

PART C – DECISION UNDER APPEAL

The decision under appeal is the reconsideration decision of the Ministry of Social Development and Poverty Reduction (the ministry) dated 17 October 2017 that denied the appellant designation as a person with disabilities (PWD). The ministry determined that the appellant did not meet all of the required criteria for PWD designation set out in the *Employment and Assistance for Persons with Disabilities Act*, section 2. Specifically, the ministry determined that the information provided did not establish that the appellant has a severe physical or mental impairment that in the opinion of a prescribed professional,

(i) directly and significantly restricts her ability to perform daily living activities (DLA) either continuously or periodically for extended periods; and,

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

The ministry determined that the appellant satisfied the other 2 criteria: she has reached 18 years of age; and her impairment in the opinion of a medical practitioner is likely to continue for at least 2 years.

PART D – RELEVANT LEGISLATION

Employment and Assistance for Persons with Disabilities Act (EAPWDA) – section 2
Employment and Assistance for Persons with Disabilities Regulation (EAPWDR) – sections 2 and 2.1

PART E – SUMMARY OF FACTS

The evidence before the ministry at reconsideration consisted of the following:

1. The appellant's PWD Designation Application dated 11 July 2017. The Application contained:
 - A Medical Report (MR) dated 10 July 2017 completed by a specialist in physical medicine and rehabilitation ("the specialist") who has known the appellant since 15 December 2016 and seen her 2-10 times in the past 12 months.
 - An Assessor Report (AR) dated 04 July 2017, completed by a physiotherapist (PT) who has known the appellant for 6 months and seen her 2-10 times in the past 12 months.
 - The appellant chose not to complete a Self Report.
2. The appellant's Request for Reconsideration dated 05 October 2017, attached to which is a submission by the appellant and several medical reports (see below).

In the MR, the specialist diagnoses the medical conditions related to the appellant's impairment as regional myofascial pain (left neck, shoulder, arm) with onset August 2016, and fibromyalgia with onset ~ 2000. He comments: "Pre-existing diagnosis of fibromyalgia, with aggravation of left neck/shoulder/arm August 2016."

The panel will first summarize the evidence from the MR and the AR as it relates to the PWD criteria at issue in this appeal.

Severity of impairment

General

MR:

Under Health History, the specialist writes:

"Myofascial pain syndrome consists of diffuse pain, poor sleep, chronic fatigue, decreased exercise/activity/fitness levels, and low mood/high anxiety.

This limits her ability to effectively work full hours and duties as an activity assistant at [place of work]."

The specialist also refers to a summary note dated June 19, 2017. The panel could not find any such note in the Record.

The specialist indicates that the appellant has not been prescribed any medication and/or treatments that interfere with her ability to perform DLA, and that she does not require any prostheses or aids for her impairment

AR:

The PT describes the appellant's impairment as: "Right wrist fracture 2003 that never healed fully, has pins & plate still *in situ*."

Under Comments, the PT gives as physical restrictions: "Right wrist post-fracture 2003, limited mobility & strength," and "Fibromyalgia limits strength & endurance, aka myofascial pain syndrome."

Physical impairment

MR:

The specialist indicates that the appellant can walk 4+blocks unaided on a flat surface, can climb 5+ steps unaided, is limited to lifting 5 to 15 lbs., and can remain seated for less than 1 hour.

“She has no specific restrictions or contra indications, but
- she needs to pace herself and work around her pain and fatigue.

To limit exacerbating her condition, I recommend

- 1) Assisting as an extra worker with light tasks.
- 2) Limit lifting to occasional; no lifting more than 15 lbs.; no pushing/pulling more than 20 lbs.; limit bending/stooping to only occasionally
- 3) Avoid activities that cause aggravation.
- 4) No lifting heavy 4-wheeled walkers.
- 5) Limit low-level activities
- 6) Avoid prolonged static postures.”

AR:

As to mobility and physical ability, the PT assesses the appellant as independent for walking indoors, walking outdoors, climbing stairs, and standing; and requiring periodic assistance from another person for lifting and carrying and holding, commenting “Grocery shopping requires assistance to lift heavy bags.”

Mental impairment

MR:

The specialist indicates that the appellant has no difficulties with communication.

