



**PART C – DECISION UNDER APPEAL**

The decision under appeal is the reconsideration decision of the Ministry of Social Development and Poverty Reduction (the ministry) dated 23 November 2018 that denied the appellant designation as a person with disabilities (PWD). The ministry determined that the appellant did not meet 3 of the 5 criteria for PWD designation set out in section 2 of the *Employment and Assistance for Persons with Disabilities Act*, section 2. Specifically, the ministry determined that the information provided did not establish that the appellant has a severe mental or physical impairment that in the opinion of a prescribed professional

(i) directly and significantly restricts her ability to perform daily living activities (DLA) either continuously or periodically for extended periods; and,

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

The ministry determined that the appellant satisfied the other 2 criteria: she has reached 18 years of age and her impairment in the opinion of a medical practitioner is likely to continue for at least 2 years.

The ministry also found that it has not been demonstrated that the appellant is in 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*. As there was no information or argument provided by the appellant regarding alternative grounds for designation, the panel considers this matter not to be at issue in this appeal.

**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 reconsideration consisted of the following:

1. The appellant's PWD Designation Application dated 10 July 2018. The Application contained:
  - A Self Report (SR).
  - A Medical Report (MR) dated 13 July 2018, completed by a general practitioner (GP) who has known the appellant for 6 months and seen her 11 or more times in that time.
  - An Assessor Report (AR) dated 13 July 2018, completed by the same GP.
  - A list of medications prescribed for the appellant.
  - A letter from the appellant to WorkSafeBC dated 05 January 2018 providing additional information in requesting a review of WorkSafeBC decisions.
2. The appellant's Request for Reconsideration dated 14 November 2018, to which is attached:
  - A submission by the appellant's advocate with argument in support of her application.
  - A letter dated 13 November 2018 from the appellant's GP ("GP letter").

In the MR, the GP provides the following diagnoses related to the appellant's impairment: fibromyalgia (onset 2010), mood disorder (onset 2016), chronic fatigue syndrome (onset 2018) and anxiety (onset 2018).

The panel will first summarize the evidence from the MR, the AR and the GP letter as it relates to the PWD criteria at issue in this appeal.

### Severity/health history – general

MR:

Under Health History, the GP writes:

"The condition is severe. Her pain makes it difficult to do most activities of daily living. This has led to anxiety and depression and she worries about finances and running her home. She is desperate to work but is unable to do this. Tasks take longer and more time. She manages this by breaking tasks into smaller tasks. The pain has changed her outlook on all aspects of her life and she now feels she just exists because regular activities have become almost impossible to do."

Under Additional Comments, the GP writes, "Chronic pain impacts on ability to get quality sleep."

The GP indicates that the appellant has been prescribed medications and/or treatments that interfere with her ability to perform DLA, listing 2 analgesics. These "make her sluggish. Foggy thoughts." The anticipated duration of these medications is "indefinite."

AR:

The GP describes the appellant's mental or physical impairments impacting her ability to

manage DLA as follows:

“Chronic pain and decreased mobility, which has significantly impacted her mental health in a negative way.”

GP letter:

In his letter of 13 November 2018, the GP writes:

“On speaking to [the appellant] and review of her medical file, I would like to clarify information presented previously and add information not included in the original application for PWD.”

. He confirms the following diagnoses of mental and physical impairments:

- Back injury in 2016 resulting in Chronic Pain Syndrome – severe.
- Fibromyalgia
- Chronic Fatigue Syndrome
- Chronic Depression
- Anxiety and Panic Attacks
- Chronic Migraines

He writes, “I confirm that the mental and/or physical impairments are both permanent and severe and will continue for more than two years.”

#### *Physical impairment*

MR:

Regarding functional skills, the GP reports that the appellant can walk 1 to 2 blocks unaided on a flat surface, can climb 5+ steps unaided, her limitations in lifting are 5 to 15 lbs. and she is limited to remaining seated 20 – 25 minutes.

The GP indicates that the appellant does not require any prostheses or aids to compensate for her impairment.

