

## **PART C – DECISION UNDER APPEAL**

The decision under appeal is the Ministry of Social Development and Poverty Reduction (the ministry) reconsideration decision dated August 29, 2018 which found that the appellant did not meet three of the five statutory requirements of Section 2 of the *Employment and Assistance for Persons with Disabilities Act* for designation as a person with disabilities (PWD). The ministry found that the appellant met the age requirement and that her impairment is likely to continue for at least two years. However, the ministry was not satisfied the evidence establishes that:

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

## **PART D – RELEVANT LEGISLATION**

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

Employment and Assistance for Persons with Disabilities Regulation (EAPWDR), Sections 2 and 2.1

## **PART E – SUMMARY OF FACTS**

The evidence before the ministry at the time of the reconsideration decision included the Persons With Disabilities (PWD) Application comprised of the appellant's information and self-report dated November 8, 2017, a medical report (MR) and an assessor report (AR) both dated February 21, 2018 and completed by a general practitioner (GP) who has known the appellant since 2004 and has met with her 2 to 10 times in the past 12 months.

The evidence also included the following documents:

- 1) Medical Imaging Report dated March 30, 2016 for the appellant's sacroiliac joints;
- 2) Letters dated May 5, 2016 and July 10, 2017 from a registered psychologist;
- 3) Medical Imaging Report dated October 9, 2016 for a CT scan of the appellant's lumbar spine;
- 4) Consultation Report dated May 17, 2017;
- 5) Letters from the appellant's psychiatrist dated July 4, 2017 and September 28, 2017;
- 6) Letter dated November 15, 2017 from the GP to ICBC;
- 7) Disability Tax certificate dated March 9, 2018;
- 8) Undated handwritten notes and schedule for taking insulin; and,
- 9) Request for Reconsideration dated August 21, 2018.

### ***Diagnoses***

In the MR, the GP diagnosed the appellant with asthma (more than 15 years), diabetes with neuropathy, with an onset in 2005, and chronic pain with an onset in April 2015. As well, the appellant has been diagnosed with anxiety and PTSD [Post Traumatic Stress Disorder] with an onset in 2015 for the PTSD and 2005 for the Anxiety, as well as depression. Asked to describe the appellant's mental or physical impairments that impact her ability to manage her daily living activities, the GP wrote in the AR: "pain causes reduced mobility. Anxiety/depression restricts motivation and makes situations stressful with panic."

### ***Physical Impairment***

In the MR and the AR, the GP reported:

- In terms of the appellant's health history, since a motor vehicle accident (MVA) in April 2015, the appellant "has had ongoing chronic back and leg pain, significantly reduced mobility and unable to stand for long."
- The appellant requires an aid for her impairment and the GP wrote "uses electric wheelchair when shopping. At home sits in chair on wheels to aid moving about and reduce standing."
- In terms of functional skills, the GP reported that the appellant can walk 1 to 2 blocks unaided on a flat surface, climb 5 or more steps unaided, lift 2 to 7 kg. (5 to 15 lbs.) and remain seated 1 to 2 hours.
- The appellant is not restricted with her mobility inside the home and is periodically restricted with mobility outside the home.
- The appellant is assessed as being independent with walking indoors and standing, with a note that she "cannot stand for long," and she takes significantly longer than typical with walking outdoors and climbing stairs. The appellant requires periodic assistance with lifting and carrying and holding and also takes significantly longer with carrying and holding, with a comment by the GP that the appellant "needs assistance to lift/carry or hold anything heavy."

- In the section of the AR relating to assistance provided, the GP indicated that a power wheelchair and a chair as a bathing aid are assistive devices routinely used by the appellant to help compensate for her impairment. The GP wrote: “uses chair on wheels in house to move about without standing.”

In the Consultation Report dated May 17, 2017, the physician wrote:

- Review of the medical imaging reports “was unremarkable although the CT scan of October 2016 did show a disc protruding impinging on the right S1 nerve root. This did not correlate with the physical findings at this time and the CT scan only showed mild facet arthropathy.”
- On physical examination, the appellant “was neurologically normal to gross light touch and to strength.”

In the Disability Tax certificate dated March 9, 2018, the specialist indicated:

- The appellant is not markedly restricted in walking, with a note that the appellant “has neuropathy and it is painful to walk- can only walk 10 minutes.”

In her self-report, the appellant indicated:

- She has several disabilities including Type 1 and 2 Diabetes for which she requires needles. Also chronic pain in her back that radiates from her lower back. Throbbing pain radiates up her back and down her legs.
- She has a hard time standing. She hurts so much, with shooting pains/spasms that shoot down the back of her legs, up her spine and into other areas.
- She has constant pain and uses a wheelchair when shopping. She cannot walk longer than 15 to 20 minutes due to pain.
- She experiences bladder and bowel incontinence.

