the MR asking for any additional information considered relevant to understanding the significance of the person's medical condition, the GP wrote that the Appellant has a recent history of peripheral neuropathy causing continuous burning pain across the chest, thought to be due to the Appellant's diabetes.

In the AR, the GP wrote that the physical impairments impacting the Appellant's ability to manage DLA were peripheral neuropathy and chronic pain, but that the Appellant was independent (i.e. that she required no assistance) with walking indoors or outdoors, climbing stairs, standing, lifting or carrying and holding.

In describing her physical impairment in the SR, the Appellant wrote that her feet were so sore at one point that she had to hold them and put pressure on them with her hands to relieve the pain, and that she has been experiencing a burning sensation on her back and stomach area that was so severe that she did not like to wear clothes because anything that touches her skin hurts. She also stated that the chronic pain keeps her from sleeping at night, she is “up and out of bed at least 4 or 5 times a night with shooting pain throughout (her) body”, and she tried three different types of medication to treat her nerve pain but they either “made (her) feel weird”, tired, or they were ineffective. She stated

that she sometimes has to take baths in the middle of the night to relieve the pain. The Appellant also advised that she had an appointment with a neurologist on April 28, 2017.

### ***Mental Impairment***

In the MR and the AR, the GP reported that the Appellant has:

- a long history of anxiety and depression;
- cognitive difficulties due to anxiety resulting in challenges to executive and memory functions, emotional disturbance (depression and anxiety), loss of initiative or interest (motivation), and inability to maintain attention or sustain concentration; and
- a poor ability to speak or read which is episodic in nature and occurs when the Appellant experiences increased anxiety.

Where asked in the AR to indicate the extent to which the Appellant's mental impairment restricts or impairs her functioning, the GP indicated a major impact to emotion, impulse control, insight and judgement, attention/concentration, executive functioning, memory and motivation, a moderate impact to bodily functions, motor activity and language, a minimal impact to consciousness, and no psychotic symptoms or other neurological, emotional or mental problems. Where prompted to provide comments, the GP wrote "episodic cognitive symptoms".

In the AR, the GP also indicated that the Appellant was independent with respect to making appropriate social decisions, ability to develop and maintain relationships, ability to secure assistance from others. She reported that the Appellant interacted appropriately with others but required periodic support or supervision from others in dealing appropriately with unexpected demands. Where prompted to explain and describe the degree and duration of the support or supervision required in dealing appropriately with unexpected demands, the GP provided no further information. The GP also indicated that the Appellant had marginal functioning with respect to both her immediate social network and her extended social networks but, where prompted, did not describe the support or supervision required or offer any additional comments.

In the SR, the Appellant stated that she has been experiencing anxiety and depression and that she believes that her chronic depression and anxiety has caused her neuropathy. In the RFR, she states that her anxiety and depression has "made her diabetes out of control" and has caused her neuropathy.

### ***Restrictions in the Ability to Perform DLA***

In the MR, the GP indicated that the Appellant took medication in the form of a sedative that interfered with her ability to perform DLA. In the section of the MR where the GP was asked where the Appellant's impairment directly restricted her ability to perform DLA, the GP indicated that the Appellant's activity was periodically restricted with respect to meal preparation, basic housework, daily shopping DLA, and that her social functioning DLA were both periodically restricted and that it was not known whether her social functioning DLA were restricted. The GP also wrote "episodic worsening with anxiety and depression symptoms" for meal preparation, basic housework and daily shopping DLA, and "cognitive symptoms from anxiety" for the social functioning DLA.

In the AR, the GP wrote that the Appellant was independent in performing most DLA, including housekeeping, meal planning, preparation and cooking, and all aspects of shopping except for making appropriate choices. The GP indicated that Appellant did require periodic assistance with paying rent and bills and medications (filling and refilling prescriptions, taking as directed and safe storage). No explanations or additional comments were provided.