AR:

Respecting mobility and physical ability, the GP assesses the appellant as independent for walking indoors, taking significantly longer than typical for walking outdoors (“2 – 3 times longer), climbing stairs (“3 times longer”) and standing (“only minutes due to pain.”). He assesses the appellant as requiring continuous assistance from another person for lifting (“10 lbs.”) and for carrying and holding (“10 – 15 lbs.”). He comments, “Can’t walk for more than 20 minutes.”

#### *Mental impairment*

MR:

The GP indicates that the appellant has no difficulties with communication.

The GP indicates that the appellant has significant deficits with cognitive and emotional function in the areas of emotional disturbance and motor activity.

AR:

The GP assesses the appellant's ability to communicate as good for speaking, reading, writing, and hearing.

The GP assesses the appellant's mental impairment as having the following impacts on daily functioning:

- Major impact: bodily functions, consciousness, emotion, and attention/concentration.
- Moderate impact: impulse control.
- Minimal impact: insight and judgment, memory, motivation, and motor activity.
- No impact: executive, language, psychotic symptoms, other neuropsychological problems, and other emotional or mental problems.

Ability to perform DLA

AR:

The GP provides the following assessments of the assistance the appellant requires in performing DLA (the GP's comments in parentheses):

- Personal care – takes significantly longer than typical for dressing, grooming, bathing, and toileting (Takes longer to complete due to pain and decreased range of motion) and for transfers in/out of bed and on off the chair (Pain and decreased movement); independent for feeding self and regulating diet.
- Basic housekeeping – takes significantly longer than typical (Takes time due to pain).
- Shopping – takes significantly longer than typical for going to and from stores (Takes longer and can't cover much distance) and for carrying purchases home (Pain, needs assistance); independent for reading prices and labels; no assessment for making appropriate choices and paying for purchases.
- Meals – takes significantly longer than typical for meal planning, food preparation and cooking (Takes longer to do due to pain and decreased mobility), independent for safe storage of food.
- Pay rent and bills – independent for all tasks: banking, budgeting, and pay rent and bills.
- Medications – independent for all tasks: filling/refilling prescriptions, taking as directed, and safe handling and storage.
- Transportation – takes significantly longer than typical for getting in and out of a vehicle (Problems transferring and getting in and out of vehicles); N/A for using public transit and using transit schedules and arranging transportation.

The GP further comments;

“Has to break down tasks into smaller tasks. Has to do multiple washes in smaller doses. The same is true of cooking and housework. Has to sit down to do task. Unable to make beds and do some cleaning tasks in her home. Can only drive for less than one hour.”

With respect to social functioning, the GP assesses the appellant as independent for making appropriate social decisions, ability to develop and maintain relationships and interacting appropriately with others; and requiring periodic support/supervision for ability to deal

appropriately with unexpected demands (Occasionally struggles with unexpected demands) and with ability to secure assistance from others (Friends & family).

The GP indicates that the appellant's mental impairment impacts her relationship with her immediate social network and with her extended social network as marginal functioning.

GP letter:

The GP writes:

"The impairments [he has listed] directly and significantly restrict [the appellant's] ability to perform daily living activities periodically and continuously and as a result of these restrictions [the appellant] requires the significant assistance of another person to perform those activities, specifically:

- Meal preparation and clean-up – continuous
- Personal self-care – continuous
- Basic housework – continuous
- Daily shopping – periodic
- Social functioning – isolates self – periodic
- Mobility inside the home – impacted by pain – continuous
- Mobility outside the home – impacted by pain – continuous
- Transportation – can drive only for ½ hour."

### Help provided/required

MR:

The GP indicates that the appellant does not require any prostheses or aids to compensate for her impairment.

AR:

The GP Indicates that help is provided by family, friends and a community service agency.

The GP leaves blank the section asking for a description of what assistance would be necessary if help is required but there is none available.

Under Assistive Devices, the GP indicates that the appellant routinely uses a back brace, a TENS machine and a Back to Life machine.

GP letter:

The GP adds to his assessments regarding DLA: "Wears a back brace daily."

### **Self Report**

In her SR, the appellant writes:

"My disability would be chronic back pain, lack of restorative sleep caused by pain, & extreme anxiety and depression.

One physician thought perhaps I had Complex Regional Pain Syndrome.

Please find a letter enclosed dated Jan. 5 2018. My condition has not improved since

my injury [in] 2016.

