PART C – DECISION UNDER APPEAL

The decision under appeal is the Ministry of Social Development and Poverty Reduction (the ministry) reconsideration decision dated July 26, 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.

The ministry also found that the appellant is not one of the prescribed classes of persons who may be eligible for PWD designation on the alternative grounds set out in Section 2.1 of the Employment and Assistance for Persons with Disabilities Regulation and the appellant did not appeal the decision on that basis.

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

An observer with the advocate's office attended the hearing with the appellant's consent.

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 March 12, 2018, a medical report (MR) dated April 4, 2018 completed by a general practitioner (GP) who met the appellant for the first time on that day, and amended by the GP on July 3, 2018, and an assessor report (AR) dated March 12, 2018 and completed by a social worker (SW) who has known the appellant since February 2018 and met with her once prior to completing the report.

The evidence also included the appellant's Request for Reconsideration dated June 28, 2018.

Diagnoses

In the MR, the GP diagnosed the appellant with degenerative disc disease (DDD) of the lumbar spine, osteoarthritis (OA) bilateral knees as well as Hepatitis C chronic infection with an onset in June 2018, and Major Depressive Disorder (MDD), probable adjustment disorder with an onset in 2015, and anxiety disorder with an onset in 2017-2018. The GP added that there are "some mental health issues developing, referral and assessment pending." Asked to describe the appellant's mental or physical impairments that impact her ability to manage her daily living activities, the SW wrote in the AR: "OA (severe), tendonitis, depression, anxiety and Hep C. She is physically restricted in performing ADLs [like 'daily living activities,' or DLA] due to severe pain related to diagnoses above- depression and anxiety also restrict ADLs [DLA] as lacks motivation."

Physical Impairment

In the MR, the GP reported:

- In terms of the appellant's health history, she "is limited by back and knee pain in many activities as described in her attached document" and "Hep C infection comes with some liver enzyme derangement, but no cirrhosis known at this time."
- Initially, that the appellant does not require an aid for her impairment and he wrote "no prosthetics or current mobility aid, however has indicated need for bath bench/aid." The amendment reported that the appellant requires an aid for her impairment as she "could likely benefit from a cane or walker but does not use one currently."
- In terms of functional skills, originally the GP reported that it was unknown how far the appellant can walk unaided and how long she can remain seated. The amendment indicated that the appellant can walk 2 to 4 blocks unaided on a flat surface, climb 2 to 5 steps unaided, lift 2 to 7 kg. (5 to 15 lbs.), and this is "variable, bad days is less than 5 lbs." and she can remain seated less than 1 hour.
- In the additional functional skills comments, the GP added that the appellant "has a history of OA and her mobility for stair climbing, prolonged standing or walking is affected. Her primary mode of transportation is walking and her days become difficult if she has to perform routine errands. She complains of intermittent left wrist tendonitis. She has a chronic Hep C infection with known liver enzyme derangement, but not high enough to support cirrhosis."

- The appellant is periodically restricted with mobility inside the home and mobility outside the home. Regarding the "periodic" nature of the restriction, the GP wrote that the appellant "may be able to complete slowly and with difficulty, limited by pain and mobility. Has more difficulty a couple of times per week if she has had increased activity."
- Regarding the degree of restriction, the GP wrote that the appellant is "able to leave home, but not comfortable and feels unwell."

In the AR, the SW indicated that:

- The appellant is assessed as taking significantly longer than typical with all aspects of mobility and physical ability and using an assistive device with walking indoors and outdoors (note: "uses stroller like a walker"), climbing stairs (note: "needs to use both railings and brace self with wall") and standing (note: "needs a cane or wall to brace self when standing"). The appellant takes "at least 2 times longer than average" for walking indoors and outdoors, "takes 2 times longer" with climbing stairs, and "takes 2 times longer" with carrying and holding. The appellant also requires continuous assistance from another person with lifting, described by the SW as "left forearm has severe tendonitis/pain; unable to lift teapot at times; severely painful to hold or lift items." The SW added: "mobilization is severely restricted as movements are painful and takes significantly (at least twice) as long as average."
- In the section of the AR relating to assistance provided, the SW indicated that a walker ("stroller") is an assistive device routinely used by the appellant to help compensate for her impairment and the SW wrote: "she is using her stroller as a walker due to no dollars to purchase one."

