

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 9, 2018 which held that the appellant did not meet 2 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, and had a severe impairment, but was not satisfied that:

- 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:

- The appellant's PWD application comprised of the appellant's Self-Report (SR) dated March 8, 2017, a Medical Report (MR) completed by the appellant's nurse practitioner (the "NP") originally dated March 8, 2017 then crossed out and dated August 22, 2017, and an Assessor Report (AR) completed by a registered nurse (the "RN") dated June 13, 2017
- Note from the appellant's psychiatrist (the "Psychiatrist") dated January 9, 2018
- Letter from the Psychiatrist dated October 19, 2017
- The appellant's Request for Reconsideration form dated December 8, 2017 (the "RFR")

Summary of relevant evidence

Diagnoses

In the MR, the NP indicates that the appellant's diagnoses are post-concussion secondary from two possible syncopal episodes, permanent pacemaker, ADHD, anxiety, depression, chronic pain in left knee, neck and shoulder. The NP indicates that the appellant has been her patient since December 2, 2016 and she has seen her 2-10 times in the past 12 months.

In the AR, the RN indicates that the appellant's impairments that impact her ability to manage DLA are migraines (2x/month), chronic generalized pain secondary to severe MDA's and random collapsing episodes, post concussion, anxiety with panic attacks, severe depression, ADHD, mood disorder NYD, cardiac insufficiency/irregularity leading to a pacemaker and dyslexia (comprehension, written output disability). The RN indicates that the appellant's first visit was for the purpose of completing the AR.

The Psychiatrist indicates that the appellant was diagnosed with ADHD, combined type, unspecified anxiety disorder, persistent depressive disorder (dysthymia), substance use and consider somatic pain disorder.

Physical Impairment

In the MR for Functional Skills, the NP indicates that the appellant is able to walk 4+ blocks unaided on a flat surface, can climb 5+ steps unaided, is able to lift 15 to 13 pounds and can remain seated for 1 to 2 hours. In the AR, the RN indicates that the appellant requires periodic assistance with walking indoors, walking outdoors (2 to 5 blocks and 1.5 x as slow), climbing stairs (20 stairs, takes 4x longer than typical). The RN explains that the appellant can walk 5-30 minutes due to back, knee, hip, ankle, foot and knee pain. The RN indicates that the appellant requires continuous assistance from another person with standing (5 min maximum), lifting (10 lbs x 2 minutes) and carrying and holding (5 lbs x 2 min) and that it takes her significantly longer than typical with lifting and carrying and holding (2x longer). The RN explains that the appellant's pain ranges from 3-9 with 10 being severe and that four days per week her pain is higher than 5/10 despite analgesics.

In the RFR, the appellant states that she has chronic pain that 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 NP 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*".

In the SR the appellant reports that she can stand for approximately 5 minutes, uses walking sticks, can lift about 5-8 pounds, can carry 5-8 pounds about two blocks but cannot reach and grab anything with weight or it will end up on the floor.

Mental Impairment

The MR indicates that the appellant has significant deficits with cognitive and emotional function in the areas of executive, memory, emotional disturbance, and attention or sustained concentration. The NP indicates that the appellant does not have any difficulties with communication.

In the AR, the RN indicates that the appellant has major impact to bodily functions, attention/concentration, language and other neuropsychological problems (ADHD), moderate impact to consciousness and memory, minimal impact to impulse control, and no impact to insight and judgment, motor activity, psychotic symptoms and other emotional or mental problems.

The Psychiatrist indicates that the appellant has chronic problems with memory and concentration, is prone to being somewhat impulsive, and often hears mumbling speech present in noises.

In the SR, the appellant states that she experiences a lot of anxiety, agitation, stress, and depression on a regular basis, feels confused some days and it is difficult for her to plan ahead because of her pain and mental health issues. She reports that making decisions is tiring and difficult and she often isolates. She reports that she has difficulty with communication and often hides in bed, trying to ignore unexpected situations.

DLA

In the MR, the NP indicates that the appellant's DLA of personal self care, meal preparation, management of medications, basic housework, daily shopping, use of transportation, management of finances and social functioning are periodically restricted. The NP explains that the appellant is challenged to shower, complete meal prep, go to stores some days roughly 7 days/month and that family helps her. The NP indicates that the appellant is not restricted with mobility inside the home or mobility outside the home.

In the Additional Comments section of the MR, the NP indicates that the appellant sometimes socially isolates herself due to her anxiety and depression and that she finds it difficult to socialize with others due to her slightly impaired memory difficulty with word finding and anxiety.