In her Request for Reconsideration, the appellant wrote:

- She has constant back pain, with shootings pains up her back and down her legs.
- She also suffers the effects of diabetes. She is insulin dependent and it takes 14 or more hours per week to administer. Her toes are completely numb, as well as her right thigh.
- Being in constant pain 24 hours a day, she has difficulty standing longer than 5 minutes as she suffers from major pain shooting up her back to her neck and down her legs.
- She can walk 10 to 15 minutes but she is in extreme pain and takes pain medication.
- She was in a car accident in April 2015 and she has several losses in her life.
- She has had physiotherapy, chiropractor, personal trainer and group therapy (physio therapy) and several courses through a pain clinic.
- For the past 3 years, her life has been in solid pain and she struggles to just exist.
- When she walks, it feels like a thousand knives are stabbing into her feet (neuropathy).
- She is tired, in pain, dizzy, headaches from the shooting pains in her legs, back, shoulders, knee, etc.

### ***Mental Impairment***

In the MR and the AR, the GP reported:

- The appellant has no difficulties with communication.
- The appellant has significant deficits with her cognitive and emotional functioning in the area of emotional disturbance. The GP wrote: “PTSD, Anxiety and Depression.”
- The appellant is not restricted in her social functioning.

- The appellant has a good ability to communicate in all areas, specifically: speaking, reading, writing and hearing.
- With respect to the section of the AR relating to daily impacts to the appellant's cognitive and emotional functioning, the GP assessed major impacts in the areas of bodily functions and emotion. There are no moderate impacts, with minimal impacts in the areas of consciousness and motivation. There are no impacts to the remaining 10 listed areas of functioning.
- The GP wrote that the appellant's "sleep is poor due to pain and depression. Also gets nightmares with PTSD. Her chronic pain and reduced mobility has increased her depression making it harder to do ADL and to do physical therapy and exercises for the pain."
- The appellant is independent in all aspects of her social functioning, specifically making appropriate social decisions, developing and maintaining relationships, interacting appropriately with others, dealing appropriately with unexpected demands, and securing assistance from others.
- The appellant has good functioning in both her immediate and her extended social networks.

In the letter dated September 28, 2017, the appellant's psychiatrist wrote:

- The appellant mentioned that she is having difficulty dealing with the pain in her back. She walks 10 to 15 minutes per day and she goes out swimming.
- The appellant complained that she is having difficulty falling asleep, her sleep is not good and her mood is low.
- He prescribed medication.

In the Disability Tax certificate dated March 9, 2018, the specialist indicated:

- The appellant is not markedly restricted in speaking or hearing.
- The appellant is not markedly restricted in performing the mental functions necessary for everyday life

In her self-report, the appellant did not elaborate on her PTSD and depression other than to write that she experiences anxiety attacks and she cannot sleep properly due to nightmares.

In her Request for Reconsideration, the appellant wrote that due to PTSD, she suffers from nightmares, waking up 10 to 15 times a night.

### ***Daily Living Activities (DLA)***

In the MR and the AR, the GP reported:

- The appellant has been prescribed medication that interferes with her ability to perform DLA. The GP noted that the medication can make the appellant "drowsy/sedated."
- The appellant is not restricted with the DLA of personal self care, mobility inside the home, the DLA of use of transportation, and the DLA of management of finances.
- The appellant is periodically restricted with the DLA of meal preparation and mobility outside the home. The GP wrote regarding the "periodic" restrictions, that the appellant "can sit and do some small tasks but unable to do full meal prep alone."
- The appellant is continuously restricted with the DLA of basic housework and the DLA of daily shopping. The GP did not provide a comment regarding the degree of restriction.
- For the assistance required with DLA, the GP wrote: "husband does meal prep, assists

with shopping, does all housework. Uses wheelchair when out on large shops. He carries groceries, loads and unloads them.”

- For the personal care DLA, the appellant is independent with performing all of the tasks with the exception of regulating diet, for which the appellant takes significantly longer and the GP wrote: “with diabetes, should be doing low sugar diet, takes time to calculate carbohydrates and do Insulin. Mood disorder makes it difficult emotionally to regulate diet.” The appellant also takes significantly longer than typical with the task of dressing, grooming, bathing, and toileting.
- Regarding the DLA of basic housekeeping, the appellant requires periodic assistance and takes significantly longer than typical with doing laundry, and the GP wrote: “only folds while sitting”, and she requires continuous assistance from another person with basic housekeeping, with a note by the GP that “husband does.”
- For the shopping DLA, the appellant is independent with all tasks with the exception of carrying purchases home, for which she requires continuous assistance from another person. Specifically, she is independent with the tasks of going to and from stores, reading prices and labels, making appropriate choices and paying for purchases.
- Regarding the meals DLA, the appellant is independent with the task of safe storage of food. She requires continuous assistance from another person with the tasks of meal planning and cooking and periodic assistance with food preparation (note: “can help if sitting”).
- For the pay rent and bills DLA, the appellant is independent with all tasks, including banking and budgeting.
- Regarding the medications DLA, the appellant is independent with all the task, specifically: filling/refilling prescriptions, taking as directed, with safe handling and storage.
- For the transportation DLA, the appellant is independent with the task of getting in and out of a vehicle, which also takes her significantly longer than typical. The GP noted that the other tasks of using public transit and using transit schedules and arranging transportation do not apply to the appellant as she “never uses.”
- The GP added that there are “no safety issues. Needs husband’s help to cook and meal plan.”

