

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 April 18, 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 appellant has a severe physical and/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 appellant's PWD application comprised of a Medical Report (MR) and an Assessor Report (AR) both completed by the appellant's general practitioner (the "GP"). The AR was signed and dated January 11, 2018 and the MR was signed and dated January 10, 2018. The GP has known the appellant 1 year and saw the appellant 2-10 times in the past 12 months prior to completing the PWD application. The PWD also included the appellant's Self-Report (SR) dated January 11, 2018.

The evidence also included the appellant's Request for Reconsideration (RFR) dated March 23, 2018. In RFR the appellant, in part, stated the following:

- She was bed-ridden for 4-5 days a week and it takes hours to get out of bed and move each morning.
- She cannot sit or stand for long periods of time without her back seizing.
- She can lift about 5lbs, walk ½ blocks and has accidental bowel movements.
- She has been taking her medication for 2 years and despite doubling the dosage, there are no signs of it helping.

Diagnoses

In the MR, the GP diagnosed the appellant with Crohn's disease and Ankylosing spondylitis (onset illegible).

Physical Impairment

In the MR and the AR, the GP indicated the following:

- "Chronic back pain: unable to sit, stand or walk for long periods. Reduced mobility, sometimes bed ridden".
- "Chronic diarrhea: Chronic abdominal pain, incontinent of the stool. Needs to be close to a washroom at all times. Fatigue and dehydration".
- The appellant can walk 4+ blocks and climb 5+ steps unaided, can lift 5-15lbs and sit less than 1 hour.
- "This patient has severe pronounced symptoms of back and abdominal pain [and] incontinent of stool. This has been refracting to treatment and [illegible] restricts her activities of daily living (ADL)".
- "Incontinent of stool, difficulties with standing, sitting and walking".
- Walking indoors/outdoors, climbing stairs and standing are performed independently and take significantly longer (without indicating how much longer it takes to perform these tasks).
- Lifting and carrying/holding require continuous assistance or unable to perform.
- "The [patient] has severe and permanent illnesses that significantly impair her [DLA] and has been refracting to all treatments".

In the SR, the appellant indicated that she has Crohn's disease which causes an extreme amount of pain in the stomach and rectum. She has arthritis in her back which is very painful and limits her movements daily.

Mental Impairment

In the MR and AR, the GP indicated the following:

- There are no difficulties with communication.
- There are no significant deficits with cognitive and emotional function.
- There are no impacts to all listed areas of cognitive and emotional functioning.
- She is independent with all listed tasks of social functioning and has good functioning with immediate and extended social networks.
- Under social functioning, the GP commented "friends, family, boyfriend give assistance" but did not indicate what assistance is needed with social functioning.

In her SR, the appellant did not indicate that she has a mental impairment or that her physical impairment has an impact on her mental functioning.

Daily Living Activities

In the MR, the GP indicated the following:

- The appellant is prescribed medications/treatments that interfere with her ability to perform DLA, and that the anticipated duration of these medications/treatments is "permanent".

- The appellant requires continuous assistance with laundry, basic housekeeping and carrying purchases home.
- She independently performs all listed tasks under personal care except 'bathing', 'transfers in/out of bed' and 'transfers on/off chair which are listed as performed independently and takes significantly longer with no indication of how much longer.
- All listed tasks under shopping (except carrying purchases home) are listed as performed independently.
- All listed tasks under meals, pay rent/bills, and medications are listed as performed independently.
- All listed tasks under transportation are listed as performed independently except 'getting in and out of a vehicle' which is listed as performed independently and takes significantly longer with no indication of how much longer.
- "she get assistance with [DLA from] boyfriend, friends and family".

In the AR, the GP indicated the following:

Help

In the AR, the GP indicated the following:

- The appellant does not require any prostheses or aids for her impairment.
- No equipment or devices are used by the appellant for assistance.
- Assistance is not provided by an assistance animal.
- Help with DLA is provided by family, friends and the appellant's boyfriend.

In the SR, that appellant did not provided any information on help in regards to type, duration, frequency or who provides it.

Additional Evidence

- Letter from the appellant's former employer, signed and dated March 28, 2018, stated that the appellant "needed assistance from other crew members to grab and carry things that were heavier than 5lbs". The letter also stated that the appellant took breaks to sit to relieve her back pain from standing or go home early due to severe pain. Lastly the letter stated that the appellant would also call in sick at the last minute due to her Crohn's disease.
- Letter from the appellant's former employer, signed and dated March 27, 2018, stated that the appellant "would have to leave early due to back pain, fatigue and bowel issues". The letter also stated that the appellant was unable to lift over 5 lbs and unable to sit for long periods of time.

Evidence on Appeal

Notice of Appeal (NOA), signed and dated March April 29, 2018, and a second NOA, signed and dated May 14, 2018, which stated "I am ill with chronic Crohn's Disease and arthritis. Have provided a doctor's letter as well".

Letter from the appellant's GP, signed and dated May 4, 2018, which in part stated that, the appellant has been "diagnosed with Crohn's Disease, [she] endures chronic diarrhea, stool incontinence, and she is unable to control her bowel movements. [She] constantly requires to be near a washroom. Ankylosing spondylitis presents episodes of reduced activities, decreases mobility, and takes 5 times longer to walk a certain distance. [Her] periods of disability are episodic and severe in nature."