[Name of another physician] was my family doctor for 17 years. She suddenly closed her practice and [the GP] took over her caseload. He is now my acting physician. I have also included a list of all medications I've been taking since 2016 up to the present. None of the medications & trials have been effective when it comes to managing my pain."

She inserts a diagram that shows her back, with the entire region in constant pain and writes that the pain has impacted her life drastically, with every day a struggle. She functions on barely 3, sometimes 3 ½, hours of sleep. The pain in her lower and mid back keeps her awake throughout the night and the time that she does sleep is not consecutive hours in a row. Her medications make her feel loopy, foggy and always tired.

She explains that she is proactive with her health, continuing to move her body every day, stretching and walking on level ground for 20 minutes maximum, but it feels like a vicious cycle with no end. She remains optimistic and wants to go back to work desperately, but she can't. She has panic attacks daily, worrying about the future. She states she is clinically depressed and can't seem to snap out of it, feeling as though she is merely existing. She hates her life. She meditates and prays daily for a positive outcome, to no avail.

### **Letter to WorkSafeBC**

In her letter to WorkSafeBC, the appellant reviews her work history up to her workplace accident in 2016, caring for children for many years and then working for several years in an adult care home. She describes how, with the exception of a brief episode of lower back pain in 2008, she was active in recreational activities, keeping herself young and fit. Her life changed drastically in 2016, as evidenced by her gaining over 40 pounds since the injury due to her inability to continue her regular exercise. This has created a reduction in her enjoyment of life as she can now walk only 20 minutes, her maximum limit on level ground before pain is experienced, compared to her active life before.

She explains that she is actively engaged in her healing and recovery and continues to be genuine and forthright for this process, trying to remain positive. She uses a home TENS machine three times daily, applies a heating pad up to four times daily and wears a back brace supporting her back and allowing her more range of motion. However the pain is constant. She has attempted a WorkSafeBC graduated return to work program without success, has attended 2 occupational rehab programs and a pain management program. Meditation techniques, stretching and core strengthening are skills in her toolbox she has gained through these programs, and she continues to use them, but while some degree of flexibility increased, she didn't progress overall to be able to return to work.

She writes that her pain has not been managed. She has tried multiple medications and has failed treatment trials and experienced unwanted side effects. She goes for regular monthly appointments to see her GP as well as a pain specialist.

She writes that the pain in her lower and mid back create difficulties in completing activities of daily living. Operating on 3 to 3 ½ hours of sleep in an unmanaged state of pain leaves her

depressed and anxious. She drinks bottled water but cannot carry the 18.5 L jugs of water upstairs. Vacuuming is difficult, as she cannot carry the vacuum up or down the stairs. She breaks down daily chores to allow for resting in between – for example when cooking she will have a chair beside her to sit and rest to enable her to change positions after every 10 or 15 minutes of standing. For laundry, she has to reduce the size of loads to carry up and down the stairs. Something as simple as changing her bed causes pain, something that she previously had not experienced. Combing her hair in the shower, she finds herself having to lean against the wall of the shower after five minutes. She finds it difficult to clasp her bra at times, she has to lay down on her bed to put on her pants, and finds pain in leaning over to clip her toenails, makes this task frustrating. At times she experiences pain in her lower and mid back during a bowel movement. She cannot drive more than 30 minutes before she needs to rest and stretch. She is unable to do all the necessary upkeep of her home, including gardening, mowing the lawn, cleaning the gutters, and pressure washing the deck, siding and driveway.

She adds that she has a great network of friends and family who help whenever possible but one can only ask for so much.

### **Notice of Appeal.**

The appellant's Notice of Appeal is dated 28 November 2017[sic]. Under Reasons for Appeal she writes, "The ministry was incorrect. I am disabled, as per legislative requirements."

### **Information submitted before the hearing**

On 19 December 2018 the appellant sent the following to the Tribunal:

1. A Notice from a Health Authority to the appellant advising her she has an appointment with a physician for a consultation at a hospital pain clinic.
2. A "To whom it may concern" letter from the GP ("GP letter2") dated 17 December 2018

The GP writes:

"[The appellant] is a client with chronic back pain, who, despite numerous investigations and referrals, has made no progress. I have no further plans except for a physiatry consult.