The specialist indicates that the appellant has no significant deficits with cognitive and emotional functioning, commenting, “Low mood is part of myofascial pain syndrome.”

AR:

Under Comments, the PT gives as mental impairment: “Depression affects activities of daily living,” and “Anxiety affects activities as well.”

The PT indicates that the appellant’s ability to communicate is good for speaking, reading and hearing, and satisfactory for writing, commenting, “Right wrist injury 2003”.

The PT assesses the degree to which the appellant’s mental impairment restricts or impacts her functioning in the following areas as:

- Major impact: emotion (depression).
- Moderate impact: bodily functions (sleep disturbance), motivation and other emotional or mental problems (anxiety).
- Minimal impact: attention/concentration (unable to maintain concentration) and motor activity.
- No impact: consciousness, impulse control, insight and judgment, executive, memory, language, psychotic symptoms, and other neuropsychological problems.

Ability to perform DLA

MR:

The specialist indicates that the appellant's impairment directly restricts her ability to perform DLA.

The specialist indicates that the appellant's ability to perform housework is restricted on a continuous basis. He indicates that she is not restricted for all other activities: personal self care, meal preparation, management of medications, daily shopping, mobility inside the home, mobility outside the home, use of transportation, management of finances, and social functioning.

AR:

The PT provides the following assessments of the assistance the appellant requires in performing DLA (the PT's comments in parenthesis):

- Personal care – independent for toileting, feeding self, regulating diet, transfers in/out of bed, and transfers on/off chair; takes significantly longer than typical for dressing, grooming, and bathing (due to loss of right wrist function, dexterity/strength).
- Basic housekeeping – periodic assistance from another person for laundry and basic housekeeping.
- Shopping – independent for going to and from stores, reading prices and labels, making appropriate choices, and paying for purchases; periodic assistance from another person for carrying purchases home (to help with heavier bags to vehicle).
- Meals – independent for meal planning, cooking, safe storage of food; periodic assistance from another person for food preparation (help cutting, peeling).
- Pay rent and bills – independent for all tasks: banking, budgeting, and paying rent and bills.
- Medications – independent for all tasks: filling/refilling prescriptions, taking as directed, and safe handling and storage.
- Transportation – independent for all tasks: getting in and out of the vehicle, using public transit, and using transit schedules and arranging transportation.

The PT comments:

“Uses assistance to carry grocery bags to car, often divides heavier bags into lighter ones and makes extra trips to keep load light in order to manage wrist condition.

Has help for laundry/housekeeping.

Personal care takes longer due to loss of right (dominant) hand dexterity.”

As to the support/supervision required for social functioning, the PT assesses the appellant as independent for all aspects: making appropriate social decisions, developing and maintaining relationships, interacting appropriately with others, dealing appropriately with unexpected demands and securing assistance from others.

The PT assesses the appellant's relationship with her immediate and extended social networks as good functioning.

MR:

The specialist indicates that the appellant does not require any prostheses or aids to compensate for her impairment.

AR:

The PT indicates that family and friends provide the help required for the appellant's DLA.

The PT does not indicate that the appellant requires any of the listed equipment or devices to compensate for her impairment, but adds that she uses a chair backrest at work and would benefit from a chair backrest at home and a higher quality mattress to improve sleep. The PT indicates that the appellant does not have an assistance animal.

Request for Reconsideration

In her Request for Reconsideration, the appellant writes that she is attaching supporting medical evidence that she meets the criteria for multiple barriers disability. These are summarized below:

1. Appellant submission dated 25 September 2017. She writes that she is been diagnosed with fibromyalgia and myofascial pain syndrome and these affect her continuously and periodically for extended times and as a result she requires home support for assistance with housework, shopping and meals for approximately 15 hours per week and that friends assist in this regard. She also writes that she takes medication daily to offset mood disorder and anxiety. She argues that these conditions give rise to persistent multiple barriers to employment. She notes that she has been on assistance on and off due to her inability to function at 37.5 hours per week since July 2016, that she has exhausted other benefits, including EI, that she broke her right dominant wrist in 2003 and struggled to return to easier work and that she has been struggling for 14 years to maintain some sort of employment at full time or part-time and has not been successful since going on leave from her current employer since July 2017. She tried to gradually return to work for an excessive amount of time but was not able to maintain this.
2. Medical imaging report dated 03 March 2004. Regarding the right wrist, and on undisplaced buckle fracture of the full volar aspect of the distal radial metathysis is in an advanced stage of bone union; an ulnar styloid fracture is ununited, and likely will remain so; and slight widening of the scapholunate joint is noted, suggesting there is some laxity or disruption of the ligament. The appellant adds handwritten comments that her right hand is dominant, she has been denied CPP disability twice, and that she has received the disability tax credit since 2003.
3. Questionnaire from an insurance company with reference to the appellant's long-term disability plan, completed by another physician on 20 June 2008. The questionnaire and the physician's answers relate to the appellant's right wrist injury that precludes her from working 8 hours/day at her previous employment.
4. Physician's assessment note dated 13 June 2013. The physician (the same one completed the above questionnaire) assesses the appellant with myofascial pain syndrome on the right side with significant myofascial distribution radiation. Trigger points in shoulder girdle and upper back, lower neck. Treatment plan is to continue with the physio/chiropractic that she is receiving.
5. Referral letter from the same physician dated 05 June 2013 (addressee unknown) conveying much the same information regarding the appellant's condition as in 4. above.

6. Disability Tax Credit Certificate dated 19 April 2016 with the medical practitioner's sections completed by another physician. The physician indicates that the appellant is markedly restricted in feeding and dressing. In describing the effects of the appellant's impairment, the physician notes:
- "Chronic right wrist pain. She suffered comminuted distal radial fracture.
 - "Due to pain, stiffness, and decreased dexterity, [the appellant] requires an inordinate amount of time to dress on a daily basis.
 - "[The appellant] requires an inordinate amount of time to prepare meals and to feed herself, on a daily basis, due to significant pain and decreased strength and dexterity in wrist."
- The physician certifies that the appellant's impairment is expected to last for a continuous period of at least 12 months.

7. Letter from the appellant's specialist to the first physician dated 20 July 2017. The specialist describes how the appellant had a back-to-work plan involving working three full days per week, with one day off in between each day of work. He reports that she is not able to continue with this plan and has not worked since 19 July 2017. He writes that, on examination, the primary limiting factor continues to be diffuse myofascial pain syndrome. His impression is:
- "Chronic myofascial pain syndrome, with chronic widespread muscular pain, significant sleep disturbance, significantly reduced capacity to stay active and exercise, as well as significant mood lability, with low mood, high anxiety states, and difficulty coping with stressful events."
- The specialist continues to recommend activity "restrictions," as per his advice of as set out in the MR under (see above).

Notice of Appeal

The appellant's Notice of Appeal is dated 24 October 2017. Under Reasons for Appeal, she writes that she does have a physical and mental impairment; this impairment restricts her abilities of daily living; and she does receive help for various activities of daily living.

The hearing

At the hearing, the appellant described how her impairment met the legislative criteria for PWD designation:

- She uses an assistive device, namely a cane, for walking any distance when her condition flares up.
- For about a week per month, she is unable to climb the stairs up to her bedroom as pain in her knees makes this difficult; as a result she sleeps on her couch in the living room.
- When she was living in another city, she was provided 15 hours of home support per week. She estimates that, now that she has moved back to her hometown, she receives 15 – 20 hours of assistance from family and friends. This sometimes includes being driven about town, as neck pain makes shoulder checking difficult. She is also accompanied while shopping, given help taking purchases to the car, from the car into the home, and putting them away once home. Because of her lack of dexterity, she will also get help in folding laundry and putting it away and with washing her hair. Due to lack of strength, she will ask visitors to do any necessary vacuuming or other household cleaning chores. Friends also assist by cooking at their own homes, on a shared-cost basis, casseroles for her to warm up.

- She has a therapy dog that was given to her by a charitable organization to help her cope with her anxiety. She trained the dog for this purpose under the guidance of the charitable organization and the dog is so certified.
- Her fibromyalgia flares up for about one week per month, resulting in sleep disturbance because of anxiety and stress. The dog is most helpful during these episodes.

The ministry stood by its position at reconsideration.

