

PART C – DECISION UNDER APPEAL

The decision under appeal is the Ministry of Social Development and Poverty Reduction's (the ministry) reconsideration decision dated January 2, 2018 which held that the appellant did not meet 3 of the 5 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 and duration requirements, but was not satisfied that:

- 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 those restrictions, the appellant requires an assistive device, the significant help or supervision of another person, or the services of an assistance animal to perform DLA.

PART D – RELEVANT LEGISLATION

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

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

PART E – SUMMARY OF FACTS

The information before the ministry at the time of reconsideration included the following:

- Letter from an orthopedic surgeon dated May 18, 2017 (the “Surgeon”)
- Outpatient Clinic Consultation Note from a Hand and Upper Extremity Surgeon (the “Hand Surgeon”) dated May 30, 2017
- The appellant’s PWD application comprised of the appellant’s Self-Report (SR) dated June 26, 2017, a Medical Report (MR) completed by the appellant’s general practitioner (the “Physician”) dated June 26, 2017, an Assessor Report (AR), completed by an occupational therapist (the “OT”) dated July 11, 2017.
- Lab Report dated June 22, 2017
- The OT Functional Assessment Report dated July 21, 2017 (the “Functional Assessment”)
- Second Assessor Report completed by a registered social worker dated August 8, 2017 (the AR2)
- The appellant’s Request for Reconsideration with her letter dated December 14, 2017 (the “RFR”).

Summary of relevant evidence

Diagnoses

In the MR, the Physician indicates that the appellant’s diagnoses are osteoarthritis (moderately advanced both knees), osteoarthritis (left wrist secondary to Kienbock disease surgery) and presumed right carpal tunnel syndrome. The Physician indicates that the appellant has been her patient for seven years and she has seen her 2-10 times in the past 12 months.

In the AR, the OT indicates that he met the appellant once for the purposes of the Functional Assessment. The OT did not complete the AR form but directs the reader to the Functional Assessment. The OT summarizes the appellant’s past medical history from 1983 to June 15, 2017 including back pain (onset in 1983), hypothyroid disease, right knee anterior cruciate ligament ACL surgical reconstruction, Kienbock’s disease left wrist followed by surgical fusion of the scaphoid-trapezium-trapezoid bones, tick bite, fungal infection between breasts, armpits and chest area, right knee anterior cruciate ligament surgical repair by the Surgeon, moderate degenerative joint disease in both knees, class II jaw malocclusion and temporomandibular joint (TMJ) pain, carpal-like symptoms right wrist and hand, undiagnosed at present, and long-standing scaly-type rash on chest.

In the AR2, the social worker indicates that the appellant’s impairments that impact her ability to manage DLA are advanced osteoarthritis both knees, osteoarthritis in her left wrist (secondary to Keinbock disease surgery), right carpal tunnel, skin virus (Lyme disease, being investigated) and numbness/pain in all joints. The social worker indicates that she met the appellant once to complete the assessment.

The Surgeon indicates that the appellant has moderately advanced osteoarthritis in both knees. The Surgeon indicates that the usual course of osteoarthritis is fluctuating symptoms which will eventually worsen. The Hand Surgeon indicates that the appellant has wrist osteoarthritis.

Physical Impairment

In the MR for Functional Skills, the Physician indicates that the appellant is able to walk 4+ blocks unaided on a flat surface, can climb 5+ steps unaided (needs rails), is unable to lift (left wrist), and can remain seated for less than one hour. In the Health History portion of the MR, the Physician indicates that the appellant has moderate osteoarthritis of both knees that causes pain, swelling and difficulty standing. The Physician also indicates that the appellant has moderate osteoarthritis of her left wrist and that she has a lot of pain in her dorsal wrist and weakness in her wrist.