In her self-report, the appellant indicated:

- Her disability makes it difficult for her to go up and down stairs or ramps and to walk on flat or uneven ground. She leans on walls and handrails when going up and down stairs. She needs a cane to help but cannot afford one.
- For walking on flat ground, it would be easier with a walker but she cannot afford one. She can only walk about 600 m. before needing a rest. She avoids walking on uneven ground whenever possible.
- She gets or needs help from adaptive housing, bathing aids, braces, cane, and walker (stroller).

Mental Impairment

In the MR, the GP reported:

- The appellant has no difficulties with communication.
- The appellant has significant deficits with her cognitive and emotional functioning in the areas of executive, emotional disturbance, motivation and attention or sustained concentration. The GP wrote: "she suffers from adjustment disorder and has mood and sleep issues stemming from unresolved grief and the inability to recover from past losses."
- The appellant is restricted in her social functioning. The GP did not indicate if the restriction is continuous or periodic. The GP wrote: "depression and anxiety are limiting her ability to maintain out of home activities, and anxiety is worsening in social environments." Regarding the degree of restriction, the GP added: "able to leave home but not comfortable and feels unwell. Isolates self if she is not receiving emotional support."

- For additional comments to the MR, the GP wrote that he is "just getting to know" the appellant and he suspects "she has a long and deep history of trauma that would impact her mental health, ability to organize and maintain healthy habits, and develop meaningful coping strategies."

In the AR, the SW reported:

- The appellant has a satisfactory 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 SW assessed major impacts in the areas of motivation, attention/concentration, and other emotional or mental problems, e.g. hostility. There are moderate impacts in the areas of bodily functions (sleep disturbance emphasized), emotion, executive, memory and language and minimal impacts to consciousness, impulse control, and motor activity. There are no impacts to the areas of insight and judgment, psychotic symptoms and other neuropsychological problems.
- The SW wrote that the appellant "reports sleep disturbance almost every night" and "consciousness is impacted by severe pain which can be disorienting." "Depression and anxiety impact her emotional functioning by causing her to isolate and withdraw into her room" and "she will require motivation from another; emotions can be liable (sic) and effect (sic) her attention/concentration as she is unable to control them." "Executive functioning is severely effected (sic) by her chronic pain and it is difficult to problem-solve/plan and organize thoughts; pain also significantly impairs memory. Depression and anxiety cause a major effect on motivation to perform ADLs [DLA]- often needs the assistance of another person to get up and out of bed. Language and processing is effected (sic) by her persistent chronic pain."
- The SW added that the appellant "is coping to deal and manage her severe OA pain which impairs her mobility to perform her basic activities of daily living, while managing her symptoms related to depression and anxiety (lack of motivation, self-isolation). Chronic, debilitating physical pain, as well as emotional pain/depression work together to impact her ability to function."
- The appellant is independent in some aspects of her social functioning, specifically interacting appropriately with others and securing assistance from others. She requires periodic support/supervision with making appropriate social decisions (note: "on bad days, often she will stay at home and chooses to not leave her bed. Needs another person to provide motivation and support"), developing and maintaining relationships (note: "another person assists with managing relationships appropriately") and dealing appropriately with unexpected demands (note: "another person assists to manage emotions").
- The appellant has very disrupted functioning in her immediate social network, described by the SW as "can get aggressive with others- has no family involved," and marginal functioning in her extended social network.

In her self-report, the appellant indicated:

- She experiences a lot of anxiety, agitation, stress, and depression.
- She experiences sensitivity to light, sound and motion.
- She has difficulty understanding what others say to her. She has difficulty hearing what others say to her in person or on the phone.

Daily Living Activities (DLA)

In the MR, the GP reported:

- The appellant has not been prescribed any medication and/or treatments that interfere with her ability to perform DLA. The GP noted that the appellant "receives sleep aids, which if taken properly should not impact daytime function."
- The appellant is not restricted with the DLA of management of medications. It is unknown if she is restricted with the DLA of management of finances. While there are restrictions to social functioning, it is not indicated whether these restrictions are continuous or periodic.
- The appellant is periodically restricted with the DLA of personal self care, meal preparation, basic housework, daily shopping, mobility inside and outside the home, and use of transportation. Regarding the "periodic" restrictions, the GP wrote that the appellant "may be able to complete slowly and with difficulty; limited by pain and mobility. Has more difficulty a couple of times per week if she has had increased activity."
- Regarding the degree of restriction, the GP wrote that the appellant is "able to leave home, but not comfortable and feels unwell. Isolates self if she is not receiving emotional support."
- For the assistance required with DLA, the GP initially wrote: "none at this time." The amendments included the GP's comment that "all physical activities are done for reduced duration as her arthritis pain allows. Her emotional assistance for motivation comes from friends, health authority professionals and volunteers, social work and sees mental health."

