APPEAL #

PART C – Decision under Appeal

The decision under appeal is the Ministry of Social Development's (the ministry's) reconsideration decision dated December 14, 2012 which held that the appellant did not meet 3 of the 5 statutory requirements of section 2 of the Employment and Assistance for Persons with Disabilities Act for designation as a person with disabilities (PWD). The ministry found that the appellant met the age requirement and has an impairment that is likely to continue for at least 2 years. However, the ministry was not satisfied that the appellant has a severe physical or mental impairment or that 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. The ministry was also not satisfied that as a result of those restrictions, in the opinion of a prescribed professional, the appellant requires help to perform DLA.

PART D – Relevant Legislation

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

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PART E – Summary of Facts

The evidence before the ministry at reconsideration comprised:

- a PWD application which included; a Physician Report (PR) dated August 29, an Assessor Report (AR) dated September 21 and a Self Report (SR) dated July 31, 2012;
- a letter dated October 24, 2011 from an Otolaryngology, Head and Neck Surgery Specialist;
- a Medical Imaging Report dated May 18, 2012 for an X-Ray;
- a Medical Imaging Report dated August 21, 2012 for an Ultrasound;
- a Request for Reconsideration dated November 30, 2012 which included a letter from the assessor who completed the AR, and a prepared letter from the appellant's physician who completed the PR dated December 5, 2012;
- a letter dated December 4, 2012 from a Mental Health Association;
- a Mental Health and Addiction Services Client Intake Form dated November 30, 2012, and
- a Patient Medical History Report.

In the PR, the appellant is diagnosed by her physician with; poor hearing (right ear), headache, right shoulder pain, hypothyroidism and anxiety (not otherwise specified). No dates of onset were provided. Under health history, the physician states that the appellant has:

- moderate to severe hearing loss in right ear related to multiple earlier ear surgeries;
- normal hearing in left ear;
- may benefit from hearing aid;
- headache (most likely mixed type);
- responds to amitriptyline;
- right shoulder pain, clinical picture in keeping with tendinitis, ultrasound fails to show tear (mild-moderate), would limit range of movement of shoulder, would especially restrict overhead activities on affected side;
- hypothyroidism, should be asymptomatic most of the time, if optimally treated;
- anxiety and depressive symptoms not otherwise specified, formal diagnosis has not been made and patient is not on specific medication for it; and
- never been seen by the physician for primary problem of back pain.

The appellant's physician (GP) who has known the appellant since July 2010 and has seen her 11 or more times, indicates that the appellant has not been prescribed any medications and/or treatments which interfere with her ability to perform DLA and that a hearing aid is required for her impairment. Regarding Degree and Course of Impairment, the GP indicates that the impairment is likely to continue for two years or more. With respect to functional skills, the appellant can walk 4+ blocks unaided on a flat surface, climb 5+ stairs unaided, lift 5 to 15 lbs., and it is unknown how long she can remain seated. The appellant has no difficulties with communication except noted is "Some anxiety may complicate public speaking". Significant deficits with cognitive and emotional function are reported for 1 of 11 specified areas specifically; emotional disturbance with a comment, "needs further workup and possible treatment."

The GP indicates that it is unknown if the impairment directly restricts the appellant's ability to perform DLA. Under the DLA listed in the PR, the GP reports that it is unknown if 2 aspects specifically; basic housework and social functioning are restricted while indicating that the other aspects of; personal self-care, meal preparation, management of medications, daily shopping, mobility inside/outside the home, use of transportation and management of finances are not. The GP comments that "Decreased hearing will affect social functioning in some situations. Hearing aid may resolve this". The GP further indicates to see the consultation report included for additional comments regarding the degree of restriction. Additional comments from the GP indicate that he noted that the appellant has stated in the SR that anxiety affects her quality of life

and the GP suggests that she discuss a possible referral to a psychiatrist and treatment options with him.

The AR was completed by a registered nurse who has met the appellant only once for a home assessment. The appellant lives alone and noted are the following mental and physical impairments that are reported to impact her ability to manage DLA; right ear hearing loss, right arm and shoulder pain, severe headaches and back pain while walking.