There is no question that she has problems with activities of daily living due to pain, decreased range of movement, and exercise tolerance. She is deconditioned due to decreased physicality. Subsequently, she needs help, which she says is not available, to do housework, laundry, shopping, and mobility. Many tasks take longer to do and sometimes do not get done.

One thing I feel has been underscored is her mental health. I realize she is worried about finances and losing her house which I commented on in her application. I believe she is stuck in a helpless place and cannot move forward. I believe the depression since her injury is a major disability for her."

[REDACTED]

3. Two letters from the appellant dated 06 December 2018

In these letters, 2 and 4 handwritten pages, the appellant expands on her SR and letter to WorkSafeBC (see above). The panel notes the following additional points of clarification:

- Her chronic pain has affected her body, mind and spirit. She is merely existing and not functioning effectively. She is either in her bed or on the couch laying down most of the day due to pain. She only does what she has to do.
- She continues to move her body every day by stretching or walking for 20 minutes maximum. The 20 minutes refers to the time she goes outside, including breaks spent sitting as necessary at a nearby park.
- Her panic attacks and anxiety have escalated in the past two years. She doesn't want to leave her home and tries to avoid certain situations. She is worried constantly that she will have a panic attack. She goes out only when she absolutely has to.
- Her migraines have drastically increased in the past two years and they are incapacitating.
- Food preparation and clean up is kept simple. She doesn't cook proper meals, but makes a sandwich or boils an egg, eating raw fruits and vegetables. Having to sit and stand throughout the normal meal process is too painful. She cannot lift her crockpot, casseroles, and pots, as they are too heavy. She needs continuous assistance with cooking and clean up.
- Basic housework is not happening. Her home looks like she is a hoarder. She has exhausted any help from friends and family. Her son is the only one who has a key and he checks on her if she doesn't answer the phone. He helps when possible, which is one day per month. She needs continuous assistance with household tasks but doesn't receive it.
- Last July, she attempted to lift the base of her vacuum and ended up in the hospital. There was no fracture but her left arm was sprained and was in a sling for month. She needs to avoid all household chores that increase her pain.
- She can't make her bed properly, so she usually lies on the top of the mattress without the linens being tucked in.
- Her personal self-care has suffered significantly. She showers maybe two times per week and avoids activities that require her to bend or hold her body certain ways. She avoids wearing bras and doesn't shave her legs. Her son helps her cut her toenails. She wears a back brace doing any activity that requires movement, even driving.
- Regarding being able to sit for 20 to 25 minutes, during that time she's continuously moving her position and she will stand and then sit. This is why driving is limited to a maximum of 30 minutes and that is pushing it. If she is in the line-up at the bank for



example, she will leave if she knows the line-up will be too long, because if she takes a chair she will lose her place in line.

- Mobility in the home has drastically changed. While she is not in a wheelchair she only moves around when necessary and lies on her side throughout the day.
- Depression, anxiety and migraines have skyrocketed since her injury. This escalation makes it almost impossible to function and participate in her life. "If I did not have the Lord in my life I wouldn't be here."
- She does not know the GP very well. She does not have the same rapport with him that she had with her previous physician. She is embarrassed and ashamed to be completely truthful to him and wasn't totally honest with him about her situation and how dreadful it really is. When she was asked about DLA, she was looking at it from the perspective of not being in a wheelchair and therefore does not need to be lifted.
- She has completely isolated herself, making excuses to friends and family about spending time with them. They certainly can't come to her home.

### **The hearing**

At the hearing, the appellant covered much of the same ground as in her SR, the letter to WorkSafeBC and her letters submitted before the hearing (see above). She emphasized how her pain prevents her from carrying out even the most basic activities. For instance, this was the first day she had had a shower in five days. The pain also results in her inability to get restorative sleep – usually only 3 to 3 ½ hours per night. Her inability to function normally and sleep properly has affected her mental well being, as she struggles with depression, anxiety and panic attacks. She worries that even her cognitive functioning has also been impacted – recently she parked her car and forgot to turn it off, leaving the engine running for 20 minutes. She explained that while she needs help for her daily living, she receives very little. She acknowledged that her pride does not allow her to let others see how desperate her physical and mental situation is, and therefore she is reluctant to ask for the assistance she requires.