Admissibility of additional information

Section 22(4) of the *Employment and Assistance Act* (EAA) provides that panels may admit as evidence the information and records that were before the minister when the decision being appealed was made and “oral or written testimony in support of the information and records” before the minister when the decision being appealed was made. These limitations reflect the jurisdiction of the panel established under section 24 of the EAA – that is, panels are limited to determining if the ministry’s decision is reasonably supported by the evidence or a reasonable application of the legislation in the circumstances of the appellant. Thus, panels are not to assume the role of decision-makers of the first instance by considering information that presents a new or different picture of the impairment or restrictions than that which was before the ministry when it made its reconsideration decision.

The ministry objected to the admissibility of that part of the appellant's testimony relating to the appellant's use of a cane and her reliance on the therapy dog, as this information was not before the ministry reconsideration.

The panel finds that the information provided by the appellant regarding the use of a cane, her therapy dog, her periodic restrictions climbing stairs, and the episodic nature of her condition, is not in support of the information before the ministry at reconsideration as this information cannot be said to corroborate or substantiate anything before the ministry when it made its decision. Accordingly, pursuant to section 22(4) of the *Employment and Assistance Act*, the panel does not admit this information as evidence.

The panel admits as evidence that part of the appellant's testimony regarding the help provided by family and friends, as this information tends to corroborate the information provided by the appellant in her Request for Reconsideration that she requires 15 hours/week of home support. The panel notes however that the type and extent of help provided has not been confirmed by either the specialist or the PT, the appellant's prescribed professionals.

PART F – REASONS FOR PANEL DECISION

The issue in this appeal is whether the ministry decision that determined that the appellant did not meet three of the five statutory requirements of Section 2 of the *EAPWDA* for designation as a person with disabilities (PWD) is reasonably supported by the evidence or is a reasonable application of the legislation in the circumstances of the appellant. Specifically, the ministry determined that the information provided did not establish that the appellant has a severe physical or mental impairment that, in the opinion of a prescribed professional,

(i) directly and significantly restricts her ability to perform daily living activities (DLA) either continuously or periodically for extended periods; and,

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

The ministry determined that the appellant satisfied the other 2 criteria: she has reached 18 years of age; and her impairment in the opinion of a medical practitioner is likely to continue for at least 2 years.

The following section of the *EAPWDA* applies to this appeal:

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 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.

The following section of the *EAPWDR* applies to this appeal:

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.

Severity of impairment

Physical impairment

The position of the appellant is that her several medical professionals have provided sufficient documentation that demonstrate that her fibromyalgia and myofascial pain, together with her right wrist/hand weakness and lack of dexterity, constitute a severe physical impairment. These conditions significantly restrict her ability to function independently, to the point where she requires significant help to perform her daily living activities.

In the reconsideration decision, the ministry found that due to the inconsistencies between the information provided by the specialist and the PT, it is difficult to develop a clear and coherent picture of the degree of the appellant's impairment, the impacts on her ability to perform DLA, and the assistance she requires as a result.

In reaching this determination, the ministry noted that the diagnosis of a serious medical condition does not in itself determine PWD eligibility or establish a severe impairment. To assess the severity of impairment, the ministry must consider the nature of the impairment and the extent of its impact on daily functioning as evidenced by limitations/restrictions of physical functioning, mental functioning, ability to perform DLA, and help required with DLA. Given the emphasis in the legislation on restrictions and help required, the panel finds reasonable this approach to the analysis of the information provided in determining severity of impairment.

In its decision, the ministry noted the comment by the specialist under Health History that her myofascial pain syndrome "limits her ability to effectively work full hours..." The ministry noted that for the purposes of determining eligibility for PWD designation, an applicant's employability or ability to work is not taken into consideration. As the focus of the legislation in section 2(b) of the *EAPWDA* is on whether an impairment "directly and significantly restricts the person's ability to perform daily living activities ...", and as employability or ability to work is not listed in section 2(1) of the *EAPWDR* as a DLA, the panel finds that ministry was reasonable in not taking into account any reported employability restrictions.

In reviewing the assessments provided by the specialist in the MR, the ministry noted the statement under Health History that “She has no specific restrictions or contra indications, but - she needs to pace herself and work around her pain and fatigue.” The ministry also noted that the specialist assessed the appellant as able to walk 4+ unaided, climb 5+ stairs unaided, is limited to lifting 5 to 15 lbs. and can remain seated for less than one hour. The ministry noted that these functional skills, as well as those mentioned as the restrictions by the specialist in his comments (e.g. “no lifting more than 15 lbs.; no pushing/pulling more than 20 lbs.”) are not indicative of a severe impairment of physical functioning.

