

PART C – DECISION UNDER APPEAL

The decision under appeal is the Ministry of Social Development and Poverty Reduction (the ministry) reconsideration decision dated August 17, 2017 which found that the appellant did not meet three of the five statutory requirements of Section 2 of the *Employment and Assistance for Persons with Disabilities Act* for designation as a person with disabilities (PWD). The ministry found that the appellant met the age requirement and that her impairment is likely to continue for at least two years. However, the ministry was not satisfied the evidence establishes that:

- the appellant has a severe physical or mental impairment;
- the appellant's daily living activities (DLA) are, in the opinion of a prescribed professional, directly and significantly restricted either continuously or periodically for extended periods; and,
- as a result of these restrictions, the appellant requires the significant help or supervision of another person, the use of an assistive device, or the services of an assistance animal to perform DLA.

PART D – RELEVANT LEGISLATION

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

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

PART E – SUMMARY OF FACTS

The evidence before the ministry at the time of the reconsideration decision included the Persons With Disabilities (PWD) Application comprised of the appellant's information dated March 22, 2017 with reference to an attached self report that had been "lost", a medical report (MR) and an assessor report (AR) both dated April 13, 2017 and completed by a general practitioner (GP) who has known the appellant for more than 10 years and has seen her 2 to 10 times in the last year.

The appellant also included the Request for Reconsideration dated October 17, 2017 requesting more time for appointments.

Diagnoses

In the MR, the GP diagnosed the appellant with chronic chest wall pain and depression, both with an onset in 2013.

Physical Impairment

In the MR and the AR, the GP reported:

- With respect to the appellant's health history, "severe chest wall pain, unable to work, affects all ADL's [DLA]."
- There is no indication that the appellant requires any prostheses or aids for her impairment.
- In terms of functional skills, the appellant can walk 4 or more blocks unaided on a flat surface, climb 5 or more steps unaided, lift under 2 kg (under 5 lbs.), and remain seated 1 to 2 hours.
- For additional comments, the GP wrote: "chronic chest wall pain following an injury in 2013. Unable to work. Pain constant which makes any exertion difficult."
- The appellant is assessed as independent with walking indoors and walking outdoors (note: "4 to 6 blocks maximum"), and standing (note: "1 hour maximum"). There is no assessment for her ability to climb stairs, with the note: "uses handrail." The appellant requires continuous assistance from another person with lifting and carrying and holding, with the note "less than 5 pounds."
- In the section of the AR relating to assistance provided, the GP indicated that none of the listed assistive devices are applicable to the appellant and the appellant does not have an assistance animal.

Mental Impairment

In the MR and the AR, the GP reported:

- The appellant has no difficulties with communication.
- The appellant has significant deficits with her cognitive and emotional function in the areas of emotional disturbance, motivation and attention or sustained concentration, and the GP commented: "...due to depression."
- The appellant has a good ability to communicate in the areas of speaking, reading, and writing and a satisfactory ability with hearing. The GP noted a decreased hearing ability.
- With respect to the section relating to daily impacts to the appellant's cognitive and emotional functioning, the GP assessed a major impact to bodily functions, emotion, and

motivation. There is a moderate impact in the area of attention/concentration. Minimal impacts are assessed for executive and memory. There are no impacts in the areas of consciousness, impulse control, insight and judgment, motor activity, language, psychotic symptoms, other neuropsychological problems or other emotional or mental problems. The GP did not provide any comments.

- Regarding an assessment of the appellant's social functioning, the GP reported that the appellant is independent in making appropriate social decisions. She requires periodic support/supervision in developing and maintaining relationships, interacting appropriately with others, dealing appropriately with unexpected demands, and securing assistance from others. The GP wrote: "depressed, decreased social interaction, isolation."
- The appellant has marginal functioning with both her immediate and extended social networks.
- Asked to describe the support/supervision required that would help to maintain the appellant in the community, the GP left this section incomplete.