In the Disability Tax certificate dated March 9, 2018, the specialist indicated:

- The appellant is not markedly restricted in dressing.
- The appellant does not have a significant restriction in two or more basic activities of daily living or in vision and one or more of the basic activities of daily living.
- The appellant “does not have impairment from diabetes at this time. We are working to improve her blood sugars to reduce risk of developing future issues.”

In her self-report, the appellant indicated:

- Her husband carries the laundry to the Laundromat, groceries, cooks, and household cleaning.
- She has a hard time standing so she has to use wheelchairs for shopping.
- She has to sit to put on her shoes.
- She uses a chair to take a shower.

In her Request for Reconsideration, the appellant wrote:

- She was in a car accident in April 2015 and has suffered several losses, including the ability to walk free of pain, to grocery shop without a chair, to go clothing shopping and to change her clothes without a chair.
- She has to sit for everything, such as washing dishes, cooking, etc.

### ***Need for Help***

The GP reported in the AR that the appellant receives help from family and her “husband provides most of support with ADL’s.” The appellant routinely uses a power wheelchair and a chair as a bathing aid, and the GP commented that the appellant “uses chair on wheels in house to move about without standing.”

### ***Additional information***

In her Notice of Appeal dated September 13, 2018, the appellant expressed her disagreement with the ministry’s reconsideration decision and wrote that she qualifies for all five sections. She has several disabilities and the decision is unfair and unjust.

Prior to the hearing, the appellant provided the following additional documents:

- 1) Letter to the appellant dated September 25, 2018 regarding registration with a medical clinic;
- 2) Patient Respiratory referral dated September 25, 2018;
- 3) Disability Tax Credit Certificate dated March 9, 2018 marked “copy” with amendments made September 19, 2018, specifically:
  - The appellant is restricted in walking. She is “unable to walk more than 1 block due to painful diabetic neuropathy. She is unable to stand for more than 5 minutes.”
  - The appellant is markedly restricted in dressing and the appellant’s “husband helps her dress.” Her restriction in dressing became a marked restriction in 2018.
  - The appellant has a significant restriction in two or more basic activities of daily living, specifically walking and dressing. These restrictions exist together all or substantially all of the time (at least 90% of the time) and the cumulative effect of these significant restrictions are equivalent to being markedly restricted in one basic activity of daily living.
  - The previous comment about not having an impairment from diabetes has been crossed out and the specialist wrote that the appellant “has difficulty walking and standing as per previous statements in prior sections of this form.”
- 4) Undated handwritten notes and schedule for taking insulin; and,
- 5) Letter dated September 30, 2018 in which the GP who completed the MR and the AR wrote that:
  - The appellant has chronic pain. There is right lateral thigh pain and numbness, neuralgia of the lateral cutaneous nerve of the thigh from her diabetes. She has arthritis of both knees. She has back pain with some mild disc space narrowing and facet joint arthrosis that causes pain in the back with movement and pain radiating into the leg.
  - The appellant has foot pain bilaterally from diabetic neuropathy and daily headaches.
  - The appellant continues to suffer from insomnia in addition to Generalized Anxiety Disorder, Depression and PTSD. She wakes up 10 times per night and always feels unrefreshed in the morning. Being tired, along with her low mood and lack of motivation, poor concentration and memory, affects her ability to function.
  - The appellant’s mental state impacts her immediate and extended social networks to a marginal functioning level. Other than her husband, she has minimal other contacts. She does not leave the house without her husband as his presence helps with her anxiety.
  - The appellant’s mobility has declined. She is now able to stand for 1 to 5 minutes

at a time and can only walk 1 block, which takes about 20 minutes with multiple breaks to rest. Her mobility is reduced by her back and foot pain and her breathing,

- The appellant's husband does the shopping and cooking, including prep work. The appellant requires that her husband put her shoes and socks on and to do foot care of trimming of nails and applying creams. At times she requires her husband's assistance in the bathroom as she has difficulty reaching around to clean herself.

At the hearing, the appellant and her advocate stated:

- She did not send the additional documents to the ministry earlier because she has been under lots of pressure. Her parents are not well, her mother was hospitalized, and her depression and PTSD have been worse. Her back is sore a lot.
- She first went to her doctor about the PWD application in December 2017.
- The Disability Tax Credit Certificate was completed by a diabetes specialist who initially had only seen her once and did not understand her history. The specialist made amendments after he understood more about her condition and how she had gotten progressively worse. The neuropathy is now in her feet.
- She does not sleep at night. She wakes up 8 to 10 times due to nightmares. She also bites her tongue and has sores in her mouth.
- She has neuropathy in her feet and her toes have been numb.
- Her doctor clarified the information in the MR and the AR in her letter dated September 30, 2018. She could not get the letter from the GP earlier because the GP was on holidays and it took time for her to prepare.
- She was in a car accident in April of 2015 and she had to stay with her parents afterwards to get some help.
- Her husband has to help her with many things, including toileting. She cannot tie her shoes or put on her socks. She did not think of putting these details in the original PWD application.
- The GP's letter is important because it addresses the questions for which the ministry wrote in the decision they need answers.
- For dressing, she cannot bend down, so she cannot do her feet. Her husband has to put creams on her feet and she wears sandals. She had sores on her feet that took 4 months to heal.
- She has a seat that she uses in the shower so she can sit down.
- She falls out of bed a lot.
- She does not do any laundry. She can sit and fold the laundry but that is all. Her husband has to carry the laundry to the car and take it to the Laundromat. She cannot lift the laundry.
- Her husband does some of the basic housekeeping, although he has disabilities too and can only do so much. She will sometimes load the dishwasher if she is sitting, but she does not do other housework and, consequently, her home is often a mess.
- She will go to the stores for grocery shopping but her back hurts too much to walk up and down the aisles. She needs an electric chair because she also cannot stand in a line-up to pay for purchases, she has to be sitting down. She sometimes sends her husband to do the grocery shopping, but she needs to get out of the house for some quality of life.
- She avoids shopping for clothes. She has gained 35 lbs. so she expects that she is not making appropriate food choices. She cannot afford the foods for an appropriate diet. They go to the food bank and she sits down while her husband selects the foods. It is

very hard to get foods that are consistent with a diabetic diet.

- Her husband puts the food on the table and he sometimes goes for fast food.
- For managing her finances, she does her banking by the drive-through teller since she cannot stand in line. She can do a budget but she is constantly over-extended.
- For her medications, she uses the blister packs since there are so many different medications that she needs to take. She would not know what to take without the packs. The pharmacy delivers the prescriptions to her door.
- For transportation, she is pretty good at getting in and out of her vehicle as she has a handle she can hold on to. How easily this is done depends on whether her back is hurting really bad, then it will take her significantly longer.
- She does not have a traditional power wheelchair. She uses the shopping chair that is offered at the store and, at home, she rolls around on an office chair on wheels. She does not have wheelchair accessibility at home so a traditional wheelchair would not work for her and she has not asked for one. It is also part of her therapy to try to do things herself as much as possible. She has a medical chair/stool in her shower.
- She always has something to help her. Her husband is her “assistive device.”
- She had a part-time job in the summer working two days a week for a relative. She started the job on June 1, 2018 so she did not go in for her last treatment at the pain management clinic. Her job was doing some typing, but the job was designed for her since she could stay seated and take her time and there was no pressure. As soon as she experiences pressure, it triggers her asthma. She has two puffers to help with an attack.
- She went to the pain management clinic for a year, chiropractor for 6 months, and physiotherapy for 1 ½ years, with a personal trainer. She has tried to use the coping skills she learned, but she is dealing with many things at once.
- With her parents’ illness, her anxiety is “through the roof” and her psychiatrist increased her medication dosage. The sleep aids she was prescribed are not working. She cannot say how many times she has panic attacks.
- Her disability is both physical and mental because being tired and groggy affects her diabetes. About 80% of the days in a month are “really bad.”

The ministry relied on the reconsideration decision as summarized at the hearing. At the hearing, the ministry clarified the statement in the reconsideration decision that the appellant does not require an assistive device to complete her DLA because she does not have a prescription for the use of a power wheelchair or a bathing aid and the appellant may be using household items for her own personal convenience.

### ***Admissibility of Additional Information***

The appellant clarified that the letter to the appellant dated September 25, 2018 regarding registration with a medical clinic and the Patient Respiratory referral dated September 25, 2018 were not intended to be submitted on this appeal. The ministry objected to the admissibility of the two additional documents, specifically the amended Disability Tax Credit Certificate and the letter dated September 30, 2018 from the GP, as the ministry argued that these documents included information that contradicted the original information, is “a 180 degree turnaround,” that was not put before the ministry and is not in support of information before the ministry at reconsideration. The appellant argued that these documents are important because they address the questions raised by the ministry in the reconsideration decision and her existing medical conditions have gotten worse over time, and she had an opportunity to meet with the diabetic specialist who completed the Disability Tax Credit Certificate.



The panel reviewed the amendments to the Disability Tax Credit Certificate and the letter from the GP and determined that most of the information supports information before the ministry at reconsideration as relating to medical conditions diagnosed or referred to in the PWD application. The panel also admitted most of the oral testimony on the appellant's behalf as being in support of, and tending to corroborate, the impact from medical conditions referred to in the PWD application which was before the ministry at reconsideration. Therefore, the panel admitted this additional information in accordance with Section 22(4)(b) of the *Employment and Assistance Act*.

However, the panel finds that the information in both the Disability Tax Credit Certificate, the letter from the GP, and her oral testimony that related to the appellant's ability to perform aspects of her personal care, specifically dressing, is inconsistent with the information in both the MR and the AR that the appellant is not restricted and she is independent with all tasks. The panel did not admit these references in the documents as the information was not before the ministry at reconsideration and was not in support of information before the ministry at reconsideration and, therefore, does not meet the requirements of Section 22(4)(b) of the *Employment and Assistance Act*.

