

PART C – DECISION UNDER APPEAL

The decision under appeal is the reconsideration decision of the Ministry of Social Development and Poverty Reduction (the ministry) dated May 7, 2018, which held that the appellant did not meet 3 of the 5 statutory requirements of section 2 of the *Employment and Assistance for Persons with Disabilities Act* for designation as a person with disabilities (PWD). The ministry found that the appellant met the age and duration requirements, but was not satisfied that:

- the evidence establishes that the appellant has a severe physical or mental impairment;
- the appellant's daily living activities (DLA) are, in the opinion of a prescribed professional, directly and significantly restricted either continuously or periodically for extended periods; and
- as a result of those restrictions, the appellant requires an assistive device, the significant help or supervision of another person, or the services of an assistance animal to perform DLA.

PART D – RELEVANT LEGISLATION

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

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

PART E – SUMMARY OF FACTS

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

1. Electrocardiogram Report dated June 19, 2017
2. Transesophageal Echocardiography Report dated June 19, 2017
3. Hospital Progress Note dated June 21, 2017
4. Hospital Discharge Summary dated August 11, 2017
5. Appellant's PWD application comprised of the appellant's Self-Report (SR) dated August 26, 2017, a Medical Report (MR) and an Assessor Report (AR), both completed by the appellant's general practitioner (the Physician) dated November 7, 2017
6. Angiographic Report dated December 21, 2017

The appellant's request for PWD designation was denied on March 1, 2018. On March 12, 2018 the ministry received the appellant's Request for Reconsideration dated March 9, 2018 (RFR).

Summary of relevant evidence

Diagnoses

In the MR, the Physician indicates that the appellant has been diagnosed with cardiomyopathy, congestive heart failure, and atrial flutters, date of onset April 2017. The Physician indicates that the appellant has been a patient for 16 years and she has been seen 2-10 times in the past 12 months.

In the AR, the Physician indicates that the appellant's impairments that impact her ability to manage DLA are that the appellant has difficulty with moderate physical activity due to shortness of breath, chest tightness, and cough.

Physical Impairment

In the MR for Functional Skills, the Physician indicates that the appellant is able to walk 2 to 4 blocks unaided on a flat surface, can climb 5+ steps unaided, is limited to lifting 15 to 35 pounds and has no limitations with remaining seated.

In the health history portion of the MR, the Physician indicates that the appellant had severe cardiomyopathy secondary to street drug use. The Physician indicates that the appellant had severe heart failure and arrhythmia develop in April 2017. The Physician indicates that the appellant has had some improvement with her arrhythmia due to cardioversion and medication but still has decreased heart function. The Physician indicates that her initial echocardiogram showed EF 20+5%. The Physician indicates that the appellant requires regular visits to cardiologist and ongoing cardiac medications and anticoagulants. The Physician indicates that the appellant has increased pulmonary pressure further decreasing her respiratory ability. The Physician indicates that the appellant is 5'8" and weighs 130 pounds.

Under Part F – Additional Comments, the Physician indicates that the appellant is "...currently stable on medication so unless she should have recurrence of her atrial fibrillation or deterioration of her heart function".

In the AR, the Physician indicates that the appellant takes significantly longer than typical with walking indoors and walking outdoors. The Physician indicates that the appellant is independent with standing, lifting (light weights) and carrying and holding, but takes significantly longer than typical with carrying and holding with heavier items.

In the SR, the appellant states that due to her congestive heart failure she cannot exert herself for long without getting out of breath and feeling faint and will barely make it up stairs. The appellant reports that she has a persistent cough. The appellant reports that she has recently been diagnosed with pulmonary hypertension, which is what caused her heart to fail. The appellant states that she has an atrial flutter, which she describes as an abnormally fast heart rhythm. The appellant reports that she cannot move around a lot without not being able to catch her breath, feeling faint, and passing out. The appellant reports that she has shortness of breath, dizziness, fatigue, and weakness. She reports that extreme dizziness accompanies fainting spells that come out of nowhere with no warning.

The appellant also reports that she has chest pressure and pain, pain in her neck and chest, abdominal swelling and that her lips turn blue and her skin has a purple/blue tinge due to lack of oxygen. The appellant also reports that she has rashes and is currently taking about six different medications, three of which are required for the rest of her life.