Letter from the ministry, signed and dated May 30, 2018, addressed the information provided by the May 4, 2018 GP letter. The ministry stated that:

- The GP describes the appellant's condition as 'severely disabling' however the "legislation clearly provides that the determination of severity of impairment is at the discretion of the minister".
- The GP indicated that the Ankylosing spondylitis presents 'episodes' of reduced activities and decreases her mobility. "However, he does not describe how often she experiences these episodes making it difficult to determine if she experiences a severe overall physical impairment".
- The GP does not speak specifically to [the appellant's] ability to perform daily living activities.

Admissibility of Additional Evidence

The ministry did not object to the admissibility of any of the additional evidence.

Section 22(4) of the *Employment and Assistance Act* (EAA) provides that panels may admit as evidence (i.e. take into account in making its decision) the information and records that were before the minister when the decision being appealed was made and "oral and written testimony in support of the information and records" before the minister when the decision being appealed was made – i.e. information that substantiates or corroborates the information that was before the minister at reconsideration. These limitations reflect the jurisdiction of the panel established under section 24 of the EAA – to determine whether the ministry's reconsideration decision is reasonably supported by the evidence or a reasonable application of the enactment in the circumstances of an appellant. That is, panels are limited to determining if the ministry's decision is reasonable and are not to assume the role of decision-makers of the first instance. Accordingly, panels cannot admit information that would place them in that role.

The panel found that the May 4th letter from the GP and the letters of support from the appellant's former employers provided additional detail or disclosed information that was in support of the information addressed in the reconsideration. Accordingly, the panel has admitted this new information as being in support of information and records that were before the ministry at the time of reconsideration, in accordance with s. 22(4) of the *Employment and Assistance Act*. However, the panel notes that the information provided by the former employers in its entirety has not been confirmed by the GP and the letter from the GP did not specifically speak to the appellant's ability to perform her DLA. Therefore, the panel places little weight on the additional evidence.

PART F – REASONS FOR PANEL DECISION

Issue on Appeal

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

- the appellant has a severe physical and/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, in the opinion of a prescribed professional, the appellant requires help, as it is defined in the legislation, to perform DLA?

Relevant Legislation

EAPWDA

2 (1) In this section:

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

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

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

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

- (a) in the opinion of a medical practitioner or nurse practitioner is likely to continue for at least 2 years, and
- (b) in the opinion of a prescribed professional
 - (i) directly and significantly restricts the person's ability to perform daily living activities either
 - (A) continuously, or
 - (B) periodically for extended periods, and
 - (ii) as a result of those restrictions, the person requires help to perform those activities.

(3) For the purposes of subsection (2),

- (a) a person who has a severe mental impairment includes a person with a mental disorder, and
- (b) a person requires help in relation to a daily living activity if, in order to perform it, the person requires
 - (i) an assistive device,
 - (ii) the significant help or supervision of another person, or
 - (iii) the services of an assistance animal.

(4) The minister may rescind a designation under subsection (2).

EAPWDR

Definitions for Act

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

- (a) in relation to a person who has a severe physical impairment or a severe mental impairment, means the following activities:
 - (i) prepare own meals;
 - (ii) manage personal finances;

- (iii) shop for personal needs;
- (iv) use public or personal transportation facilities;
- (v) perform housework to maintain the person's place of residence in acceptable sanitary condition;
- (vi) move about indoors and outdoors;
- (vii) perform personal hygiene and self care;
- (viii) manage personal medication, and

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

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

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

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

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

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

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

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

Alternative grounds for designation under section 2 of Act

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

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

Panel Decision

Severe Impairment

In the reconsideration decision, the ministry was not satisfied that the information provided establishes a severe physical or mental impairment. Determining a severe physical or mental impairment requires weighing the

evidence provided against the nature of the impairment and its reported functional skill limitations. A diagnosis of a serious medical condition does not in itself determine PWD eligibility or establish a severe impairment. An "impairment" is a medical condition that results in restrictions to a person's ability to function independently or effectively or for a reasonable duration. To assess the severity of an impairment, the ministry must consider the nature of the impairment and the extent of its impact on daily functioning.

The panel finds that employability is not a consideration for eligibility for PWD designation because employability is not a criteria in section 2(2) of the EAPWDA nor is it listed among the prescribed daily living activities in section 2 of the EAPWDR.

Physical Impairment

The appellant's position is that she suffers Crohn's Disease and arthritis. She is in pain, cannot sit or stand for long periods of time without pain, needs to be near a washroom at all times due to incontinence, can only walk half of a block without pain and can only lift about 5lbs.

The ministry's position is that the functional skill limitations described by the GP do not describe a severe degree of physical impairment.

In its reconsideration decision, the ministry noted that the GP indicated that the appellant is able to walk 4+ blocks unaided, climb 5+ stairs unaided, can lift 5-15lbs and can remain seated for less than 1 hour. The ministry noted that the GP commented that the appellant experiences chronic back pain, resulting in being unable to sit, stand or walk for long periods causing reduced mobility and is sometimes bedridden. The ministry noted that in the RFR the appellant stated that the PWD application was rushed and that she can only walk ½-1 block, lift 5 lbs and can be bedridden for 4-5 days per week. The ministry stated that it places little weight on the appellant's statements because they have not been confirmed by a prescribed professional pursuant to the legislation. The panel finds that the ministry's determination that a prescribed professional provide or confirm the information provided was reasonable in view of section 2 (2) of EAPWD which is explicit in its exclusion of the appellant's opinion and explicitly focuses on the opinion of the prescribed professional. Furthermore, aside from a brief description from the applicant in the form of a self-report, the vast majority of the PWD application (the medical and assessor's reports) is clearly to be completed by a prescribed professional and not the appellant or anyone else. In the case of eligibility of PWD designation, the legislation requires that the opinion of the prescribed professional and the satisfaction of the minister are to be instrumental.