In the Functional Assessment, the OT indicates that the appellant does not have the requisite physical or functional capacity for work or retraining at this time. For physical assessment, the OT reports that the appellant has limited range of motion for jaw opening, right shoulder for extension and abduction, bilateral wrist extension/flexion and ulnar/radial deviation with left significantly worse than right due to wrist fusion and muscle wasting of the ulnar eminence left CMC joint and digits #2 and 3 MCP joints. The OT indicates that the appellant has generalized weakness right shoulders and bilateral hands (left grip strength only 10% of right). The OT also indicates that the appellant has limited range of motion for trunk side flexion and rotation and for left knee flexion, significant weakness in core stabilizers and chronic numbness left big toe and digits #2 and 3 dorsal region, possibly due to L4/5 nerve root compression. The OT indicates that the appellant demonstrates significant biomechanical asymmetries and deviations from centre of gravity posture including joint mal-alignments at shoulders, pelvis and knees, impacting on neck, shoulder, pelvis and back mobility and function.

The OT indicates that the appellant reports full body pain and joint stiffness with significant systemic fatigue, chronic low back pain with parenthesis left toes, chronic left wrist pain, chronic right wrist/hand pain, chronic pain in her knees, painful right clavicle, bilateral feet pain, skin rash chest and discoloration truncal region, TMJ pain and sleep deprivation due to chronic pain. The OT indicates that the appellant's home has multiple stairs to enter (about 30) without railing, which are dilapidated and in disrepair creating a significant fall risk for the appellant.

In the Functional Assessment, the OT indicates that the appellant's sitting is limited to 20 minutes and recovery periods of 20 minutes allow up to a maximum of two hours sitting per day. The OT reports that the appellant is limited to 10-15 minutes of computer work per day, and static standing is limited to 20 minutes and a recovery period of 30 minutes allows a further standing period. The OT indicates that dynamic standing (stand/walk) is limited to 30 minutes and that walking is limited to 2 blocks due to low back, knee and feet pain at which point she requires lie down position for resumption of function. The OT indicates that the appellant is able to safely ascend/descend 1 flight of stairs using railing both sides and side stepping one foot at a time and lifting/carrying is limited to 1-2 pounds.

The Hand Surgeon indicates that the appellant reports experiencing significant pains with limitations of the use of the left hand. He indicates that she has been wearing her brace, which helps a bit and she takes pain medications and uses topical treatments. The Hand Surgeon indicates that the appellant has some mild swelling around her left wrist and multiple points of tenderness. The Hand Surgeon reports that the appellant has chronic pain from her wrist osteoarthritis with significant limitations in motion.

In the AR2, the social worker indicates that the appellant takes significantly longer than typical with all aspects of mobility and physical ability noting that a handrail is needed with climbing stairs. The social worker also indicates that periodic assistance is required from another person with lifting and carrying and holding (no lifting or carrying with left hand).

The Surgeon indicates that the appellant is no longer able to work in the type of employment she did before, and that her walking tolerance is significantly more limited than it used to be with burning pain in her left knee, problems kneeling or crouching and difficulties descending stairs and inclines. The Surgeon also indicates that she has wrist pain.

In the RFR the appellant states that she has chronic pain which fluctuates from day to day which makes it difficult to completely explain some things, given the nature of the PWD application form. The appellant states that she has difficulty getting up and down from chairs, and that anything that requires bending or standing for any length of time exacerbates her pain and will require a rest of several hours and the application of ice. The appellant states that if she were to force herself to walk the four blocks the Physician indicates she could walk; she would spend the next several hours flat on her back with ice on her knees trying to relieve the pain. The appellant reports "*ditto with the stairs – handrail or no handrail*".

Mental Impairment

The MR indicates that the appellant has no significant deficits with cognitive and emotional function and no difficulties with communication.

In the Functional Assessment, the OT reports that the appellant appears quite stressed regarding her future. No cognitive impairments were noted, although there was some reporting that the appellant has difficulty with memory.

In the AR2, the social worker indicates that the appellant's ability to communicate with speaking and hearing are good and that her reading and writing are satisfactory. The social worker did not complete section B, question 4 for cognitive and emotional functioning.