The Hospital Progress Note indicates that the appellant was admitted with severe biventricular systolic dysfunction. The Progress Note indicates that the appellant has been symptomatically improving but was still in atrial flutter. The appellant was referred to a heart function clinic.

The Hospital Discharge Summary indicates that the appellant was admitted to the hospital due to dizziness. The Summary indicates that the most responsible diagnosis was dizziness, not yet determined. The Summary notes pre and post admission comorbidities of atrial flutter, DVT, crystal meth use and non-ischemic cardiomyopathy with an echocardiogram in April 2017 that showed severe decreased biventricular systolic function and a subsequent TEE June 17, 2017 which showed improved LV systolic function.

Mental Impairment

The MR indicates that the appellant does not have any difficulties with communication and does not have any significant deficits with cognitive and emotional function.

In the AR, the Physician indicates that the appellant does not have any difficulty with communication. For section 4, cognitive and emotional functioning, the Physician indicates "N/A".

DLA

In the MR, the Physician indicates that the appellant has not been prescribed medications that interfere with her ability to perform DLA.

In the AR, the Physician indicates that the appellant is independent with all DLA of personal care, meals, paying rent and bills, medications and bills. The Physician indicates that the appellant takes significantly longer than typical with laundry and basic housekeeping. With respect to shopping, the Physician indicates that the appellant is independent with going to and from stores, reading prices and labels, making appropriate choices and paying for purchases but takes significantly longer than typical with carrying purchases home, if the items are too heavy. The Physician indicates that the appellant is independent with getting in and out of a vehicle. For using public transit and using transit schedules and arranging transportation, the Physician indicates "N/A", explaining that the appellant does not use public transportation.

The Physician indicates that the appellant is independent with interacting appropriately with others, dealing appropriately with unexpected demands and securing assistance from others. The Physician did not indicate the appellant's level of independence with making appropriate social decisions or developing and maintaining relationships but explains that developing and maintaining relationships is a problem for long term relationships. The Physician indicates that the appellant has good functioning with her immediate and extended social networks.

Need for Help

In the MR, the Physician indicates that the appellant does not require any prostheses or aids for her impairment.

In the AR, the Physician comments that the appellant would have to have help carrying items up stairs. The Physician indicates that family and friends provide the help required for DLA. The Physician indicates that the appellant does not routinely use any assistive devices and does not have an assistance animal. The Physician indicates that the appellant needs an oxygen machine and a blood pressure machine.

Additional information provided

In her Notice of Appeal dated May 22, 2018 (NOA), the appellant states that she suffers on a daily basis from symptoms of pulmonary hypertension including nausea, vomiting, fainting spells, weakness, and stomach pain. The appellant states that there is no way she can work a steady job and function through the symptoms. The appellant states that she cannot live properly or have a proper place to live because she does not have enough money for a place of her own. The appellant states that her illnesses require her to be on a special diet for her heart failure but she cannot afford to buy vitamins or anything but basic, cheap food. The appellant states that she requires a lot of help daily and although she can walk and go up stairs she cannot walk far or go up too many stairs. The appellant states that she will suffer from her illness the rest of her life and she does not understand why her PWD application keeps getting denied.

Prior to the hearing the appellant provided a submission from her advocate dated June 7, 2018 (the "Submission") explaining that the advocate asked the Physician to complete a questionnaire but due to a family emergency the Physician was not able to complete the form by May 7, 2018. The advocate explained that it was decided that a medical clinic would provide the most recent diagnosis of pulmonary arterial hypertension but due to a busy schedule and a facsimile not being completed, the form did not get submitted prior to reconsideration. The advocate explains that the situation with the Physician was unforeseeable, and the problems with the fax were not the appellant's fault. The advocate requests that the tribunal allow the evidence and find it reasonable to rescind the reconsideration decision.

The Submission also included the following:

1. Letter from a respirologist dated May 7, 2018 indicating that the appellant was diagnosed with pulmonary arterial hypertension on December 21, 2017;
2. Note from the Physician indicating that she was away from May 6 to 11, 2018 and from May 22 to 28, 2018; and
3. Questionnaire completed by the Physician dated June 5, 2018 (the "Questionnaire").