In the AR, the RN indicates that for personal care the appellant is independent with toileting, regulating diet, transfers (in/out of bed) and transfers (on/off of chair) but requires periodic assistance from another person with dressing, grooming, bathing and feeding self. The RN indicates that on weeks with high levels of pain and depression her personal care is neglected (4/7 days per week) and that 4-5 days per week she does not dress, and that she does not groom or bathe 4 out of 7 days per week. With respect to feeding self the RN indicates that the appellant needs a dietary consult and does emotional eating (snacks all day).

The RN indicates that the appellant is independent with laundry but requires continuous assistance from another person with housekeeping, indicating that it takes her 10 times longer than typical as she has very low motivation, avoids dishes, is obsessive about floor and vacuuming (2-3/day) but avoids other housekeeping tasks.

The RN indicates that with respect to shopping, the appellant is independent with reading prices and labels, making appropriate choices and paying for purchases but requires continuous assistance with going to and from stores (avoids shopping due to depression/anxiety) and carrying purchases home (delivery or clerk carries groceries outside). The RN also indicates that the appellant takes significantly longer than typical with reading prices and labels (2x) as she is obsessive about price. The RN comments that with shopping, the appellant's adult children/landlord will pick up groceries or delivery is organized. For meals the RN indicates that the appellant is independent with safe storage of food and requires continuous assistance from another person with meal planning, food preparation and cooking, explaining that the appellant's adult daughters cook for her and bring her food, that she grazes all day and has difficulty reading recipes, following, organizing cooking tasks due to her ADHD and concussion, as well as difficulty standing.

The RN indicates that the appellant is independent with banking (online) but requires continuous assistance with budgeting (very poor budgeting and never buys anything for herself due to extreme anxiety about money) and bills (difficulty doing executive tasks of bill payment).

The RN indicates that the appellant requires continuous assistance with filling/refilling prescriptions (needs a reminder date to refill) and taking as directed, and uses a blister pack due to memory problems. The RN indicates that the appellant is independent with getting in and out of a vehicle, requires periodic assistance using public transit and takes significantly longer than typical 2x (asks bus driver about schedule and direction due to concussion) and requires continuous assistance using transit schedules and arranging transportation (landlord transports her). The RN comments that the appellant's ADHD affects her ability to pay attention to the road while driving.

For social functioning the RN indicates that the appellant is independent with appropriate social decision, interacts appropriately with others and is able to secure assistance from others, but requires continuous support/supervision to develop and maintain relationships (withdraws from people due to pain and depression) and periodic support/supervision to deal appropriately with unexpected demands (increased anxiety and panic). The RN indicates that the appellant has marginal functioning with her immediate social networks (due to depression, pain, and anxiety) and marginal functioning with her extended social networks (lots of social isolation; when out she is polite).

The Psychiatrist reports that the appellant is depressed or bored most day and has difficulty finding things that she enjoys. He reports that she switches moods rapidly and finds that her mood changes have a substantial impact on her social functioning. The Psychiatrist reports that the appellant has not had long-standing problems with alcohol but that she uses marijuana regularly. The Psychiatrist reports that the appellant's mental health state is one that clearly causes difficulty in social functioning which will require continuous assistance for her to manage her living requirements.

In the SR, the appellant states that she does not use the bath tub because of pain levels and fear of falling while trying to access the tub. She states that she uses a walk in shower but even that takes a long time because of shoulder pain and needing to be careful to prevent falling. The appellant states that it is painful to brush her hair and her basic hygiene doesn't get done often because of her pain, time to complete, distraction, or forgetfulness. The appellant states that preparing and eating meals is very difficult due to her pain and she has to make sure everything is at waist and chest level as lifting her arms up or bending down activates her pain. The appellant states that she can usually cook a meal if she stays in the kitchen but if she leaves the room without using the timer she forgets to go back and she is afraid to cook alone. The appellant states that she usually "grazes" all day and does not remember to eat regular meals or healthy foods. The appellant states that she could not remember to take her medications regularly so she uses blister packages and the pharmacist calls to tell her when her medications are ready for delivery.

The appellant states that she is obsessive about cleaning her floor but needs to do it slowly using a long handled Swiffer. She reports that she does small loads of laundry but will let her dishes build up to an enormous amount before she forces herself to do them or get help to do them. The appellant states that she does not remember to clean unless she sees a big mess. The appellant reports that she avoids stores when possible and tries to make her grocery shopping as quick as possible. She reports that the lights give her a headaches and make her feel disoriented and the noise of the crowds makes her feel overwhelmed.