The ministry noted that the appellant does not require any prostheses or aids to manage her physical functioning though she stated she can only walk ½ - 1 block and takes hours to get out of bed. The ministry concluded that if her mobility was affected to the extent she described, it would be expected that the appellant would benefit from an assistive device such as a cane, walker, or grab bars for her bed or bathroom. Additionally, the ministry noted that the GP indicated that the appellant is independent with walking (indoor/outdoor), climbing stairs, and standing and these tasks take significantly longer but did not state how much longer. The letter from the GP dated May 4, 2018 indicated ankylosing spondylitis presents episodes of reduced activities, decreases mobility, takes 5 times longer to walk a certain distance, and the appellant's periods of disability are episodic and severe in nature. The ministry noted that the GP did not describe how often she experiences these episodes making it difficult to determine if she experiences a severe overall physical impairment. The panel finds that the evidence provided by the GP is lacking in both content and detail as described by the ministry and therefore the ministry reasonably determined that it is not satisfied that the information provided establishes a severe impairment.

The ministry noted that the GP indicated that the appellant experiences chronic diarrhea, chronic abdominal pain and incontinence of stool, thereby creating the need to be near a washroom. The ministry argued that the appellant is independent with DLA that may affect her ability to be near a washroom; namely the appellant is independent with 'going to/from stores', 'filling/refilling prescriptions', 'using public transportation' and has good functioning with both immediate and extended social networks. The ministry determined that if the appellant's medical issues related to Crohn's disease were considered severe, there would be an impact to her social functioning and DLA that are performed in the community. The panel finds that the evidence provided by the GP in terms of his narrative description of the appellant's medical conditions is contradicted by the evidence he provided regarding DLA and therefore finds that the ministry was reasonable in its conclusion that the evidence does not

establish that chronic diarrhea and incontinence of stool result in a severe impairment.

The ministry noted that the GP indicated that the appellant experiences severe prolonged symptoms of pain and incontinence of stool which severely restrict her DLA. The ministry argued that in the AR the GP indicated that the appellant independently performs the majority of her DLA, though some tasks take significantly longer. The panel finds that the narrative evidence provided by the GP described a severe physical impairment however this severe physical impairment does not manifest to physical functioning, mobility and physical ability or DLA to the same degree, as is pointed out by the ministry. The panel finds that the ministry was reasonable in its conclusion that the evidence does not establish that prolonged symptoms of pain and incontinence of stool establishes a severe physical impairment.

The ministry noted that the continuous assistance is required with basic housekeeping, laundry and carrying purchases home and concluded that this (lifting over 5lbs) appears to be the appellant's main challenge and acknowledges the challenges with lifting. However the ministry determined that since the appellant is able to lift a small amount of weight and is assessed to be independent in a large majority of her DLA, it is concluded that the appellant is capable of performing basic tasks of DLA and therefore this restriction does not necessarily establish a severe physical impairment. The panel notes that though the appellant and her former employers stated that she can only lift 5lbs, this has not been confirmed by the GP and that the GP indicated that the appellant can lift 5-15lbs. The panel also notes that the large majority of DLA are performed independently according to the GP's assessment. For these reasons the panel finds that the ministry was reasonable to determine that the appellant's restriction of lifting 5-15lbs does not establish a severe physical impairment.

Given the assessments of the appellant's functional ability, and mobility and physical ability in the PWD application and the May 4th letter from the GP, the panel finds that the ministry was reasonable in its determination that the evidence does not support a finding that the appellant suffers from a severe physical impairment and the legislative criteria outlined in Section 2(2) of the EAPWDA have not been met.

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, do not include the ability to work.

The appellant argued that her Crohn's disease and arthritis restricts her ability to perform her DLA.

The ministry position is that there is not enough evidence to confirm that a severe impairment directly and significantly restricts DLA continuously or periodically for extended periods.

In its reconsideration decision, the ministry noted that despite sometimes taking longer to do some tasks, the appellant is independent in a majority of her DLA, including all aspects of personal care, meal preparation and cooking, paying bills and banking, medication management and transportation.

The ministry noted that the continuous assistance is required with basic housekeeping, laundry and carrying

purchases home. However the ministry determined that since the appellant is able to lift a small amount of weight and is assessed to be independent in a large majority of her DLA, it is concluded that the appellant is capable of performing basic tasks of DLA and therefore this restriction does not necessarily establish a severe physical impairment.

The ministry noted that the appellant does not require any assistive devices and that if she experienced significant restrictions it would be expected that she would benefit from at least on aid such as a cane, or a walker with a seat, or grab bars for her bed or bathroom.

The ministry's arguments for DLA were the same as those presented in the section pertaining to severe physical impairment and the panel has provided analysis for each of those arguments above.