The Questionnaire is a list of questions provided by the advocate to the Physician seeking further information regarding the impacts of the appellant's impairment. In response to the questions, the Physician indicates that the appellant has a severe physical impairment due to cardiomyopathy, which causes shortness of breath and fatigue with minimal physical activity, despite being optimally treated with medication. The Questionnaire indicates that the appellant takes significantly longer than typical to perform DLA, can go up and down stairs slowly and rests daily. The Questionnaire indicates that the appellant requires help with housework due to fatigue and needs help with transportation. The Questionnaire indicates that the appellant needs help with stresses of daily life from family and friends as she is easily confused or overwhelmed. The Physician indicates that the appellant requires help with finances and social functioning. The Physician indicates that the appellant's level of activity is significantly reduced due to her cardiac debility. The Physician indicates that the appellant is significantly restricted, on a continual basis, from performing moderately active activities of daily living that a 24 year old would engage in such as sports, child care and working in a moderately active job.

Prior to the hearing the ministry provided a letter dated June 14, 2018 indicating that it had reviewed the Submission. The ministry states that had it had the information in the Submission at the time of the reconsideration decision, the ministry may have found that the appellant's request met the criteria for PWD designation.

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

Admissibility of New Information

The ministry did not object to the new information.

The panel has admitted the information in the NOA and the Submission 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 *Employment and Assistance Act*. The information in the NOA supports the information provided by the appellant that her impairment significantly restricts her ability to perform DLA.

The letter from the respirologist indicating that the appellant was diagnosed with pulmonary hypertension supports the information previously provided from the appellant that she was diagnosed with pulmonary hypertension that was before the ministry at the time of reconsideration. The note from the Physician supports the information from the advocate explaining the delay in providing the additional information and the Questionnaire supports the information about the appellant's impairment and DLA that was before the ministry at the time of reconsideration.

PART F – REASONS FOR PANEL DECISION

Issue on Appeal

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

- a severe physical or mental impairment was established;
- the appellant's daily living activities (DLA) are, in the opinion of a prescribed professional, directly and significantly restricted either continuously or periodically for extended periods; and
- as a result of those restrictions, in the opinion of a prescribed professional, the appellant requires help, as it is defined in the legislation, to perform DLA?

Relevant Legislation

EAPWDA

2 (1) In this section:

"**assistive device**" means a device designed to enable a person to perform a daily living activity that, because of a severe mental or physical impairment, the person is unable to perform;

"**daily living activity**" has the prescribed meaning;

"**prescribed professional**" has the prescribed meaning.

(2) The minister may designate a person who has reached 18 years of age as a person with disabilities for the purposes of this Act if the minister is satisfied that the person 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).

EAPWDR

Definitions for Act

2 (1) For the purposes of the Act and this regulation, "**daily living activities**",

(a) in relation to a person who has a severe physical impairment or a severe mental impairment, means the following activities:

- (i) prepare own meals;
- (ii) manage personal finances;
- (iii) shop for personal needs;
- (iv) use public or personal transportation facilities;
- (v) perform housework to maintain the person's place of residence in acceptable sanitary condition;

- (vi) move about indoors and outdoors;
- (vii) perform personal hygiene and self care;
- (viii) manage personal medication, and

(b) in relation to a person who has a severe mental impairment, includes the following activities:

- (i) make decisions about personal activities, care or finances;
- (ii) relate to, communicate or interact with others effectively.

(2) For the purposes of the Act, "**prescribed professional**" means a person who is

(a) authorized under an enactment to practice the profession of

- (i) medical practitioner,
- (ii) registered psychologist,
- (iii) registered nurse or registered psychiatric nurse,
- (iv) occupational therapist,
- (v) physical therapist,
- (vi) social worker,
- (vii) chiropractor, or
- (viii) nurse practitioner, or

(b) acting in the course of the person's employment as a school psychologist by

- (i) an authority, as that term is defined in section 1 (1) of the [Independent School Act](#), or
- (ii) a board or a francophone education authority, as those terms are defined in section 1 (1) of the [School Act](#),
if qualifications in psychology are a condition of such employment.

