

PART C – DECISION UNDER APPEAL

The decision under appeal is the Ministry of Social Development and Poverty Reduction (the ministry) reconsideration decision dated February 13, 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.

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 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 September 25, 2017, a medical report (MR) dated October 23, 2017 and an assessor report (AR) dated September 26, 2017 and both completed by a rheumatologist who has known the appellant for one year and has seen her 2 to 10 times in the last year ("the rheumatologist").

The evidence also included the following additional documents:

- 1) Letter dated January 31, 2013 from a physician;
- 2) Letter dated May 17, 2017 from the rheumatologist;
- 3) Letter to the appellant dated October 19, 2017 in which the ministry advised that the MR had not been signed by a registered physician or nurse practitioner;
- 4) Request for Reconsideration dated January 31, 2018 and attached written submission by an advocate, a letter from the appellant dated January 9, 2018, and a letter dated December 27, 2017 from the rheumatologist.

Diagnoses

In the MR, the rheumatologist diagnosed the appellant with back pain within the fibromyalgia diagnostic code, with an onset in January 2011. 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 rheumatologist wrote: "normal."

Physical Impairment

In the MR and the AR, the rheumatologist reported:

- Regarding the appellant's health history, the rheumatologist wrote that the appellant has "chronic back pain, worse with standing, lifting, bending. Overweight with history of hypertension and dyslipidemia."
- The appellant does not require an aid for her impairment.
- In terms of functional skills, the appellant can walk 2 to 4 blocks unaided on a flat surface, climb 2 to 5 steps unaided, lift 2 to 7 kg. (5 to 15 lbs.) and remain seated less than 1 hour.
- For additional comments to the MR, the rheumatologist wrote "overweight, hypertension, dyslipidemia."
- The appellant is assessed as independent with walking indoors (note: "back pain"), walking outdoors (note: "limited"), climbing stairs (note: "limited"), standing (note: "limited") and lifting (note: "limited"), requiring periodic assistance from another person with carrying and holding. The rheumatologist wrote "chronic back pain."
- In the section of the AR relating to assistance provided, the rheumatologist did not indicate that any of the listed assistive devices are applicable to the appellant.

In the letter dated May 17, 2017, the rheumatologist reported:

- The appellant has "right shoulder pain consistent with supraspinatus tendonitis preventing her from elevating the arm of at least two months duration."

- She “continues to have mechanical back pain with a supraspinatus tendonitis and both mechanical back pain causing radiation of the pain in the form of sciatica into the right neck and calf posteriorly.”
- The appellant “continues to be significantly overweight and is known to have problems with dyslipidemia, hypertension and depression.”
- Her right shoulder is a major issue that is preventing her from using it properly and her lower back continues to be an ongoing disability.

In the letter dated December 27, 2017, the rheumatologist wrote:

- The appellant has “the obvious problems of chronic back pain and radiological evidence of degenerative disc and facet joint disease in the lower back of overweight and dyslipidemia” and “there are some other ongoing problems.”
- There is an inability to do any physical work including regular chores at home or lifting her arms against gravity such as trying to apply some make-up to her eyes. She feels that her strength is decreased enough to prevent her from doing any lifting above 1 kg. of body weight over any period of time.
- “At no time peripheral joint swelling has been documented. All of this symptomatology falls well into the definition of fibromyalgia.”
- “All of the problems identified in previous communication and at the beginning of this letter in combination with fibromyalgia, are considered severe and prolonged and unfortunately are not likely to resolve with any medical interventions and in turn preventing her from doing any gainful employment.”
- “By far the main issues accounting for her main disabilities are degenerative disc disease in the lower back (code 13.6) and fibromyalgia (code 13.8).”

In the letter dated January 31, 2013, a physician indicated:

- The appellant has chronic right carpal tunnel syndrome and chronic lower back pain and is unable to lift anything heavier than 5 kg. or to push and pull with her arms.
- She would be suggested to look for more sedentary type of work until her condition is improved.
- She would benefit from right wrist brace.