The evidence clearly indicates that the appellant takes significantly longer to perform some tasks of daily living; however the vast majority of her DLA are performed independently. The panel finds that the evidence does not establish that the appellant's overall ability to perform her DLA is significantly restricted due to her impairment. The legislation requires that *the ministry be satisfied* that in the opinion of a prescribed professional that a severe impairment directly and significantly restricts the person's ability to perform DLA either continuously or periodically for extended periods. In this case, the ministry has argued that it is not satisfied that the legislative criteria have been met because the majority of the DLA are performed independently, the appellant is able to lift a small amount of weight and the appellant does not require an assistive device. The panel finds that the ministry's argument is supported by the evidence.

Given this evidence as a whole, the panel finds that the ministry reasonably concluded that the evidence does not establish that an impairment significantly restricts DLA continuously or periodically for extended periods, pursuant to Section 2(2)(b)(i) of the EAPWDA.

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 appellant's position is that she requires the help from her family, friends and boyfriend to function.

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

The GP clearly indicated that the appellant receives help from family, friends and her boyfriend. However the type or frequency of the assistance is not clear nor is it clear why the appellant requires help with social functioning when she is assessed as independent with all aspects of social functioning and has good functioning with immediate and extended social networks.

The ministry determined that "the evidence suggests it is in the nature of the duty of family members/friends to help each other when in need but it does not necessarily establish that such help is required as a result of the impairment". The panel finds that, in the case of the appellant, there was no evidence provided either by the appellant, the GP or the appellant's supporters (i.e. family, friends or former employers) to indicate or even suggest that 'it is in the nature of the duty of family members/friends to help each other when in need'. In the absence of such evidence, the panel finds that the ministry was not reasonable in its determination that the evidence suggests that it is in the nature of the duty of family members/friends to help each other when in need.

However, given that confirmation of direct and significant restrictions with DLA is a precondition of the need for help criterion and because 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) <input type="checkbox"/> UNANIMOUS <input checked="" type="checkbox"/> BY MAJORITY	
THE PANEL <input checked="" type="checkbox"/> CONFIRMS THE MINISTRY DECISION <input type="checkbox"/> 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? <input type="checkbox"/> Yes <input type="checkbox"/> No	
LEGISLATIVE AUTHORITY FOR THE DECISION:	
<i>Employment and Assistance Act</i>	
Section 24(1)(a) <input checked="" type="checkbox"/> or Section 24(1)(b) <input checked="" type="checkbox"/>	
and	
Section 24(2)(a) <input checked="" type="checkbox"/> or Section 24(2)(b) <input type="checkbox"/>	

PART H – SIGNATURES	
PRINT NAME Neena Keram	
SIGNATURE OF CHAIR	DATE (YEAR/MONTH/DAY) 2018/06/11

PRINT NAME Susan Ferguson	
SIGNATURE OF MEMBER	DATE (YEAR/MONTH/DAY) 2018/06/11
PRINT NAME Sanjay Gulati	
SIGNATURE OF MEMBER	DATE (YEAR/MONTH/DAY) 2018/06/11

Employment
and Assistance
Appeal Tribunal

Dissenting Opinion

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 April 18, 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 appellant has a severe physical and/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

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

PART E – SUMMARY OF FACTS

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The evidence also included the appellant's Request for Reconsideration (RFR) dated March 28, 2018. In RFR the appellant, in part, stated the following:

- She is bed-ridden for 4-5 days a week and it takes hours to get out of bed and moving each morning.
- She cannot sit or stand for long periods of time without her back seizing.
- She can lift about 5lbs, walk ½-1 block and has accidental bowel movements.
- She has been taking her medication for 2 years and despite doubling the dosage, there are no signs of it helping.

Diagnoses

In the MR, the GP diagnosed the appellant with Crohn's disease and Ankylosing spondylitis (onset illegible on Tribunal copies).

Physical Impairment

In the MR and the AR, the GP indicated the following:

- "Chronic back pain; unable to sit, stand or walk for long periods. Reduced mobility, sometimes bed ridden".
- "Chronic diarrhea: Chronic abdomen pain, incontinent of stool. Need to be close to a washroom at all times. Fatigue and dehydration".
- The appellant can walk 4+ blocks on a flat surface and climb 5+ steps unaided, can lift 5-15lbs and sit less than 1 hour.
- "This patient has severe pronounced symptoms of back and abdominal pain [and] incontinence of stool. This has been refracting to treatment and severely restricts her [activities of daily living]".
- "Incontinent of stool, difficulties with standing, sitting and walking".
- Walking indoors/outdoors, climbing stairs and standing are performed independently but take significantly longer than typical.
- Lifting and carrying/holding require continuous assistance or unable to perform.
- "The [patient] has severe and permanent illnesses that significantly impair her [DLA] and has been refracting to all treatments".

In the SR, the appellant indicated that she has Crohn's disease which causes an extreme amount of pain in the stomach and rectum. She has arthritis in her back which is very painful and limits her movements daily. She needs to be close to a bathroom because of frequent bowel movements. It takes her longer to do "regular things" such as getting out of bed or grocery shopping. She cannot stand or sit long without being in pain. She is always fatigued no matter how much she rests and is constantly sick with colds because of a weakened immune system.