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

Alternative grounds for designation under section 2 of Act

2.1 The following classes of persons are prescribed for the purposes of section 2 (2) [*persons with disabilities*] of the Act:

- (a) a person who is enrolled in Plan P (Palliative Care) under the Drug Plans Regulation, B.C. Reg. 73/2015;
- (b) a person who has at any time been determined to be eligible to be the subject of payments made through the Ministry of Children and Family Development's At Home Program;
- (c) a person who has at any time been determined by Community Living British Columbia to be eligible to receive community living support under the [Community Living Authority Act](#);
- (d) a person whose family has at any time been determined by Community Living British Columbia to be eligible to receive community living support under the [Community Living Authority Act](#) to assist that family in caring for the person;
- (e) a person who is considered to be disabled under section 42 (2) of the [Canada Pension Plan](#) (Canada).

Panel Decision

Severity of Impairment

The legislation provides that the determination of severity of an impairment is at the discretion of the minister, taking into account all of the evidence including that of the appellant. However, the legislation is also clear that the fundamental basis for the analysis is the evidence from a prescribed professional respecting the nature of the impairment and its impact on daily functioning. While the legislation does not define "impairment", the MR and AR define "impairment" as a "loss or abnormality of psychological, anatomical or physiological structure or functioning causing a restriction in the ability to function independently, effectively, appropriately or for a reasonable duration." While this is not a legislative definition, and is therefore not binding on the panel, it reflects the legislative intent and provides an appropriate analytical framework for assessing the degree of impairment resulting from a medical condition.

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

Severe Physical Impairment

The ministry's position is that a diagnosis of a serious medical condition does not in itself determine PWD eligibility or establish a severe impairment and that the information provided does not establish a severe physical impairment. In particular, the reconsideration decision indicates that the Physician's assessment of the appellant's basic functional skills is not indicative of a severe impairment of physical functioning.

The reconsideration decision also finds that while the AR indicates that the appellant takes significantly longer than typical with walking indoors and walking outdoors, and takes significantly longer than typical with carrying/holding ("only with heavier items"), the Physician did not describe how much longer than typical the appellant takes with these tasks. The reconsideration decision also finds that although the Physician in the AR indicates that the appellant is independent with lifting ("light weights"), in the MR the Physician indicates that the appellant can lift 15 to 35 pounds and walk 2 to 4 blocks unaided. The ministry's position is that the ability to lift 15 to 35 pounds is sufficient ability to lift a wide variety of household and shopping items.

The reconsideration decision also notes that while the Physician indicates that the appellant has difficulty with moderate physical activity, this description, in conjunction with the other assessments provided, is not considered sufficient evidence to establish a severe impairment of physical functioning.

The appellant's position is that her medical conditions of congestive heart failure, atrial flutter, and pulmonary hypertension cause her ongoing daily pain, shortness of breath, fatigue, weakness, fainting spells, dizziness, and she is exhausted all the time. The appellant's position is that although she can walk and go up stairs she cannot walk far, can "barely make it up stairs", and cannot move around a lot with having to stop and catch her breath. The appellant's position is that the information provided establishes that she meets the criterion for designation as PWD.

The panel finds that the ministry reasonably determined that the information provided does not establish that the appellant has a severe physical impairment. In the MR, the Physician indicates that the appellant has cardiomyopathy, congestive heart failure and atrial flutter, but the panel finds that the ministry reasonably determined that the functional assessments, which indicate that the appellant can walk 2 to 4 blocks unaided on a flat surface, can climb 5+ steps unaided, can lift 15 to 35 pounds and has no limitation with respect to being seated, do not reflect a severe level of impairment. The panel notes that while the Physician indicates in the Health History portion of the MR that the appellant had severe cardiomyopathy and severe heart failure, the Physician also indicates, in Part F – Additional Comments, that the appellant is currently stable on medications unless she has a recurrence of her atrial fibrillation or deterioration of her heart function.