In the AR, the SW reported:

- For the personal care DLA, the appellant is independent with performing the tasks of toileting, feeding self and regulating diet. She requires continuous assistance from another person and takes significantly longer than typical with the task of dressing, and the SW wrote that "due to severe pain, is unable to dress without help and takes 2 times longer." The SW added that the appellant "is unable to raise arms up so requires the assistance of one other person to dress self" and "dressing, grooming and bathing also takes at least 2 times longer as she needs to go slow and needs another person to help." She requires periodic assistance from another person and takes significantly longer with the tasks of grooming (note: "needs assistance from another as it is too painful"), bathing (note: "can't lift self out of tub with wrist so needs another person to assist") and transfers in/out of bed (note: "needs another person to help out of bed due to severe pain"). For the task of transfers on/off chair, the appellant "takes 3 times longer."
- Regarding the DLA of basic housekeeping, the appellant is independent with doing laundry and it "takes 2 times longer", and she requires periodic assistance from another person with basic housekeeping, with a note by the SW that the appellant is "unable to reach spaces due to tendonitis- severe pain." The SW added that the appellant "has persistent tendonitis in forearm which prevents her from being able to reach up or down- so very difficult/impossible to do housecleaning."
- For the shopping DLA, the appellant is independent in the tasks of reading prices and labels, making appropriate choices and paying for purchases. She uses an assistive device and takes significantly longer than typical with the tasks of going to and from stores (note: "uses stroller to carry items and brace self") and with carrying purchases home (note: "needs to push stroller in order to bring home- takes 2 times longer"). The SW added that the appellant "uses her stroller as a walker to take significantly longer

than before."

- Regarding the meals DLA, the appellant is independent with the tasks of meal planning and safe storage of food. She requires periodic assistance from another person with the task of food preparation (note: "can't strain pots or lift anything over 2 lbs. due to severe pain") and she requires period assistance from another person and takes significantly longer with the task of cooking (note: "certain dishes take longer to cook").
- 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 the task of filling/refilling prescriptions and takes significantly longer with the tasks of taking as directed (note: "opening pill bottles is painful so takes 2 to 3 times longer than average") and with the task of safe handling and storage.
- For the transportation DLA, the appellant is independent with the task of using transit schedules and arranging transportation. She requires periodic assistance from another person, uses an assistive device, and takes significantly longer than typical with the task of getting in and out of a vehicle (note: "needs to brace self with car door or grab bars and takes 2 times longer than average"). With the task of using public transit, the appellant takes longer, described by the SW as "takes 3 times longer than average due to pain/stroller use." The SW added that "transfers in and out of a vehicle cause severe pain- she needs to take 2 times longer to brace self on car door and find right positioning (i.e. where are the grab bars)."
- The SW added that "movements which require lifting over 2 lbs. she is unable to do due to pain- pain also causes opening pill bottles to take 2 to 3 times longer than average."

In her self-report, the appellant indicated:

- Her disability makes it difficult for her to get in and out of the bathtub, reach up and down to wash, and to get out of bed. She gets assistance from her partner.
- It is difficult for her to stand at the sink, counter and stove, to move food from shelves to counters to stoves and ovens, and to open jars and bags. She can only stand for 15 minutes at a time maximum before she has to sit down and rest. Some days she cannot even lift 2 lbs.
- Her disability makes it difficult to do the dishes, clean floors and bathroom, vacuum, dust, carry and fold her laundry and put it away. She cannot stand for any length of time or bend and kneel or reach above her head. She cannot carry the laundry basket at all. Some days she cannot clean due to lack of motivation from depression, and on those days her partner assists her.
- It is difficult for her to walk around stores, stand long enough to make choices and manage line-ups, take groceries home, and to not get anxious, scared, frustrated or angry in stores because of crowds, light, sound, motion or long line-ups. She relies on the shopping cart to assist her with walking through the stores. Carrying her groceries home is a big problem for her. She limits how much she buys and needs assistance if she needs more items.
- Her disability makes it difficult to walk to and stand at the bus stop and get on and off the bus or train. Some days she cannot use the stairs to get on the bus.