In her self-report, the appellant wrote:

- She has been suffering from back pain for about 4 years and it keeps getting worse. Her capacity to do work has steadily decreased due to pain.
- The pain in her shoulders, especially the right, is much worse now.
- Another major problem is her back. She suffers from intermittent pain, day and night.
- She often feels weak and she no longer has the ability to stand or sit for long periods.
- Walking and climbing stairs are painful after only a short time and she needs to take breaks on the stairs.
- Her left side is most affected. Sometimes when she is outside and her legs feel weak, she thinks she might fall.

In her letter dated January 9, 2018 with the Request for Reconsideration, the appellant wrote:

- According to the ministry, she can walk 2 to 4 blocks, climb 2 to 4 steps and lift 5 to 25 lbs all without assistance, and remain seated less than an hour.

- According to what the doctor said, it is severe and prolonged and the doctor has rectified with respect to the amount of weight she can lift, being less than 2 lbs.

Mental Impairment

In the MR and the AR, the rheumatologist reported:

- 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 hear and has a poor ability to communicate in speaking, reading, and writing attributed by the rheumatologist to “poor English.”
- With respect to the section of the AR relating to daily impacts to the appellant’s cognitive and emotional functioning, the rheumatologist did not complete this section as applicable to the appellant, leaving it incomplete.
- For the appellant’s social functioning, the rheumatologist indicated that the appellant is independent in all areas, 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. The appellant is assessed with good functioning in both her immediate and extended social networks.

In the letter dated May 17, 2017, the rheumatologist reported:

- The appellant “continues to be significantly overweight and is known to have problems with dyslipidemia, hypertension and depression.”

In the letter dated December 27, 2017, the rheumatologist wrote:

- Given a number of socio-economical reasons including poor ability to communicate in English, inability to get a proper job, economical reasons at home, a son with some issues, and the family having been under a fair amount of stress since moving to Canada some 8 to 10 years ago.
- Stress has been a major factor in contributing to many of the appellant’s complaints.

In the letter dated January 31, 2013, a physician indicated that more courses for English would be beneficial for improving the appellant’s poor English skills.

In her self-report, the appellant wrote:

- She thinks she might fall and nobody will be there to help her or to understand her because of her lack of English. This causes her much anxiety.
- She feels depressed at times. Sometimes she believes that “life is too difficult.”
- The fact that the financial situation of her family is poor, also contributes to the feeling of helplessness.

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

- A number of life circumstances, including an inability to work, contributed to a state of stress.
- She has a history of experiencing a traumatic event in her childhood.

Daily Living Activities (DLA)

In the MR and the AR, the rheumatologist reported:

- The appellant has not been prescribed any medication and/or treatments that interfere with her ability to perform DLA.
- In the AR, the appellant is independent with walking indoors and with walking outdoors. The rheumatologist noted “back pain” and “limited.”
- The appellant is independent with all of the listed tasks for several DLA, specifically: the personal care DLA (dressing- “limited”, grooming, bathing, toileting, feeding self, regulating diet, transfers in/out of bed and transfers on/off chair), the meals DLA (meal planning, food preparation, cooking, safe storage of food), the pay rent and bills DLA (including banking and budgeting), the medications DLA (filling/refilling prescriptions, taking as directed, and safe handling and storage), and the transportation DLA (getting in and out of a vehicle, using public transit, and using transit schedules and arranging transportation).
- Regarding the basic housekeeping DLA, the appellant requires periodic assistance with both tasks, doing laundry and basic housekeeping.
- For the shopping DLA, the appellant is independent with the tasks of making appropriate choices and paying for purchases, and she requires periodic assistance from another person with the task of going to and from stores, reading prices and labels and the task of carrying purchases home. The rheumatologist provided additional comments “chronic back pain.”

In the letter dated December 27, 2017, the rheumatologist wrote there is an inability to do any physical work including regular chores at home or lifting her arms against gravity such as trying to apply some make-up to her eyes.

In her self-report, the appellant wrote:

- Before, she was able to do all housework on her own, but lately she has been requiring a lot of help from all the people at home.
- She can no longer carry heavy grocery bags, reach to grab or clean areas above her chest or perform many other daily activities without help. Her arms hurt and at best “feel heavy” with most activities.
- Her back makes it difficult to do grocery shopping (lift), housework (flexion), and other activities necessary to carry on in her daily living (dressing/undressing, bathing, and wearing/folding clothes).
- She does not have a pain-free day and this makes it very difficult to find and maintain a job.