## PART F – REASONS FOR PANEL DECISION

The issue on appeal is whether the ministry's reconsideration decision, which found that the appellant is not eligible for PWD designation, was reasonably supported by the evidence or was a reasonable application of the applicable enactment in the circumstances of the appellant. The ministry found that the evidence does not establish that the appellant has a severe mental or physical impairment and that her DLA are, in the opinion of a prescribed professional, directly and significantly restricted either continuously or periodically for extended periods. Also, it could not be determined that, as a result of those restrictions, the appellant requires the significant help or supervision of another person, the use of an assistive device, or the services of an assistance animal to perform DLA.

The criteria for being designated as a PWD are set out in Section 2 of the EAPWDA as follows:

### Persons with disabilities

2 (1) In this section:

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

"daily living activity" has the prescribed meaning;

"prescribed professional" has the prescribed meaning.

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

(a) in the opinion of a medical practitioner or nurse practitioner is likely to continue for at least 2 years, and

(b) in the opinion of a prescribed professional

(i) directly and significantly restricts the person's ability to perform daily living activities either

(A) continuously, or

(B) periodically for extended periods, and

(ii) as a result of those restrictions, the person requires help to perform those activities.

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

(a) a person who has a severe mental impairment includes a person with a mental disorder, and

(b) a person requires help in relation to a daily living activity if, in order to perform it, the person requires

(i) an assistive device,

(ii) the significant help or supervision of another person, or

(iii) the services of an assistance animal.

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

The EAPWDR provides as follows:

**Definitions for Act**

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

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

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

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

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

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

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

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

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

- (i) an authority, as that term is defined in section 1 (1) of the Independent School Act, or
- (ii) a board or a francophone education authority, as those terms are defined in section 1 (1) of the School Act,

if qualifications in psychology are a condition of such employment.

**Part 1.1 — Persons with Disabilities**

**Alternative grounds for designation under section 2 of Act**

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

- (a) a person who is enrolled in Plan P (Palliative Care) under the Drug Plans Regulation, B.C. Reg. 73/2015;

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

### **Severe Physical Impairment**

In the reconsideration decision, the ministry was not satisfied that the information provided establishes a severe physical impairment. The ministry acknowledged that the appellant was diagnosed by the GP with asthma (more than 15 years), diabetes with neuropathy (onset in 2005), and chronic pain (onset in April 2015). The GP wrote in the MR that the appellant "has had ongoing chronic back and leg pain, significantly reduced mobility and unable to stand for long" since a MVA in April 2015. In the letter dated September 30, 2018, the GP elaborated regarding the appellant's chronic pain, specifying that there is right lateral thigh pain and numbness, arthritis of both knees, back pain with movement and pain radiating into the leg, foot pain bilaterally from diabetic neuropathy, and daily headaches.

In her self-report, the appellant wrote that she has several disabilities including Diabetes for which she requires needles and chronic pain in her back that radiates up her back and down her legs. The appellant wrote that she has a hard time standing and she cannot walk longer than 15 to 20 minutes due to pain. In her Request for Reconsideration, the appellant wrote that as she is in constant pain 24 hours a day, she has difficulty standing longer than 5 minutes. The appellant wrote that she can walk 10 to 15 minutes but she is in extreme pain and takes pain medication. The appellant wrote that she was in a car accident in April 2015 and she has several losses in her life. She has received various treatments including physiotherapy, chiropractic, personal training and group therapy (physiotherapy) and has taken several courses through a pain clinic.

A diagnosis of a serious medical condition or conditions does not in itself determine PWD eligibility or establish a severe impairment. An "impairment" involves a loss or abnormality of psychological, anatomical, or physiological structure or functioning causing a restriction in the ability to function independently, effectively, appropriately, or for a reasonable duration. Section 2(2) of the EAPWDA requires that the ministry be satisfied that the impairment is severe before the ministry may designate an applicant as a PWD. To assess the severity of the impairment, the ministry must consider the nature of the impairment and the extent of its impact on daily functioning.

The ministry considered the impacts of the appellant's diagnosed medical conditions on her daily functioning, reviewing the assessments provided in the MR and the AR, as well as the Disability Tax certificate dated March 9, 2018. The ministry wrote that the GP reported in the MR that the appellant is able to walk 1 to 2 blocks unaided on a flat surface, climb 5 or more

steps unaided, lift 5 to 15 lbs. and remain seated 1 to 2 hours. The ministry reasonably considered that the specialist reported in the Disability Tax certificate dated March 9, 2018 that the appellant is not markedly restricted in walking, with a note by the specialist that the appellant “has neuropathy and it is painful to walk- can only walk 10 minutes.”

At the hearing, the appellant stated that the Disability Tax Credit Certificate was completed by a diabetes specialist who initially had only seen her once and did not understand her full medical history. The specialist made amendments after he understood more about her condition and how her functioning had gotten progressively worse. In the Disability Tax Credit Certificate with amendments made September 19, 2018, the physician indicated that the appellant is now restricted in walking and she is “unable to walk more than 1 block due to painful diabetic neuropathy.” In the letter dated September 30, 2018, the GP wrote that the appellant’s mobility has declined due to her back and foot pain and her breathing and she can now only walk 1 block, which takes about 20 minutes with multiple breaks to rest.