The appellant reports that moving about indoors and outdoors is difficult and she avoids stairs, bending and walking on uneven ground. The appellant reports that she uses walking sticks when she is out and needs a seat on the bus because of her balance issues. The appellant reports that she needs reminders to pay her bills on time and she has difficulty budgeting for groceries. The appellant reports that she has difficulty interacting with friends and has difficulty making new relationships. She reports difficulty with communication and finding the right words to be able to explain herself to others.

Need for Help

In the MR, the NP indicates that the appellant lives on her own but relies on her children and boyfriend when she is overwhelmed or feeling depressed mood. The NP indicates that the appellant lives with her partner who helps her with cooking and socializing.

In the AR, the RN indicates that the appellant sees the Psychiatrist, mental health worker for depression/anxiety once a month but would benefit from educational program and support groups. The RN indicates that falling unexpectedly is leading to concussions. Under Additional Comments (including identification of any safety issues) the RN also notes that the appellant has unexpected falls leading to concussions, as well as cardiac issues and social isolation.

The RN indicates that help is provided by family, friends, health authority professionals (nurse practitioner), community service agencies and comments that friends and adult children assist with meals, shopping, reminders, prompts for personal care, emotional support, writing, comprehending/executive tasks. The RN indicates that the appellant needs a rehab worker through mental health to assist with cooking, cleaning, shopping, isolation, depression, executive tasks, prompts and personal care. The RN indicates that psychiatric care is needed for prescribing and monitoring medication; the head injury society is needed for executive tasks and support groups, and that the appellant requires chronic pain management services. The RN indicates that the appellant uses braces (knee Velcro), blister pack medications, and other (alarm to prompt memory).

The RN comments that the appellant uses a knee brace daily to both knees for ambulating and a cell phone/computer alarms for reminders. The RN also indicates that the appellant requires a triangle pillow to support knees, grabber to pick items up and requires a new knee brace. The RN does not indicate that the appellant has an Assistance Animal.

The Psychiatrist reports that the appellant requires medications and needs assistance to manage DLA of social functioning.

In the SR the appellant states that she gets help from the Psychiatrist, nursing centre, family/friends, and several community support centres/groups, including a chronic pain group and brain injury society. She reports that she needs bathroom bars in the shower and stair grips.

Additional information provided

In her Notice of Appeal (NOA) dated January 26, 2018 the appellant states that additional medical information was provided on January 9, 2018 the same day that the reconsideration decision was generated and was not included in the decision, so the appellant requests that the matter go forward with a tribunal hearing.

At the hearing, the appellant and her advocate stated that they did not think that the Psychiatrist's information was given enough weight and that his information demonstrates that the appellant has had a pattern of problem with activities including school, work and household activities. The advocate argues that the Psychiatrist's information confirms that the appellant has continuous symptoms. The advocate indicated that the SR was completed with the assistance of a community brain injury society.

At the hearing the appellant stated that she has not slept for a few nights, has disturbing dreams with vision issues that make reading difficult. She reports that she has tried a new medication but it has not helped. She reports that she was getting help from her children but they have moved so she has lost her help except her boyfriend. She reports that she is forgetting how to eat. The appellant reports that the NP indicates that she has approximately seven difficult days per month but it is a lot more and that the AR, which indicates that she has difficult days 4-7 days per week is more accurate. The appellant reports that while the NP indicates that she has not been prescribed medications that interfere with her ability to perform DLA, the appellant reports that she does get her medications in a blister pack and that the NP prescribes a pain medication and the Psychiatrist prescribes the other medications. The appellant reports that she has lost approximately 20 pounds in two months. She reports that she is 5'7" and weighs approximately 160-170 pounds. The appellant reports that with housekeeping she goes as long as she can and sometimes that is 5 minutes, sometimes 7 minutes but she often leaves the sink full of dishes for four days. For meals she often has foods such as cereal, potato chips, or apples although her boyfriend helps.

At the hearing the appellant, through her advocate, advised that the appellant had an updated letter from the Psychiatrist dated March 1, 2018 (the "Letter"), which indicates that the appellant's symptoms continue. The appellant indicated that she had not been able to get the letter to the ministry prior to the hearing. The advocate read the Letter, in which the Psychiatrist indicates that the appellant requires assistance on a continuous basis, that tasks take an inordinate amount of time on a regular basis and that the appellant receives help from her boyfriend. The advocated reported that the Letter indicates that the appellant is not capable of managing food preparation and planning her meals, that she is exhausted frequently, has low mood on a regular basis and that she continues to struggle with being forgetful and disorganized. The advocate states that in the Letter, the Psychiatrist reports that the appellant's social functioning is substantially interrupted, and that she is severely impacted on a continuous basis.