Daily Living Activities (DLA)

In the MR and the AR, the GP reported:

- With respect to the appellant's health history, the GP wrote the appellant is "unable to work" and her medical condition "affects all ADL's [DLA]."
- The appellant has not been prescribed any medication and/or treatments that interfere with her ability to perform DLA.
- In the AR, the appellant is independent with walking indoors and with walking outdoors.
- The appellant is independent and does not require assistance with all of the tasks for the pay rent and bills DLA (including the tasks of banking and budgeting), and she is independent with all of the tasks of the medications DLA (filling/refilling prescriptions, taking as directed, and safe handling and storage).
- Regarding the personal care DLA, the appellant is independent with the tasks of grooming, toileting, and feeding self. The appellant requires continuous assistance from another person with dressing (note: "painful"), bathing (note: "decreased motivation"), and regulating diet (note: "decreased appetite"). There was no assessment provided for the tasks of transfers in/out of bed or on/off chair.
- For the basic housekeeping DLA, the appellant requires continuous assistance from another person with both housekeeping and laundry and the GP commented: "causes increased pain."
- With the shopping DLA, the appellant is independent with the tasks of reading prices and labels, making appropriate choices, and paying for purchases, and uses an assistive device for going to and from stores (note: "shopping cart"). She requires continuous assistance from another person with carrying purchases home (note: "under 5 lbs.").
- Regarding the meals DLA, the appellant is independent with the tasks of meal planning and safe storage of food, and requires continuous assistance from another person with food preparation and cooking. The GP wrote: "needs help with prep and lifting."
- For the transportation DLA, the appellant takes significantly longer than typical with getting in and out of a vehicle (note: "painful") and the other tasks are assessed as not applicable to the appellant.

Need for Help

The GP reported in the AR that help required for DLA is provided by family. When asked to identify whether the appellant lives alone, with family, friends, or a caregiver, or in a care facility, the GP left this section of the AR incomplete. The GP did not identify any of the listed assistive devices as being used by the appellant and wrote "N/A," or not applicable. The GP indicated she does not have an assistance animal.

Additional information

In her Notice of Appeal stamped received on November 17 2017, the appellant expressed her disagreement with the ministry's reconsideration decision and wrote that the ministry claimed that they have not seen her self-report and she has provided it. She has had lots of stress and she is close to a breaking point. She suffers from severe and chronic pain. "It is invisible tissue damage, chest cavity, back, it affects everything about my being." She has been told that the GP can do no more so she suffers all the time.

Prior to the hearing, the appellant provided the following additional documents:

- 1) Letter dated March 22, 2017 to the GP in which an advocate wrote that the copy of the application that includes the appellant's self report of her functioning is enclosed for his information only. The advocate requested that the self-report not be included by the GP with the application; and,
- 2) Copy of pages from the PWD application completed by the appellant, which was similar to the GP's information but differs from the GP's assessment in the following respects:
 - The appellant indicated that she can climb no stairs unaided and wrote "uses handrail at all times" and while she can remain seated 1 hour maximum she is "constantly moving."
 - The appellant indicated that she has cognitive difficulties with communication, she also has significant deficits with cognitive and emotional functioning in the areas of consciousness and motor activity ("agitation"), and she lives with family.
 - In terms of daily impacts to cognitive and emotional functioning, there is a major impact to motor activity ("agitation"), moderate impact to consciousness, and no impact to executive and memory.
 - She takes significantly longer than typical with transfers in/out of bed and transfers on/off chair (note: "2 times longer" and "uses chair arms for support") and she takes longer in going to and from stores when shopping and "uses shopping cart for support."
 - She requires continuous assistance from another person with the tasks of budgeting (note: "[illegible] times longer all her finances (taxes) done, no money to budget") and to pay rent and bills (note: "behind on bills").
 - The appellant indicated that she requires continuous assistance from another person with the tasks of filling/refilling prescriptions and taking as directed (note: "been prescribed medications, doesn't take them").