DLA

In the MR, the Physician indicates that the appellant's DLA of personal self care is periodically restricted explaining that the appellant has difficulty getting in/out of the bath, is unable to carry heavy grocery bags, has difficulty with stairs and needs to step up one at a time, and difficulty opening jars. The Physician indicates that the appellant is continuously restricted with daily shopping and mobility outside the home. The Physician indicates that the degree of restriction is mild to moderate. The Physician indicates that the appellant is not restricted with meal preparation, management of medications, mobility inside the home, use of transportation, management of finances or social functioning. The Physician indicates that the appellant has not been prescribed any medication and/or treatments that interfere with her ability to perform DLA.

In the Functional Assessment, the OT indicates that the appellant can perform most aspects of light housework and daily functioning, but is moderately impaired with DLA of dressing, bathing, grooming, toileting, meal preparation and cleaning due to her functional impairments. The OT indicates that the appellant is unable to do any activities which require bimanual function (lifting/carrying, dragging of items on floor including grocery bags, laundry, or buckets). The OT indicates that sit to stand movements require hand hold on table top or arm rests to push into stand and stabilize for sitting and that side to side bed mobility is slow and painful due to bilateral wrist pain and knee and lower back pain limit mobility. The OT indicates that the appellant's general activity level is 2-3 hours of productivity/day if allowed to sit/stand/walk in combination with breaks every 20 minutes.

In the AR2, the social worker indicates that with respect to personal care the appellant takes significantly longer than typical with dressing, grooming, bathing, toileting, feeding self, transfers (in/out of bed) and transfers (on/off of chair), noting "*slow: pain & weakness*" with dressing, grooming and bathing. The social worker indicates that the appellant is independent with regulating diet. The social worker indicates that the appellant takes significantly longer than typical with all listed aspects of basic housekeeping and shopping, noting that the appellant needs help. Under additional comments, the social worker indicates that the appellant requires significant assistance with all household cleaning, laundry and food shopping as a direct result of her impairments. The social worker also indicates that all moving about/attempting tasks takes at least 3-4x longer due to pain, weakness and numbness.

For meals, the social worker indicates that the appellant is independent with meal planning, but takes significantly longer than typical with food preparation, cooking, and safe storage of food, explaining that she requires periodic assistance with food preparation and cooking due to pain and weakness. The social worker indicates that the appellant is independent with budgeting and paying rent and bills but takes significantly longer than typical with banking, due to pain and weakness. For medications, the social worker indicates that the appellant takes significantly longer than typical with filling/refilling medications due to pain and weakness but is independent with taking as directed and safe handling and storage of medications. For transportation the social worker indicates that the appellant takes significantly longer than typical with getting in and out of a vehicle, takes significantly longer than typical and uses an assistive device using public transit (needs seat) and is independent using transit schedules and arranging transportation. The social worker explains that the appellant requires assistance with meal preparation and cooking and a seat on transportation as a direct result of her impairments. All moving about/attempting tasks takes at least 3-4x longer due to pain and weakness.

The social worker did not complete the section of the AR for social functioning.

The Hand Surgeon indicates that the appellant's wrist osteoarthritis and chronic pain affect her DLA with significant limitations in motion.

In the RFR the appellant indicates that she “limps” along doing what she can when she can and lives in less than ideal conditions of cleanliness. The appellant states that if she takes on a task such as vacuuming the floor, it would take her several hours or days to complete this task as she can only do this for about 15 minutes before her pain increases to intolerable levels and she must stop. The appellant indicates that it takes her several hours of rest and ice to return to “normal” pain levels so she can try again.

The appellant reports that it is difficult to gauge exactly how much longer a task takes as she does not time herself. She reports that she tries not to dwell on what she cannot do and tends to minimize the impact of her disabilities. The appellant states that because of the pain in her knees, she has difficulty getting up and down from chairs, in and out of the tub (cannot sit and must take showers), and getting up and down from the toilet.