In the AR, the appellant is reported to have satisfactory ability to communicate in the areas of speaking, and writing while poor ability is indicated for reading (can only read for brief periods) and hearing (right ear hearing loss). With respect to mobility and physical ability, the appellant is noted as being independent for walking indoors and taking significantly longer than typical with walking outdoors (able to walk 1 block-pain in back). Nothing noted for climbing stairs while standing (can't stand for any period of time), lifting (lifting grandchild-very difficult) and carrying and holding (unable to carry) take significantly longer than typical.

It is noted that although there is no formal diagnosis of a mental/emotional disorder, the assessor chose to report the following details. When asked to indicate whether there is no impact, a minimal impact, a moderate impact, or a major impact on the appellant's daily functioning in 14 listed areas of cognitive and emotional functioning, notes a major impact for 7 listed aspects; bodily functions, impulse control, insight and judgement, executive, motivation, other neurophysical problems and other emotional or mental problems, a moderate impact for 1 aspect; memory, a minimal impact for 3 additional aspects; consciousness, attention/concentration and motor activity and no impact for the remaining 3 areas; emotion, language and psychotic symptoms. Accompanying narrative is that the appellant's headache wakes her up 2-3 times; emotional and physical abuse- fractured upper jaw- occurred during an abusive relationship- husband was reported looking for her with a gun- she is in hiding; very emotional, fearful that he will find her and kill her; crying easily through the interview; has been in several unsafe relationships in the past and lacks interest in feeding herself and preparing food.

With respect to DLA:
Under Personal Care; the appellant is reported by the assessor to independently manage the aspects of toileting, feeding self and transfers (on/off chair) while she takes significantly longer than typical for aspects of dressing (hard to get clothes on), grooming (can't get her arm up to hair), bathing (showers every 3 days in the dark), regulate diet (poor diet habits) and transfers in/out of bed (days in bed due to nauseating headaches),
Under Basic Housekeeping; laundry is independently managed while basic housekeeping takes significantly longer than typical (takes a long time to clean a small space),
Under Shopping; the appellant requires continuous assistance from another person or unable for the aspects of going to and from stores (friend or neighbours help), reading prices and labels (can't read labels), making appropriate choices (cheapest only) and carrying purchases home (friends or neighbours) while for the aspect of paying for purchases, the appellant uses interact banking as an assistive device,
Under Meals; safe storage of food is independently managed while aspects of meal planning, food preparation (open a can if she has one) and cooking (heating can contents) take significantly longer than typical,
Under Pay Rent and Bills; the appellant requires continuous assistance from another person or unable for banking(rent paid by welfare), budgeting (limited ability) and pay rent and bills,
Under Medications; the appellant requires continuous assistance from another person or unable with filling/refilling prescriptions (close pharmacy closed, friend gets prescriptions) and taking as directed (frequently forgets) while she is independent with the aspect of safe handling and storage,
Under Transportation; the appellant requires continuous assistance from another person or unable to get in and out of a vehicle and takes significantly longer than typical using transit (difficulty with schedule and location) and using transit schedules and arranging for transportation (bus stop moved and current locations unknown).

Additional comments are: needs a partial plate on the bottom of her mouth and poor fitting upper dentures cause added difficulty with eating.

With respect to Social Functioning, the appellant is noted as requiring continuous support/supervision for appropriate social decisions (assistance from Mental Health), interacts appropriately with others (Mental Health helps out in structuring the environment) and being able to deal appropriately with unexpected demands while she is independent for being able to develop and maintain relationships and being able to secure assistance from others. Marginal functioning is noted both with the appellant's immediate social network and for her extended social network. The AR indicates that the appellant needs help with meals i.e. delivery service or homemaker and that she has 2 friends who regularly help if possible. The assessor writes that the appellant requires a vision assessment and proper glasses. "This may contribute to headaches." Also she requires a hearing assessment and hearing aid and a prescription system for medication. No assistance is provided by assistance animals.