The panel notes that in the MR the Physician indicates that the appellant can lift 15 to 35 pounds and in the AR the Physician indicates that the appellant is independent with lifting (light weights) and carrying and holding, but takes significantly longer with carrying and holding with heavier items. However, the Physician does not explain how much longer than typical it takes the appellant with carrying and holding heavier items and does not provide any further example of what "heavier items" or "light weights" mean. As the Physician has indicated that the appellant can lift 15 to 35 pounds, the information provided regarding the appellant's ability to lift and carry and hold items is somewhat inconsistent and it is difficult to obtain a clear picture of the appellant's abilities with these aspect of mobility and physical ability. The panel finds that the ministry's determination that the ability to lift 15 to 35 pounds reflects the ability to lift a variety of household items was reasonable.

In addition, the panel also notes that while the Physician, in the AR, indicates that it takes the appellant significantly longer than typical with walking indoors and walking outdoors, the Physician did not provide further explanation as to how much longer than typical the appellant takes with these tasks.

The panel notes that in the ministry's submission, the ministry indicates that if it had the Submission at the time of reconsideration, the ministry may have found that the appellant met the criteria for PWD designation. However, the ministry's comment in that regard is not determinative of the issue and the panel must review all of the information and the reconsideration decision to determine if the reconsideration decision was reasonable or not.

The panel notes that in the additional information provided, the letter from the respirologist confirms the appellant's information in the SR that she has been diagnosed with pulmonary arterial hypertension. However, the letter from the respirologist does not provide any additional information regarding the severity of the appellant's impairment or

the impact to her mobility and physical abilities. In the Questionnaire, the Physician again states that the appellant has a severe physical impairment due to cardiomyopathy, which causes shortness of breath and fatigue with minimal physical activity despite being optimally treated with medication. The Physician also states that the appellant takes significantly longer than typical to perform DLA, explaining that the appellant can go up and down stairs slowly and rests daily. However, the Physician did not provide any further explanation as to how long it takes the appellant to go up and down stairs, how much rest the appellant needs, or how much longer than typical it takes the appellant to perform DLA.

While the information in the Questionnaire provides some additional information, the Physician has not provided further descriptions or assessments that clarify the appellant's mobility and physical ability, information to explain the inconsistencies noted above regarding the appellant's ability to lift or carry and hold items, or a description of how much longer than typical it takes the appellant with walking indoors, walking outdoors, or other DLA.

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

The panel also notes that in the NOA the appellant states that she is not able to work as she cannot work a steady job and function through her symptoms, but employability is not a criterion for designation of PWD.

Severe Mental Impairment

The ministry's position is that the appellant is not reported to have any mental health conditions or impairments and no difficulties with communication. The ministry notes that although the Physician indicates, in the AR that the appellant has difficulty developing and maintaining long-term relationships, the Physician did not indicate restrictions to four of five listed areas of social functioning. In addition, the Physician indicates that the appellant has good functioning with both her immediate and extended social networks. The ministry's position is that the information provided does not establish that the appellant has a severe mental impairment.

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

The MR indicates that the appellant does not have any difficulties with communication and does not have any significant deficits with cognitive and emotional function. In the AR, the Physician indicates that the appellant does not have any difficulties with her ability to communicate. For cognitive and emotional functioning, the Physician indicates "N/A". For DLA of social functioning, the Physician indicates that the appellant is independent with interacting appropriately with others, dealing appropriately with unexpected demands, and securing assistance from others. The Physician did not indicate the appellant's level of independence with respect to making appropriate social decisions or developing and maintaining relationships. However, in the box to describe the appellant's ability to develop and maintain relationships the Physician states "currently this has been a problem for long term relationship". There is also a check mark in the box but it is unclear if the check mark is meant to indicate that the appellant is independent, requires periodic support/supervision, or requires continuous support/supervision with this aspect of DLA. The panel notes that the reconsideration decision indicates that the Physician indicates that the appellant requires continuous support/supervision with being able to develop/maintain relationships, the panel finds that the information provided in the AR is not clear in that regard.

In the NOA, the appellant did not provide any further information regarding a mental impairment. In the Questionnaire, the Physician indicates that the appellant needs help with stresses of daily life from family and friends as she's easily confused or overwhelmed and that she requires help with social functioning. However, the Physician does not provide further information describing how often the appellant is confused or overwhelmed, the amount of support supervision the appellant requires (whether period or continuous, and if periodic, the frequency or duration of periodic assistance needed).