The appellant indicates that she has limitations with food preparation and eating, writing or anything using her right hand (she is right-handed) and has trouble gripping and holding things. The appellant states that there is danger that she may cut herself or drop items on herself such as hot liquids, plates, pens or pots.

Need for Help

In the MR, the Physician indicates that the appellant does not require any prostheses or aids for her impairment. The Physician indicates that the appellant requires help with carrying heavy bags.

The Surgeon indicates that the appellant does not need knee replacement. The Surgeon indicates that he offered the appellant a corticosteroid injection but she was not interested in that. The Surgeon indicates that they discussed viscosupplementation and the appellant reported that she could not afford the \$450 for the injection.

In the Functional Assessment, the OT recommends that the appellant speak to her landlord about fixing the stairs as the existing stairs create a significant fall risk. The OT indicates that the Physician may consider referrals to an immunologist, rheumatologist and/or naturopath for investigation into multiple joint inflammation, undiagnosed skin condition and systemic fatigue; referral to a neurologist for right wrist carpal tunnel symptoms, radiographic investigation of L4/5, further investigation into dislocated left clavicle (x-rays, chiropractor) and referral to an orthotist for foot orthotics. The OT also recommends that the appellant has ergonomic equipment including a sit/stand desk, ergonomic chair and work site modifications including alternating sit/stand/walk for any future employment environment.

In the AR2, the social worker indicates that the appellant has no one to help her with DLA's and that her household DLA's are not getting done regularly due to her symptoms and that she needs help. The social worker does not recommend any assistive devices. The social worker indicates that the appellant does not have an assistance animal.

In the RFR the appellant indicates that she has little to no assistance available to her.

Additional information provided

In her Notice of Appeal dated March 6, 2018 (NOA) the appellant states that she disagrees with the reconsideration decision as her condition is worsening and she believes the paperwork did not have enough details on her DLA.

On March 14, 2018, the appellant submitted a letter from another social worker (SW2) dated March 2, 2018, indicating that the appellant is living with quite severe and advanced osteoarthritis in both of her knees and her left wrist, and is coping with degenerative disease in her back and leaky gut syndrome. The SW2 indicates that the appellant has developed serious depression and anxiety, which affects her sleep, mood, and motivation. The SW2 indicates that due to her unrelenting pain, the appellant can only sit, stand or walk for very brief periods of time and must alternate positions constantly throughout the day. The SW2 indicates that lying in bed and walking down the street are agony, stairs are particularly difficult, and the appellant is unable to lift anything with her left arm. The SW2 indicates that the appellant requires assistance with basic DLA such as carrying groceries, housecleaning and transferring in/out of bed. The SW2 indicates that the appellant would benefit from further occupational therapy to recommend assistive devices.

The appellant also submitted a letter from the Physician dated March 14, 2018 indicating that the appellant has been struggling with worsening pain in her back, knees, neck and wrist. The Physician indicates that the appellant has recently received a diagnosis of fibromyalgia as well as her known osteoarthritis. The Physician indicates that the appellant is currently unable to work more than 2 hours at a time and she supports the appellant's application for appeal.

Prior to the hearing the ministry submitted an email dated March 21, 2018 indicating that the ministry's submission would be the reconsideration decision.

With the consent of both parties, the hearing was conducted as a written hearing pursuant to section 22(3)(b) of the *Employment and Assistance Act*.

Admissibility of New Information

The panel has admitted the information in the letter from the SW2 regarding the appellant's osteoarthritis, degenerative disc disease, and observations about her mobility and physical ability, and DLA, as it is evidence in support of the information and records concerning the appellant's medical conditions and daily functioning, that was before the ministry at the time of reconsideration, in accordance with section 22(4) of the *Employment and Assistance Act* (EAA). The panel has not admitted the information regarding the appellant's leaky gut syndrome, depression, and anxiety as there was no information about these conditions/symptoms before the ministry at the time of reconsideration.