Need for Help

The GP reported in the MR that "all physical activities are done for reduced duration as her arthritis pain allows. Her emotional assistance for motivation comes from friends, health authority professionals and volunteers, social work and sees mental health." In the AR, the SW reported that the appellant receives help from friends, health authority professionals, volunteers, and community service agencies. The appellant indicated in her self-report that she gets or

needs help from community agencies, counsellors, friends, her partner, and health professionals and she gets or needs help from adaptive housing, bathing aids, braces, a cane, and a walker (stroller).

Additional information

In her Notice of Appeal dated August 9, 2018, the appellant expressed her disagreement with the ministry's reconsideration decision and wrote that the ministry denial was based on the low number of doctor and SW visits and her community has a doctor shortage that creates long waits for appointments and frequent doctor changes out of the patients' control. The denial is also based on the lack of referrals to specialist, but referrals have been made and wait times are long.

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

1) Prescriptions dated March 14, 2018 for muscle relaxants, pain relief, sleep aid, antihistamine, and conjugated estrogen;
2) Referral dated June 19, 2018 to a physician regarding hives;
3) Referral dated August 15, 2018 to Mental Health & Addictions regarding past trauma-grief, referring to the loss of several family members close together, which the appellant never properly grieved. The appellant seems to adjust poorly, suffers from significant insomnia, and relies heavily on mental health, social work, and peers to perform instrumental activities of daily living. She reports consistently low mood;
4) Referral dated August 28, 2018 regarding Positive Hepatitis C diagnosis. The appellant has a previous history of IVDU [intravenous drug use] but has not used for over 20 years. She may have been infected at this time. She is otherwise well.
5) Imaging Report dated September 7, 2018 for an X-Ray of both knees. The conclusion is that there is "severe OA change noted right knee joint affecting the patellofemoral joint.... A right side joint effusion is present;
6) Referral dated September 13, 2018 regarding urinary incontinence. Known health conditions include Hep C positive status, chronic pain associated with osteoarthritis, mental health issues and [illicit drug] dependency; and,
7) Letter dated October 1, 2018 in which the appellant's advocate wrote that:
    - It can be difficult to access physicians in the appellant's community.
    - There is a chronic shortage of physicians, social workers, and other professionals so that the wait time to see a physician is 3 to 6 weeks and the wait to get assigned a social worker through Mental Health & Additions is 2 to 3 months.
    - There is also a very high turn-over of health care professionals and social workers, making it difficult for patients to develop long-standing relationships with any particular professional.
    - The appellant has been referred to specialists.
    - The appellant has also been attending Mental Health & Addictions seeking help for her mental and emotional challenges.

At the hearing, the appellant's advocate stated:

- The main reason for the ministry's denial of PWD designation was that there were no referrals to specialists and, therefore, evidence of these referrals have been provided. The appellant understood that the referrals had been made earlier, but mental health had no record of the referrals being made previously. The appellant was in the process of switching counselors, which resulted in delay for making the referrals.
- It has already been stated in the application that the appellant was seeking help, and the

referrals back up what was previously said.

- Her letter provides some background information that should have been taken into consideration by the ministry when finding that there was no long-standing relationship between the appellant and the medical professionals. This is an arbitrary requirement because it is not a requirement set out in the legislation.
- There is a lack of doctors in the appellant's community and the doctors often do not stay long in the community. It makes it very difficult for patients to develop a long-term relationship and it is unreasonable for the ministry to make this a requirement.
- The application clearly sets out that the appellant requires help from her partner at home and also from community agencies outside the home.
- The appellant is impacted from performing her DLA by pain, causing her to go at a slower rate or requiring assistance from others for tasks that she should be able to do on her own.
- The appellant often needs help to clean her house. She cannot stand to cook. She cannot walk around without experiencing pain.
- The ministry did not question the reliability of the GP's assessment regarding the duration of the appellant's impairment, but the ministry did question the reliability of the information relating to the severity of the impairment and the direct and significant restrictions to DLA. This approach is inconsistent.

The ministry relied on the reconsideration decision as summarized at the hearing. At the hearing, the ministry clarified that the ministry does not require a long-standing relationship between the medical professional and the appellant, but the ministry has to be 'satisfied' that the criteria have been met, requiring reliable information to make an evidence-based decision.