In answer to questions, the appellant explained that her daily 20 minute walk is something that she is not able to do every day. When she does do it, it is for therapeutic reasons, more to get out of the house and get some fresh air. Usually she walks slowly to a nearby park and then has to sit on a bench to rest.

She explained that she needs to wear a back brace to provide back support when moving about, even driving. The only time she does not wear it is when she is laying down or having a shower.

The appellant stated that she had originally arranged to have a registered psychiatric nurse complete the AR, but her GP took it upon himself to complete that section of the application without consulting her.

The ministry stood by its position at reconsideration.

**Admissibility of additional information**

The panel finds that the information provided by the appellant before the hearing, including GP letter2, and in her testimony at the hearing is in support of the information and records before the ministry at reconsideration. This information tends to substantiate the information provided by the GP in the MR, AR and his letter at reconsideration, and by the appellant in her SR and letter to WorkSafeBC. The panel therefore admits this information as evidence under section 22(4) of the *Employment Assistance Act*.

[REDACTED]

**PART F – REASONS FOR PANEL DECISION**

The issue in this appeal is whether the ministry decision that determined that the appellant did not meet three of the five statutory requirements of Section 2 of the EAPWDA for designation as a person with disabilities (PWD) is reasonably supported by the evidence or is a reasonable application of the legislation in the circumstances of the appellant. Specifically, the ministry determined that the information provided did not establish that the appellant has a severe physical or mental impairment that, in the opinion of a prescribed professional,

(i) directly and significantly restricts her ability to perform daily living activities (DLA) either continuously or periodically for extended periods; and,

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

The ministry determined that the appellant satisfied the other 2 criteria: she has reached 18 years of age; and her impairment in the opinion of a medical practitioner is likely to continue for at least 2 years.

The following section of the EAPWDA applies to this appeal:

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 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.

The following section of the EAPWDR applies to this appeal:

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.

### **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) 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).

### **Analysis**

#### **Severity of impairment**

The legislation is clear that the determination of severity of impairment is at the discretion of the minister, taking into account all of the evidence, including that of the applicant. The legislation requires that for PWD designation, the minister must be "satisfied" that the person has a severe mental or physical impairment. For the minister to be "satisfied" that the person's impairment is severe, the panel considers it reasonable for the ministry to expect that the information submitted by the independent and professional medical practitioner and prescribed professional (in this case the GP) who completes the application provides the minister with a comprehensive overview of the nature and extent of the impacts of the person's medical conditions on daily

[Redacted]

functioning. Significant weight must also be placed on the evidence of the applicant, unless there is a legitimate reason not to do so.

The diagnosis of a serious medical condition does not in itself determine PWD eligibility or establish a severe impairment. An impairment is a medical condition diagnosed by a medical practitioner (the GP) who, pursuant to section 2(a) of the EAPWDA, has confirmed that the condition will continue for at least 2 years and that results in restrictions to a person's ability to function independently, effectively, or for a reasonable duration. To assess the severity of impairment, the ministry must consider the nature of the impairment and the degree of restriction on daily functioning.

#### *Severity of physical impairment*

As understood by the panel from her testimony at the hearing, the position of the appellant is that the information provided by her GP, as further expanded and clarified in her submissions, clearly establishes that she has a severe physical impairment. Her GP has assessed her condition as severe, citing chronic pain and decreased mobility making it difficult to do most activities of daily living and her ability to get quality sleep. Her GP has also indicated that she needs an assistive device, a back brace, to compensate for her impairment. In her own submissions, the appellant has provided more detail on how her condition restricts her daily functioning to the point where there are many tasks she cannot do and as a result requires assistance from another person, help that she is not receiving.

In the reconsideration decision, the ministry found that, based on the information provided, it cannot determine that the appellant has a severe physical impairment. In reaching this conclusion, the ministry reviewed the information provided by the GP in the MR regarding basic functional skills, the AR regarding mobility and physical ability, and in the GP letter.