Although the appellant may have some difficulties with becoming confused and easily overwhelmed and has some difficulties with social functioning with long term relationships, the panel finds that the ministry reasonably determined that the information provided does not establish that the appellant has a severe mental impairment.

Restrictions in the ability to perform DLA

Section 2(2)(b)(I) of the EAPWDA requires that the minister be satisfied that in the opinion of a prescribed professional, a severe mental or physical impairment directly and significantly restricts the appellant's ability to perform DLA either continuously or periodically for extended periods. While other evidence may be considered for clarification or support, the ministry's determination as to whether or not it is satisfied that the legislative criteria are met, is dependent upon the evidence from prescribed professionals. The term "directly" means that there must be a

causal link between the severe impairment and the restriction. The direct restriction must also be significant. Finally, there is a component related to time or duration – the direct and significant restriction may be either continuous or periodic. If periodic, it must be for extended periods. Inherently, any analysis of periodicity must also include consideration of how frequently the activity is restricted. All other things being equal, a restriction that only arises once a year is less likely to be significant than one that occurs several times a week. Accordingly, in circumstances where the evidence indicates that a restriction arises periodically, it is appropriate for the ministry to require evidence of the duration and frequency of the restriction in order to be “satisfied” that this legislative criterion is met.

DLA are defined in section 2(1) of the EAPWDR and are listed in both the MR and the AR sections of the PWD application with the opportunity for the prescribed professional to check marked 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. In particular, the reconsideration decision notes that in the MR, the Physician indicates that the appellant is not prescribed any medications or treatments that interfere with her ability to perform DLA and in the AR, the Physician indicates that the appellant is independent with the large majority of listed areas of DLA. The ministry notes that although the Physician in the AR indicates that the appellant takes significantly longer than typical with laundry and basic housekeeping, the Physician does not describe how much longer than typical it takes the appellant to perform those DLA. In addition, the reconsideration decision notes that although the Physician indicates that the appellant requires help carrying heavy items up stairs, in the MR the Physician indicated that the appellant can lift 15 to 35 pounds and climb 5+ steps unaided.

The ministry’s position is that it is difficult to establish significant restrictions to DLA based on the assessment provided.

The appellant’s position is that the information provided establishes that she meets the criteria for PWD designation. The appellant’s position is that she cannot live properly on her own and she requires a lot of help daily. In the NOA, the appellant states that although she can walk and go up stairs she cannot walk far or go up many stairs. The appellant states that *“I will suffer from this illness the rest of my life I don’t understand how I keep getting denied it’s ridiculous”*.

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).

In the MR, the Physician indicates that the appellant has not been prescribed any medication or treatments that interfere with her ability to perform DLA. In the AR, the Physician indicates that the appellant is independent with all aspects of personal care, meals, paying rent and bills, medications and transportation (noting that using public transit and using transit schedules and arranging transportation were not applicable).

The Physician indicates that the appellant takes significantly longer than typical with laundry and basic housekeeping but does not provide any further explanation of how much longer than typical is needed with this aspects of DLA. With respect to shopping, the Physician indicates that the appellant is independent with going to and from stores, reading prices and labels, making appropriate choices and paying for purchases but takes significantly longer than typical with carrying purchases home describing “if not too heavy”. However, as noted previously, the information provided by the Physician regarding the appellant’s ability with lifting and carrying and holding is not clear as in the MR the Physician indicates that the appellant can lift 15 to 35 pounds which would be a considerable amount of groceries. The Physician comments that the appellant would have to have help carrying items up stairs but does not provide further information on how often help is required or the types of items that the appellant needs help to carry up stairs.

For DLA of social functioning, the Physician indicates that the appellant is independent with interacting appropriately with others, dealing appropriately with unexpected demands, and securing assistance from others. The Physician did not indicate the appellant’s level of independence with respect to making appropriate social decisions or developing and maintaining relationships. However, in the box to describe the appellant’s ability to develop and maintain relationships the Physician states “currently this has been a problem for long term relationship”. There is also a check mark in the box but it is unclear if the check mark is meant to indicate that the appellant is independent, requires periodic support/supervision, or requires continuous support/supervision with this aspect of DLA. The panel notes that the reconsideration decision indicates that the Physician indicates that the appellant requires continuous support/supervision with being able to develop/maintain relationships, the panel finds

that the information provided in the AR is not clear.