Mental Impairment

In the MR and AR, the GP indicated the following:

- There are no difficulties with communication.
- There are no significant deficits with cognitive and emotional function.
- There are no impacts to all listed areas of cognitive and emotional functioning.
- She is independent with all listed tasks of social functioning and has good functioning with immediate and extended social networks.
- Under social functioning, the GP commented "friends, family, boyfriend give assistance" but did not indicate what assistance is needed with social functioning.

The GP has not identified any mental impairment. In her SR, the appellant did not indicate that she has a mental impairment or that her physical impairment has an impact on her mental functioning.

Daily Living Activities

In the MR, the GP indicated the following:

- The appellant is prescribed medications/treatments that interfere with her ability to perform DLA, being Remicade, Tylenol #3 and Prednisone, and the anticipated duration of these medications/treatments is "permanent".
- The appellant requires continuous assistance with or is unable to do laundry, basic housekeeping and carrying purchases home as a result of impairments that directly restrict her ability to manage in those DLA.
- She independently performs all listed tasks under personal care except 'bathing', 'transfers in/out of bed' and 'transfers on/off chair' which are listed as performed independently and taking significantly longer than typical.
- All listed tasks under shopping, except carrying purchases home, are listed as performed independently.
- All listed tasks under meals, pay rent/bills, and medications are listed as performed independently.
- All listed tasks under transportation are listed as performed independently except 'getting in and out of a vehicle' which is listed as performed independently but takes significantly longer than typical.
- "She gets assistance with [DLA from] boyfriend, friends and family".

Help

In the AR, the GP indicated the following:

- The appellant does not use or require any equipment or devices to compensate for her impairment.
- Assistance is not provided by an assistance animal.
- Assistance with DLA is provided by family, friends and the appellant's boyfriend.

Additional Evidence

- Letter from the appellant's former employer, signed and dated March 28, 2018, stated that the appellant "needed assistance from other crew members to grab and carry things that were heavier than 5lbs". The letter also stated that the appellant took breaks to sit to relieve her back pain from standing or would go home early due to severe pain. Lastly the employer stated that the appellant would also call in sick at the last minute due to her Crohn's disease.
- Letter from the appellant's former employer, signed and dated March 27, 2018, stated that, when the appellant was employed part-time, "on many occasions [the appellant] would have to leave early due to back pain, fatigue and bowel issues". The employer also stated that she had witnessed incidents of the appellant's incontinence of stool, that the appellant was unable to lift over 5lbs. and was unable to sit for long periods of time.

Evidence on Appeal

Notice of Appeal (NOA), signed and dated March April 29, 2018, and a second NOA, signed and dated May 14, 2018, which stated "I am ill with chronic Crohn's Disease and arthritis. Have provided a doctor's letter as well".

Letter from the appellant's GP, signed and dated May 4, 2018, which in part stated:

"Diagnosed with Crohn's Disease, [she] endures chronic diarrhea, stool incontinence, and she is unable to control her bowel movements. [She] constantly requires to be near a washroom.

Ankylosing spondylitis presents episodes of reduced activities, decreases mobility, and takes 5 times longer to walk a certain distance.

"Her] periods of disability are episodic and severe in nature."

PART F – REASONS FOR PANEL DECISION

Issue on Appeal

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

- the appellant has a severe physical and/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, in the opinion of a prescribed professional, the appellant requires help, as it is defined in the legislation, to perform DLA.

Relevant Legislation

EAPWDA

2 (1) In this section:

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

"daily living activity" has the prescribed meaning;

"prescribed professional" has the prescribed meaning.

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

- (a) in the opinion of a medical practitioner or nurse practitioner is likely to continue for at least 2 years, and
- (b) in the opinion of a prescribed professional
 - (i) directly and significantly restricts the person's ability to perform daily living activities either
 - (A) continuously, or
 - (B) periodically for extended periods, and
 - (ii) as a result of those restrictions, the person requires help to perform those activities.

(3) For the purposes of subsection (2),

- (a) a person who has a severe mental impairment includes a person with a mental disorder, and
- (b) a person requires help in relation to a daily living activity if, in order to perform it, the person requires
 - (i) an assistive device,
 - (ii) the significant help or supervision of another person, or
 - (iii) the services of an assistance animal.

(4) The minister may rescind a designation under subsection (2).

EAPWDR

Definitions for Act

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

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

- (i) prepare own meals;
- (ii) manage personal finances;

- (iii) shop for personal needs;
- (iv) use public or personal transportation facilities;
- (v) perform housework to maintain the person's place of residence in acceptable sanitary condition;
- (vi) move about indoors and outdoors;
- (vii) perform personal hygiene and self care;
- (viii) manage personal medication, and

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

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

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

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

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

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

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

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

Alternative grounds for designation under section 2 of Act

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

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

Dissenting 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, in the panel's opinion, it reflects the legislative intent and provides an appropriate analytical framework for assessing the degree of impairment resulting from a medical condition.

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

Physical Impairment

The appellant's position is that she suffers from Crohn's Disease and ankylosing spondylitis. She is in pain, cannot sit or stand for long periods of time without back pain and seizing, is constantly fatigued, is bedridden 4-5 days a week, needs to be near a washroom at all times due to incontinence, can only walk 1/2 to 1 block without pain and cannot lift more than 5lbs.

The ministry's position is that the appellant has some degree of restriction due to her impairments but is not satisfied that the combination of her functional skills, mobility and physical ability exhibit a severe impairment. The ministry argues that the appellant's impairments do not restrict her DLA continuously or periodically for extended periods.