The ministry stated that it is important to note that the GP does not explain why the appellant went from being independent with her mobility indoors and taking longer than typical with her mobility outdoors to requiring continuous assistance from another person with mobility inside and outside of the home, noting that this is also contrary to her SR in which she states that she walks every day on level ground to a maximum of 20 minutes. The ministry found the information provided in the PWD application and additional information provided at reconsideration demonstrates that the appellant experiences limitations to her physical functioning due to chronic pain. However, the ministry determined that the assessments provided by her GP and in her SR speak to a moderate rather than a severe physical impairment.

#### Panel finding

The panel notes that the appellant's reference in the SR to a 20 minute walk every day is in the context of her being proactive with her health, moving her body every day by stretching or walking for 20 minutes max. As she explained at the hearing, she is not able to do this walk every day and when she does do it, it is for therapeutic reasons, more to get out of the house and get some fresh air. Usually she walks slowly to a nearby park and then has to sit on a bench to rest. This is not, as the ministry suggests, a daily brisk walk of 20 minutes duration.

The panel acknowledges an apparent difference in assessments between those reported by the GP in the AR (independent for walking indoors and 2 to 3 times longer for walking outdoors) and requiring continuous assistance from another person for mobility inside and outside the house as stated in the GP letter. However, these assessments must be viewed in context: in the AR, the assessments refer to a specific physical activity – walking. In the GP letter, the context is performing DLA – moving about indoors or outdoors to perform household or other tasks, such as making a bed, carrying a vacuum cleaner upstairs, taking the garbage out to the curb or mowing the lawn.

In the panel's view, reading the application together as a whole, including the GP letter and the SR and WorkSafeBC letter, the ministry has not given sufficient weight to a number of factors relating to the appellant's physical impairment:

- The GP's statement in the MR: "The condition is severe. Her pain makes it difficult to do most activities of daily living."
- The narratives in the appellant's submissions that, despite trialing numerous medications and attending a pain clinic, her condition has not improved since her accident in 2016 and she continues to suffer constant debilitating pain. As the GP writes in GP letter2, "[The appellant] is a client with chronic back pain, who, despite numerous investigations and referrals, has made no progress. I have no further plans except for a physiatry consult."
- The GP's comment in the MR that "Chronic pain impacts on ability to get quality sleep."
- The GP's comments in the AR regarding decreased range of movement due to pain for some tasks, such as for personal care (with examples given by the appellant in her SR that she has difficulty combing her hair, doing up the clasps of her bra and trimming her toenails).
- The evidence from the GP in the AR, as confirmed by the appellant in her letter to WorkSafeBC and again by the GP in his GP letter, that she wears a back brace – an assistive device to help compensate for her impairment.
- The information provided by the GP, and described in more detail by the appellant in the SR and her other submissions, that her ability to perform several DLA is restricted to the point where she requires the continuous assistance of another person

Considering how the above factors speak to the degree to which the appellant's chronic pain restricts her ability to function independently or effectively, the panel finds that the ministry was unreasonable in determining that the information provided does not establish that the appellant has severe physical impairment.

#### *Severity of mental impairment*

The position of the appellant, as explained in her discussion of her condition at the hearing, is that the information provided by the GP, as further elaborated in her submissions, amply shows that she has a severe mental impairment.

The ministry's position, as set out in the reconsideration decision, is that the information provided does not establish that the appellant has a severe mental impairment. In explaining this decision, the ministry reviewed the assessments provided by the GP in the MR, AR and GP

letter. In the MR, the GP indicated that the appellant experiences significant deficits with cognitive and emotional functioning in the areas of emotional disturbance and motor activity, and in the AR indicated that these deficits have major impacts on cognitive and emotional functioning in four areas: bodily functions, consciousness, emotion, and attention/concentration, along with one moderate and four minimal impacts in other areas. The ministry noted that GP reported no difficulties with communications. Regarding social functioning, the ministry also noted that in the AR, the GP indicated that the appellant requires periodic support/supervision with dealing appropriately with unexpected demands and securing assistance from others and that the GP reported that the appellant has marginal functioning with their immediate and extended social networks.

The ministry further noted that in the MR, the GP commented that "Chronic pain impacts on the ability to get quality sleep," and in the GP letter that he wrote that the appellant requires significant assistance from another person to manage social functioning – "isolates self – periodic."

