

PART C – DECISION UNDER APPEAL

The decision under appeal is the Ministry of Social Development and Poverty Reduction (ministry) reconsideration decision dated 20 September 2017, which determined that the appellant was not eligible for persons with disabilities designation (PWD) because she had not met all of the legislated criteria under section 2 the *Employment and Assistance for Persons with Disabilities Act*. The ministry determined that the appellant had demonstrated that 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 ministry further determined that the appellant had not demonstrated that she has a severe mental or physical impairment; the appellant’s severe mental or physical impairment, in the opinion of a prescribed professional, directly and significantly restricts her ability to perform daily living activities (DLA) either continuously or periodically for extended periods; and as a result of direct and significant restrictions, she requires help to perform those activities.

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

Evidence before the ministry at reconsideration consisted of the following:

1. The appellant's PWD Application

The Application contained:

- A Medical Report (MR) dated 5 June 2017, completed by the appellant's general practitioner (GP) who has seen the appellant 2-10 or more times in the past 12 months and has known the appellant since June 2016.
- An Assessor Report (AR) dated 5 June 2017, completed by the appellant's GP.
- A Self Report (SR) dated 19 June 2017, completed by the appellant with 2 additional handwritten pages entitled Addendum Disabling Condition.

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

Diagnoses

In the MR, the GP specifies the following diagnoses as related to the appellant's impairment:

- Osteoarthritis both hands and wrists – onset July 2013
- Early onset osteoarthritis right knee – onset December 2013
- Vision loss – right eye worse – onset December 2002
- Depression – onset January 2012

In the AR, the GP has responded to the question "What are the applicant's mental or physical impairments that impact his/her ability to manage Daily Living Activities?" with the comments: *pain in both hands/wrists and knees. Depression affecting sleep and appetite. Difficulty with carrying, lifting and holding.*

Severity of mental impairment

MR:

The GP indicates that the appellant suffers from depression.

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

The GP indicates that the appellant had significant deficits with cognitive and emotional functioning in the areas of memory, emotional disturbance and motivation.

AR:

The GP assesses the appellant's ability to communicate as good in all the areas of speaking, reading, and hearing and satisfactory in the area of writing (*has pain in fingers and wrists, takes 2-3x longer*).

The GP assess the appellant's cognitive and emotional functioning as having no impact in the areas of, consciousness, impulse control, insight and judgement, executive, memory, motor activity, language, psychotic symptoms, other neuropsychological problem and other emotional or mental problems. The GP assesses minimal impacts on daily functioning in the area of attention/concentration. Moderate impacts on daily functioning are assessed in the areas of bodily functions and motivation. Major impacts are assessed in the area of emotion. The GP writes: *was in abusive relationship and continues to be affected by it.*

SR:

The appellant reports that she has severe depression due to years of physical and mental abuse from her ex-husband. She states that she suffers from insomnia even if she takes her medication. She explains that depression makes her not want to go out and it is difficult for her to have a social life and be with people. She also states that being in pain increases her depression.

Severity of physical impairment

MR:

Under Health History, the GP writes: 1) *Choroidal neovascularization causing visual loss both eyes. Right eye is worse and vision 20/200 (right eye) and vision 20/30 (in left eye);* 2) *Pain in both hand[s] – x-ray shows mild-moderate bilateral osteoarthritis in both hands and wrists causing pain and difficulty carrying, holding and lifting;* 3) *Mild early osteoarthritis right knee and has difficulty bending it and using stairs;* 4) *Depression – finds it difficult to work, says she was abused by her ex-husband. Has poor sleep and decrease in appetite.*

For functional skills, the GP indicates that the appellant can walk 1-2 blocks unaided (*according to patient*), climb no steps unaided (*says has to hold on handrails to climb*), lift under 2-7 kg. (5-15 lbs.), and remain seated 1-2 hours (*according to patient*).

The GP indicates that the appellant requires a wrist splint for her impairment.

AR:

The GP assesses the appellant's mobility and physical ability as independent for walking indoors, walking outdoors and standing. The GP indicates that the appellant requires continuous assistance from another person or is unable and take significantly longer than typical for climbing stairs (*due to knee pain uses handle bars if unable to use elevator*). The GP also indicates that the appellant requires continuous assistance from another person or is unable and take significantly longer than typical with lifting and carrying and holding (*pain with hands and has difficulty with gripping and [illegible] purchases. Get help from kids*).