In the SR, the Appellant stated that she was having a hard time with “basic life activities”. In the RFR she also wrote that she was having a hard time with “day to day activities”. In neither instance did she elaborate.

### ***Need for Help***

In the MR and the AR the GP indicated that the Appellant does not have an assistance animal and does not require any prostheses or aids for her impairment. In the AR the GP reported that the Appellant required help with her DLA from family and friends, commenting that her sister and daughter help her with DLA and supervise her medications.

In the SR, the Appellant wrote that she stayed with her sister so that she could be monitored and taken care of during the time that she tried one of the three forms of medication that she took in various attempts to alleviate her nerve pain.

### ***Additional Information submitted after reconsideration***

In her Notice of Appeal dated September 20, 2017, the Appellant wrote that she has extreme ongoing anxiety and depression which affects her physical functioning by causing neuropathic pain, that she has type 1 diabetes, that she is unable to work due to her illness, and that she has been in and out of hospital.

At the hearing, the Appellant stated that she did not have any help preparing her appeal and she is concerned that there might not have been enough documentation to support her application. She explained how she used to be able to function well and had no difficulties socializing, but in recent years she has suffered many losses that lead to her anxiety and depression, including a marriage break-up and the death of her parents at a relatively early age, 9 months apart. She suffers from anxiety and depression which she believes is impacting her physical health. The Appellant stated that she has been experiencing a burning sensation on her stomach and that she doesn't like to wear a shirt because any fabric that touches her skin causes pain and irritation.

The Appellant said that in recent years she has gone to the hospital 4 times and been admitted on 3 occasions, all as a result of diabetic ketoacidosis (DKA), which she described as a condition associated with diabetes where the body does not have enough glucose for energy which results in a build-up of acids. She stated further that she doesn't feel like she is getting any better and she doesn't want to end up in hospital again. The Appellant said she is trying to take care of herself so she can look after her teenage daughter but she is so depressed and anxious that she can't go out in public any more. By way of example, she stated that often when she drives to the grocery store she gets as far as the parking lot but cannot go inside, so she drives home.

She also explained that she has tried three different kinds of medication designed to address her nerve pain and that none of them worked. She said that she had 5 sisters, but one lives overseas, three are in a distant location in Canada and only one, from whom she is estranged, lives within a few hours drive of her. The Appellant explained that when she was on medication she had to rely on her estranged sister to look after her.

At the hearing, the Ministry relied on its reconsideration decision.

## ***Admissibility of Additional Information***

Section 22(4) of the *Employment and Assistance Act* (EAA) provides that panels may admit as evidence (i.e. take into account in making its decision) the information and records that were before the Ministry when the decision being appealed was made and “oral and written testimony in support of the information and records” before the Ministry when the decision being appealed was made, i.e. information that substantiates or corroborates the information that was before the Ministry at reconsideration. These limitations reflect the jurisdiction of the panel established under section 24 of the EAA: to determine whether the Ministry’s reconsideration decision is reasonably supported by the evidence or a reasonable application of the enactment in the circumstances of an Appellant. That is, panels are limited to determining if the Ministry’s decision is reasonable and are not to assume the role of decision-makers of the first instance. Accordingly, panels cannot admit information that would place them in that role.

At the hearing, the Appellant submitted the following documents:

1. Two page **Discharge Summary Report** from a hospital in the Appellant’s community, dated June 14, 2016, providing a history of the Appellant’s medical condition, the reasons for her visit to the hospital, advice provided, and notes indicating that she was being discharged in good condition;
2. Three page **Consultation Report** completed by a medical practitioner at a hospital in the Appellant’s community, dated June 14, 2015, providing a history of the Appellant’s past medical history, the history of her present illness, a list of medications, physical examination results and a treatment plan;
3. Two page **Electrocardiogram Report** in the name of the Appellant dated June 14, 2015;
4. One page **Medical Imaging Report** relating to an examination of the Appellant’s lungs, dated June 14, 2015, identifying “no active disease in the chest”;
5. Five page **Discharge Cumulative Lab Report**, dated June 16, 2015, providing examination results for the Appellant;
6. Two page **Discharge Summary Report** from a hospital in the Appellant’s community, dated January 11, 2017, providing reasons for her visit to the hospital, the treatments she received, and a discharge diagnosis;
7. Three page hand-written **Progress and History Report** prepared in a hospital in the Appellant’s community, dated January 9, 2017, and signed by a person whose qualifications are not identified providing information about the Appellant’s medical condition, medications and a summary of lab test results;
8. One page hand-written **Progress and History Report** prepared in a hospital in the Appellant’s community, dated January 10, 2017, and signed by a person whose qualifications are not identified providing information about the Appellant’s medical condition, medications and a summary of lab test results;
9. One page **Radiology Department Examination Report** relating to a chest x-ray of the Appellant’s lungs, dated June 14, 2015, identifying no abnormal findings;
10. Three page **Discharge Cumulative Lab Report**, dated January 26, 2015, providing examination results for the Appellant;
11. One page **Discharge Cumulative Lab Report**, dated January 9, 2015, providing examination results for the Appellant;
12. One page **Discharge Blood Culture Lab Report**, dated January 9, 2015, providing examination results for the Appellant;
13. Three page **Discharge Cumulative Lab Report**, dated January 9, 2015, providing examination results for the Appellant;

14. Two page **Magnetic Resonance Department Examination Report** relating to a magnetic resonance imaging of the Appellant's thoracic spine, dated May 11, 2017, identifying "mid thoracic spondylosis but ... no comprehensive myelopathy";
15. One page **Intake Summary**, dated April 23, 2013, prepared by a mental health facility in the Appellant's community referencing a referral to the facility and confirming a client screening and assessment appointment scheduled for July 9, 2013;
16. One page **Client Referral Casenote Summary**, dated July 16, 2013, prepared by a mental health facility in the Appellant's community on behalf of the Appellant, providing a summary of the Appellant's recent family history which are causing "multiple stressors", identifying a "mood" score of "4/10 (1=lowest)" (prepared on April 19, 2013), indicating a referral to Assessment and Treatment Services with an appointment on July 9, 2013, and stating "Client did not show for appointment. Message left for client via phone. No contact from client. Inactivate Referral to (Assessment and Treatment Services)";
17. One page **Letter**, dated February 25, 2016, to an optometry clinic confirming the an appointment for the Appellant for a glaucoma evaluation;
18. One page **Radiologist Report**, dated January 30, 2017, relating to an x-ray and examination of the Appellant's right knee, prepared by a physician, indicating "No acute osseous, joint space or soft tissue abnormality identified";
19. Two page **Blood Test Report** in the name of the Appellant dated October 18, 2016;
20. One page **Blood Test Report** in the name of the Appellant dated November 3, 2016;
21. Two page **Radiological Consultation Report** summarizing the results of an examination of the Appellant on December 9, 2016;
22. One page **Radiologist Report**, dated December 30, 2016, relating to an x-ray and examination of the Appellant's left foot and ankle, prepared by a physician, indicating "No fracture or malalignment is identified";
23. Two page **Anesthesiology Consultation Note**, dated June 30, 2017, prepared on behalf of the Appellant by an anesthesiologist as a preanesthetic consultation on referral by a medical practitioner. The examination concerns a diagnosis of pain in the Appellant's "infraumbilical lower abdomen", and the anesthesiologist indicates that the Appellant's "symptoms are moderately severe to the point that she would like to walk around the house without any shirt on". The anesthesiologist reports that there is no abdominal tenderness and "nothing untoward on examination of her thoracic spine". He further states that he has often seen cases such as this postoperatively and usually on one side, that in these circumstances symptoms are often controlled with epidural steroid injections, and that he "gets a sense that her (DLA) are mostly preserved";
24. One page **Doctor's Note**, dated May 2, 2013, prepared by the GP indicating that the Appellant is being treated for anxiety and depression; and,
25. One page **Doctor's Note**, dated February 17, 2017, prepared by the GP indicating that the Appellant is unable to work from December 2016 to May 2017 due to chronic medical illness.