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

- The doctor has clarified that she has a chronic condition and she requires help.
- She cannot lift a cooking pot and she needs someone’s help to bend over and take out the pots.

Need for Help

The rheumatologist reported in the AR that help required for DLA is provided by family. The rheumatologist did not identify any of the listed assistive devices as being used by the appellant.

Additional information

In her Notice of Appeal dated February 26, 2018, the appellant expressed her disagreement with the ministry's reconsideration decision and wrote that she does have a severe physical impairment that significantly restricts her ability to perform DLA, causing her to require significant help to perform these activities.

Prior to the hearing, the appellant provided a letter dated May 9, 2018 in which the rheumatologist wrote that:

- The appellant's several diagnoses do not oppose each other, but several different problems are occurring at the same time and each was causing different symptomatology. The results are pain and disability regardless of the cause.
- The known problems are: 1) mechanical back pain secondary to degenerative and facet joint disease in the lumbar spine as a consequence of lumbar instability, overweight, weak abdominal wall muscles, repetitive use of her spine over the years, and radiation into her lower limbs and buttocks in the form of "hip pain." 2) Anxiety and recurrent panic attacks, part of the picture of fibromyalgia, a chronic soft tissue pain syndrome aggravated by stress, frustration, and socio-economic issues, etc. 3) Overweight, 4) Dyslipidemia; and 5) Hypertension.
- Fibromyalgia is a continuous cause of generalized soft tissue pain in literally every part of her body. Mostly muscles of the upper and lower girdle, but also neck, lower back, soft tissues of the arms and forearms and legs around the joints, with no objective inflammation but a well-recognized pain syndrome that is chronic and practically untreatable but worsened by stress, unfitness, etc. This condition alone causes poor sleep at night, malaise, fatigue, mental fog, lack of concentration and, because of the nature of the pain, inability to function from day to day doing activities of daily living. Patients with this condition require help from family members and cannot hold a permanent job on account of worsening of the symptoms with repetitive activities. Weather changes being a worsening factor but no medication is bound to make a difference to the severity of the chronicity.
- The appellant has significant mechanical back issues or chronic back strain with secondary damage and the same type of activities, particularly bending, standing, and lifting will aggravate this pain and, in turn, it gets referred into the lower limbs.
- The appellant's pain syndrome, multi-factorial, is severe and prolonged. It does account for significant disability and prevents her from doing her activities of daily living, holding a job or even taking care of some chores in the house, preparing meals, cleaning, doing business outside the home, which is further compromised by her English language limitations. As a consequence, she is more dependent on being taken by other people to do some shopping or personal needs as she is afraid of driving and feels insecure, all part of the same picture.
- The appellant's lack of concentration, anxiety, stress, and panic attacks, further contribute to her inability to function individually and, therefore, she depends more on other peoples' help, mostly family members who take care of the cleaning the house, washing clothes, and doing any other physical work that involves lifting or repetitive activities.
- Further investigations and drug therapy or consultations with other physicians or health allied workers are not likely to make a big difference to her ability to function.

At the hearing, the appellant stated:

- Even preparing meals for her husband is difficult and it is hard for her to see the everyday reality of her hard life.
- Even to get out of bed, her husband has to push her because she is so stiff and in so much pain in the morning. She has to turn constantly in the night to get comfortable.
- It is very hard for her to perform daily chores. She has to provide food for two children.
- Her arms are so weak she cannot lift her arm. She does not have the strength and each time it becomes more and more complicated for her.
- She cannot handle a pot. She constantly asks for help of her daughter and son who are both in school.
- She cannot grab a broom and do a simple movement of sweeping because her pain is so much. The pain in her shoulders is unbearable. The pain is not so simple that she can take a pain killer.
- Her back pain is an acute pain that paralyzes her. It is a very strong pain that goes all the way up her leg and she has to stay in one position.
- She feels so tired after doing the house chores. It is like a great exertion and it makes her dizzy.
- To shop or run errands, she always goes with someone. Her son is in charge and she can walk and grab some small things. She asks her son to get the other things while she sits and rests. She is trying to accomplish some things because she cannot ask her children all the time because they have school.
- Even her feet hurt, her stomach gets swollen, and she has headaches that are so bad that she cannot sleep.
- For taking transportation, it has been getting worse. When she goes out, she is scared and she carries her ID in case something happens. When she takes public transportation, the seats are often all taken and when her pain increases no one gives her a seat. Perhaps she still looks young or they do not understand that she is in pain. She either has to find some place to sit, or go home.
- Her primary form of transportation is to be driven by her son or her husband. One time per week she takes the bus but she is scared.
- When her children are at school, this is her constant concern. She asks why she cannot be outside working or helping her children and husband.
- Sometimes she wants to put on make-up to be pretty but she gets depressed because it is too hard. She wants to cook for herself and she gets hungry but she cannot cook until someone from her family arrives to help her.
- The doctor's report says she can walk a block or two. One day she can do a block and then for the next 5 days she cannot go out because of the pain. Each time, it is a shorter distance that she can walk and there is more pain. There are days when she cannot walk at all. The pain in her shoulders and in her buttocks is unbearable.
- Her daughter has to help her untangle her hair.
- She can do some house chores but she needs to rest. She tries to do something but her hand gets tired and it shakes and she feels very fatigued. She will start doing something and her family will see her difficulty and they will finish the chore for her. She cannot finish any chore.
- One day she feels like she cannot even go out the door and, other days, she has to go out. Some days she cannot even take a step.
- Maybe once per week she can go out. Lately, she has been too scared to go out.

- The pain does not give her advance notice. The pain in her back and buttocks is unbearable. The pain in her shoulders is so intense that her arms shake. It is not a regular thing. Today, she is fine.
- Sometimes her knees hurt and sometimes her wrists are very painful.
- It is hard to say how often because there is so much variation. Her pain and fatigue are always present. Every day she needs her family's assistance. The pain does not stop.
- The pain is all the time and even to put on a shoe she cannot do it.
- She takes over-the-counter pain medication, but mostly that just puts her to sleep. She has a lack of sleep at night. Her stomach hurts all the time too.
- Sometimes her husband will rub her shoulders or back to help with the pain. She has had no referral to a pain clinic.

At the hearing, the appellant's husband stated:

- Starting in the morning, when they wake up, he needs to carefully push her out of bed. Sometimes, almost every day, she asks for him to massage her back and shoulders.
- He is not currently working, so the appellant gets him to help her with lifting things.
- He is currently studying and is gone from the house most of the day and this leaves the appellant alone. Their daughter is the appellant's best helper. He does not know what will happen in September when their children will both be enrolled in post-secondary education programs full-time.
- He helps the appellant when she wants to carry something heavier. A small papaya, for example, would be okay for her to carry by herself but a large papaya is too much.
- He sometimes helps the appellant to go up the stairs.
- Every day the appellant requires either his help or their children's help.
- The appellant would have no problem to cook something for herself but cooking for 4 people is too much.
- She becomes afraid when they are out driving. He always helps her to get out of the car.
- The appellant has some fear to take the public transportation. She seems younger than her real age and nobody will stand up to allow her to be seated. She is okay if she gets a seat. They use the car to do the shopping.
- The appellant was better 3 or 4 years ago, but her condition has been getting worse.
- The appellant does not sleep many hours and wakes up several times during the night.

At the hearing, the appellant's friend stated:

- She is a registered nurse who has worked in rehabilitation for 20 years. She has known the appellant since she came to Canada.
- The appellant has degenerative discs in her back and the things that the appellant says she cannot do, and what she observes are consistent with the level of injury.
- With a spinal injury, everyone is different with the level of assistance that they require. The appellant needs help with all her daily living activities.
- The appellant has gotten worse over time. In the last year and a half, the appellant has gotten much worse. She used to walk all the time, for example, and it was hard to keep up with her but now she is no longer walking.
- The appellant used to be more social and now she does not visit because she is in pain. The appellant gets discourage a lot when she used to be the encourager.