The ministry also considered that the GP assessed the appellant in the AR as being independent with walking indoors and standing (note: “but cannot stand for long”), and she does not use an assistive device for these areas of mobility and physical ability. In the MR, the GP reported that the appellant is not restricted with her mobility inside the home and is periodically restricted with mobility outside the home. However, in another section of the AR, the GP indicated that a power wheelchair is an assistive device routinely used by the appellant to help compensate for her impairment and wrote: “uses chair on wheels in house to move about without standing.” In the Disability Tax Credit Certificate with amendments made September 19, 2018, the physician indicated that the appellant is “unable to stand for more than 5 minutes.” In the letter dated September 30, 2018, the GP wrote that the appellant is now able to stand for 1 to 5 minutes at a time.

In the AR, the GP indicated that the appellant takes longer with walking outdoors and climbing stairs and the ministry reasonably considered that the GP did not indicate how much longer than typical these activities take the appellant. The GP did not indicate that the appellant requires the assistance of another person or an assistive device, such as a cane or walker, for walking outdoors. At the hearing, the appellant stated that she does not have a traditional power wheelchair, that her residence is not wheelchair accessible so she has not asked for one. The appellant stated that she uses the electric chair that is offered at various stores for when she is shopping. The ministry considered that the GP assessed the appellant in the MR as able to climb 5 or more steps unaided, and this assessment was not amended in the letter from the GP dated September 30, 2018.

The GP reported that the appellant requires periodic assistance from another person with lifting and carrying and holding (note: “needs assistance to lift/carry or hold anything heavy”) and she also takes longer with carrying and holding. The ministry reasonably considered that the GP assessed the appellant in the MR as able to lift up to 15 lbs. and this assessment was not amended by the GP, although given an opportunity to do so in the letter dated September 30, 2018.

For the ministry to be “satisfied” that an impairment is severe, the panel considers it reasonable for the ministry to expect that the information provided by the medical practitioner and

prescribed professional presents a comprehensive overview of the nature and extent of the impacts of the medical conditions on daily functioning, including explanations, descriptions or examples in the spaces provided in the MR and in the AR forms.

Given the GP's assessment of physical functioning in the moderate range of functional skills limitations, with the exception of walking outdoors, and with insufficient evidence of the need for assistance, the panel finds that the ministry reasonably determined that the evidence is not sufficient to establish that the appellant has a severe physical impairment under Section 2(2) of the EAPWDA.

### **Severe Mental Impairment**

In the reconsideration decision, the ministry was not satisfied that the information provided was sufficient evidence of a severe mental impairment. The ministry wrote that the GP reported in the MR that the appellant has been diagnosed with anxiety (onset in 2005), PTSD (onset in 2015) as well as depression. The ministry reasonably considered that the GP reported in the MR that the appellant has one significant deficit with her cognitive and emotional functioning in the area of emotional disturbance. In assessing daily impacts to the appellant's cognitive and emotional functioning, the GP assessed major impacts in the area of emotion as well as the area of bodily functions. The ministry considered that the GP wrote that the appellant's "sleep is poor due to pain and depression," that the appellant "also gets nightmares with PTSD," and "her chronic pain and reduced mobility has increased her depression making it harder to do ADL and to do physical therapy and exercises for the pain." In the Disability Tax certificate dated March 9, 2018, the specialist indicated that the appellant is not markedly restricted in performing the mental functions necessary for everyday life. The specialist did not amend these assessments, given an opportunity to do so with the revised Certificate dated September 19, 2018.

Considering the two "social functioning" DLA, as set out in Section 2(1)(b) of the EAPWDR, that are specific to mental impairment – make decisions about personal activities, care or finances (decision making), and relate to, communicate or interact with others effectively (relate effectively), the panel finds that the ministry reasonably concluded that there is insufficient evidence to establish that the appellant is significantly restricted in either. Regarding the 'decision making' DLA, the GP reported in the AR that the appellant independently manages most of the decision-making components of DLA, specifically: shopping (making appropriate choices and paying for purchases), meals (safe storage of food), pay rent and bills (including budgeting), and medications (taking as directed and safe handling and storage). The GP indicated that the appellant takes longer with regulating her diet as her "mood disorder makes it difficult emotionally to regulate diet" and that she "should be doing low sugar diet, takes time to calculate carbohydrates and do Insulin." While the GP indicated that the appellant requires continuous assistance with the task of meal planning, there was not further explanation or description to clarify the appellant's need for her husband's assistance in this area.

Regarding the DLA of 'relating effectively', the GP reported in the MR that the appellant is not restricted with her social functioning and, in the AR, that the appellant is independent with developing and maintaining relationships and with interacting appropriately with others. The GP initially assessed good functioning in the appellant's immediate and extended social networks. In the letter dated September 30, 2018, the GP wrote that the appellant has a marginal

functioning level with her immediate and extended social networks and, other than her husband, she has minimal other contacts. The GP does not explain the reason for the change in her assessment of the appellant's functioning level, with no amendment of the assessment of independence in the relevant aspects of social functioning, and wrote in the letter that the appellant "notes a deterioration in relationship with her parents due to her pain and mental health issues." At the hearing, the appellant stated that her parents are not well and, consequently, her depression and PTSD have been worse. The appellant stated that, with her parents' illness, her anxiety is "through the roof" and her psychiatrist increased her medication dosage. The sleep aids she was prescribed are not working. She cannot say how many times she has panic attacks. The appellant stated that her disability is both physical and mental because being tired and groggy affects her diabetes.