SR:

The appellant states that she suffers from severe osteoarthritis in her knee and hands and she cannot function well. She says that she has a vision problem, having lost her vision in one eye because of an eye bleed caused by stress and life pressure. The appellant states that she cannot walk more than 1 block or stand more than a few minutes. She cannot cook or clean the house and her children do this for her. She also explains that she cannot hold, carry or grasp anything because of the severe osteoarthritis in both of her hands and she cannot climb steps at all. The appellant states that she always has headaches. She states that one of her hands was broken because of physical abuse and she didn't receive proper treatment and cannot use her hand. She states that she is not able to look for a job and does not have any resources for daily life expenses.

Ability to perform DLA

MR:

The GP indicates that the appellant has not been prescribed medication that interferes with her ability to perform DLA.

AR:

The GP indicates that the appellant is independent in all listed personal care DLA; the shopping DLA of going to and from stores, reading prices and labels, making appropriate choices and paying for purchases; the meals DLA of meal planning; all medications DLA; and the transportation DLA of getting in and or of a vehicle.

The GP indicates that the appellant requires continuous assistance and takes significantly longer with:

- basic housekeeping DLA of laundry and basic housekeeping (*children do this*)
- the shopping DLA of carrying purchases home (*children take all purchases*)
- the transportation DLA of using schedules and arranging transportation (*takes 1-2x longer than normal*)

The GP indicates that the appellant requires periodic assistance and takes significantly longer with:

- the meals DLA of food preparation, cooking and safe storage of food (*her children do 90% of the cooking/food prep*)
- all pay rent and bills DLA (*needs help from her daughters*)
- the transportation DLA of using public transit (*takes longer than normal, 1-2x*)

The GP comments: *physical abilities limited by chronic spinal pain, reduced strength and stamina due to effects of anemia (chronic), pancreatitis and tongue cancer (radiation treatment) – all conditions reduce permanently her muscle mass and strength.*

Section 2(1)(b) DLA

The following DLA are applicable to a person who has a severe mental impairment:

Make decisions about personal activities, care or finances

AR:

The GP indicates that the appellant is independent with shopping DLA of readings labels, making appropriate choices, and paying for purchases; the meals DLA of meal planning; all medications DLA;

The GP indicates that the appellant requires periodic assistance and takes significantly longer with the meals DLA of safe storage and all pay rent and bills DLA. The GP indicates that the appellant requires continuous assistance and takes significantly longer with the transportation DLA of using transit schedules and arranging transportation.

Relate to, communicate or interact with others effectively

MR:

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

AR:

The GP assesses the appellant's ability to communicate as good in the areas of speaking, reading, and hearing and satisfactory with writing.

In assessing social functioning DLA, the GP indicates that the appellant is independent with appropriate social decisions and is independently able to secure assistance from others. The GP indicates that the appellant requires periodic assistance/support to develop and maintain relationships, interact appropriately with others, and deal appropriately with unexpected demands, with the comment: *due to depression/anxiety*. The GP indicates that the appellant has good functioning in her immediate social networks and marginal functioning in her extended social networks (*depressed*).

Help required

MR:

The GP indicates that the appellant requires a wrist splint for her impairment.

AR:

The GP indicates that the appellant receives assistance from family.

In response to the prompt to specify what help is required but there is none available, the GP does not provide a response.

The GP indicates that the appellant uses splints and braces (*wrist splints*). The GP indicates that equipment required but not currently being used is knee brace and wrist splints.

The GP indicates that the appellant does not receive assistance from assistance animals.

2. Other documents:

- An ophthalmology assessment dated 8 December 2016 indicating right eye 20/200 vision and left eye 20/30 vision.

3. Request for Reconsideration

A Request for Reconsideration dated 6 September 2017, with the following documents:

- A 2-page letter dated 25 August 2017, prepared by the appellant's advocate arguing that the decision to deny the appellant's request for PWD designation was made in error.
- A 3-page letter dated 24 August 2017, prepared with assistance from an advocate and signed by the appellant. The letter addresses each of the 3 legislated criteria that the ministry determined had not been met. At the end of the letter is a prepared statement of agreement with a space for signature by the appellant's physician. The physician has not signed the statement of agreement, but has provided the following handwritten statement: *With respect to the above, I have received the information and [the appellant] has provided the information. Accuracy of the information provided cannot be confirmed as I have not witnessed the details provided.*