In the NOA the appellant states that she cannot live properly, have a proper place to live or buy the food she requires for her illness because she does not have enough money to do so. The appellant has not provided any further information to describe how her impairment impacts her DLA or to explain the difficulties she has with laundry, housekeeping, grocery shopping or social functioning. While the letter from the respirologist indicates the appellant's diagnosis of pulmonary hypertension the respirologist does not provide any additional information describing the impacts to DLA as a result of this diagnosis.

In the Questionnaire the Physician indicates that the appellant's level of activity is significantly reduced due to her cardiac debility and the appellant is restricted daily due to her medical condition. The Physician indicates that the appellant is significantly restricted from performing moderately active activities of daily living that someone her age would engage in such as sports, child care or working in a moderately active job. The Physician indicates that these restrictions are on a continuous basis. However, this additional information from the Physician is very general and does not provide further explanation to confirm that the appellant has a severe impairment that significantly restricts DLA as required by section 2(2) of the EAPWDA, which are specified as follows:

- (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.

In particular, the Physician does not provide further information on how much longer than typical it takes the appellant to perform laundry or basic housekeeping or explain the previously noted inconsistencies with respect to the appellant's ability with lifting and carrying and holding. While the Physician indicates that the appellant is restricted from activities such as sports, childcare or working in a moderately active job, those items are not part of the criteria considered for PWD designation. While the Physician indicates that the appellant requires help with housework due to fatigue the Physician has not provided further description to indicate whether the help required is period or continuous, and if periodic a description of the nature and frequency of help required. In the Questionnaire the Physician indicates that the appellant needs help with transportation, but does not provide further comments about the nature of type of help and in the AR, the Physician had indicated that the appellant was independent with getting in and out of a vehicle and that using public transit and using transit schedules and arranging transportation were both not applicable so it is not clear what type of help the appellant requires with transportation.

The panel finds that while the appellant may take significantly longer than typical with laundry and basic housekeeping, may have some periods of confusion or become overwhelmed, and may have some difficulties with long term relationships, the information provided continues to indicate that the appellant is independent with the large majority of DLA and the amount of any assistance required remains unclear.

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

Help to perform DLA

Section 2(2)(b)(ii) of the EAPWDA requires that, *as a result of direct and significant restrictions in the ability to perform DLA*, a person requires help to perform those activities. Help is defined in subsection (3) as the requirement for an assistive device, the significant help or supervision of another person, or the services of an assistance animal in order to perform DLA.

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

The appellant's position is that she requires a lot of help daily and she requires additional income to have a place of her own and to afford the special diet she requires for her medical conditions.

In the MR, the Physician indicates that the appellant does not require any prostheses or aids for her impairment and does not indicate that the appellant requires any help. In the AR, the Physician indicates that the appellant would have to have help carrying items up stairs, receives help from family and friends and requires an oxygen machine and blood pressure machine.

In the Questionnaire the Physician indicates that the appellant requires help with housework due to fatigue and she needs help with transportation but as noted above the Physician did not explain what help is needed with transportation when in the AR the DLA of transportation is indicated to be independent or not applicable. Question seven on the Questionnaire asks that the Physician confirm that the patient requires significant help or supervision with DLA but the Physician did not provide a response to that question.

While the appellant could likely benefit from increased income, financial hardship is not an aspect to be considered in determining whether the appellant requires help due to a severe impairment. While the Physician has provided some information describing that the appellant requires some help, the information regarding help with lifting or carrying and holding and the help required for transportation is inconsistent and unclear.

In addition, 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.

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

Helene Walford

SIGNATURE OF CHAIR

DATE (YEAR/MONTH/DAY)

2018/07/04

PRINT NAME

Meghan Wallace

SIGNATURE OF MEMBER

DATE (YEAR/MONTH/DAY)

2018/07/04

PRINT NAME

Patrick Cooper

SIGNATURE OF MEMBER

DATE (YEAR/MONTH/DAY)

2018/07/04