- She uses an assistive device for getting in and out of a vehicle as she “has to use seat back for support.”
- For social functioning, she requires continuous support/supervision from another person for developing and maintaining relationships (note: “sticks to people she already knows”), interacting appropriately with others (note: “isolates self”), dealing appropriately with unexpected demands (note: “anxious/overwhelmed when met with unexpected demands”), and securing assistance from others (note: “unable to ask for help from others”).

The appellant’s daughter attended the hearing as a witness.

At the hearing, the appellant’s daughter stated:

- When the appellant sustained her injury, she ripped the muscles under her breast and arm. The injured breast is positioned much lower than the other because there is no muscle to support it. The appellant holds the injured breast all the time.
- When the appellant wakes up, it is hard for her to get out of bed. She will help the appellant out of the shower, and helps her to brush her hair because the appellant cannot lift her arms up.
- She helps the appellant by making dinner when the appellant stays with them. The appellant will contribute to the cost of the groceries. The appellant cannot cut carrots because they are too hard and pushing down on the knife is difficult for her.
- The appellant cannot take her grandchildren to the park since she cannot stand for long.
- Mentally, the appellant is “losing it” because she is in pain all the time and feels useless.
- When the appellant comes to visit, it is difficult living together. The appellant lives with another daughter in another community most of the time.
- She drives the appellant places since she does not have the energy to do it herself.
- She has to carry the appellant’s laundry for her because it involves going up and down stairs and it is too heavy for the appellant.
- When the appellant stays with her or her sister they will cook and clean and basically take care of her.
- The appellant can pay her bills by herself.

At the hearing, the appellant stated:

- The advocate completed the pages of the PWD application with the appellant’s information. The copy submitted on the appeal includes the same information as the copy originally intended to be submitted to the ministry as nothing has changed.
- She suffered a freak accident that “destroyed” her “whole life.” She injured her knee, shin, and lower part of her leg when she fell, and she was dragged, which “ripped off” her breast. Unfortunately, she did not go to the hospital until 36 hours later. She had to stay with a friend and could not go back to work. Her daughter had to pick her up.
- There was no diagnosis but she has severe pain in her chest cavity. For 4 years she has had to put pressure on her breast and the pain is “99% on the right side” although it also affects the left side a bit. It has also “messed up” her back since she “leans to the right and her back is “killing” her 99% of the time. She developed plantar fasciitis and needs new orthotics, but they are expensive.
- She suffers from chronic pain and she does not take pain medications as she found they had side effects, like itchiness. Her doctor has prescribed Tylenol 3 and a narcotic and

she sometimes uses cannabis. Her doctor has prescribed a new medication that she would like to try but the cost is not paid for by the ministry. She asked about the pain clinic 3 years ago and she is still waiting so there must be a considerable wait list. She tries to engage in activities to take her mind off the pain, such as painting or colouring.

- She may be able to sit for an hour but she is always shifting and moving in her seat to try to get comfortable. She may be able to walk 4 to 6 blocks but it is very slowly.
- She used to live on her own, but she has moved in full-time with her daughter since February 2017 because she can no longer look after herself.
- She does not like to go out to see friends anymore. She is grumpy and sad 99% of the time. She tries so hard and she says she can go for walks and that she can lift things but she really should not. She wants to be able to do things on her own but then she will suffer afterwards. For example, she can slide and manoeuvre to get the groceries up the stairs but then “everything hurts all of the time.”
- She cannot do things with her grandchildren that she used to be able to do. She wonders where she will be in a year’s time. She hopes that she can get back to work some day but when she looked into returning to work she was told that she is not ready. If she was designated as a PWD, she would get help to go to the chiropractor and she could take some steps to heal.
- She is not sure why her doctor assessed her functioning differently in some areas. She has been his patient for about 20 years but he does not see her day-to-day functioning.

The ministry relied on the reconsideration decision as summarized at the hearing. The ministry stated at the hearing that there is a process with the ministry for complaining about missing documents and also to obtain copies of documents through the Freedom of Information and Protection of Privacy legislation. The ministry also clarified that the AR can be completed by a prescribed professional other than a medical practitioner as the list includes an occupational or physical therapist, chiropractor, or nurse practitioner.