The ministry also reviewed the assessments provided by the PT in the AR, noting that the PT assessed the appellant as independent with walking indoors, walking outdoors, climbing stairs, and standing; and requiring periodic assistance from another person for lifting and carrying/holding, though without providing any information as to how often such assistance is required.

The ministry concluded that, based on the information provided, a severe impairment of the appellant's physical functioning has not been established.

The legislation is clear that the determination of severity of impairment is at the discretion of the minister, taking into account all of the evidence. The legislation requires that for PWD designation, the minister must be “satisfied” that the person has a severe mental or physical impairment.

For the minister to be “satisfied” that the person’s impairment is severe, the panel considers it reasonable for the ministry to expect that the information provided by the independent and professional medical practitioner and prescribed professional (in this case the specialist and the PT) completing the Application permits the minister to form a comprehensive overview of the nature and extent of the impacts of the person's medical conditions on daily functioning. It is therefore reasonable for the minister to expect that the MR and the AR include explanations, descriptions or examples in the spaces provided.

As the ministry noted, there are inconsistencies between the information provided by the specialist and by the PT. In cases where the prescribed professional completing the AR is different from the medical practitioner completing the MR, the legislation does not require an exact match between the information provided in the MR compared to that in the AR. However, where there is a major discrepancy between the two, this raises questions as to on which set of assessments the ministry should rely. In this case, the specialist did not provide a diagnosis of the appellant's right wrist/hand fracture and resulting loss of strength and dexterity, while the PT highlighted this condition as her impairment. Similarly, the specialist indicated that the appellant could lift up to 15 lbs., while the PT assesses her as requiring periodic assistance for lifting and carrying/holding.

In the panel's view, these inconsistencies are so serious that it would be difficult for the ministry to obtain a clear picture of the appellant's impairment. Considering these inconsistencies, and taking into account functional skills (able to walk 4+ blocks, etc., as reported by the specialist), the panel finds that the ministry was reasonable in determining that a severe physical impairment has not been established.

Mental impairment

The appellant's position is that the evidence clearly shows that she has a severe mental impairment. This has been documented with the specialist stating in the MR that "Low mood is part of myofascial pain syndrome," and in his 20 July 2017 letter reporting his impression of "significant mood lability, with low mood, high anxiety states, and difficulty coping with stressful events." In addition, the PT assessed a major impact on daily functioning in the area of emotion (depression) and moderate impacts to bodily functions (sleep disturbance), motivation and other emotional or mental problems (anxiety).

In the reconsideration decision, the ministry found that information provided does not establish that the appellant has a severe impairment of her mental functioning.

In reviewing the information provided, the ministry noted in the MR that the specialist reported that the appellant has no difficulties with communications, no deficits with cognitive and emotional function, noting that "Low mood is part of myofascial pain syndrome," and no restrictions with social functioning.

The ministry also reviewed the information provided by the PT in the MR (see Part F above under *Mental impairment*). The ministry noted that although the PT indicates a major impact to cognitive and emotional functioning in the area of the emotion, the specialist does not indicate a significant deficit to cognitive and emotional functioning in the area of emotional disturbance. The ministry also noted that the PT indicated a major impact to one area of cognitive and emotional functioning, moderate impacts to three areas and minimal impacts to two areas and concluded that the cumulative impact to cognitive and emotional functioning from these assessments is not considered indicative of a severe impairment of mental functioning. The ministry further noted that the PT reported that the appellant is independent with all listed areas of social functioning, has good functioning with both her immediate and extended social networks, does not describe any support/supervision required to help her maintain in the community and does not describe any safety issues with regard to social functioning.

The panel notes that while the PT has assessed one area of major impact of the appellant's mental health condition on daily functioning, and several moderate and minor impacts, he has not provided any narrative or other assessments that describe how and where in the appellant's daily life these impacts arise. Considering that:

- the specialist has not diagnosed a specific mental health disorder and has indicated that the appellant does not have a significant deficit to cognitive and emotional functioning,
- neither the specialist nor the PT has assessed the appellant with any difficulties with communications (except for writing, attributable to her wrist issues), and
- neither the specialist nor the PT has assessed the appellant as having any restrictions with social functioning,

the panel finds that the ministry reasonably determined that a severe mental impairment has not been established.