Additional information before the panel on appeal consisted of the following:

Notice of Appeal

In the Notice of Appeal dated 25 September 2017, the appellant wrote as reasons for appeal: *I am not able to work. I have severe pain in my hands and knees. I cannot carry any items. I have been referred to see a muscle and joint specialist (Oct 2/2017).*

Appeal Submissions

Appellant

The appellant's appeal submissions included:

- A 1-page letter signed by the appellant arguing that she does have a severe physical and emotional impairment. She provides details relating to her impairments and their impacts.
- A 1-page letter dated 24 October 2017 from the appellant's GP, which speaks to the appellant's medical conditions and the resultant difficulties she experiences.
- A 3-page Rheumatologist's report dated 2 October 2017.

Ministry

The ministry submitted a 2-page appeal submission setting out the ministry's response and position in relation to the appellant's appeal submission and accompanying documents. The ministry's position is that the information provided did not establish a severe impairment.

Admissibility

The panel finds that the information provided in the Notice of Appeal, appellant's submission and accompanying documents is admissible in accordance with section 22 (4)(b) of the *Employment and Assistance Act* because it consists of reiteration and elaboration in support of information and records before the ministry at reconsideration.

The panel finds that the ministry's appeal submission consists of argument responding to the appellant's submissions and will be considered as such.

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 PWD designation 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 mental or severe physical impairment;
- that the appellant's severe mental or physical impairment, in the opinion of a prescribed professional, directly and significantly restricts her ability to perform daily living activities (DLA) either continuously or periodically for extended periods; and
- as a result of those restrictions, she requires help to perform those activities.

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

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 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

The legislation requires that for PWD designation, the minister must be "satisfied" that the person has a severe mental or physical impairment. The legislation makes it clear that the determination of severity is at the discretion of the minister, considering all the evidence, including that of the appellant. Diagnosis of a serious medical condition or the identification of mental or physical deficits does not in itself determine severity of impairment.

Severity of physical impairment

In the reconsideration decision, the ministry determined that it was not satisfied that this criterion had been met. In making this determination, the ministry considered the functional skills assessment by the GP noting that the appellant is able to walk 1-2 blocks unaided, climb no steps unaided, is limited to lifting under 2-7kg and can remain seated for 1-2 hours. The ministry noted that the GP's assessment of the appellant's functional skills was accompanied by comments suggesting that the information provided was based on self-assessment rather than medial assessment of the appellant's abilities. As well, the ministry concluded that the assessments provided did not reflect a severe impairment. The ministry noted that the appellant is independently able to walk indoors and outdoors and argues that it does not consider handrails to be an assistive device in relation to climbing stairs. The ministry noted that while the appellant is assessed in the AR as requiring continuous assistance with carrying, lifting and holding, she is assessed in the MR as being able to lift 2-7kg unaided. The ministry argued that being able to lift 2-7kg is sufficient for a number of household and shopping items. The ministry also noted that the GP did not provide information as to how much longer than typical the appellant takes with climbing stairs, lifting and carrying and holding.

The panel notes that the appellant has argued in her appeal submission that she is unable to use her right hand properly and has vision loss in her right eye and partial vision loss in her left eye. Further she argues she has pain in her hands and knee every day and even with medication it doesn't go away. She explains that she has difficulty buttoning jackets and pants. She states that she is not able to drive due to vision loss and has to rely on public transit. She also describes frequent headaches that leave her unable to get out of bed. In addition, the panel notes that the GP's October letter consists primarily of a reiteration of the information included in the PWD application, with minor modification/elaboration. The GP states in this letter that the appellant finds it difficult to stay seated, use stairs and walk long distances. As well, the GP states that the appellant takes 2-3 times longer with stairs and walks at a slow pace with frequent breaks. The GP states that the appellant can lift 5 to 10 lbs but has difficulty carrying and holding as she experiences severe pain and needs to put them down; the appellant's daughters help with grocery shopping, carrying and holding. The ministry argued that the information provided by the GP in the October letter suggests that it is a reiteration of the appellant's self assessment and does not necessarily reflect the GP's medical opinion. Further, the ministry argues that the GP's letter does not necessarily reflect a severe impairment as the degree and frequency of difficulty with household chores is not explained. Further, the ministry argues that taking 10-15 minutes longer to dress and 2-3 times longer to use stairs does not suggest a severe impairment. The panel notes that the information provided in the Rheumatologist's report supports the GP's diagnosis of bilateral arthritis of the hands. The Rheumatology report indicates that although the appellant is in severe pain x-rays are essentially normal, there are no clear inflammatory features, no convincing signs of synovitis, and CRP is normal. The panel notes that rheumatologist suggests that the appellant might be developing early osteoarthritis in her previously fractured left hand. The ministry argues that the narrative and test results discussed in the Rheumatologist's report, reflect normal or mild results, and does not lead to the conclusion of a severe impairment.