The panel has admitted the information in the Physician Letter with respect to the appellant's worsening pain as it is evidence in support of the information and records about the chronic and progressive nature of the appellant's conditions, that was before the ministry at the time of reconsideration, in accordance with section 22(4) of the EAA. The panel has not admitted the information about fibromyalgia as that is a new diagnosis and was not before the ministry at the time of reconsideration.

The panel has accepted the information in the appellant's NOA and the ministry's submission as argument.

PART F – REASONS FOR PANEL DECISION

Issue on Appeal

The issue on appeal is whether the ministry's decision to deny the appellant designation as a PWD was reasonably supported by the evidence or was a reasonable application of the applicable enactment in the circumstances of the appellant. In particular, was the ministry reasonable when concluding it was not satisfied that

- a severe physical or mental impairment was established;
- 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 those restrictions, in the opinion of a prescribed professional, the appellant requires help, as
- it is defined in the legislation, to perform DLA?

Relevant Legislation

EAPWDA

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 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).

EAPWDR

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 practice 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.

(3) The definition of "parent" in section 1 (1) applies for the purposes of the definition of "dependent child" in section 1 (1) of the Act.

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).

Panel Decision

Severity of Impairment

The legislation provides that the determination of severity of an impairment is at the discretion of the minister, taking into account all of the evidence including that of the appellant. However, the legislation is also clear that the fundamental basis for the analysis is the evidence from a prescribed professional respecting the nature of the impairment and its impact on daily functioning. While the legislation does not define "impairment", the MR and AR describe "impairment" as 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." While this is not a legislative definition, and is therefore not binding on the panel, in the panel's opinion, it reflects the legislative intent and provides an appropriate analytical framework for assessing the degree of impairment resulting from a medical condition.

When considering the evidence provided respecting the severity of impairment, the ministry must exercise its decision-making discretion reasonably by weighing and assessing all of the relevant evidence.

Severe Physical Impairment

The ministry's position is that the information provided does not establish a severe physical impairment. The reconsideration decision indicates that a diagnosis of a serious medical condition does not in itself determine PWD eligibility or establish a severe impairment.

The reconsideration decision summarizes the information provided, noting that the Physician reports that the appellant has moderately advanced osteoarthritis in both knees, osteoarthritis in the left wrist secondary to Kienbock Disease and presumed right carpal tunnel, but that the Physician also describes the severity of the conditions in the appellant's knees and left wrist to be moderate osteoarthritis. The reconsideration decision notes that the Physician reports that the appellant can walk 4+ blocks unaided, can climb 5+ stairs unaided (with railing), is unable to lift with left wrist, and can remain seated less than 1 hour. The reconsideration decision specifically notes that the Functional Assessment indicates that the appellant has limited range of motion and generalized weakness in the right shoulder and bilaterally with the wrists and hands, with the left side worse than the right due to wrist fusion and muscle wasting. The reconsideration decision also notes that the Functional Assessment indicates that the appellant can safely ascend/descend 1 flight of stairs using the railing, and is limited to lifting 1-2 pounds due to her wrists and knee pain. The reconsideration decision also notes that in the AR2, the social worker reports that all moving takes about 2-3 times longer due to the appellant's severe knee pain and the social worker reports that the appellant needs help with housekeeping, laundry, and shopping and periodic help with meals.

The ministry's position is that the information provided indicates that the appellant is independent in most areas of DLA with only periodic assistance required, so it has not been demonstrated that the appellant has a severe functional impairment and is more representative of a moderate functional impairment.

The reconsideration decision indicates that while it is reported that the appellant is unable to return to work; employability is not a factor when determining the PWD designation.

The appellant's position is that the information provided demonstrates that she has a severe physical impairment and in the NOA she states that her condition is worsening. In the RFR, the appellant states that the Physician does not live with her and does not really have a good grasp of her daily limitations. The appellant argues, in the RFR, that she has chronic pain that limits her daily. The appellant argues that a person who cannot move without pain and without exacerbating that pain, is not someone who moves independently, therefore, she does not move independently.

The panel finds that the ministry reasonably determined that the information provided does not establish that the appellant has a severe physical impairment.

