

PART C – DECISION UNDER APPEAL

The decision under appeal is the Ministry of Social Development and Poverty Reduction (the ministry) reconsideration decision dated January 2, 2018 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.

The ministry also found that the appellant is not one of the prescribed classes of persons who may be eligible for PWD designation on the alternative grounds set out in Section 2.1 of the *Employment and Assistance for Persons with Disabilities Act* and the appellant did not appeal the decision on that basis.

PART D – RELEVANT LEGISLATION

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

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

PART E – SUMMARY OF FACTS

Although the Tribunal received a Release of Information for a representative for the appellant, the appellant stated at the hearing that the advocate would not be attending the hearing and that she would like to proceed with the hearing and submit an additional letter from her doctor.

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 and self-report dated August 29, 2017, a medical report (MR) and an assessor report (AR) both dated August 30, 2017 and completed by a general practitioner (GP) who has known the appellant since September 2013 and has seen her 2 to 10 times in the last year. The GP noted: "almost once a month."

The evidence also included the Request for Reconsideration dated December 9, 2017 and attached letter from the appellant dated December 9, 2017 and an undated letter from a settlement worker.

Diagnoses

In the MR, the GP diagnosed the appellant with disc protrusions L4-5 with LT [left] L5 nerve root damage, with an onset of June 2013, and chronic migraine headaches. The appellant was not diagnosed with a medical condition within the mental disorders category of the diagnostic codes in the MR. Asked to describe the appellant's mental or physical impairments that impact her ability to manage her daily living activities, the GP wrote: "significant low back pain and left leg."

Physical Impairment

In the MR and the AR, the GP reported:

- Regarding the appellant's health history, the GP wrote that the appellant "has a quite significant LBP [low back pain] with LT radiculopathy. This started in 2013 and unfortunately never resolved, she is limited in walking, sitting and activities of daily living. She was assessed by CT scan with finding of L4-5 disc protrusion with pressure on her LT L5 and surgery was recommended by [the neurosurgeon], which she scared to proceed with that in spite of making the decision to do so a couple of times as pain got worse."
- The appellant requires an aid for her impairment. The GP wrote: "bath and toilet bar and bath stool will help."
- In terms of functional skills, the appellant can walk 1 to 2 blocks unaided on a flat surface, climb 2 to 5 steps unaided, lift under 2 kg. (under 5 lbs.) and remain seated less than 1 hour.
- For additional comments to the MR, the GP wrote that the appellant "is suffering from ongoing low back pain with LT radiculopathy that limited her ability of walking, sitting and other physical activities."
- The appellant is assessed as independent with standing, requiring periodic assistance from another person and taking longer than typical with walking indoors and walking outdoors, requiring continuous assistance and taking longer with climbing stairs, and requiring continuous assistance with lifting, and carrying and holding. The GP wrote that "her husband and son support her activities."

- 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 wrote “N/A” or not applicable to the appellant. For equipment that is required by not currently being used, the GP wrote “toilet and bathing bars and bath stool and cane.”
- In the additional information to the AR, the GP wrote that the appellant “...needs support as her ongoing back pain and radiculopathy is not resolving in spite of nerve block injection and she scares of surgery. She is suffering from inability to perform many activities as discussed.”

In her self-report, the appellant wrote:

- She has lower back pain due to disc degeneration. She cannot walk for more than 15 minutes. She has to rest. She has knee problems.
- She has high cholesterol.
- She has bad headache.
- She has a hard time in general.

In her letter with the Request for Reconsideration, the appellant wrote:

- Her situation is scary and she is scared for her life. She is young and has high cholesterol and was diagnosed with disc L4-5 and LT L5 nerve root damage.
- Her doctor has asked her to walk in order to avoid a heart attack and stroke. She loves to walk but her back problem stops her from walking. During her 15 minutes of walking, she stops, sits and breathes and then continues walking. It is so painful.
- Her health issues are affecting her lifestyle. She mostly lies down on the couch.
- She has migraines, which affects her mental health.
- She climbs stairs but has to stop at every step.
- She cannot sit on a chair from more than 5 to 10 minutes. She has to get up and move a bit.