Admissibility of Additional Information

The ministry objected to the admissibility of the additional documents on the basis that they were not available to the ministry at the time that the reconsideration decision was made. The panel reviewed the documents and determined that most of the information in the reports, referrals, and letter support information before the ministry at reconsideration as relating to medical conditions diagnosed or referred to in the PWD application. The panel also admitted the oral testimony on the appellant's behalf as being in support of, and tending to corroborate, the impact from medical conditions referred to in the PWD application which was before the ministry at reconsideration. Therefore, the panel admitted this additional information in accordance with Section 22(4)(b) of the *Employment and Assistance Act.*

With respect to the referral dated June 19, 2018 for hives and the referral dated September 13, 2018 for urinary incontinence, the panel found that these were not medical conditions diagnosed in the PWD application or referred to at reconsideration and, therefore, the ministry has not had an opportunity to consider this information. As this information was not before the ministry at reconsideration and was not in support of information before the ministry at reconsideration, the panel did not admit this information.

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 DDD of the lumbar spine, OA bilateral knees as well as Hepatitis C-chronic infection with an onset in June 2018, and the GP noted in the MR that the appellant is "limited by back and knee pain in many activities as described in her attached document" and "Hep C infection comes with some liver enzyme derangement, but no cirrhosis known at this time." In the referral regarding Positive Hepatitis C diagnosis, dated August 28, 2018, the physician wrote that the appellant has a previous history of intravenous drug use, has not used for over 20 years but she may have been infected at this time, and she is "otherwise well." The X-Ray Report dated September 7, 2018 for both of the appellant's knees, provided on the appeal, concluded that there is "severe OA change noted right knee joint affecting the patellofemoral joint." The ministry considered the additional comments provided by the GP on July 3, 2018 that the appellant "has a history of OA and her mobility for stair climbing, prolonged standing or walking is affected" and that the appellant's "primary mode of transportation is walking and her days become difficult if she has to perform routine errands." The GP also added that the appellant "complains of intermittent left wrist tendonitis."

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. The ministry wrote that the GP initially reported in the MR that it was unknown how far the appellant can walk unaided and how long she can remain seated. The ministry considered that, for additional comments to the MR, the GP wrote that he is "just getting to know" the appellant and the ministry noted that neither the GP nor the SW had seen the appellant more than once or twice for the purposes of completing the PWD application. The ministry determined that it is more likely that the information provided by the GP and the SW is more a reiteration of information that the appellant has told them about her impairment rather than a direct reflection of their medical/professional opinions.

In her letter dated October 1, 2018, the appellant's advocate wrote that there is a chronic shortage of physicians, social workers, and other professionals in the appellant's community so that the wait time to see a physician is 3 to 6 weeks and the wait to get assigned a social worker through Mental Health & Additions is 2 to 3 months. The advocate wrote that there is also a very high turn-over of health care professionals and social workers, making it difficult for patients to develop long-standing relationships with any particular professional. At the hearing, the appellant's advocate argued that requiring a long-standing relationship between the appellant and the medical professionals is arbitrary because the requirement is not set out in the legislation and, therefore, it is unreasonable. However, the ministry wrote in the reconsideration decision that while the accuracy of the assessments are questioned given the limited understanding that the GP and SW would have after only one or two visits, the information has been considered and the ministry concluded that a moderate level of impairment is established when considering the evidence that is consistent as between the GP and the SW.

The assessment of functional skills in the MR was amended by the GP on July 3, 2018 to indicate that the appellant is able to walk 2 to 4 blocks unaided on a flat surface, climb 2 to 5 steps unaided, lift 5 to 15 lbs., with a note by the GP that this is "variable, bad days is less than 5 lbs.," and the appellant can remain seated less than 1 hour. The ministry reasonably considered that the GP did not indicate how often the appellant's lifting ability is reduced due to "bad days." In the AR, the SW assessed the appellant as requiring continuous assistance from another person with lifting and she also takes significantly longer than typical with lifting, which the SW described as "left forearm has severe tendonitis/pain; unable to lift teapot at times; severely painful to hold or lift items." Given the GP's assessment of lifting to the maximum of 15 lbs., the assistance required with lifting would likely be for weights in excess of this amount, or on one of the appellant's "bad days." The SW does not describe the frequency or duration of the exacerbations of the appellant's condition and the resulting reduction in her functioning.