No representative from the ministry attended the hearing.

Admissibility of New Information

Although the Letter contains information that is fairly similar to the information previously provided by the Psychiatrist, the panel has not admitted the Letter because it was not provided prior to the tele-conference hearing and the panel was not able to review the Letter. In addition, the information in the Letter provides a new assessment of DLA and as that information was not before the ministry at the time of reconsideration, it is not evidence in support of information and records that were before the ministry at the time of reconsideration, in accordance with section 22(4) of the *Employment and Assistance Act* (EAA).

The panel has admitted the appellant's oral testimony regarding her medical conditions and difficulties with DLA as it is evidence in support of information and records that were before the ministry at the time of reconsideration, in accordance with section 22(4) of the EAA.

The panel has accepted the oral information from the advocate 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

- 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

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 checkmark boxes 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 in the MR, the NP reports that the appellant has not been prescribed any medications that interfere with her ability to perform DLA. The reconsideration decision indicates that while the NP indicates periodic restrictions to the majority of listed areas of DLA, the explanation that the appellant has restrictions 7 days per month does not sufficiently establish that the periodic restrictions are for extended periods. The reconsideration decision also indicates that the NP does not describe the degree of restriction to DLA so it is difficult to establish that the appellant has significant restrictions to DLA.

The reconsideration decision indicates that although the AR indicates that the appellant requires continuous assistance with a variety of DLA, the NP indicates only periodic restrictions to DLA. The reconsideration decision also notes that although the AR describes a frequent need for assistance with areas of personal care (4 to 7 days per week), the MR describes periodic restrictions (including restrictions to personal care) as occurring roughly 7 days per month. The ministry also notes that taking two times longer than typical in performing DLA is not considered indicative of significant restrictions to DLA.

The reconsideration decision indicates that although the RN indicates that the appellant needs help with carrying purchases home, the NP indicates that the appellant can lift 15 to 35 pounds and can walk 4+ blocks unaided. The reconsideration decision indicates that ministry is inclined to place more weight on the MR because the NP has known the appellant since December 2016 and has seen her 2 to 10 times in the past 12 months (she circles 10) whereas the NP met the appellant the first time when completing the AR.

The reconsideration decision also indicates that while it considered the information from the Psychiatrist, it does not speak to restrictions to DLA or the assistance that the appellant requires with DLA.

The ministry's position is that based on the assessments provided, there is not enough evidence to confirm that the appellant has a severe impairment that significantly restricts the appellant's ability to perform DLA continuously or periodically for extended periods so the legislative criteria has not been met.

The appellant, through her advocate, argues that it is logical that as the ministry has accepted that the appellant has a severe impairment that she meets the other criteria. The appellant, through her advocate, argues that the ministry did not sufficiently consider the information from the Psychiatrist as it demonstrates that the appellant has continuous symptoms and has significant restrictions with DLA. The appellant argues that the Psychiatrist's language is clear and his impression is that she is continuously affected.

The appellant argues that the information from the RN in the AR is more accurate even though the RN only met her the first time for the AR assessment. The appellant argues that the information provided by the RN in the AR is more accurate as she has a lot more difficult days than 7 days per month. The appellant argues that all the evidence, when considered together, demonstrates that she meets the legislative criteria.

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).

While the appellant, through her advocate, argues that it is logical that the appellant meets the criteria as it has been established that she has a severe impairment, the panel finds that the ministry was reasonable on determining that the appellant has to meet all of the legislative criteria as there are distinct components of the application for PWD designation. Just because a person has a severe impairment, it does not automatically follow that the person has significant restrictions to DLA.

The appellant argues that the information from the Psychiatrist was not given sufficient weight; the reconsideration decision indicates that the ministry considered the information but determined that it did not speak to restrictions to DLA. The panel notes that the information from the Psychiatrist does indicate that the appellant has difficulty in social functioning which will require continuous assistance for her to manage her living requirements but that the Psychiatrist has only provided information regarding the appellant's social functioning and not restrictions to other DLA. In addition, the Psychiatrist does not provide information regarding the frequency or duration of assistance needed.

The panel notes that there are considerable differences and inconsistencies between the information in the MR and the AR. For example, with respect to personal care, both the MR and the AR indicate that the appellant has some periodic restrictions with at least some aspects of DLA (dressing, grooming, bathing and feeding self) but the NP reports the restrictions are roughly 7 days per month whereas the RN reports that her periodic restrictions on weeks with high levels of pain and depression are 4 to 7 days per week.