The GP assessed the appellant in the MR as having no difficulties with communication and, in the AR, as having a good ability to communicate in all areas, specifically: speaking, reading, writing and hearing. In the Disability Tax certificate dated March 9, 2018, the specialist indicated that the appellant is not markedly restricted in speaking or hearing and the specialist did not amend these assessments, given an opportunity to do so with the revised Certificate dated September 19, 2018.

Given the absence of evidence of significant impacts to the appellant's cognitive and emotional functioning, as well as the insufficient evidence of significant impacts to the two social functioning DLA that are specific to a mental impairment, the panel finds that the ministry reasonably determined that a severe mental impairment was not established under Section 2(2) of the EAPWDA.

### **Restrictions in the ability to perform DLA**

Section 2(2) of the EAPWDA requires that a severe impairment directly and significantly restricts the appellant's ability to perform the DLA either continuously or periodically for extended periods. The direct and significant restriction may be either continuous or periodic. If the restriction is periodic, it must be for an extended time. Inherently, any analysis of periodicity must also include consideration of the frequency. Accordingly, in circumstances where the evidence indicates that a restriction arises periodically, it is appropriate for the ministry to require evidence from the prescribed professional of the duration and frequency of the restriction in order to be "satisfied" that this legislative criterion is met.

DLA are defined in Section 2(1) of the EAPWDR and are also listed in the MR and, with additional details, in the AR. Therefore, a prescribed professional completing these forms has the opportunity to indicate which, if any, DLA are significantly restricted by the appellant's impairment continuously or periodically for extended periods. In this case, the GP is the prescribed professional.

In the reconsideration decision, the ministry was not satisfied that the appellant has a severe physical or mental impairment that, in the opinion of the prescribed professional, directly and significantly restricts DLA either continuously or periodically for extended periods of time. The ministry reviewed the information provided in the MR and wrote that the GP indicated that the

appellant is not restricted with the DLA of personal self care, mobility inside the home, the DLA of use of transportation, and the DLA of management of finances. The ministry considered that the GP reported the appellant is periodically restricted with the DLA of meal preparation and wrote that the appellant “can sit and do some small tasks but unable to do full meal prep alone.” The ministry also reviewed the GP’s assessment that the appellant is continuously restricted with the DLA of basic housework and the DLA of daily shopping and wrote that her “...husband does meal prep, assists with shopping, does all housework” and “carries groceries, loads and unloads them,” and the appellant “uses wheelchair when out on large shops.”

At the hearing, the appellant stated that she will go to the stores for grocery shopping but her back hurts too much to walk up and down the aisles. She needs an electric chair because she also cannot stand in a line-up to pay for purchases; she has to be sitting down. The panel finds that the ministry was not reasonable to note that the appellant does not require an assistive device for her grocery shopping as the GP also indicated in the AR that the appellant routinely uses a “power wheelchair,” which the appellant clarified is the electric chairs provided by some grocery stores for customers with mobility challenges.

In the letter dated September 30, 2018, the GP wrote that the appellant’s husband does the shopping and cooking, including prep work. At the hearing, the appellant stated that she sometimes sends her husband to do the grocery shopping, but she needs to get out of the house for some quality of life. The appellant also stated that her husband does some of the basic housekeeping, although he has disabilities too and can only do so much. The appellant stated that she will sometimes load the dishwasher if she is sitting but she does not do other housework and her home is often a mess.

The ministry also reviewed the AR and wrote that the GP’s assessment indicated that the appellant is independent in almost all of her [tasks of] DLA. For the personal care DLA, the GP reported that the appellant is independent with performing all of the tasks with the exception of regulating diet, for which the appellant takes significantly longer and the GP wrote: “with diabetes, should be doing low sugar diet, takes time to calculate carbohydrates and do Insulin,” and “mood disorder makes it difficult emotionally to regulate diet.” Although the appellant performs the tasks independently, the GP indicated that the appellant also takes significantly longer than typical with dressing, grooming, bathing, and toileting.

The GP also assessed the appellant as being independent with all of the tasks for the pay rent and bills DLA (including banking and budgeting), with all of the tasks of the medications DLA (filling/refilling prescriptions, taking as directed, with safe handling and storage) and with the applicable task for the transportation DLA of getting in and out of a vehicle, which also takes her significantly longer than typical. At the hearing, the appellant stated that she does her banking by the drive-through teller since she cannot stand in line, and she can do a budget but she is constantly over-extended. The appellant also stated that she relies on blister packs for taking her medications and the pharmacy delivers the prescriptions to her door. The appellant stated that she is pretty good at getting in and out of her vehicle as she has a handle she can hold on to, and how easily this is done depends on whether her back is hurting really bad, then it will take her significantly longer. The GP did not amend the assessment of independence in the tasks of the pay rent and bills, medications, and transportation DLA, although given an



opportunity to do so in the letter dated September 30, 2018.