Although the AR2 describes the appellant's knee pain as severe, the Physician and the Surgeon both indicate that the appellant has moderately advanced osteoarthritis in both knees and the Physician describes the appellant's restrictions as mild to moderate. While the information indicates that the appellant needs a railing for stairs the Physician indicates that the appellant does not require any prosthesis or aids for her impairment and the panel finds that the ministry reasonably determined that a handrail does not meet the definition in legislation of an "assistive device" and that the use of a handrail does not establish a severe level of impairment.

The appellant states that if she tries to walk 4 blocks unaided as reported by the Physician that she would spend the next several hours flat on her back with ice on her knees trying to relieve the pain. By contrast, the Functional Assessment indicates that the appellant can walk for 30 minutes, limited by pain which requires a 15 minutes break in lie down position for resumption of function. The Physician indicates that the appellant has not been prescribed any medications or treatments that interfere with her ability to perform DLA. The panel also notes that the Surgeon offered the appellant a corticosteroid injection but, despite her reported level of pain, the appellant was not interested in that.

In her NOA the appellant indicates that her condition is worsening and in his letter dated May 18, 2017 the Surgeon indicates that he advised the appellant that the usual course of osteoarthritis was fluctuating symptoms which will eventually worsen. The appellant states that the Physician does not really have a good grasp of her daily limitations and that the medical documentation provided does not have enough details about her DLA. The appellant provided another letter from the Physician dated March 14, 2018 which indicates that the appellant has been

struggling with worsening pain in her back, knees, neck and wrist. However, the Physician does not provide any further information to indicate the severity of her impairment or to describe any change in impact to her DLA. While the Physician indicates that the appellant is unable to work for more than 2 hours at a time, the panel notes that employability is not a criterion for determining eligibility for PWD under the legislation.

The SW2 indicates that the appellant is living with quite severe and advanced osteoarthritis in both of her knees and left wrist but the panel notes that the Physician and the Surgeon reported that the appellant has moderately advanced osteoarthritis which indicates a somewhat lesser degree of advancement. The SW2 indicates that the appellant can only sit, stand or walk for very brief periods of time and must alternate between positions constantly throughout the day. However, the SW2 did not provide any information indicating the length of time that the appellant is able to sit, stand or walk or provide an indication of what she meant by the term "brief"; whereas the Functional Assessment indicates that the appellant can sit for 20 minutes, can work at the computer for 10-15 minutes, can stand for 20 minutes, can walk for 30 minutes, can walk for 2 blocks, and can lift 1-2 pounds.

The panel notes that the Functional Assessment indicates that the appellant has chronic right wrist/hand pain but there is no information indicating limitations with her right wrist/hand and the Hand Surgeon's report relates to the appellant's left wrist pain.

The panel finds that the ministry reasonably determined that the assessments of functional mobility, considered in their entirety do not demonstrate a severe level of impairment. The panel finds that the ministry reasonably determined that the information provided does not establish that the appellant has a severe physical impairment.

Severe Mental Impairment

The ministry's position is that the information provided does not establish a severe mental impairment. The reconsideration decision indicates that the Physician reports no difficulties with communication and no significant deficits with cognitive and emotional function.

The appellant did not argue that she has a severe mental impairment.

The panel finds that although the OT, in the Functional Assessment, indicates that the appellant appears quite stressed regarding her future, and that there were some reports of difficulty with memory, no cognitive impairments were noted during the assessment. In addition the Physician did not make any diagnosis of a mental impairment and the Physician and the social worker both report that the appellant does not have any difficulties with communication or restrictions with social functioning. Given that there is no diagnosis of any mental impairment and no significant deficits noted with cognitive and emotional function, the panel finds that the ministry reasonably determined that the information provided does not establish that the appellant has a severe mental impairment.