After this review of the information, the ministry found that the information provided by the GP and in her SR does not establish that she has a severe mental impairment.

#### Panel finding

In the MR, the GP diagnosed the appellant with mood disorders and anxiety. In the GP letter he refined these diagnoses as chronic depression and anxiety and panic attacks, and in GP letter<sup>2</sup> he writes that the appellant's depression since her injury is a major disability for her. However, as noted above, the diagnosis of a serious medical condition does not in itself determine PWD eligibility or establish a severe impairment. What is key to the determination of severity of impairment is the degree to which the diagnosed medical condition restricts daily functioning.

While the appellant in her submissions and at the hearing was eloquent in describing her worries and her feelings of despair at her situation, neither she nor the GP have provided much information to explain how her mental health condition, as distinct from her severe physical impairment, has limited her daily functioning. For instance, the GP attributes her lack of sleep to the chronic pain, not to anxiety; however, little information is provided as to how the resulting chronic fatigue affects her mental functioning. As another example, while the evidence from the GP is that the appellant tends to isolate herself, the explanation offered by the appellant is that she does so because of pride and embarrassment of her physical situation. The panel also notes that the GP has not provided any narrative that would explain or describe in more detail the nature, frequency and duration of the four major impacts of the appellant's mental health condition on daily functioning (bodily functions, consciousness, emotion, and attention/concentration) and circumstances under which they occur.

Due to the lack of information on the impact of the appellant's mental health condition on daily functioning, the panel finds the ministry was reasonable in concluding that it could not determine that the appellant has a severe mental impairment.

[REDACTED]

Direct and significant restrictions in the ability to perform DLA

The position of the appellant is that the GP's assessments that she requires continuous assistance from another person for several DLA, and that she also uses a back brace to compensate for her impairment, establish that her severe impairment directly and significantly restricts her ability to perform DLA on a continuous basis, and that therefore she meets this criterion.

In the reconsideration decision, the ministry found that it was not satisfied that the appellant has a severe impairment that, in the opinion of the prescribed professional, directly and significantly restricts her ability to perform DLA continuously or periodically for extended periods. In reaching this conclusion, the ministry reviewed the information provided by the GP in the MR and AR relating to ability to perform DLA (see Part E above).

The ministry acknowledged that the appellant has certain limitations resulting from pain and decreased range of motion, and is required to break tasks down to smaller tasks. However the GP failed to describe how much longer it typically takes her to manage the DLA, as requested in the PWD application, in order to determine if they represent a significant restriction to her overall level of functioning.

The ministry then reviewed the information provided by the GP in the GP letter regarding continuous assistance from another person required for meal preparation and clean-up, personal self-care, and basic housework, and periodic help required for daily shopping. The ministry noted that the GP does not explain the reasons for the change of assessments compared to the PWD application. The PWD application showed that she was able to complete the tasks, but only needed to break them down, compared to now needing assistance from another person to manage meal preparation and clean-up, personal self-care, for basic housework, and daily shopping. On this basis, the ministry found that there is not enough information to establish a severe impairment significantly restricts daily living activities continuously or periodically for extended periods and that therefore the legislative criterion has not been met.

Panel finding

The panel notes that, according to the legislation, the direct and significant restriction in the ability to perform DLA must be the result of a severe impairment, a criterion met in this appeal. The legislation – section 2(2)(b)(i) of the EAPWDA – requires the minister to assess direct and significant restrictions to DLA in consideration of the opinion of a prescribed professional, in this case the GP. This does not mean that other evidence should not be factored in as required to provide explanation of the professional evidence, but the legislative language is clear that a prescribed professional's evidence is fundamental to the ministry's determination whether it is "satisfied." And for the minister to be "satisfied," it is reasonable for the ministry to expect that a prescribed professional provides a clear picture of the extent to which the ability to perform DLA is restricted, as assessed in terms of the nature and duration of help required, in order for the ministry to determine whether the restrictions are "significant."