- The appellant needs help doing the laundry, carrying something heavy, or reaching to high places for something.
- With fibromyalgia, the pain is not always the same, it is unpredictable.
- She has had to help the appellant set up the table, to carry plates and to move furniture. She sees her asking her kids for help lifting the laundry and reaching for things in the cupboards. The appellant is also not comfortable sitting or standing for too long.

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 rheumatologist dated May 9, 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 the oral testimony on the appellant's behalf 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 appellant's arguments, as set out in the written submissions with the Request for Reconsideration and the advocate's oral submissions, will be addressed in Part F- Reasons for Panel Decision, below.

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 rheumatologist with chronic back pain, worse with standing, lifting and bending, and being overweight, with a history of hypertension and dyslipidemia. The panel notes that the diagnosis of back pain by the rheumatologist was within the fibromyalgia diagnostic code, with an onset in January 2011. In the letter dated May 17, 2017, the rheumatologist reported that the appellant also has “right shoulder pain consistent with supraspinatus tendonitis preventing her from elevating the arm of at least two months duration” and she “continues to have mechanical back pain with a supraspinatus tendonitis and both mechanical back pain causing radiation of the pain in the form of sciatica into the right neck and calf posteriorly.”

At the hearing, the advocate argued that the ministry did not fully consider the additional diagnoses as set out in the letter from the rheumatologist dated December 27, 2017. In the reconsideration decision, the ministry considered that the rheumatologist wrote in the letter that the appellant has “the obvious problems of chronic back pain and radiological evidence of degenerative disc and facet joint disease in the lower back of overweight and dyslipidemia” and “there are some other ongoing problems.” The ministry also considered that the rheumatologist wrote that “...at no time peripheral joint swelling has been documented,” “...all of this symptomatology falls well into the definition of fibromyalgia” and “...by far the main issues accounting for her main disabilities are degenerative disc disease in the lower back (code 13.6) and fibromyalgia (code 13.8).”

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.

In the Request for Reconsideration, the advocate argued that the rheumatologist wrote in the December 27, 2017 letter that all of the problems identified in previous communication and in the letter “are considered severe and prolonged and unfortunately are not likely to resolve with any medical interventions and in turn preventing her from doing any gainful employment.” The panel finds that the ministry reasonably concluded that the appellant’s employability or inability to work is not taken into consideration for the purposes of determining eligibility for the PWD designation.

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 rheumatologist reported in the MR that the appellant is able to walk 2 to 4 blocks unaided on a flat surface, climb 2 to 5 steps unaided, lift 5 to 15 lbs., and remain seated less than 1 hour. In her letter dated January 9, 2018 with the Request for Reconsideration, the appellant wrote that according to what her doctor said, her condition is “severe and prolonged” and the doctor “has rectified with respect to the amount of weight he (sic) can lift, being less than 2 lbs.” The panel finds that the ministry reasonably considered that the rheumatologist wrote in the December 27, 2017 letter that the appellant “feels that her strength is decreased enough to prevent her from doing any lifting above 1 kg. of body weight over any period of time” and that by specifying how the appellant “feels,” the rheumatologist reported on behalf of the appellant and stopped short of providing an amendment of the assessment that the appellant is able to lift 5 to 15 lbs. The rheumatologist also wrote that “stress has been a major factor in contributing to many of [the appellant’s] complaints which involve chronic soft tissue pain syndrome in the rest of her body... inability to do any physical work including regular chores at home...” and thereby emphasized the appellant’s own self-report of limitations.

At the hearing, the advocate argued that the ministry can infer from the comment by the rheumatologist that the appellant’s “inability to do any physical work including regular chores at home or lifting her arms against gravity such as trying to apply some make-up to her eyes” that the appellant has restrictions with lifting. Without a specific amendment to the previous assessment, the panel finds that the ministry reasonably considered that the ability to lift 5 to 15 lbs. allows for the lifting of a variety of household and shopping items and, when asked in the AR about the impairments that impact the appellant’s ability to manage her DLA, the rheumatologist wrote “normal.”

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.