Restrictions in the ability to perform DLA

Section 2(2)(b)(i) of the EAPWDA requires that the minister be satisfied that in the opinion of a prescribed professional, a severe mental or physical impairment directly and significantly restricts the appellant's ability to perform DLA either continuously or periodically for extended periods. While other evidence may be considered for clarification or support, the ministry's determination as to whether or not it is satisfied that the legislative criteria are met, is dependent upon the evidence from prescribed professionals. The term "directly" means that there must be a causal link between the severe impairment and the restriction. The direct restriction must also be significant. Finally, there is a component related to time or duration – the direct and significant restriction may be either continuous or periodic. If periodic, it must be for extended periods. Inherently, any analysis of periodicity must also include consideration of how frequently the activity is restricted. All other things being equal, a restriction that only arises once a year is less likely to be significant than one that occurs several times a week. Accordingly, in circumstances where the evidence indicates that a restriction arises periodically, it is appropriate for the ministry to require evidence of the duration and frequency of the restriction in order to be "satisfied" that this legislative criterion is met.

DLA are defined in section 2(1) of the EAPWDR and are listed in both the MR and the AR sections of the PWD application with the opportunity for the prescribed professional to check mark whether activities are performed independently or are restricted, and provide additional narrative. DLA, as defined in the legislation, does not include the ability to work.

The ministry's position is that the information provided is not sufficient to establish that the appellant has a severe impairment that, in the opinion of a prescribed professional, directly and significantly restricts the appellant's ability to perform DLA. The reconsideration decision notes that the Physician reports that the appellant is periodically restricted with personal self-care and continually restricted with shopping and mobility, noting the degree of restriction to be mild-moderate. The reconsideration decision also notes that the Functional Assessment indicates that the appellant can perform most aspects of light housework and daily functioning, but is moderately impaired with dressing, bathing, grooming, toileting, meal preparation, and cleaning and unable to do tasks that require bimanual function.

The reconsideration decision acknowledges that the appellant has chronic pain and restrictions with her knees and wrists and that the social worker indicates that she needs some help. However the ministry's position is that the information provided indicates that the appellant functions primarily independently with the exception of requiring some help with heavier housekeeping and shopping. The reconsideration decision indicates that it is unclear why the social worker reports that the appellant requires ongoing help with basic housekeeping and shopping given that the OT reports that the appellant can manage most aspects of DLA's including light housework. The ministry notes that the amount of assistance the appellant requires is not reported to be extensive nor do any of the medical professionals indicate that the appellant has episodes that require significant help for extended periods. The ministry's position is that it is unable to conclude that the appellant's ability to perform DLA is directly and significantly restricted either continuously or for extended periods.

The appellant's position is that the information provided demonstrates that she has a severe impairment that significantly restricts her ability to perform DLA, either continuously or periodically for extended periods. The appellant's position is that her chronic pain fluctuates and because she has little to no assistance available to her, she does what she can but lives in less than ideal conditions of cleanliness. The appellant argues that when she performs tasks such as vacuuming the floor, it would take her several hours or days to complete this tasks as she can only do about 15 minutes before her pain increases to intolerable levels and she must stop. She reports that it takes several hours of rest and ice to return to "normal" so that she can try again.

The panel finds that the ministry reasonably determined that the assessments provided are not indicative of a severe level of impairment that directly and significantly restricts the appellant's DLA either continuously or periodically for extended periods as required by EAPWDA section 2(2)(b), but are more indicative of a moderate level of impairment.

While the MR indicates that the appellant is restricted with DLA of personal self care, daily shopping, and mobility outside the home, the Physician describes the degree of restriction as mild to moderate. While the Physician indicates that the appellant has continuous restrictions with daily shopping and mobility outside the home, the AR2 does not indicate that the appellant requires continuous assistance from another person with any listed aspects of these DLA or any others. Regarding shopping and mobility outside the home, the AR2 indicates the appellant requires periodic assistance and "ongoing help" with all areas of shopping, and takes significantly longer than typical with shopping and with mobility outside the home.