Admissibility of Additional Information

The ministry objected to the admissibility of the pages of the PWD application completed by the appellant and her advocate as this was not before the ministry at reconsideration, and a self-report by the applicant is an optional part of the application. The appellant argued that she had meant for these pages to be included in the application and they must have been lost by the ministry. The panel considered the information in the self-report by the appellant and the oral testimony on her behalf as being, for the most part, in support of, and tending to corroborate, the impact from medical conditions referred to in the PWD application which was before the ministry at reconsideration. The appellant also referenced an “attached” self-report in the PWD application and she stated at the hearing that the copy submitted on the appeal contains the same information. Therefore, the panel admitted this additional information in accordance with Section 22(4)(b) of the *Employment and Assistance Act*.

The panel did not admit the information from the appellant regarding issues with her back or plantar fasciitis as these conditions were not diagnosed by the GP and were not included in the PWD application or the Request for Reconsideration and were not before the ministry at reconsideration.

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 chronic chest wall pain, and that the GP commented that due to "severe chest wall pain" she is unable to work and it "affects all ADL's [DLA]." For additional comments in the MR, the GP wrote: "...pain constant which makes any exertion difficult" and "unable to work." The panel finds that the ministry reasonably determined 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. At the hearing, the appellant stated that she has not received a diagnosis but she has severe pain in her chest cavity since the accident and, for 4 years, she has had to put pressure on her breast and the pain is "99% on the right side." The appellant stated that she does not take pain medications, but her doctor has prescribed a new medication that she would like to try but that she cannot afford.

A diagnosis of a serious medical condition or conditions does not in itself determine PWD eligibility or establish a severe impairment. An "impairment" involves 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. Section 2(2) of the EAPWDA requires that the ministry be satisfied that the impairment is severe before the ministry may designate an applicant as a PWD. To assess the severity of the impairment, the ministry must consider the nature of the impairment and the extent of its impact on daily functioning.

The ministry considered the impacts of the appellant's diagnosed medical conditions on her daily functioning, beginning with the assessments provided in the MR and the AR. The ministry wrote that the GP reported in the MR that the appellant is able to walk 4 or more blocks unaided on a flat surface, climb 5 or more steps unaided, lift under 5 lbs., and remain seated 1 to 2 hours. In her self-report, the appellant indicated that she can walk outdoors 4 to 6 blocks maximum and she walks slowly, she can climb no stairs unaided and "uses handrail at all times" and, while she can remain seated 1 hour maximum, she is "constantly moving" to try to get comfortable. The panel finds that the ministry reasonably determined that stair handrails are not an "assistive device," as defined in Section 2 of the EAPWDA to mean "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," as rails are a required safety feature for stairs.

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 explanations, descriptions or examples in the spaces provided in the MR and in the AR forms.

In the AR, the GP assessed the appellant as independent with walking indoors and outdoors and standing (note: “1 hour maximum”). The GP did not provide an assessment for her ability to climb stairs and noted: “uses handrail.” The GP indicated that the appellant requires continuous assistance from another person with lifting and carrying and holding, with the note “less than 5 pounds.” At the hearing, the appellant stated that for 4 years since her injury, she has had to put pressure on her breast and the pain is “99% on the right side,” and her daughter stated that the appellant holds her injured breast most of the time. The GP did not indicate whether the restrictions to lifting and carrying and holding are limited to the right side or both sides. In the section of the AR relating to assistance provided, the GP indicated that none of the listed assistive devices, including braces, are required by the appellant.

Given the emphasis by the GP on the appellant’s inability to work, the GP’s assessment of physical functioning in the high-moderate range of functional skills limitations and independence with her mobility and physical ability, with the exception of lifting and carrying and holding heavier weights in excess of 5 lbs., the panel finds that the ministry reasonably determined that the evidence is not sufficient 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 acknowledged that the appellant was diagnosed by the GP with depression and, at the hearing the appellant stated that she is grumpy and sad 99% of the time. The appellant’s daughter also stated that, mentally, the appellant is “losing it” because she is in pain all the time and feels useless.