In the reconsideration decision, the ministry also considered the rheumatologist's report in the AR that the appellant is independent with most of her mobility and physical ability, including walking indoors and outdoors, climbing stairs, standing, and lifting, and requires periodic assistance with carrying and holding. The rheumatologist commented that the appellant has chronic back pain and that she is "limited," as set out by the rheumatologist in the functional skills limitations. The ministry reasonably considered that the rheumatologist does not describe the frequency or duration of periodic assistance from another person required with carrying/holding.

In her self-report, the appellant wrote that she often feels weak and she no longer has the ability to stand or sit for long periods. She also wrote that walking and climbing stairs are painful after only a short time and she needs to take breaks on the stairs. At the hearing, the appellant's husband stated that he sometimes helps the appellant go up the stairs. The appellant's friend stated at the hearing that the appellant is not comfortable sitting or standing for too long. The friend stated that the appellant has gotten much worse in the last year and a half. For example, the appellant used to walk all the time and it was hard to keep up with her but now the appellant is no longer walking.

At the hearing, the appellant stated that the doctor's report says she can walk a block or two but one day she can do a block and then for the next 5 days she cannot go out because of the pain. Each time, it is a shorter distance that she can walk and there is more pain and there are days when she cannot walk at all because of the pain. The appellant stated that the pain does not give her advance notice, the pain in her back and buttocks is unbearable, and the pain in her shoulders is so intense that her arms shake. The appellant stated that this is not a regular thing and today she is fine. The panel notes that the rheumatologist reported that the appellant does not require an aid for her impairment and he did not identify any of the assistive devices as being applicable to the appellant, including aids for mobility such as a cane or walker.

At the hearing, the advocate emphasized that the reduction in the appellant's physical functioning as described in the oral testimony is due to the degenerative nature of the appellant's condition, as documented by the rheumatologist. Given an opportunity to update his assessment of the appellant's physical functioning, the rheumatologist wrote in the May 9, 2018 letter that the appellant has significant mechanical back issues or chronic back strain with secondary damage and the same type of activities, particularly bending, standing, and lifting will aggravate this pain and, in turn, it gets referred into the lower limbs. However, the ministry reasonably considered that the rheumatologist did not take the opportunity to specifically amend his original assessment of functional skill limitations in the moderate range and the appellant's independence with her mobility and most physical ability, nor did he provide further information about how often the appellant requires assistance with carrying/holding.

Given the rheumatologist's assessment of physical functioning in the moderate range of functional skills limitations and independence with her mobility and physical ability, with the exception of carrying/holding, and the lack of detail regarding the extent of assistance required, 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 panel notes that while the appellant was not diagnosed by the rheumatologist in the MR with a medical condition within the mental disorders category of the diagnostic codes, the rheumatologist reported in the May 17, 2017 letter that the appellant “continues to be significantly overweight and is known to have problems with dyslipidemia, hypertension and depression.” In the letter dated December 27, 2017, the rheumatologist wrote that given a number of socio-economical reasons including poor ability to communicate in English, inability to get a proper job, economical reasons at home, and a son with some issues, the family has been under a fair amount of stress since moving to Canada some 8 to 10 years ago. The rheumatologist wrote that “stress has been a major factor in contributing to many of [the appellant’s] complaints.” In the letter dated May 9, 2018, the rheumatologist listed anxiety and recurrent panic attacks as included in the appellant’s problems and wrote that this is “part of the picture of fibromyalgia, a chronic soft tissue pain syndrome aggravated by stress, frustration, and socio-economic issues, etc.”

In her self-report, the appellant wrote that she thinks she might fall and nobody will be there to help her or to understand her because of her lack of English and this causes her much anxiety. The appellant wrote that she feels depressed at times, she sometimes believes that “life is too difficult,” and the fact that the financial situation of her family is poor also contributes to the feeling of helplessness. In her letter provided with her Request for Reconsideration, the appellant wrote that a number of life circumstances, including an inability to work, contributed to a state of stress and she also has a history of experiencing a traumatic event in her childhood.