In her letter, the settlement worker wrote:

- She has known the appellant for over 6 months. The pain (mentally and physically) that she is going through is bad enough that she cannot make it to come with her husband to some appointments they have with her.
- Mostly the appellant “stays home due to the back pain and imagine (sic) she has.”

Mental Impairment

In the MR and the AR, the GP reported:

- Regarding the appellant's health history, "the pain interferes with her sleeping and affected her mood negatively and she feels down at times."
- The appellant has no difficulties with communication.
- The appellant has no significant deficits with her cognitive and emotional functioning.
- The appellant has a good ability to communicate in all areas, specifically: speaking, reading, writing and hearing.
- With respect to the section of the AR relating to daily impacts to the appellant's cognitive and emotional functioning, the GP assessed no major impacts, moderate impacts in the areas of bodily functions and no impact to moderate impact to motivation, and no impact to minimal impacts to emotion, attention/concentration, executive, and memory. The GP commented that "back pain interferes with her sleeping and she wakes up several times and feels tired as a result of that, so she has less energy for taking care of herself. Also it negatively affected her mood as she lost her ability to work out of home and to help at home."
- The GP did not complete an assessment of the appellant's social functioning, including her ability to make appropriate social decisions, develop and maintain relationships, interact appropriately with others, deal appropriately with unexpected demands, and secure assistance from others.

In her letter provided with her Request for Reconsideration, the appellant wrote:

- She is so depressed and hopeless.
- All her health issues affect her memory, and her emotional and cognitive well-being.
- She is isolated and sad.

In her letter, the settlement worker wrote that the appellant's back pain is really affecting her mood and she is worried about the appellant's health issues.

Daily Living Activities (DLA)

In the MR and the AR, the GP reported:

- The appellant has been prescribed medication that interferes with her ability to perform DLA. The GP noted that the medication "makes her a bit sleepy" and "she should continue with [the medication] as long as she has this pain issue."
- In the additional comments to the MR, the GP wrote that the appellant "...is dependent on her husband for some activities of daily living including bathing, cleaning the house, food preparation, shopping."
- In the AR, the appellant requires periodic assistance and takes longer with walking indoors and with walking outdoors. The GP noted that "her husband and son support her activities."
- The appellant is independent with all of the listed tasks for the pay rent and bills DLA

(including banking and budgeting) and the medications DLA (filling/refilling prescriptions, taking as directed, and safe handling and storage).

- For the personal care DLA, the appellant is independent with the tasks of feeding self and regulating diet, and she requires periodic assistance from another person with dressing, toileting, transfers in/out of bed, and transfers on/off chair. The GP explained that “at times she needs help and support of her husband or son or sister for personal care.” The appellant requires continuous assistance from another person with the task of bathing.
- Regarding the basic housekeeping DLA, the appellant requires continuous assistance with both tasks, doing laundry and basic housekeeping. The GP wrote that “her husband helps.”
- For the shopping DLA, the appellant is independent with the tasks of reading prices and labels, making appropriate choices and paying for purchases, and she takes longer than typical with the task of going to and from stores and she requires periodic assistance from another person and takes longer than typical with the task of carrying purchases home. The GP provided additional comments that the appellant “is in pain most of the time and so needs the support of a family member for shopping and carrying purchases home. At the time of significant pain, she needs help with toileting and almost always for bathing needs support.”
- Regarding the meals DLA, the appellant is independent with the tasks of meal planning and safe storage of food and she requires periodic assistance from another person with the tasks of food preparation and cooking. The GP wrote: “As discussed needs family support most of the time for cooking as can’t stand for a long time.”
- For the transportation DLA, the appellant is independent with the task of using transit schedules and arranging transportation, and she requires periodic assistance from another person and takes longer than typical with the tasks of getting in and out of a vehicle and using public transit. The GP commented: “takes longer for her or needs help.”
- The GP added comments that “when she is in pain which as discussed is most of the time she needs family support for cooking, food preparation or using public transit as walking long distance is a challenge.”

In her self-report, the appellant wrote:

- She cannot walk for more than 15 minutes. She has to rest.
- She cannot wash her dishes.
- She has a hard time in general.

In her letter provided with her Request for Reconsideration, the appellant wrote:

- Her doctor has asked her to walk. Her back problems stop her from walking.
- During her 15 minutes of walking, she stops, sits, breathes, and continues walking. It is so painful.
- Her health issues are affecting her lifestyle. She cannot do her personal chores. She has to depend on her husband and her son.
- Most days she depends on her family for meal preparation, cleaning her home, and shopping for food.