The Ministry did not introduce any additional information at the hearing.

With the exception of document #25 above, the Ministry did not object to the admissibility of the Appellant's additional written documents submitted at the hearing because it considered the evidence to be in support of the information and records before the Ministry when the decision being appealed was made. The Ministry objected to the admissibility of the information in document #25 because it considered the information in that document not specific enough.

The panel considered the information in the Notice of Appeal to be argument.

The panel considered the information contained in documents #1- 16, 19-21, and 23-24 above as being in support of information and records that were before the Ministry at the time of reconsideration, in accordance with Section 22(4)(b) of the EAA, and that those documents were admissible. The panel notes that most of these documents provide information which is consistent with or corroborates the diagnosis provided by GP in the MR and the AR.

The panel did not admit the additional evidence contained in documents #17,18, and 22 above because they refer to medical conditions that were not identified by the GP in the MR. In addition, the panel did not admit the additional evidence in document #25 because it does not identify a specific medical illness. As a result, documents #17, 18, 22 and 25 were not in support of information and records that were before the Ministry at the time of the reconsideration, in accordance with Section 22(4)(b) of the EAA.

## PART F – Reasons for Panel Decision

The issue on appeal is whether the Ministry's reconsideration decision, which found that the Appellant is not eligible for designation as a PWD, was reasonably supported by the evidence or was a reasonable application of the applicable enactment in the circumstances of the Appellant. The Ministry found that the evidence does not establish that the Appellant has a severe mental or physical impairment that, in the opinion of a prescribed professional, is likely to continue for at least 2 years, and that her DLA are not, in the opinion of a prescribed professional, directly and significantly restricted either continuously or periodically for extended periods. Also, as a result of those restrictions, it could not be determined that the Appellant requires the significant help or supervision of another person, the use of an assistive device, or the services of an assistance animal to perform DLA.

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

### Persons with disabilities

2 (1) In this section:

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

"daily living activity" has the prescribed meaning;

"prescribed professional" has the prescribed meaning.

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

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

(b) in the opinion of a prescribed professional

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

(A) continuously, or

(B) periodically for extended periods, and

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

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

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

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

(i) an assistive device,

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

(iii) the services of an assistance animal.

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

The EAPWDR provides as follows:

### Definitions for Act

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

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

(i) prepare own meals;



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

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

- (a) authorized under an enactment to practise the profession of
- (i) medical practitioner,
  - (ii) registered psychologist,
  - (iii) registered nurse or registered psychiatric nurse,
  - (iv) occupational therapist,
  - (v) physical therapist,
  - (vi) social worker,
  - (vii) chiropractor, or
  - (viii) nurse practitioner ...

## **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).

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### **Duration of Impairment**

In its reconsideration decision, the Ministry was not satisfied that the information provided establishes an impairment which was likely to continue for two years.

#### *Panel Decision*

The panel notes that Section C of the MR asks the prescribed professional completing the MR whether the applicant's impairment is "likely to continue for two years or more from today" and asks

what the estimated duration of the impairment is and if there are any remedial treatments that might resolve or minimize the impairment. The GP ticked the "No" box in response to the question about whether she expected the duration of the impairment to continue for two years or more and did not provide any information about what she expects the duration to be or whether there are any remedial treatments.

Section 2(2)(a) of the EAPWDA says that the minister must be satisfied that a person must have a severe mental or physical impairment that, in the opinion of a medical practitioner or nurse practitioner, is likely to continue for at least 2 years before it may designate a person as a PWD.

The panel finds that the Ministry's determination that there is not sufficient evidence to establish that an impairment which was likely to continue for two years was reasonably supported by the evidence before the Ministry at reconsideration.