In its reconsideration decision, the ministry noted that the GP indicated that the appellant is able to walk 4+ blocks unaided, climb 5+ stairs unaided, can lift 5-15lbs and can remain seated for less than 1 hour. The ministry noted that the GP stated that the appellant experiences chronic back pain, resulting in being unable to sit, stand or walk for long periods causing reduced mobility and is sometimes bedridden. The ministry noted that in the RFR the appellant stated that the PWD application was rushed and details may have been left out, and that she can only walk 1/2-1 block, lift 5 lbs and can be bedridden for 4-5 days per week. The ministry stated that it places little weight on the appellant's statements in determining the severity of her condition because the details have not been confirmed by her physician. Despite the apparent discrepancy about the amount the appellant can lift, the ministry acknowledged in its reconsideration decision that the appellant is unable to lift over 5 lbs. and that she requires continuous assistance with all listed activities under the heading Basic Housekeeping and anything that requires lifting and carrying. The ministry says that the appellant's main challenge is "anything that requires lifting and carrying".

Where, for example, the appellant's evidence is contradicted by the GP's report, or raises medical conditions that are not identified in the GP's report, it may be reasonable to place little weight on that evidence. Thus, for example, it would be reasonable to place little weight on the appellant's statement that she gets frequent colds because of a weakened immune system, because the GP has not mentioned a weakened immune system in the MR. Similarly, where the appellant's statement about her ability to walk differs significantly from that of the GP, it was reasonable in the reconsideration decision of April 18, 2018, for the ministry to accept the GP's assessment that the appellant can walk 4+ blocks on a flat surface, taking significantly longer than typical, rather than the appellant's statement that she can walk only 1/2 to 1 block. However, where an appellant's statement is descriptive of medical conditions and symptoms set out by a prescribed professional in the MR and AR, and that statement provides information about the severity of an appellant's condition, it is not reasonable for the ministry to place little weight on that evidence solely because the details are not repeated in the GP's report. That determination has been held by the court to be "patently unreasonable" (*Hudson v. British Columbia (Employment and Assistance Appeal Tribunal)*, 2009 BCSC 1461). Therefore I find that the ministry's determination that it gave little weight to the appellant's statement because the details had not been confirmed by the GP was not reasonable.

The ministry noted that the appellant does not require any prostheses or aids to manage her physical functioning though she stated she can only walk 1/2 - 1 block and takes hours to get out of bed. The ministry stated that that if her mobility was affected to the extent she described, it would be expected that the appellant would benefit from an assistive device such as a cane, walker, or grab bars for her bed or bathroom. Additionally, the ministry noted that

the GP indicated that the appellant is independent with walking (indoor/outdoor), climbing stairs, and standing and that these tasks take significantly longer but did not state how much longer. I note that in his letter dated May 4, 2018, the GP has stated that it takes the appellant 5 times longer to walk a certain distance.

In his letter dated May 4, 2018, the GP describes symptoms relating to both Crohn's Disease and ankylosing spondylitis, the latter of which presents episodes of reduced activities and decreases mobility. He goes on to say that the appellant's periods of disability are episodic and severe in nature.

In its Written Submission on Appeal dated May 30, 2018, the ministry noted that the GP did not describe how often the appellant experiences these episodes, making it difficult to determine if she experiences a severe overall physical impairment. The ministry repeated its argument that, "if the appellant experienced *severe/significant* challenges with mobility, it would be expected that she would benefit from an assistive aid (ie. cane/walker/scooter) to enable her to achieve distances in a more reasonable amount of time." The ministry also noted that the GP did not speak specifically about the appellant's ability to perform daily living activities in his letter of May 4, 2018.

In assessing the evidence about the appellant's physical functioning, including her mobility, the ministry does not mention the appellant's account of her back pain and 'seizing', that she is bedridden 4 or 5 days each week and that it takes her hours to get out of bed and get moving each day, other than to say that they have not given her statement significant weight because the details have not been confirmed by the GP. The ministry does not mention the GP's evidence that the appellant takes medication that affects her DLA; or the evidence of the employers that gives some indication of the frequency of back pain that meant she had to leave work early "on many occasions". While employability is not a consideration in determining eligibility for PWD designation, the observations of the employers are relevant where they provide details relating to the evidence of the GP and the appellant regarding the severity of her impairment. This evidence is relevant to an assessment of the appellant's mobility. Therefore the ministry's conclusion that the appellant's main challenge is "anything that requires lifting and carrying" is not a reasonable conclusion based on the evidence.

In the Reconsideration Decision and in its Written Submission on Appeal, the ministry relies on the fact that the appellant does not require the use of an assistive device or aid, as support for its determination that the appellant's impairment is not severe. That fact can reasonably support the determination that the GP's statement that the appellant can walk 4+ blocks, is to be preferred over the appellant's statement that she can only walk ½ - 1 block. Any inference beyond that is speculation, and in the context of the whole of the evidence in this appeal, it does not reasonably suggest how an assistive aid might overcome the appellant's chronic back pain and muscle spasm that render her bedridden, or allow her to get out of bed and mobile in less than the hours the appellant describes.