The ministry also considered that the GP reported in the MR that the appellant is periodically restricted with her mobility inside and outside the home and that she "may be able to complete slowly and with difficulty" but that she is "limited by pain and mobility." The GP wrote that the appellant has "more difficulty a couple of times per week if she has had increased activity," and there was no further description of how frequently the appellant's activity level is increased. The ministry also considered the assessment by the SW in the AR that the appellant takes significantly longer than typical with all aspects of mobility and physical ability and also uses an assistive device with walking indoors and outdoors (note: "uses stroller like a walker"), climbing

stairs (note: “needs to use both railings and brace self with wall”) and standing (note: “needs a cane or wall to brace self when standing”). The SW added: “mobilization is severely restricted as movements are painful and takes significantly (at least twice) as long as average.” The panel finds that a stroller, handrails on the stairs, and the wall do not fall within the definition of an “assisted device” in Section 2(1) of the EAPWDA, as “a device designed to enable a person to perform a DLA that, because of a severe mental or physical impairment, the person is unable to perform.” While the SW wrote that the appellant “uses stroller like a walker,” a stroller is a household item designed for infant transport and was not “designed to enable a person to perform a DLA.”

Initially, the GP reported that the appellant does not require an aid for her impairment and he wrote “no prosthetics or current mobility aid” and that the appellant “indicated need for bath bench/aid.” In the amendment to the MR, the GP reported regarding the appellant’s need for an aid for her impairment that she “could likely benefit from a cane or walker but does not use one currently.” The ministry reasonably considered that the GP wrote that the appellant could “likely benefit” from the use of a cane or a walker, but the GP did not indicate that the appellant currently requires a mobility aid.

For the ministry to be “satisfied” that an impairment is severe, the panel considers it reasonable for the ministry to expect that the information provided by the medical practitioner and prescribed professional presents a comprehensive overview of the nature and extent of the impacts of the medical conditions on daily functioning, including explanations, descriptions or examples in the spaces provided in the MR and in the AR forms.

In her self-report, the appellant indicated that her disability makes it difficult for her to go up and down stairs or ramps and to walk on flat or uneven ground. She leans on walls and handrails when going up and down stairs, and she needs a cane to help but cannot afford one. For walking on flat ground, she can only walk about 600 m. before needing a rest. She avoids walking on uneven ground whenever possible. The appellant indicated that she gets or needs help from adaptive housing, bathing aids, braces, cane, and walker (stroller). Neither the GP nor the SW assessed a need for adaptive housing or braces. The ministry considered the GP’s comment that the appellant’s mental impairment is “more concerning” than her physical impairment, and noted that the GP did not make a referral to a specialist such as a physiotherapist, rheumatologist or pain clinic. A referral regarding the appellant’s Hep C diagnosis was available on the appeal, but no referral regarding the DDD in her lumbar spine or the OA in her knees.

Given the GP’s assessment of physical functioning in the moderate range of functional skills limitations, and independence with her mobility and physical ability 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 both MR's that the appellant has been diagnosed with MDD, probable adjustment disorder with an onset in 2015, and anxiety disorder with an onset in 2017-2018. The GP added that there are "some mental health issues developing, referral and assessment pending." The ministry considered the additional comments made by the GP that he is "just getting to know" the appellant and he suspects "she has a long and deep history of trauma that would impact her mental health, ability to organize and maintain healthy habits, and develop meaningful coping strategies," and the ministry reasonably emphasized the need for further assessment given the limited contact between the GP and the appellant. A referral was subsequently made, on August 15, 2018, to Mental Health & Addictions regarding the appellant's "past trauma- grief," and the GP commented about the loss of several family members close together, which the appellant never properly grieved. The GP wrote that the appellant suffers from significant insomnia and relies heavily on mental health, social work, and peers to perform instrumental activities of daily living and the appellant reports consistently low mood. There was no information available on the appeal of the results of an assessment by a mental health practitioner and whether the adjustment disorder is conclusively demonstrated.

The ministry considered that the GP reported in the MR that the appellant has significant deficits with her cognitive and emotional functioning in the areas of executive, emotional disturbance, motivation and attention or sustained concentration. The GP wrote that the appellant "suffers from adjustment disorder and has mood and sleep issues stemming from unresolved grief and the inability to recover from past losses." In assessing daily impacts to the appellant's cognitive and emotional functioning, the SW indicated major impacts in the areas of motivation, attention/concentration, and other emotional or mental problems, e.g. hostility, with moderate impacts in the areas of bodily functions (sleep disturbance emphasized), emotion, executive, memory and language, and minimal impacts to consciousness, impulse control, and motor activity. The ministry considered that the SW wrote that the appellant "reports sleep disturbance almost every night" and "consciousness is impacted by severe pain which can be disorienting." The SW also wrote that "depression and anxiety impact her emotional functioning by causing her to isolate and withdraw into her room," and many of the impacts are due to the appellant's chronic pain as opposed to a mental impairment as the SW commented that "executive functioning is severely affected (sic) by her chronic pain," "pain also significantly impairs memory," and "language and processing is effected (sic) by her persistent chronic pain."