### **Severity of Impairment**

A diagnosis of a serious medical condition does not in itself determine PWD eligibility or establish a "severe" impairment. Section 2(2) of the EAPWDA requires that in determining whether a person may be designated as a PWD the Ministry must be satisfied that the individual has a severe physical or mental impairment. An "impairment" is a medical condition which results in restrictions to a person's ability to function independently or effectively. With respect to assessing the severity of an impairment, Section 2(2)(b)(i) of the EAPWDA requires that a mental or physical impairment *directly and significantly* restrict the person's ability to perform DLA either *continuously, or periodically for extended periods*. Therefore, to assess the severity of an impairment, the Ministry must consider both the nature of the impairment and the extent to which it impacts daily functioning as evidenced by functional skill limitations and the degree to which the ability to perform DLA is restricted. In making its determination the Ministry must consider all the relevant evidence, including that of the Appellant. However, the legislation is clear that the fundamental basis for the analysis is the evidence from a prescribed professional – in this case the Appellant's GP.

### **Physical Functioning**

In its reconsideration decision, the Ministry was not satisfied that the information provided establishes a severe physical impairment as the GP did not provide a diagnosis of a medical condition directly related to a physical impairment. The Ministry noted that the GP had reported that the Appellant did not need any prostheses or aids for her impairment, is independent in all activities requiring mobility and physical ability; and the Ministry noted that the Appellant can walk 2 - 4 blocks unaided on a flat surface, can climb more than 5 steps unaided, can lift 15 - 35 lbs., and has no limitation with respect to how long she can remain seated.

At the hearing, the Appellant stated that she has been experiencing a burning sensation on her stomach and that causes pain and irritation.

### *Panel Decision*

The panel notes that, when asked to indicate the severity of the Appellant's medical conditions as they relate to physical functioning in the MR, the GP did not provide any information in the section of the MR asking for an indication of the severity of the medical conditions relevant to the Appellant's impairment. The panel further notes that, while the GP wrote that the Appellant has a recent history of peripheral neuropathy causing continuous burning pain across the chest and that the physical impairments impacting her ability to manage DLA were peripheral neuropathy and chronic pain, the Appellant was independent and required no assistance with walking indoors or outdoors, climbing stairs, standing, lifting or carrying and holding.

The panel finds that the Ministry's determination that there is not sufficient evidence to establish that the Appellant has a *severe* physical impairment which directly and significantly restricts the Appellant's ability to perform DLA either continuously or *periodically for extended periods* pursuant to Section 2(2) of the EAPWDA was reasonably supported by the evidence before the Ministry at reconsideration.

### **Mental Functioning**

In its reconsideration decision, the Ministry found that the GP's assessments in the MR provided evidence of significant deficits with respect to cognitive and emotional functioning in the areas of executive and memory functions, emotional disturbance (depression and anxiety), loss of initiative or interest (motivation), and inability to maintain attention or sustain concentration, but no significant deficits for the majority of areas of cognitive and emotional functioning. The Ministry further noted that the GP identified difficulties with communication, noting that the Appellant has "cognitive difficulties due to anxiety", and that her speaking and reading skills were poor. In the AR, the Ministry noted that the GP indicated major impacts to seven areas of cognitive and emotional functioning, moderate impacts to three areas, minimal impacts to one area, and no impact to three areas of cognitive and emotional functioning. On balance the Ministry found that, based on the GP's assessment, the cumulative impact on cognitive and emotional functioning was indicative of a severe impairment to mental functioning. However, the Ministry further determined that the GP did not describe the frequency or duration of those periods when impacts to her cognitive and emotional functioning were elevated, and as a result, it could not determine whether her cognitive or emotional functioning is severely impacted for prolonged periods of time, thereby representing a severe restriction to her daily functioning.

At the hearing, the Appellant stated that she experiences severe depression and anxiety which adversely affects her ability to function on a daily basis.

### *Panel Decision*

As the GP has indicated that the Appellant's episodes of impairment are periodic rather than continuous, the panel finds that the Ministry was reasonable in determining that in order to assess whether the periodic impairments were for extended periods it would need to know how often and for how long the episodes occur.