Need for Help

The GP reported in the AR that help required for DLA is provided by family and wrote “her husband, son, and sister support her.” The GP did not identify any of the listed assistive devices as being used by the appellant and wrote “N/A”, or not applicable to the appellant. When asked to describe equipment required but not currently being used, the GP indicated “toilet and bathing bars and bath stool and cane.”

Additional information

In her Notice of Appeal dated January 15, 2018, the appellant expressed her disagreement with the ministry’s reconsideration decision and wrote that she will provide a doctor’s letter at the interview day.

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

Letter dated January 17, 2018 in which the GP wrote that:

- The appellant is suffering from severe back pain with left radiculopathy since 2013, frequent migraine headaches, and low mood as a result of chronic pain and an inability to function at home and out of the home.
- The GP believes that the appellant is not able to work due to these reasons.
- The appellant is dependent on her husband and son for most activities of daily living including bathing, shopping, and cleaning the house.
- The letter included an area for “additional comments”; however the GP did not add any comments.

At the hearing, the appellant stated:

- She gets severe headaches and she had to take over-the-counter pain medication to be able to attend the hearing today.
- Her social life is “zero” right now. She has a sister here but she never sees her or her sister’s child. She just stays home and cries. No one comes to her house because they do not want to make her feel she needs to prepare something.
- Her cholesterol level is high and, when she wakes up in the morning, she is very dizzy. She does not go out much because she is afraid that she will feel dizzy and fall down. This happened once in her bathroom and she hurt her right thigh. She did not lose consciousness. Her husband tells her never to take a bath when he is not there to supervise.
- Her doctor said her liver is creating a lot of fat but she is very careful with what she eats.
- She has back pain that radiates into her leg. She cannot do anything around the house. Her son does the dusting and washing the dishes.
- She also has pain in the palm of her hands that radiates into her forearms. The doctor has given her “medical gloves” to wear at night.
- She does not go to social gatherings.
- She started working at a very young age. She and her sister had to work for the family but it came to a point that they could not do it anymore.
- In Canada, she completed a course for a different type of work but her back “died” on her and she could not continue. She was lifting and she had a terrible back pain and she

realized she could not do this work. These back problems started in 2013.

- She wants to be able to work to provide her son with things.
- She sleeps on the floor even though the bed “is 100% better” so that her son can sleep in the bed.
- She is under lots of stress because they live in a limited space and she worries about the future for her son.
- She also gets pain in her knees and ankles, which get swollen, and she feels that her body “is dying” on her.
- She does not have the aids that her doctor recommended because they could not afford these things. She did not discuss with her doctor if there were any community resources available to obtain a cane to help her with walking.
- She has family members who have said that their experience with surgery is that it only makes the pain worse so she has anxiety about going ahead with surgery.

The ministry relied on the reconsideration decision as summarized at the hearing.

Admissibility of Additional Information

The ministry did not object to the admissibility of the letter from the GP dated January 17, 2018. The panel reviewed the letter and determined that the information is in support of information before the ministry at reconsideration as relating to medical conditions diagnosed in the PWD application. The panel also admitted most of the oral testimony on the appellant’s behalf, except that detailed below, as being 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. 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 appellant’s oral testimony regarding problems with her hands and forearms as this condition was not diagnosed by the GP in the PWD application or referred to in the Request for Reconsideration and was 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 disc protrusions L4-5 with LT [left] L5 nerve root damage, with an onset of June 2013, and chronic migraine headaches. For additional comments in the MR, the GP wrote: "she is limited in walking, sitting and activities of daily living. She was assessed by CT scan with finding of L4-5 disc protrusion with pressure on her LT L5 and surgery was recommended by [the neurosurgeon], which she scared to proceed with that in spite of making the decision to do so a couple of times as pain got worse." Although the appellant emphasized in her self-report, in her letter submitted at reconsideration, and again on the hearing that she has very high cholesterol and that this causes her to have dizzy spells and she has fallen in the bathroom, the GP did not refer to high cholesterol in the PWD application nor in the additional letter submitted on the appeal.