The panel finds that the ministry's determination was reasonable. The panel notes that the appellant asserts that she has severe osteoarthritis in her hands and knee; however, the GP's diagnoses indicate mild-moderate osteoarthritis in the hands and mild osteoarthritis of the knee. The panel notes that the GP's assessments of the appellant's functional capacity and mobility and physical ability assessments appear to reflect the appellant's reporting of her abilities rather than the GP's assessment of her abilities. As well, the panel notes that the appellant's self-assessment in her reconsideration letter, dated 24 August 2017, is specifically not endorsed by the GP. The panel finds that, despite some inconsistency between the GP's assessments and the appellant's self assessments, the information provided reflects some restrictions with mobility and physical ability, particularly

relating to carrying and holding. However, despite evidence of some limitations, the panel finds that the information provided does not establish a severe impairment. The panel also notes that the appellant has argued in the SR and Notice of Appeal that she cannot look for a job or work and does not have resources for her daily expenses. However, the panel notes that employability is not a consideration for eligibility for PWD designation because 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. The panel finds that the ministry's determination that a severe physical impairment has not been established is reasonable.

Severity of mental impairment

In the reconsideration decision, the ministry found that the appellant does not have a severe mental impairment. The ministry noted that the GP's assessment indicates that the appellant has no difficulties with communication. The ministry considered that in the MR the GP indicated significant deficits with cognitive and emotional functioning in the areas of memory, emotional disturbance and motivation but in the AR the GP assesses moderate impacts in the area of motivation and no impacts in the area of memory. The ministry also considered that there were major impacts assessed in the area of emotion, moderate impacts with respect to bodily functions and motivation and minimal impacts in the area of attention/concentrations. The ministry noted that no impacts were assessed for the remaining ten areas. As well, the ministry considered the GP's assessment of the appellant's social functioning abilities. In this consideration, the ministry noted that the GP has indicated that the appellant requires periodic assistance with some areas of social functioning (develop/maintain relationships, interacting appropriately with others and dealing appropriately with unexpected demands, *due to depression/anxiety*) and is independent in other social functioning areas (making appropriate social decisions and being able to secure assistance from others). The ministry noted that in relation to the areas where periodic assistance is required, the assessment does not include information as to the frequency or duration of support required. As well, the ministry noted that the appellant is assessed as having good functioning in her immediate and marginal functioning in her extended social networks. The ministry also considered that the GP did not provide information in relation to the presence of any safety issues or support/supervision required to maintain the appellant in the community. The ministry concluded that the information provided did not establish a severe impairment in mental functioning.

The panel notes that the appellant has argued in her appeal submission that she has battled depression and anxiety for years because of abuse, which made her feel guilty and afraid. She argues that her relationships have been affected and she isolated herself from family and friends. She explains that she is easily frustrated and anxious, doesn't like to go out alone and has her sister or one of her daughters go to appointments with her. The GP's October letter states that the appellant suffers from depression and anxiety from past abuse and reiterates her preference to stay home and her practice of having a daughter or her sister attend appointments with her. The GP also states that the appellant has difficulty with eating, sleeping, concentration, motivation and emotional functioning and relies on her family for physical help and emotional support. The GP states that the appellant has been referred to psychiatry but the wait time is lengthy. The panel finds that these assessments are essentially the information provided in the PWD assessments and SR. The ministry argues that although the GP has concerns about the appellant's mental health it is difficult to conclude that there is a severe mental impairment without a mental health assessment from a specialist.