The panel finds that Ministry reasonably determined that the cumulative impact on cognitive and emotional functioning on the Appellant was indicative of a severe impairment to mental functioning but that the GP provided insufficient evidence to enable the Ministry to determine that periodic impairments were for extended periods, as required under EAPWDA Section 2(2)(b)(i)(B). Therefore

the panel finds that the Ministry reasonably determined that a severe mental impairment was not established pursuant to Section 2(2) of the EAPWDA.

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

In its reconsideration decision, the Ministry found that not enough evidence was provided to establish that the Appellant's ability to manage DLA is significantly restricted either continuously or periodically for extended periods of time, and that as a result she requires significant assistance. The Ministry also noted discrepancies between the assessments made by the GP in the MR and the AR. Specifically, the Ministry notes that the GP indicates that the Appellant is periodically restricted with meal preparation, basic housework, daily shopping and social functioning in the MR, whereas in the AR, the GP states that the Appellant is independent with meal preparation, basic housework, most activities related to shopping for personal needs, and most aspects of social functioning.

The Appellant's position is that she has difficulty taking her medications as directed.

#### *Panel Decision*

Section 2(2)(b) of the EAPWDA requires that the Ministry be satisfied that a prescribed professional has provided an opinion that an applicant's severe impairment *directly* and *significantly* restricts her DLA, continuously or periodically for extended periods. 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. In this case, the Appellant's GP is the prescribed professional.

DLA are defined in Section 2(1) of the EAPWDR and are also listed in the MR and, with additional details, in the AR. Therefore, in completing the MR and the AR, prescribed professionals have the opportunity to indicate which, if any, DLA are significantly restricted by the Appellant's impairments either continuously or periodically for extended periods, and to further elaborate so that the nature and extent of the restrictions to DLA are clear. Prescribed professionals are further encouraged to elaborate on the nature and extent of the limitations or restrictions in the instructions provided in those sections of the forms. For example, in Part C of the AR the assessor is instructed to identify whether assistance is required in each case with respect to the full range of DLAs, and if the applicant is not independent, to describe the type and amount of assistance required.

The panel finds that the Ministry's decision that this criterion is not met is a reasonable application of the legislation as the Ministry reasonably determined that the information provided by the GP in the MR and the AR is contradictory for specific DLA. For example, in the MR, the GP wrote that the Appellant's meal preparation, basic housekeeping, daily shopping, and social functioning DLA were periodically restricted and that her DLA were not restricted for management of finances or management of medications, whereas in the AR she indicated that the Appellant was independent with respect to meals (planning, preparation, cooking and safe storage), basic housekeeping, all aspects of shopping (except making appropriate choices), and that she required periodic assistance with paying rent and bills and managing medications.

As well the panel notes that the GP has provided insufficient evidence in terms of the nature, frequency and/or duration of the assistance required to perform DLA in those few instances where the GP has indicated that periodic assistance is required.

Therefore, the panel finds that the ministry reasonably concluded 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 with DLA**

In its reconsideration decision, the Ministry states that it cannot be determined that significant help is required because it has not been established that DLA are significantly restricted.

The Appellant's position is that she has to rely on her daughter to assist her in taking her medications.

### *Panel Decision*

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. 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.

The panel finds that the Ministry reasonably determined that, as direct and significant restrictions in the Appellant's ability to perform DLA have not been established, it cannot be determined that the Appellant requires help to perform DLA as a result of those restrictions, as defined by Section 2(3)(b) of the EAPWDA.

### **Conclusion**

Having reviewed and considered all of the evidence and relevant legislation, the panel finds that the Ministry's reconsideration decision, which determined that the Appellant was not eligible for PWD designation under Section 2 of the EAPWDA, was reasonably supported by the evidence and was a reasonable application of the EAPWDA in the circumstances of the Appellant, and therefore confirms the decision. The Appellant's appeal, therefore, is not successful.