The ministry reasonably considered that the rheumatologist reported in the MR that the appellant has no significant deficits with her cognitive and emotional functioning and she has no difficulties with communication. While the rheumatologist indicated in the AR that the appellant has a poor ability to communicate in speaking, reading, and writing, this was attributed by the rheumatologist to “poor English” and the ministry reasonably concluded that restrictions to communication due to a language barrier are not indicative of restrictions due to a mental impairment. In the letter dated January 31, 2013, a physician indicated that more courses for English would be beneficial for improving the appellant’s poor English skills.

At the hearing, the appellant’s friend stated that the appellant used to be more social and now she does not visit because she is in pain, and the appellant also gets discourage a lot. For the appellant’s social functioning, the ministry reasonably considered that the rheumatologist reported in the AR that the appellant is independent in all areas, 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. The appellant is assessed by the rheumatologist with good functioning in both her immediate and extended social networks.

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 rheumatologist 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 rheumatologist indicated that the appellant has not been prescribed medications or treatments that interfere with her ability to perform DLA. As previously noted, when asked in the AR about the mental or physical impairments that impact the appellant's ability to manage her DLA, the rheumatologist wrote "normal." In the AR, the rheumatologist assessed the appellant as independent with the "mobility" DLA of moving about indoors and outdoors, within the functional skills limitation of walking 2 to 4 blocks.

The ministry considered that the rheumatologist reported that the appellant is independent with all of the tasks of several other DLA, specifically: the personal care DLA (dressing, grooming, bathing, toileting, feeding self, regulating diet, transfers in/out of bed, transfers on/off chair), the meals DLA (meal planning, food preparation, cooking, safe storage of food), the pay rent and bills DLA (banking, budgeting, pay rent and bills), the medications DLA (filling/refilling prescriptions, taking as directed, safe handling and storage), and the transportation DLA (getting in and out of a vehicle, using public transit, and using transit schedules and arranging transportation).

At the hearing, the appellant stated that, contrary to the rheumatologist's assessment in the AR, she requires help with her personal care DLA as even to get out of bed, her husband has to push her because she is so stiff and in so much pain in the morning. The appellant stated that her pain is "all the time" and even to put on a shoe she cannot do it. The appellant stated that sometimes she wants to put on make-up to be pretty but she gets depressed because it is too hard. Her daughter has to help her untangle her hair. At the hearing, the appellant's husband stated that starting in the morning, when they wake up, he needs to carefully push the appellant out of bed.

For the meals DLA, the appellant stated at the hearing that she cannot handle a pot and she constantly asks for help of her daughter and son who are both in school. The appellant stated that she wants to cook for herself and she gets hungry but she cannot cook until someone from her family arrives to help her. However, the testimony of the appellant's husband was not consistent as he stated at the hearing that the appellant would have no problem to cook something for herself but cooking for 4 people is too much.

Regarding the transportation DLA, the appellant stated at the hearing that taking public transportation has been getting worse. When she goes out, she is scared and she carries her ID in case something happens. The appellant stated that when she takes public transportation, the seats are often all taken and when her pain increases no one gives her a seat. She either has to find some place to sit, or go home. The appellant stated that her primary form of transportation is to be driven by her son or her husband. The appellant stated that one day she feels like she cannot even go out the door, she cannot even take a step and, other days, she has to go out. The appellant stated that maybe once per week she can go out but, lately, she has been too scared to go out. At the hearing, the appellant's husband stated that the appellant becomes afraid when they are out driving, and he always helps her to get out of the car.

In the reconsideration decision, the ministry considered that the rheumatologist indicated that the appellant requires periodic assistance with some tasks of DLA, specifically: laundry, basic housekeeping (basic housekeeping DLA), and going to and from stores, reading prices and labels, and carrying purchases home (shopping DLA). The ministry reasonably considered that the notes by the rheumatologist "chronic back pain" do not describe the specific frequency that the appellant requires help or how long she requires help with these tasks. The ministry reasonably considered that in the absence of a description of the nature of restrictions to the task of reading prices and label when shopping, it is difficult for the ministry to determine whether the restrictions are due to a mental impairment rather than to a barrier to reading the English language.