Another example is that with respect to meals the MR indicates that the appellant is periodically restricted but the AR indicates that the appellant is continuously restricted with meal planning, food preparation, and cooking. With respect to basic housekeeping the MR indicates that the appellant's DLA is periodically restricted whereas the AR indicates that the appellant is independent with laundry but requires continuous assistance with basic housekeeping. The appellant's evidence is that she is obsessive about keeping her floor clean but lets the dishes build up in the sink for several days. Although the RN indicates that the appellant needs help with carrying purchases home, the nurse practitioner indicates that the appellant can lift 15 to 35 pounds and can walk 4+ blocks unaided. While the RN indicates that the appellant takes 10x longer than typical with basic housekeeping the appellant's own evidence is that she is obsessive about her floor so the information establishes that the appellant is in fact capable of spending significant time on some household tasks.

The RN indicates that the appellant takes twice as long as typical with reading prices and labels when shopping and using public transit, but the panel finds that the ministry reasonably determined that taking twice as long as typical with some aspects of DLA is not indicative of significant restrictions to DLA.

Although the appellant states that the information from the RN is more reflective of her restrictions, even though she only met the appellant one time for the purposes of completing the AR, the panel finds that the ministry was reasonable in giving more weight to the MR, as the NP has known the appellant since December 2016 and has seen her 10 times in the past 12 months and because the inconsistencies between the assessments make it difficult for the ministry to determine that the legislative criteria is met.

With respect to social functioning, the MR indicates that the appellant's DLA is periodically restricted. The AR indicates that the appellant is independent with appropriate social decisions, interacting appropriately with others and securing assistance from others, requires periodic assistance with dealing appropriately with unexpected demands, and requires continuous assistance with developing and maintaining relationships. As noted above, the Psychiatrist indicates that the appellant has difficulty with social functioning and will require continuous assistance to manage her living requirements, but he does not indicate whether she requires continuous assistance with all aspects of social functioning or only some. The Psychiatrist's information is very broad and general with few details which are not particularly helpful for the ministry to determine the impact to the appellant's DLA. Given the differences in degree of restrictions and aspects of social functioning of DLA with which the appellant requires help, the panel finds that the ministry reasonably determined that it is difficult to obtain a clear picture of the appellant's restrictions to DLA of social functioning.

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 reconsideration decision indicates that the ministry reviewed the information regarding the help needed. In particular, the reconsideration decision notes that in the MR the NP does not indicate that the appellant requires any prostheses or aids for her impairment and in the AR the RN indicates that the appellant is provided assistance by family, friends, health authority professionals, community service agencies, uses braces (knee Velcro), blister packs (medications), alarm systems to prompt memory, and requires a triangle pillow for knee support, and a grabber to pick up items. However, 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 gets some help from her boyfriend but her children have moved so they cannot help her anymore. The appellant's position is that she gets help from community service agencies, family, friends, the Psychiatrist and uses walking sticks. The appellant, in the SR, indicates that she needs help with bathroom bars in the shower and stair grips so she does not fall while going in and out of her home.

In the MR, the NP indicates that the appellant does not require any prostheses or aids for her impairment. The NP comments that the appellant lives on her own but relies on her children and boyfriend when she is overwhelmed or feeling depressed mood. The NP indicates that the appellant lives with her partner who helps her with cooking and socializing.

In the AR, the Assessor indicates that the appellant needs support/supervision from the Psychiatrist, mental health worker for depression/anxiety once a month; educational program, and support groups. The RN indicates that help is provided by family, friends, health authority professionals (nurse practitioner), community service agencies and comments that friends and adult children assist with meals, shopping, reminders, prompts for personal care, emotional support, writing, comprehending/executive tasks. The RN indicates that the appellant needs a rehab worker through mental health to assist with cooking, cleaning, shopping, isolation, depression, executive tasks, prompts and personal care. The RN indicates that the psychiatric care is needed for prescribing and monitoring medication; the head injury society is needed for executive tasks and support groups, and that the appellant requires chronic pain management services. The RN indicates that the appellant uses braces (knee velcro), blister pack medications, and other (alarm to prompt memory). The RN comments that the appellant uses a knee brace daily to both knees for ambulating and a cell phone/computer alarms for reminders. The RN also indicates that the appellant requires a triangle pillow to support knees, grabber to pick items up and requires a new knee brace. The RN does not indicate that the appellant has an Assistance Animal.

The panel finds that the information provided indicates that the appellant requires some help with some aspects of DLA. 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, was reasonably supported by the evidence and is a reasonable application of the applicable enactment, and therefore confirms the decision. The appellant is not successful on appeal.