In the MR, the GP reported the appellant has significant deficits with her cognitive and emotional function in the areas of emotional disturbance, motivation and attention or sustained concentration. While the appellant indicated in her self-report that she also has significant deficits in cognitive and emotional functioning in the areas of consciousness and motor activity (“agitation”), this assessment was not confirmed by the GP in the PWD application. There was also no additional information from the GP or other medical professional provided on the appeal.

The ministry considered that the GP reported major impacts to cognitive and emotional functioning in the areas of bodily functions, emotion, and motivation, a moderate impact in the area of attention/concentration, and minimal impacts in executive and memory. There are no impacts in the areas of consciousness, impulse control, insight and judgment, motor activity, language, psychotic symptoms, other neuropsychological problems or other emotional or mental problems, and the GP did not provide any comments. In her self-report, the appellant indicated that there is a major impact to motor activity (“agitation”), moderate impact to consciousness, and no impact to executive and memory; however, this assessment was not confirmed by the

GP anywhere in the PWD application and there was no additional information provided on the appeal from the GP or a mental health specialist.

Considering the two “social functioning” DLA that are specific to mental impairment – make decisions about personal activities, care or finances (decision making), and relate to, communicate or interact with others effectively (relate effectively), the panel finds that the ministry reasonably concluded that there is insufficient evidence to establish that the appellant is significantly restricted in either. Regarding the ‘decision making’ DLA, the GP reported in the AR that the appellant independently manages most of the assessed decision-making components of DLA, specifically: shopping (making appropriate choices and paying for purchases) meals (meal planning and safe storage of food), pay rent and bills (including budgeting), medications (taking as directed and safe handling and storage), and making appropriate social decisions, requiring no support or supervision from another person. In her self-report, the appellant agreed that she is independent with making social decisions.

Regarding the DLA of ‘relating effectively’, the GP reported in the AR that the appellant requires periodic support/supervision from another person for developing and maintaining relationships and with interacting appropriately with others; however, the panel finds that the ministry reasonably considered that the comments by the GP “depressed, decreased social interaction, isolation” do not describe the frequency or duration of the support/supervision required. In her self-report, the appellant indicated that she requires continuous support/supervision from another person for developing and maintaining relationships (note: “sticks to people she already knows”), interacting appropriately with others (note: “isolates self”); however, this assessment was not confirmed by the GP anywhere in the PWD application and there was no additional information provided on the appeal from the GP or a mental health specialist.

The ministry wrote that the GP assessed marginal functioning in both her immediate and extended social networks and the panel notes that, when asked to describe the support/supervision required that would help to maintain the appellant in the community, the GP left this section incomplete. The GP reported in the MR that the appellant has no difficulties with communication and while the appellant indicated in her self-report that she has cognitive difficulties with communication, this was not supported with information from the GP or a mental health specialist,

Given the insufficient evidence of significant impacts to the appellant’s cognitive and emotional functioning or to the two social functioning DLA that are specific to a mental impairment, the panel finds that the ministry reasonably determined that a severe mental impairment was not established under Section 2(2) of the EAPWDA.

Restrictions in the ability to perform DLA

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

Section 2(2)(b) of the EAPWDA requires that a prescribed professional provide an opinion that an applicant’s severe impairment directly and significantly restricts her ability to perform DLA, either continuously or periodically for extended periods. In this case, the GP is the prescribed

professional. DLA are defined in Section 2(1) of the EAPWDR and are also listed in the MR and, with additional details, in the AR. Therefore, a prescribed professional completing these forms has the opportunity to indicate which, if any, DLA are significantly restricted by the appellant's impairment continuously or periodically for extended periods.