Direct and significant restrictions in the ability to perform DLA

Panel decision

The appellant argues that the assessments provided by the PT, as clarified by her testimony at the hearing regarding assistance provided by her family and friends, demonstrate that her impairment significantly restricts her ability to perform DLA on a continuous basis.

In the reconsideration decision, the ministry found that there is not enough evidence to confirm that the appellant has a severe impairment that significantly restricts her ability to perform DLA continuously or periodically for extended periods. The ministry noted that while the legislation does not specifically require the frequency and duration of restrictions to be explained, the ministry finds such information valuable in determining the significance of the restrictions.

In reaching its conclusion regarding this criterion, the ministry reviewed the information provided by the specialist in the MR and by the PT in the AR (see Part E above under *Ability to perform DLA*). The ministry noted that although in the AR the PT indicated restrictions to areas of personal care, shopping, and meals, in the MR the specialist indicated that the appellant is not restricted in these areas. The ministry also noted that in the AR, the PT does not describe how much longer than typical the appellant takes with dressing, grooming, and bathing. Further, the PT does not describe the frequency or duration of periodic assistance from another person required with laundry, basic housekeeping, carrying purchases home, or food preparation. For these reasons, the ministry found it difficult to establish significant restrictions to DLA based on the assessments by the PT in the AR.

The panel notes that, according to the legislation, the direct and significant restriction in the ability to perform DLA must be the result of a severe impairment, a criterion not established in this appeal. The legislation – section 2(2)(b)(i) of the EAPWDA – requires the minister to assess direct and significant restrictions of DLA in consideration of the opinion of a prescribed professional, in this case either the specialist or the PT. This does not mean that other evidence should not be factored in as required to provide explanation of the professional evidence, but the legislative language is clear that a prescribed professional's evidence is fundamental to the ministry's determination whether it is "satisfied." And for the minister to be "satisfied," it is reasonable for the ministry to expect that a prescribed professional provides a clear picture of the extent to which the ability to perform DLA is restricted, as assessed in terms of the nature and duration of help required, in order for the ministry to determine whether the restrictions are "significant."

The panel finds that in the AR, in instances where periodic assistance from another person is assessed as being required, the PT provides limited information as to the degree, scope, frequency and duration of such assistance. For example, in his summary comments he writes: "Uses assistance to carry grocery bags to car, often divides heavier bags into lighter ones and makes extra trips to keep load weight in order to manage wrist condition. Has help for laundry/housekeeping." While the appellant provided some clarification in her testimony at the hearing of how much time was involved, these details were not before the ministry as representing the opinion of the prescribed professional.

Further, in the MR and AR there are footnotes that state that periodic assistance "refers to the need for significant help for an activity some of the time as would be the case where a person required help due to the episodic nature of the impairment." The panel notes that there is insufficient evidence that would point to the appellant's impairment being episodic in nature.

Given that a severe impairment has not been established, and considering the lack of detailed information provided by the PT on the nature of periodic assistance provided and the overall level of independence reported by the specialist and the PT, the panel finds that the ministry was reasonable in determining that the information provided did not confirm that the appellant has a severe impairment that significantly restricts her ability to perform DLA continuously or periodically for extended periods, and that therefore this legislative criterion has not been met.

Help required

Panel decision

In the reconsideration decision, the ministry held that, as it has not been established that DLA are significantly restricted, it cannot be determined that significant help is required.

Section 2(2)(b)(ii) of the EAPWDA requires that, as a result of being directly and significantly restricted in the ability to perform DLA either continuously or periodically for extended periods, a person must also require help to perform those activities. That is, the establishment of direct and significant restrictions under section 2(2)(b)(i) is a precondition of meeting the need for help criterion. Help is defined in subsection (3) as the requirement for an assistive device, the significant help or supervision of another person, or the services of an assistance animal in order to perform a DLA.

While the appellant benefits from the assistance of her family and friends, since the ministry reasonably determined that direct and significant restrictions in the appellant's ability to perform DLA have not been established, the panel finds that the ministry 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, was reasonably supported by the evidence. The panel therefore confirms the ministry's decision. The appellant is thus not successful on appeal.