In the SR, the appellant describes her disability as; ulcer, deaf in right ear, 3 surgeries because of tumour, migraines, torn right rotator cuff, obesity, poor eyesight (can only read for 5-10 minutes and then it feels like eyes are being pulled out of her head), thyroid imbalance, high blood pressure, lower back injury and depression.
She describes how her disability affects her life and ability to take care of herself as follows:

- breaks out in tears- embarrassing;
- takes 6 antidepressants, pain medication and meds for ulcers;
- has very disrupted sleep- wakes up every 2-3 hours;
- feels fatigued in the morning;
- can't lift right arm so washing hair takes longer and is painful (rotator cuff);
- migraines completely disable her (one in July lasted whole day);
- dressing is difficult because of bad shoulder and obesity;
- is nervous to go out because of restricted hearing- fears she won't hear danger sound;
- needs assistance with shopping because of restrictions with lifting;
- friends provide transportation and assistance to carry purchases;
- back pain and obesity limit ability to do housework;
- gets very panicky when has unexpected news;
- hates crowds;
- relies on friend to get out of the house and do things in the community;
- has had assistance to find apartment and other services from community services;
- walks slowly due to knee and back pain, needs to rest after 2 blocks;
- finds yard work very difficult because of pain;
- finds stairs difficult and must have a handrail for support;
- needs help with weight loss; and
- her memory is poor.

In a letter dated October 12, 2011 from the Otolaryngology, Head and Neck Surgery Specialist, it is confirmed that the appellant has had right-sided hearing problems for many years and has had 3 surgeries performed on her right ear in the past however; there has been no head trauma and she doesn't remember why the surgeries were performed. The specialist reports that the appellant reveals normal hearing on the left side and a "unilateral moderate to severe hearing loss" on the right side. Her mouth and oropharyngeal and neck exams were normal. The specialist recommends a hearing aid trial followed by a return visit in a few months.

The Medical Imaging Report dated May 18, 2012 for an X-Ray indicates that the reason for the exam is shoulder pain and a query for tendonitis and that the findings indicate "No significant bony or joint abnormality

is seen. Patient could not tolerate positioning for axillary view."

The Medical Imaging Report dated August 21, 2012 for an Ultrasound indicates that the reason for the exam is a 4 month right shoulder pain worsening, no trauma, query for tendinitis vs bursitis and that the findings indicate "Imaging is not optimal secondary to body habitus. I do not see any evidence of obvious rotator cuff tear. No significant abnormality is demonstrated."

In an undated submission from the assessor, she reported the following:

1. The appellant has many days when she cries all day and it is difficult to have her stop crying long enough to sign a few forms and answer a few questions. She required her friend to comb her hair and provide transportation to the pharmacy to renew her medication. She now has a referral for a Mental Health assessment.
2. Decreased vision and hearing affect the appellant's ability to interact with the world as she only goes out with her friend who helps with essentials; reading labels, carrying groceries to the car and house and taking her to the store and appointments. She lives 10 blocks from a store, has no idea where the bus stop is or its schedule.
3. It is not known how long it would take the appellant to walk 4 blocks but estimated to be 1 hour.
4. The appellant's Body Mass Index (BMI) from December 4, 2012 is 46.1 indicates severe or morbid obesity. Her excess weight affects her ability to move easily.
5. The assessor indicates that she failed to check her serious depression and anxiety that is reflected in the comments section.

In a pre-printed document comprised of 5 prepared statements to which the GP could indicate yes or no and add comments, he responded as follows:

1. Yes, the GP agrees that the appellant requires assessment for her mental health.
2. No, the GP indicates that the appellant was not prescribed Elavil 10 mg to treat depression rather for her headaches, initially and Yes that this medication is used to treat depression. Noted is that the appellant has depression and anxiety symptoms and no diagnosis as yet.
3. Yes, the GP agrees that with a BMI of 46.1, the appellant is placed in the category of severe obesity.
4. Yes, the GP agrees that the appellant is on Synthroid used to treat people with low thyroid hormone with symptoms like weight gain and lack of energy.
5. No, the GP indicates that the appellant was not taking Conversyl to treat hypertension or congestive heart failure not adequately controlled and comments that she is on Conversyl for HPT that is currently well controlled. Added is that the most limiting problem at present is her anxiety and depression.