In the reconsideration decision, the ministry reviewed the information provided in the MR and wrote that the GP indicated that the appellant has not been prescribed medication/treatment that interferes with her ability to perform DLA. In the AR, the GP assessed the appellant as independent with the "mobility" DLA of moving about indoors and outdoors. The ministry considered that the GP assessed the appellant as being independent with all of the tasks for the pay rent and bills DLA and the medications DLA. While the appellant indicated in her self-report that she requires continuous assistance from another person with the tasks of budgeting and to pay rent and bills, as well as for filling/refilling prescriptions and taking as directed, her testimony suggested that her restrictions are due to a lack of funds and the restrictions have not been confirmed in the opinion of a prescribed professional as required by the legislation.

The ministry wrote that, for the personal care DLA, the GP assessed the appellant as being independent with the tasks of grooming, toileting, and feeding self, and requiring continuous assistance from another person with dressing (note: "painful"), bathing ("decreased motivation"), and regulating diet (note: "decreased appetite"). At the hearing, the appellant's daughter stated that she helps the appellant out of the shower, and helps her to brush her hair because she cannot lift her arms up. There was no assessment provided by the GP for the tasks of transfers in/out of bed or on/off chair. In her self-report, the appellant indicated that she takes significantly longer than typical with transfers in/out of bed and transfers on/off chair (note: "2 times longer" and "uses chair arms for support"); however, this assessments by the appellant has not been confirmed in the opinion of a prescribed professional, as required by the legislation.

The ministry considered that the GP assessed the appellant as requiring continuous assistance from another person with both housekeeping and laundry and the GP commented: "causes increased pain." At the hearing, the appellant's daughter stated that when the appellant is staying with her, she has to carry laundry for her because it involves going up and down stairs and it is too heavy for her, and she also does the cleaning. The ministry wrote that the restrictions reported by the GP to the shopping DLA relate to the use of a shopping cart as an "assistive device" for the task of going to and from stores, and the appellant requires continuous assistance from another person for carrying purchases home for weights heavier than 5 lbs. At the hearing, the appellant stated that she often tries to do things on her own and she can slide and manoeuvre to get the groceries up the stairs but then she will feel the impact later and "everything hurts all of the time."

The ministry considered that for the meals DLA, the appellant is assessed by the GP as requiring continuous assistance with food preparation and cooking. The GP wrote: "needs help with prep and lifting." At the hearing, the appellant's daughter stated that when the appellant stays with her or her sister they will cook and basically take care of her. She stated that the appellant cannot cut carrots because they are too hard and pushing down on the knife is difficult for her. The ministry wrote that, regarding the transportation DLA, the GP assessed the

appellant as taking significantly longer than typical with getting in and out of a vehicle (note: “painful”) and the appellant added in her self-report that she uses an assistive device as she “...has to use seat back for support.”

The panel finds that the ministry reasonably considered the definition of “assistive devices” in Section 2 of the EAPWDA and determined that a shopping cart does not fall within this definition, for the same reason previously discussed with respect to stair rails. The panel notes that a chair arm and a seat back also do not fall within the definition of an assistive device. The ministry acknowledged that the GP confirmed limitations to lifting weights heavier than 5 lbs. but noted that there are no restrictions assessed to the appellant’s other physical abilities or to her mobility that would impact her ability to perform her DLA.

Given the GP’s assessment of moderate physical functioning, other than for lifting weights in excess of 5 lbs. and, in the absence of further explanation or description by the GP, as well as the insufficient evidence of significant restrictions to the two social functioning DLA that are specific to a severe mental impairment, the panel finds that the ministry reasonably concluded that it was difficult to establish the need for continuous assistance with the basic housekeeping DLA and some other tasks of DLA. 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.

The GP reported that the appellant receives help from family, and the appellant’s daughter stated at the hearing that she and her sister provide help to the appellant and the appellant can no longer live alone. However, 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 in the opinion of a prescribed professional, the panel also finds that the ministry 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 confirms the ministry’s decision. The appellant’s appeal, therefore, is not successful.