The MR indicates that the appellant requires periodic assistance with personal self-care and the AR2 indicates that the appellant takes significantly longer than typical with dressing, grooming, toileting, feeding self and transfers (3-4x longer due to pain, weakness, and numbness). While the AR2 indicates that the appellant requires periodic assistance with basic housekeeping, the Physician in the MR did not indicate whether the appellant's DLA of basic housekeeping is restricted or not and the Functional Assessment indicates that the appellant can perform most aspects of light housekeeping and daily function, but is moderately impaired with DLA of bathing, grooming, toileting, meal preparation and cleaning.

While the AR2 indicates that the appellant requires periodic assistance with basic housekeeping, shopping, food preparation and cooking, the social worker does not provide any further information indicating the frequency or duration of periodic assistance required.

The information from the Surgeon does not address DLA and while the information from the Hand Surgeon indicates that the appellant's wrist osteoarthritis affects her daily activities, the Hand Surgeon does not provide any details on the nature, frequency or degree of limitations to DLA. The Hand Surgeon indicates that the appellant will most likely need a wrist fusion to help with her pain but there is no information indicating a surgery date, anticipated recovery period, or anticipated prognosis post surgery.

While the letter from SW2 indicates that the appellant is unable to lift anything significant with her left arm there is no information regarding restrictions or limitations with her right arm and the appellant is right handed. While the SW2 indicates that the appellant requires assistance with aspects of DLA such as carrying groceries, housecleaning and transferring in/out of bed, there is no further information on the nature, degree or frequency of assistance required. Likewise the additional information from the Physician, which indicates that the appellant is struggling with worsening pain in her back, knees, neck and wrist, does not provide any further information on restrictions to DLA.

Considering all the information together, the panel finds that the ministry was reasonable in determining that the appellant's impairment does not, in the opinion of a prescribed professional, directly and significantly restrict the appellant's ability to perform DLA as required by the legislation.

Help to perform DLA

Section 2(2)(b)(ii) of the EAPWDA requires that, *as a result of direct and significant restrictions in the ability to perform DLA*, a person requires help to perform those activities. 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 DLA.

The ministry's position is that because it has not been established that DLA are significantly restricted, it cannot be determined that help is required.

The appellant's position is that she requires help and has little or no assistance available to her.

In the MR, the Physician indicates that the appellant does not require any prostheses or aids for her impairment. The Physician indicates that the appellant requires help with carrying heavy bags. The Surgeon indicates that the appellant does not need knee replacement, that he offered the appellant a corticosteroid injection and discussed viscosupplementation.

In the Functional Assessment, the OT recommends that the appellant speak to her landlord about fixing the stairs as the existing stairs create a significant fall risk. The OT indicates that the Physician may consider referrals to an immunologist, rheumatologist and/or naturopath for investigation into multiple joint inflammation, undiagnosed skin condition and systemic fatigue; referral to a neurologist for right wrist carpal tunnel symptoms, radiographic investigation of L4/5, further investigation into dislocated left clavicle (x-rays, chiropractor) and referral to an orthotist for foot orthotics. The OT also recommends that the appellant has ergonomic equipment including a sit/stand desk, ergonomic chair and work site modifications including alternating sit/stand/walk for any future employment environment.

In the AR2, the social worker indicates that the appellant has no one to help her with DLA's and that her household DLA's are not getting done regularly due to her symptoms and that she needs help. The social worker does not recommend any assistive devices. The social worker indicates that the appellant does not have an assistance animal.

The panel finds that the information provided by the Physician indicates that the appellant requires help with one DLA (carrying heavy items) while the information in the AR2 indicates the need for more extensive assistance but help is not available. However, as confirmation of direct and significant restrictions with DLA is a precondition of the need for help criterion and 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, the panel also finds that the ministry reasonably concluded that it cannot be determined that the appellant requires help to perform DLA as required by section 2(2)(b)(ii) of the EAPWDA.

Conclusion

The panel finds that the ministry's reconsideration decision, which determined that the appellant was not eligible for PWD designation, is reasonably supported by the evidence and is a reasonable application of the applicable enactment. The panel therefore confirms the decision. The appellant is not successful on appeal.