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 SW reported in the AR that the appellant independently manages all of the decision-making components of DLA, specifically: personal care (regulating diet), shopping (making appropriate choices and paying for purchases), meals (meal planning and safe storage of food), pay rent and bills (including budgeting), and transportation (using transit

schedules and arranging transportation. While independent with the decision making aspects of the medications DLA (taking as directed and safe handling and storage), the SW indicated that the appellant takes longer with the tasks of taking her medication as directed and safe handling and storage of her medication. The SW wrote that "opening pill bottles is painful so takes 2 to 3 times longer than average," which attributes the difficulty to the appellant's physical impairment and not to an impairment in the appellant's decision-making capacity. In the MR, the GP reported that the appellant is not restricted with the DLA of management of medications.

The SW indicated that the appellant requires periodic support/supervision with making appropriate social decisions and wrote that "on bad days, often she will stay at home and chooses to not leave her bed. Needs another person to provide motivation and support." The SW does not elaborate with a description or an explanation of how often the appellant experiences "bad days" in order to allow the ministry to gage the extent of the requirement for periodic support/supervision.

Regarding the DLA of 'relating effectively', the GP reported that the appellant is restricted in her social functioning, although the GP did not indicate if the restriction is continuous or periodic. The GP wrote that "depression and anxiety are limiting her ability to maintain out of home activities, and anxiety is worsening in social environments." Regarding the degree of restriction, the GP added: "able to leave home but not comfortable and feels unwell" and the appellant "isolates self if she is not receiving emotional support." In the AR, the SW reported that the appellant is independent in interacting appropriately with others and securing assistance from others. She requires periodic support/supervision with developing and maintaining relationships, and the SW wrote that "another person assists with managing relationships appropriately." The SW reported that the appellant has very disrupted functioning in her immediate social network, described by the SW as "can get aggressive with others- has no family involved," and she has marginal functioning in her extended social network. However, when asked to describe the support/supervision required which would help to maintain the appellant in the community, the SW wrote "she needs a proper walker" and did not report safety concerns.

In her self-report, the appellant indicated that she experiences a lot of anxiety, agitation, stress, and depression, with sensitivity to light, sound and motion. The appellant wrote that she has difficulty understanding what others say to her and difficulty hearing what others say to her in person or on the phone. However, the GP reported in the MR that the appellant has no difficulties with communication and the SW indicated that appellant has a satisfactory ability to communicate in all areas, specifically: speaking, reading, writing and hearing.

Given the assessment of impacts to some of the areas of cognitive and emotional functioning due to chronic physical pain, the tentative nature of the assessments pending the referral to a mental health specialist, 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 and the SW are the prescribed professionals.

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 periodically restricted with several DLA, specifically: personal self care, meal preparation, basic housework, daily shopping, mobility inside and outside the home, and use of transportation and, regarding the "periodic" restrictions, the GP wrote that the appellant "may be able to complete slowly and with difficulty; limited by pain and mobility" and that she "has more difficulty a couple of times per week if she has had increased activity." As previously discussed, there was no further description of how frequently the appellant's activity level is increased to the extent of impacting her functioning.

The ministry also considered that when initially asked what assistance the appellant requires with the DLA, the GP wrote "none at this time." The amendments on July 3, 2018 included the GP's comment that "all physical activities are done for reduced duration as her arthritis pain allows" and "her emotional assistance for motivation comes from friends, health authority professionals and volunteers, social work and sees mental health."

The ministry considered that the SW indicated in the AR that the appellant generally takes at least twice as long with physical tasks as mobility is restricted, with a range of functioning assessed, depending on the level of pain the appellant experiences. The ministry wrote that considering the information overall, the appellant's impairment is in the moderate range as she is capable of performing basic tasks. For the personal care DLA, for example, the SW assessed the appellant as being independent with performing the tasks of toileting, feeding self and regulating diet and, for the task of transfers on/off chair, the SW indicated that the appellant "takes 3 times longer." The SW reported that the appellant requires periodic assistance from another person and takes significantly longer with the tasks of grooming, bathing and transfers in/out of bed; however, the comments by the SW that the appellant "needs assistance from another as it is too painful," "can't lift self out of tub with wrist so needs another person to assist," and "needs another person to help out of bed due to severe pain," do not elaborate on

the frequency or duration of the exacerbation in the appellant's pain. The SW indicated that the appellant requires continuous assistance from another person and takes significantly longer than typical with the task of dressing as "due to severe pain, is unable to dress without help and takes 2 times longer."