The ministry considered that the GP assessed the appellant as being independent with all tasks of the shopping DLA with the exception of carrying purchases home, for which she requires continuous assistance from another person. The ministry considered this assessment as inconsistent with the information in the MR that the appellant can walk up to 2 blocks without assistance and lift up to 15 lbs. While the GP modified the assessment regarding the appellant's mobility, which has decreased to a maximum of 1 block unaided, there was no change to the lifting capability of up to 15 lbs. The GP indicated in the AR that the appellant is independent with the tasks of going to and from stores, reading prices and labels, making appropriate choices and paying for purchases. At the hearing, the appellant stated that she has gained 35 lbs. so she expects that she is not making appropriate food choices and that it is very hard to get foods that are consistent with a diabetic diet. However, the GP as the prescribed professional did not change these specific assessments, although given an opportunity to do so in the September 30, 2018 letter.

The ministry considered the GP's assessment in the AR regarding the DLA of basic housekeeping, which indicated that the appellant requires periodic assistance and takes significantly longer than typical with doing laundry, and the GP wrote: "only folds while sitting", and the appellant requires continuous assistance from another person with basic housekeeping, with a note by the GP that "husband does." Regarding the meals DLA, the appellant requires continuous assistance from another person with the tasks of meal planning and cooking and periodic assistance with food preparation (note: "can help if sitting"). In her self-report, the appellant wrote that her husband carries the laundry to the Laundromat, gets groceries, cooks, and does the household cleaning. The appellant wrote that she has a hard time standing so she has to use wheelchairs for shopping, she has to sit to put on her shoes, and she uses a chair to take a shower. In her Request for Reconsideration, the appellant wrote that she has to sit for everything, such as washing dishes, cooking, etc.

For those tasks that the GP indicated the appellant requires periodic assistance, the information from the GP and the appellant is that the appellant is able to complete these tasks while seated. At the hearing, the appellant stated that her disability is both physical and mental because being tired and groggy affects her diabetes, and about 80% of the days in a month are "really bad." Although provided an opportunity in the September 30, 2018 letter, this information regarding the frequency and duration of the appellant's "bad days" was not confirmed by the GP as the prescribed professional.

Given the GP's assessment of independence with many of the tasks of DLA and the functional skills assessment in the moderate range, an absence of sufficient information to determine that periodic assistance for some tasks is required for extended periods, and insufficient evidence of significant impacts to the two social functioning DLA that are specific to a mental impairment, the panel finds that the ministry reasonably concluded that the evidence is insufficient to show that the appellant's overall ability to perform her DLA is significantly restricted either continuously or periodically for extended periods, pursuant to Section 2(2)(b)(i) of the EAPWDA.

**Help to perform DLA**

In the reconsideration decision, the ministry held that, as it has not been established that DLA are significantly restricted, it cannot be determined that significant help is required. Section 2(2)(b)(ii) of the EAPWDA requires that, as a result of being directly and significantly restricted in the ability to perform DLA either continuously or periodically for extended periods, a person must also require help to perform those activities. That is, the establishment of direct and significant restrictions under section 2(2)(b)(i) is a precondition of meeting the need for help criterion. Help is defined in subsection (3) as the requirement for an assistive device, the significant help or supervision of another person, or the services of an assistance animal in order to perform a DLA.

The GP reported in the AR that the appellant receives help from family and her “husband provides most of support with ADL’s,” she routinely uses a power wheelchair as well as a chair as a bathing aid. As the ministry reasonably determined that direct and significant restrictions in the appellant’s ability to perform DLA have not been established, the panel finds that the ministry also reasonably concluded that, under section 2(2)(b)(ii) of the EAPWDA, it cannot be determined that the appellant requires help to perform DLA.

### **Conclusion**

The panel finds that the ministry’s reconsideration decision, which determined that the appellant was not eligible for PWD designation pursuant to Section 2(2) of the EAPWDA, was reasonably supported by the evidence. The panel confirms the ministry’s decision. The appellant’s appeal, therefore, is not successful.

**PART G – ORDER**

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

THE PANEL       CONFIRMS THE MINISTRY DECISION       RESCINDS THE MINISTRY DECISION  
If the ministry decision is rescinded, is the panel decision referred back to the Minister for a decision as to amount?       Yes       No

**LEGISLATIVE AUTHORITY FOR THE DECISION:**  
*Employment and Assistance Act*  
Section 24(1)(a)  or Section 24(1)(b)   
and  
Section 24(2)(a)  or Section 24(2)(b)

**PART H – SIGNATURES**

PRINT NAME  
S. Walters

SIGNATURE OF CHAIR	DATE (YEAR/MONTH/DAY) 2018-10-04
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PRINT NAME  
Sanjay Gulati

SIGNATURE OF MEMBER	DATE (YEAR/MONTH/DAY) 2018-10-04
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PRINT NAME  
Jeremy Sibley

SIGNATURE OF MEMBER	DATE (YEAR/MONTH/DAY) 2018-10-04
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