The panel finds that the ministry's determination that a severe mental impairment has not been established was reasonable. The panel finds that the information provided in the GP's October letter reiterates and confirms the assessments provided in the PWD application and SR with respect to the appellant's mental impairment. The panel notes that the GP has also indicated in the October letter that the appellant has been referred to a mental health specialist; however, this assessment has not yet taken place. The panel notes that the GP's assessments relating to decision-making indicate that the appellant is independent in most areas. The panel also notes the absence of communication difficulties, safety concerns and a need for support or supervision to maintain the appellant in her community. The panel finds that the ministry reasonably concluded that the information provided does not establish a severe mental impairment and that this criterion was not met.

Direct and significant restrictions in the ability to perform DLA

The legislation specifies that the minister assess direct and significant restrictions in the ability to perform DLA in consideration of the opinion of a prescribed professional. This does not mean that other evidence should not be considered, but it is clear that a prescribed professional's evidence is fundamental. At issue in this assessment is the degree of restriction in the appellant's ability to perform the DLA listed in section 2(1)(a) and (b) of the EAPWDR applicable to a person with a severe mental or physical impairment.

The ministry was not satisfied that the appellant has a severe impairment that, in the opinion of a prescribed professional, directly and significantly restricts her ability to perform DLA. In reaching this conclusion, the ministry noted that the appellant has not been prescribed medication that impacts her ability to perform DLA. The ministry considered the GP's assessment that the appellant is independent with all personal care DLA and requires

continuous assistance and takes significantly longer with basic housekeeping and laundry. The ministry considered the GP's assessment that the appellant is continuously restricted with carrying purchases home and independent with all other shopping tasks. The ministry noted that the appellant is independent with meal planning and requires periodic assistance and takes significantly longer with all other meals tasks. The considered the assessment that the appellant requires periodic assistance and takes significantly longer with pay rent and bills tasks and is independent with all medications tasks. As well, the ministry considered that the appellant is assessed as independent getting in and out of a vehicle, requires periodic assistance and takes significantly longer using public transit and requires continuous assistance and takes significantly longer using transit schedules and arranging transportation. The ministry argued that taking 2 times longer to complete tasks is not indicative of a significant restriction to DLA and that the GP has not described how much longer than typical the appellant takes with many of the tasks. As well, the ministry argued that the information provided did not establish the frequency of periodic restrictions or how much longer than typical the appellant took to complete tasks. The ministry also argued that the GP has not indicated which of the restrictions to DLA relate to the appellant's physical impairment, mental impairment or a combination of the two.

In the October letter, the GP states that the appellant has difficulty with household chores, such as cleaning, vacuuming, laundry and cooking due to pain in her hands and fingers. The GP states that the appellant receives help from her children in these areas. The panel finds that this information is consistent with the assessments provided in the PWD assessments. The GP states that the appellant finds it difficult to dress and bathe, taking 10-15 minutes longer to dress. The appellant also argues in her appeal submission that she has difficulty with buttons on her jackets and pants. The panel notes that this is a minor difference from the PWD assessment, which indicated that the appellant was independent in all areas of personal care with no indication that these tasks took longer than typical

The panel finds that the ministry's determination that the assessments provided by the GP do not establish that a severe impairment significantly restricts the appellant's ability to perform DLA continuously or periodically for extended periods was reasonable. The panel finds that the GP's comment that the appellant's children doing 90% of cooking and meal preparation does include sufficient information in relation to periodic assistance for extended periods in relation to those aspects of the DLA. However, the panel finds that, in relation to the majority of areas where some periodic restriction is assessed, the GP has not provided sufficient information in relation to the nature, degree and duration of the assistance required by the appellant to establish that there are significant restrictions for extended periods in the appellant's ability to perform DLA. As well, the panel finds that the information relating to the amount of time beyond what is typical has not been provided in relation to the majority of tasks that are assessed as taking significantly longer. As such, the panel concludes that the ministry's determination on this criterion was reasonable.

Help required

The legislation 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. 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, significant help or supervision of another person, or the services of an assistance animal in order to perform a DLA.

In the reconsideration decision, the ministry determined that as it had not been established that appellant's ability to perform DLA was significantly restricted, it cannot be determined that significant help is required. While the information provided demonstrates that the appellant does receive assistance from family as well as the use of a wrist splint, the panel finds that the ministry reasonably determined that direct and significant restrictions in the appellant's ability to perform DLA have not been established. As such, 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, determining that the appellant had not met all of the legislated criteria for PWD designation, was a reasonable application of the legislation in the circumstances of the appellant and reasonably supported by the evidence. The panel confirms the ministry's reconsideration decision. The appellant is not successful on appeal.