In the MR, the GP indicates that he has known the appellant for six months. In the SR, the



appellant draws attention to her relationship with the GP by writing that her former family physician retired suddenly and the GP took over her caseload, and describing him as her “acting physician,” indicating a level of discomfort with him. She confirmed this in her submission before the hearing, where she wrote that she does not know the GP very well, not having the same rapport with him that she had with her previous physician and not being comfortable with a male doctor. She was embarrassed and ashamed to totally honest with him about her situation and how dreadful it really is. It was under these circumstances that the GP wrote his letter at reconsideration, where he states, upon learning of the denial of the original application, “On speaking to [the appellant] and review of her medical file, I would like to clarify information presented previously and add information not included in the original application for PWD.”

While the ministry in the reconsideration decision implies that there is a wide, unexplained change between the DLA assessments in the AR and in the GP letter, the panel considers the differences represent a different way of describing the high degree of restrictions in the appellant’s ability to perform the DLA of moving about indoors and outdoors, personal self-care, basic housekeeping and shopping. The differences can be summed up in the words of the GP in his GP letter<sup>2</sup>: “...she needs help, which she says is not available, to do housework, laundry, shopping, and mobility. Many tasks take longer to do and sometimes do not get done.”

On reading the application as a whole, the panel has the overall impression that the appellant manages to barely “get by” with her DLA requiring physical effort. She does this at some expense to her mental health: as the GP writes in the MR, “The pain has changed her outlook on all aspects of her life and she now feels she just exists because regular activities have become almost impossible to do.” She relies on a back brace whenever she has to move about, and receives little assistance from another person – her son, who visits about once per month. Without help, she skimps on some important regular needs, such as diet (sandwiches and raw fruit and vegetables instead of cooking meals), bathing (showering only once every few days), making her bed properly (being unable to tuck in the sheets), dressing (finding it too difficult to wear a bra) and housekeeping (not throwing out stuff no longer needed, so her home looks like she is a hoarder, making her embarrassed to have anyone visit).

In terms of the opinion of a prescribed professional, the GP confirmed in his GP letter the significant degree that the appellant is restricted in her ability to perform DLA. He wrote that, “The impairments [he has listed] directly and significantly restrict [the appellant’s] ability to perform daily living activities periodically and continuously and as a result of these restrictions [the appellant] requires the significant assistance of another person to perform those activities,” listing several DLA requiring continuous assistance of another person: personal self-care, meals, basic housekeeping and mobility inside and outside the home

In view of the above considerations, the panel finds the ministry was unreasonable in not determining that, in the opinion of a prescribed professional, as a direct result of the appellant’s severe physical impairment she is significantly restricted in her overall ability to perform DLA on a continuous basis.

[Redacted]

Help required

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.

Panel finding

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 panel has found that the ministry was unreasonable in not determining that as a direct result of the appellant's severe physical impairment she is significantly restricted in her overall ability to perform DLA on a continuous basis.

Further, the GP has noted in the AR and the GP letter that the appellant wears a back brace, an assistive device which the appellant explains she relies on whenever she is moving about (except in the shower), and the GP has provided assessments in the GP letter that the appellant requires the continuous assistance of another person in order to perform many of the tasks associated with the DLA of moving about indoors and outdoors, personal self care, basic housekeeping, and meal preparation.

On this basis, the panel finds that the ministry was not reasonable in determining that the appellant did not meet the help required criterion set out in section 2(2)(b)(ii) of the EAPWDA.

**Conclusion**

Based on the foregoing, the panel finds that the ministry's reconsideration decision, which determined that the appellant was not eligible for PWD designation, was not reasonably supported by the evidence. The panel therefore rescinds the ministry's decision. The appellant is thus successful on appeal.

**PART G – ORDER**

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

THE PANEL       CONFIRMS THE MINISTRY DECISION       RESCINDS THE MINISTRY DECISION

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

**LEGISLATIVE AUTHORITY FOR THE DECISION:**

*Employment and Assistance Act*

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

and

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

**PART H – SIGNATURES**

PRINT NAME

Richard Roberts

SIGNATURE OF CHAIR

DATE (YEAR/MONTH/DAY)

2018 December 31

PRINT NAME

Inge Morrissey

SIGNATURE OF MEMBER

DATE (YEAR/MONTH/DAY)

2018 December 31

PRINT NAME

Glenn Prior

SIGNATURE OF MEMBER

DATE (YEAR/MONTH/DAY)

2018 December 31