The ministry noted that the GP indicated that the appellant experiences chronic diarrhea, chronic abdominal pain and incontinence of stool, thereby creating the need to be near a washroom at all times. The ministry went on to note that the GP's has stated that the appellant experiences "severe, prolonged" symptoms of pain and incontinence of stool and that her conditions "severely restrict" her DLA. The ministry argued that the appellant is independent with DLA that may affect her ability to be near a washroom; namely the appellant is independent with 'going to/from stores', 'filling/refilling prescriptions', 'using public transportation' and has good functioning with both immediate and extended social networks. The symptoms of incontinence are managed in part by being near a washroom at all times and her physical functioning appears to allow for that access. I agree with the majority that that finding is reasonably supported by the evidence.

The ministry also noted that the appellant experiences "good functioning with extended social networks". The ministry states that "it would be expected that [the appellant's] social function with [her] extended social network would be affected if her conditions were considered severe."

I note that, in the ministry's AR form, the section relating to Social Functioning is only to be completed "if the Applicant has an identified mental impairment, including brain injury", and the appellant has no such diagnosis. Therefore, it would appear that the GP filled out this section in error. According to the ministry's form, information about social functioning is not a consideration in assessing severity of physical impairment. Further, the form defines "extended social network" as "neighbourhood contacts, acquaintances, storekeepers, public officials, etc." The GP's AR is clear that the appellant's physical impairments do not prevent her from interacting with her community, in terms of doing banking, filling and refilling prescriptions, using public transit or doing shopping, with

the exception of carrying home her purchases. The section of the AR relating to Social Functioning does not add or detract from any of the relevant evidence about the appellant's level of physical impairment.

The ministry noted that the continuous assistance is required with basic housekeeping, laundry and carrying purchases home and then concluded that lifting and carrying appears to be the appellant's main challenge. Despite the possible discrepancy between the MR and the evidence of the appellant and her 2 previous employers, where the GP ticked the box 5 – 15 lbs. in answer to the question about the appellant's limitations in lifting, the ministry has accepted that the appellant can only lift up to 5 lbs. I find that this conclusion is reasonably supported by the evidence, as the evidence of the appellant and her former employers is consistent and within the range given by the GP.

The ministry determined that since the appellant is able to lift a small amount of weight and is assessed to be independent in a large majority of her DLA, it concluded that the appellant is capable of performing basic tasks of DLA and therefore this restriction does not necessarily establish a severe physical impairment.

DLA are defined in s. 2 (1) of EAPWDR, reproduced above. The list in the AR does not mirror the list in the legislation, but sets out various specific aspects of DLA that can be correlated with the list in the legislation. In identifying DLA in this decision, I am referring to the categories set out in the EAPWDR.

In response to the portion of the AR relating to DLA, asking the GP to "indicate the assistance required related to impairment(s) that directly restrict the applicant's ability to manage in the following areas", the GP identifies 2 DLA where the appellant needs "continuous assistance from another person or [is] unable". Those 2 DLA are: s.2 (1) (a) (iii) shop for personal needs and (v) perform housework to maintain the person's residence in acceptable sanitary condition. In the AR, the assistance is required for 1 aspect of shopping, being carrying purchases home, and both aspects of housework, being basic housework and laundry. The GP identifies 3 DLA where the appellant "takes significantly longer than typical". Those 3 DLA are: s. 2 (1) (a) (iv) use public or personal transportation facilities, (vi) move about indoors and outdoors and (vii) perform personal hygiene and self care. The aspects of those DLA where the appellant "takes significantly longer than typical" are bathing, transfers (in/out of bed), transfers (on/off chair) and getting in/out of a vehicle.

The ministry states that "the evidence suggests it is in the nature of the duty of family members/friends to help each other when in need, but it does not necessarily establish that such help is required because of the impairment." Given that this is exactly what the GP has stated in the AR, and there is no other evidence cited by the ministry to support the conclusion that help is not required because of the impairment, I find that the ministry's conclusion is not reasonably supported by the evidence. Further, I agree with the panel majority that there is no such evidence about "the nature of the duty of family members/friends". The fact that assistance is provided by friends and family does not detract from, nor is it relevant to, the need for assistance.

The ministry appears to have reduced the main restriction due to Crohn's Disease to a need to be near a washroom at all times, and the main restriction due to ankylosing spondylitis to a reduced ability to lift and carry anything heavier than 5 lbs., and to find on that basis that the appellant's impairment is not severe and her DLA are not significantly restricted. The ministry's characterization of the appellant's impairments omits the effect of other symptoms and restrictions beyond "lifting and carrying", including "severe, prolonged back and abdominal pain" and fatigue, sometimes rendering the appellant bedridden, or the DLA where the appellant is independent but takes significantly longer than typical, when identifying the appellant's impairments. Therefore, I find that the ministry's determination that the appellant's impairment is not severe and her DLA are not significantly restricted is not reasonably supported by the evidence.

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. The list in the AR does not mirror the list in the legislation, but sets out various specific aspects of DLA that can be correlated with the list in the legislation. In both the MR and the AR sections of the PWD application there is the opportunity for the prescribed professional to check marked boxes and provide additional narrative. DLA, as defined in the legislation, do not include the ability to work.

The appellant argued that her Crohn's disease and ankylosing spondylitis restrict her ability to perform her DLA.

Having found that a severe impairment had not been established, the ministry position is that the information provided does not establish that a severe impairment significantly restricts DLA continuously or periodically for extended periods.