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 1 to 2 blocks unaided on a flat surface, climb 2 to 5 steps unaided, lift under 5 lbs., and remain seated less than 1 hour. In her self-report, the appellant wrote that she cannot walk for more than 15 minutes, she has to rest, and she has “knee problems.” In her letter submitting at reconsideration, the appellant wrote that her doctor has asked her to walk in order to avoid a heart attack and stroke, she loves to walk but her back problem stops her from walking. The appellant wrote that during her 15 minutes of walking, she stops, sits and breathes and then continues walking and she finds it “so painful.” The GP wrote in the MR that a neurosurgeon had recommended surgery for the appellant but that she is “scared to proceed with that in spite of making the decision to do so couple of times as pain got worse.” At the hearing, the appellant stated that she is anxious about surgery because her relatives who have had surgery have told her that it can make the pain worse. The appellant wrote in her letter at reconsideration that she climbs stairs but has to stop at every step and she cannot sit on a chair from more than 5 to 10 minutes as she has to get up and move a bit. In the letter dated January 17, 2018, the GP did not add any additional information about the appellant’s functional skill limitations.

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.

The ministry also considered the GP’s report in the AR that the appellant requires periodic assistance from another person and takes longer than typical with walking indoors and with walking outdoors and that the appellant does not use a cane or other assistive device for her mobility. At the hearing, the appellant stated that she cannot afford the items that the doctor recommended, such as a cane, and she did not inquire about possible community resources to obtain these items at a reduced cost. The ministry reasonably considered that the GP’s comment that “her husband and son support her activities” does not describe the frequency that the appellant requires assistance with her mobility, or for how long, and whether this is for distances in excess of the 1 to 2 blocks she is able to walk unaided.

The ministry wrote that while the GP indicated in the AR that the appellant requires continuous assistance from another person with climbing stairs and that she takes significantly longer, this information is not consistent with the report in the MR that the appellant is able to climb 2 to 5 steps “unaided,” or without the assistance of another person or the use of an assistive device. The ministry also reasonably considered that the GP did not indicate how much longer than typical it takes the appellant with climbing stairs. The ministry wrote that the GP reported in the AR that the appellant requires continuous assistance from another person with lifting and carrying and holding and, is considered with the assessment in the MR, she would require assistance for heavier weights in excess of 5 lbs. Provided an opportunity to clarify the discrepancies in the assessments in the MR and the AR and to clarify the extent of assistance

required by the appellant, the GP did not address these issues in the additional letter provided on the appeal. Instead, the GP wrote in the letter dated January 17, 2018 that the appellant has “inability for function at home and out of home” and provided an opinion that the appellant is not able to work due to her medical conditions. The panel notes that employability is not a criterion in section 2(2) of the EAPWDA, as it is with the status of Persons with Persistent Multiple Barriers (PPMB) to employment, nor is it listed among the prescribed daily living activities in section 2 of the EAPWDR.

Given the GP’s assessment of physical functioning in the moderate range of functional skills limitations and the inconsistencies and lack of detail, as noted by the ministry regarding the extent of assistance required by the appellant, 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 wrote that the GP reported in the MR that the appellant’s “pain interferes with her sleeping and affected her mood negatively and she feels down at times” and, in the AR, that “back pain interferes with her sleeping and she wakes up several times and feels tired as a result of that, so she has less energy for taking care of herself” and “it negatively affected her mood as she lost her ability to work out of home and to help at home.” The GP also reported in the MR that the appellant does not have any significant deficits in her cognitive and emotional functioning; however, the GP indicated in the AR that there are moderate impacts in the areas of bodily functions and motivation and minimal impacts to emotion, attention/concentration, executive and memory.

The ministry considered the appellant’s information in her letter at reconsideration that she is so depressed and hopeless, that all of her health issues affect her memory, and her emotional and cognitive well-being, and she is isolated and sad. The appellant’s settlement worker wrote in a letter provided at reconsideration that the appellant’s back pain is really affecting her mood. The panel notes that the appellant was not diagnosed in the MR with a medical condition within the mental disorders category of the diagnostic codes and, in the letter provided on appeal, the GP referred to “low mood as a result of chronic pain and inability for function at home and out of home” and an opinion that the appellant is not able to work as a result.