At the hearing, the appellant stated that she cannot grab a broom and do a simple movement of sweeping because her pain is so much, the pain in her shoulders is unbearable and it is not so simple that she can take a pain killer. The appellant also stated that she feels so tired after doing the house chores, that it is like a great exertion and it makes her dizzy. She can do some house chores but she needs to rest. The appellant stated that to shop or run errands, she always goes with someone. She stated that she can walk and grab some small things and she asks her son to get the other things while she sits and rests. She is trying to accomplish some things because she cannot ask her children all the time. The appellant stated that she tries to do something but her hand gets tired and shakes and she feels very fatigued. She will start doing something and her family will see her difficulty and they will finish the chore for her. She cannot finish any chore. At the hearing, the appellant's husband stated that he helps the appellant when she wants to carry something heavier. A small papaya, for example, would be okay for her to carry by herself but a large papaya would be too much.

The panel finds that the testimony of the appellant and her husband indicated that the appellant is able to perform lighter tasks of the housekeeping shopping DLA and requires assistance with heavier items. The appellant's friend stated at the hearing that the appellant needs help with "all her DLA" and then specified that the appellant needs help doing the laundry, carrying something heavy, or reaching to high places. The appellant's friend stated that she sees the appellant asking her kids for help lifting the laundry and reaching for things in the cupboards. The appellant's friend stated that with fibromyalgia, the pain is not always the same, it is unpredictable.

In the Request for Reconsideration, the advocate argued that the rheumatologist's assessment in the MR and the AR do not accurately reflect the appellant's difficulty performing DLA. In the reconsideration decision, the ministry also considered the information from the rheumatologist in the letter dated December 27, 2017, that there is an "inability to do any physical work including regular chores at home or lifting her arms against gravity such as trying to apply some make-up to her eyes etc." and noted that the rheumatologist does not describe specific restrictions to "regular chores at home" to allow the ministry to determine the extent of restrictions in particular tasks of DLA, whether continuous or periodic for extended periods of time, other than applying make-up as part of the "grooming" task of the personal care DLA.

Given an opportunity to clarify the extent of assistance with particular tasks of DLA in the letter dated May 9, 2018, the rheumatologist wrote that the appellant's pain syndrome accounts for "significant disability and prevents her from doing her activities of daily living, holding a job or even taking care of some chores in the house, preparing meals, cleaning, doing business outside the home, which is further compromised by her English language limitations. As a consequence, she is more dependent on being taken by other people to do some shopping or personal needs as she is afraid of driving and feels insecure, all part of the same picture." The rheumatologist also wrote that the appellant's "lack of concentration, anxiety, stress, panic attacks, further contribute to her inability to function individually and, therefore, she depends more on other peoples' help, mostly family members who in turn take care of the cleaning the house, washing clothes, and doing any other physical work that involves lifting or repetitive activities." The panel finds that the rheumatologist does not describe specific restrictions to allow the ministry to determine if the appellant now requires continuous assistance from another person with tasks of DLA, or periodic assistance and, if so, whether for extended periods of time. The appellant, her husband and her friend, all described the appellant's ability to do some light tasks of DLA and her need for assistance with lifting or carrying heavier items.

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. 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 rheumatologist'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 some inconsistent evidence regarding the need for assistance and an absence of sufficient information from the prescribed professional 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 rheumatologist reported that the appellant receives help from family and she does not require an assistive device. The appellant stated that her husband and children support her. 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.

PART G – ORDER

THE PANEL DECISION IS: (Check one) UNANIMOUS BY MAJORITY

THE PANEL CONFIRMS THE MINISTRY DECISION RESCINDS THE MINISTRY DECISION

If the ministry decision is rescinded, is the panel decision referred back to the Minister for a decision as to amount? Yes No

LEGISLATIVE AUTHORITY FOR THE DECISION:

Employment and Assistance Act

Section 24(1)(a) or Section 24(1)(b)

and

Section 24(2)(a) or Section 24(2)(b)

PART H – SIGNATURES

PRINT NAME

Sandra Walters

SIGNATURE OF CHAIR

DATE (YEAR/MONTH/DAY)

PRINT NAME

Susan Mackey

SIGNATURE OF MEMBER

DATE (YEAR/MONTH/DAY)

PRINT NAME

Rob Nijjar

SIGNATURE OF MEMBER

DATE (YEAR/MONTH/DAY)