Regarding the DLA of basic housekeeping, the appellant is independent with doing laundry, taking "2 times longer", and she requires periodic assistance from another person with basic housekeeping, with a note by the SW that the appellant is "unable to reach spaces due to tendonitis- severe pain." For the shopping DLA, the SW reported that the appellant uses an assistive device and takes significantly longer than typical with the tasks of going to and from stores and with carrying purchases home The SW added that the appellant "uses stroller to carry items and brace self," "needs to push stroller in order to bring home- takes 2 times longer," and "uses her stroller as a walker to take significantly longer than before." However, a stroller does not meet the definition of an assistive device as set out in Section 2(1) of the EAPWDA, as previously discussed.

For the meals DLA, the SW indicated that the appellant requires periodic assistance from another person with the task of food preparation and she requires periodic assistance from another person and takes significantly longer with the task of cooking. The SW noted that the appellant "can't strain pots of lift anything over 2 lbs. due to severe pain," but does not elaborate on the frequency or duration of the exacerbation in the appellant's pain to allow the ministry to determine that assistance is required for extended periods of time. The ministry reasonably considered that while the GP reported that on "bad days" the appellant can lift less than 5 lbs.," the GP also did not indicate how often the appellant's lifting ability is reduced due to "bad days."

In her self-report, the appellant indicated that her disability makes it difficult for her to perform some tasks such as get in and out of the bathtub, reach up and down to wash, to get out of bed, to stand in the kitchen, to move food from shelves to counters to stoves and ovens, and to open jars and bags. Her disability also makes it difficult for her to do the dishes, clean floors and bathroom, vacuum, dust, carry and fold her laundry and put it away. The appellant indicated that she cannot carry the laundry basket at all. The appellant indicated that some days she cannot clean due to lack of motivation from depression, and on those days her partner assists her. It is also difficult for the appellant to walk around stores, stand long enough to make choices and manage line-ups, take groceries home, and to not get anxious, scared, frustrated or angry in stores because of crowds, light, sound, motion or long line-ups. Her disability makes it difficult to walk to and stand at the bus stop and get on and off the bus or train. Some days she cannot use the stairs to get on the bus. The appellant indicated that some days she cannot even lift 2 lbs., but she did not elaborate on how often this occurs.

Given the assessment by the GP and the SW for a level of independence with many tasks of DLA or the need for periodic assistance from another person with some tasks of DLA without sufficient information to determine that the assistance is required for extended periods, the panel finds that the ministry reasonably concluded that the evidence is insufficient to show that the appellant's overall ability to perform her DLA is significantly restricted either continuously or periodically for extended periods, pursuant to Section 2(2)(b)(i) of the EAPWDA.

Help to perform DLA

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

The GP reported in the MR that the appellant's "emotional assistance for motivation comes from friends, health authority professionals and volunteers, social work and sees mental health." In the AR, the SW reported that the appellant receives help from friends, health authority professionals, volunteers, and community service agencies. While the appellant indicated in her self-report that she also gets or needs help from adaptive housing, bathing aids, braces, a cane, and a walker, the need for these assistive devices was not confirmed in the opinion of either the GP or the SW, as the prescribed professionals. As previous discussed, a stroller does not fall within the definition of an assistive device. As the panel finds that the ministry reasonably determined that direct and significant restrictions in the appellant's ability to perform DLA have not been established in the opinion of a prescribed professional, the panel also finds that the ministry reasonably concluded that, under section 2(2)(b)(ii) of the EAPWDA, it cannot be determined that the appellant requires help to perform DLA.

Conclusion

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

PART G – ORDER

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

THE PANEL ☒**CONFIRMS THE MINISTRY DECISION** ☐**RESCINDS THE MINISTRY DECISION**

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

LEGISLATIVE AUTHORITY FOR THE DECISION:

Employment and Assistance Act

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

and

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

PART H – SIGNATURES

PRINT NAME	
S. Walters	
SIGNATURE OF CHAIR	DATE (YEAR/MONTH/DAY) 2018-10-09

PRINT NAME	
Kevin Ash	
SIGNATURE OF MEMBER	DATE (YEAR/MONTH/DAY) 2018-10-09
PRINT NAME	
Lorraine Grant	
SIGNATURE OF MEMBER	DATE (YEAR/MONTH/DAY) 2018-10-09