The ministry also considered that in the MR the GP reported that the appellant has no difficulties with communication and, in the AR, that her ability to communicate in all areas is good. At the hearing, the appellant stated that her social life is “zero” right now, she has a sister here but she never sees her, and she just stays home and cries. The ministry wrote that the GP has not provided any information to indicate that the appellant requires any support/supervision with any aspects of her social functioning.

Given the lack of a definitive mental health diagnosis and insufficient evidence of significant impacts to the appellant's cognitive and emotional and social functioning, 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 been prescribed medication that interferes with her ability to perform DLA as it "makes her a bit sleepy." In the AR, the GP assessed the appellant as requiring periodic assistance with the "mobility" DLA of moving about indoors and outdoors but did not specify the extent of the assistance required to allow the ministry to determine that the restriction is periodic for extended periods of time, as previously discussed.

The ministry considered that the GP indicated that the appellant requires continuous assistance with three tasks of DLA, specifically: bathing, laundry, and basic housekeeping. In her self-report, the appellant wrote that she cannot wash her dishes and she has a hard time in general. At the hearing, the appellant stated that her cholesterol level is high and, when she wakes up in the morning, she is very dizzy. She stated that she felt dizzy and fell down once in her bathroom and her husband has told her never to take a bath when he is not there to supervise.

The ministry considered that the GP indicated that the appellant requires periodic assistance with some tasks of DLA, specifically: dressing, toileting, transfers in/out of bed, transfers on and off a chair, food preparation, and cooking. The ministry also considered that the notes by the GP that "at the time of significant pain she needs help with toileting," "at times she needs help or support of her husband or son or sister for personal care," and "needs family support most of the time for cooking as can't stand for a long time" do not describe the specific frequency that the appellant requires help or how long she requires help with these tasks. The ministry noted that the GP assessed the appellant as independent with standing, and that she does not require the assistance of another person or an assistive device, and there is no further explanation by

the GP in the AR or the letter provided on the appeal for the comment in the AR that the appellant “can’t stand for a long time.”

The ministry considered that the GP reported that the appellant requires periodic assistance and takes significantly longer than typical with some tasks of DLA, specifically: carrying purchases home when shopping, getting in and out of a vehicle and using public transit, and again noted that the comments “she is in pain most of the time,” and “takes longer for her or needs help” do not describe the specific frequency that the appellant requires help or how long she requires help with these tasks. The ministry also considered the additional comments by the GP in the MR that the appellant “...is dependent on her husband for some activities of daily living including bathing, cleaning the house, food preparation, shopping” and, in the AR, that “when she is in pain which as discussed is most of the time she needs family support for cooking, food preparation or using public transit as walking long distance is a challenge,” and wrote that there is insufficient detail to allow the ministry to determine that the need for periodic assistance is for extended periods of time. As previously noted, the GP wrote in the MR that surgery was recommended by a neurosurgeon and that the appellant had made the decision to proceed with the surgery “...a couple of times as pain got worse,” and wrote in the AR that “at the time of significant pain she needs help with toileting,” which indicates fluctuations or exacerbations in the appellant’s low back pain that have not been described by the GP for frequency or duration.

Section 2(2) of the EAPWDA requires that a severe impairment directly and significantly restricts the appellant’s ability to perform the DLA either continuously or periodically for extended periods. The direct and significant restriction may be either continuous or periodic. If the restriction is periodic, it must be for an extended time. Inherently, any analysis of periodicity must also include consideration of the frequency. Accordingly, in circumstances where the evidence indicates that a restriction arises periodically, it is appropriate for the ministry to require evidence from the prescribed professional of the duration and frequency of the restriction in order to be “satisfied” that this legislative criterion is met.

Given the GP’s assessment of physical functional skills in the moderate range and the assessment of the need for periodic assistance from another person with a few tasks of DLA, with an absence of sufficient information to determine that the assistance is required for extended periods, the panel finds that the ministry reasonably concluded that the evidence is insufficient to show that the appellant’s overall ability to perform her DLA is significantly restricted either continuously or periodically for extended periods, pursuant to Section 2(2)(b)(i) of the EAPWDA.

Help 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, that her husband, son and sister support her, and that a bath and toilet bar and bath stool would help and she needs a cane. 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.