In its reconsideration decision, the ministry noted that “despite sometimes taking longer to do some tasks,” the appellant is independent in a majority of her DLA, including all aspects of personal care, meal preparation and cooking, paying bills and banking, medication management and transportation with a comment that she gets assistance with DLA from boyfriend, friends and family. The ministry then repeats its assertion that “the evidence suggests it is in the nature of the duty of family members/friends to help each other when in need, but it does not necessarily establish that such help is required as a result of the impairment.”

In the AR the GP states only that the appellant “takes significantly longer than typical” to do bathing, transfers in/out of bed and on/off chair and getting in/out of vehicle. There is no indication that the appellant only takes significantly longer “sometimes”.

As stated above, I agree with the majority that there is no such evidence about a duty of family members and friends. Further, I would note that even if there was such evidence, it does not negate the fact that the GP has stated that the assistance is “required related to impairment(s) that directly restrict the applicant's ability to manage” DLA. For these reasons I find that the ministry's conclusion that the evidence of assistance from family members and friends does not necessarily establish that such help is required as a result of the appellant's impairment is not reasonably supported by the evidence.

The ministry noted the evidence of the GP that the appellant requires continuous assistance with basic housekeeping and “anything that requires lifting and carrying”, which it identifies as the appellant's main challenge. However the ministry determined that since the appellant is able to lift small amounts of weight and is assessed to be independent in a large majority of her DLA, it is concluded that the appellant is capable of performing basic tasks of DLA and therefore she does not experience significant restrictions as a result. The ministry noted that the appellant does not require any assistive devices and that if she experienced significant restrictions it would be expected that she would benefit from at least one aid such as a cane, or a walker with a seat, or grab bars for her bed or bathroom.

S. 2 of the EEAPWDA does not require that a *majority* of DLA must be directly and significantly restricted in order for the ministry to find a significant impairment of the ability to perform DLA, but rather that 2 or more DLA be directly and significantly restricted (*Hudson v. British Columbia Employment and Assistance Appeal tribunal, supra*). The GP has identified 2 DLA where the appellant either needs continuous assistance from another person or is unable to perform, and 3 DLA where the appellant takes significantly longer than typical to complete. With respect to walking, the GP has specified that it takes the appellant 5 times longer to walk a certain distance. The ministry's acknowledgement that the GP indicates the appellant needs continuous help with basic housekeeping (the ministry does not mention laundry in this section), followed by the conclusion that the appellant is capable of basic tasks of daily living, is not logical, nor is it reasonably supported by the evidence. Being unable to do basic housekeeping and laundry without significant help from others is a very significant restriction, as it affects the

appellant's ability to "perform housework to maintain the person's place of residence in acceptable sanitary condition" as set out in EAPDR s.2 (1) (v).

The ministry's argument about the need for assistive devices is the same as that presented in the section pertaining to severe physical impairment and I have provided analysis for that argument above.

The legislation requires that the ministry be satisfied that in the opinion of a prescribed professional that a severe impairment directly and significantly restricts the person's ability to perform DLA either continuously or periodically for extended periods. In this case, the ministry has argued that it is not satisfied that the legislative criteria have been met because the majority of the DLA are performed independently, the appellant is able to lift a small amount of weight and the appellant does not require an assistive device. Given the whole of the evidence about the nature and extent of the appellant's restrictions in DLA, including the restriction acknowledged by the ministry that the appellant requires continuous assistance with basic housekeeping and the evidence of the GP and the appellant about the appellant's mobility, the ministry's conclusion that the appellant is not significantly restricted in DLA is not reasonable. The limited description of the appellant's disability that the ministry adopts does not take into account the appellant's other symptoms of back pain, muscle spasm and fatigue, or the fact that it takes her significantly longer to carry out 3 other DLA related to movement.

Although the type or frequency of the assistance is not described in specific detail in the AR, that is not a legislative requirement where the rest of the evidence provides sufficient description of the impairment, directly related restrictions and need for assistance. It is open to the ministry to find that evidence does not sufficiently describe the type or frequency of assistance. However, in this case the ministry has disregarded evidence on those issues and has not provided reasonable explanations for doing so.

I find that the ministry's decision that the evidence does not establish that an impairment significantly restricts DLA continuously or periodically for extended periods, pursuant to Section 2(2)(b)(i) of the EAPWDA, is not reasonably supported by the evidence

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 appellant's position is that she requires the help from her family, friends and boyfriend to function.

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

Because I find that the ministry's decision that DLA are not significantly restricted is not reasonably supported by the evidence, it would have been necessary for the ministry to determine whether significant help is required. The ministry has not done so. Assistance is required for basic housekeeping, laundry and carrying purchases home. It is consistent with the whole of the evidence of the appellant's impairments, her back and abdominal pain, fatigue, periods of being bedridden, taking hours to get up and moving in the morning, inability to stand or sit for long periods without back pain and spasm, that the assistance she would require for the DLA identified by the GP would be significant. Therefore I find that the ministry's determination that the information does not establish that the appellant requires the significant help of another person to perform directly and significantly restricted DLA is not reasonably supported by the evidence.

Conclusion

I find that the ministry's reconsideration decision, which determined that the appellant was not eligible for PWD designation, was not reasonably supported by the evidence and is not a reasonable application of the applicable enactment, and therefore I would rescind the decision.