In the letter from the Mental Health Association, it is reported that the appellant has been a client for the past 3 years and that her mental state has been extremely fragile for the entire time and when exposed to any type of stress she becomes unable to function or cope and breaks into tears.

A Mental Health and Addiction Services Client Intake Form dated November 30, 2012 from the appellant who describes her mental health problem as "anxious and crying all the time", indicates that she has sought help for her mental health when she was first on welfare as she would like to sleep and stop crying all the time. She indicates no alcohol or drugs and that nothing seems to work for her.

The Patient Medical History Report indicates the medication that had been prescribed for the appellant by her GP between June 27, 2012 and November 28, 2012.

At the hearing the appellant's advocate indicated that above noted documents were prepared by the assessor

who would also attend the hearing as a witness for the appellant.

The assessor testified as follows:

- She has 10 years' work experience with mental health in another province.
- Since August, she has seen the appellant twice a month and talks with her, weekly.
- She filled out the Mental Health and Addictions Services Client Intake Form for the appellant, who has difficulty with forms.
- She had the appellant do a self-report for mental health.
- She thinks that the appellant's medications are insufficient.
- She finds that the appellant doesn't have the will to do much and cries all the time.
- She provides the appellant with support, transportation and advocacy.

In response to questions , the appellant indicated that:

- She is housebound unless her friend takes her out.
- On days when she stays home, she passes time watching movies, on Facebook or playing computer games.
- Her friends provide transportation when she needs to go somewhere.
- She gets groceries, once a month.
- She has a huge fear of going out.
- She does not ask her friends to do anything else for her.
- Her glasses help her to see distance.
- She could not remember hurting her shoulder.
- She lives in a basement suite, with a flat entry.
- She still doesn't know where the nearest bus stop is.

A 6-page intake document dated December 20, 2012 from a mental health agency (not available at reconsideration) came about as a result of a referral from the appellant's GP and the support, accompaniment and transportation from the assessor. The document covers the appellant's background, demographics, history, health conditions, medications, risk profile, diagnosis, and substance use profile. There is no signature or qualifications indicated anywhere on the document by the intake worker.

The panel finds that the 6-page intake document from a mental health agency, the appellant's assessor's as well as the appellant's testimonies are further description of the impact of the appellant's previously diagnosed medical conditions and are thus admissible under section 22(4) of the Employment and Assistance Act as being in support of the information and records before the minister at reconsideration.

The advocate's submission is accepted as argument.

No additional evidence was provided by the ministry on appeal. The ministry had no objections to the new evidence only to remark that it did not contain a new diagnosis.

APPEAL #

PART F – Reasons for Panel Decision

The issue under appeal is whether the ministry reasonably concluded that the appellant has not met the all of the eligibility criteria for designation as a PWD because it was not satisfied that the appellant had a severe physical or mental impairment that, in the opinion of a prescribed professional, directly and significantly restricts her ability to perform DLA either continuously or periodically for extended periods resulting in the need for help to perform DLA. The ministry determined that the age requirement had been met and that the appellant has an impairment that will last for at least 2 years.

The criteria for being designated as a person with disabilities (PWD) are set out in s. 2 of the EAPWDA and s. 2 of the EAPWDR which are set out below.

2 (1) In this section:

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

"daily living activity" has the prescribed meaning;

"prescribed professional" has the prescribed meaning.

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

(a) in the opinion of a medical practitioner 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).

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 authorized under an enactment to practice the profession of

(a) medical practitioner,

(b) registered psychologist,

(c) registered nurse or registered psychiatric nurse,

(d) occupational therapist,

(e) physical therapist,

(f) social worker,

(g) chiropractor, or

(h) nurse practitioner.

Severity of Impairment

Physical Impairment

With respect to the existence of a severe physical impairment; the appellant's position is that she is morbidly obese which is confirmed by the appellant's GP and that "Morbid obesity is a severe impairment." Compounded by headaches, reduced use of right shoulder due to tendonitis, hypertension, moderate to severe hearing loss in right ear and hypothyroidism, the appellant's advocate submits that a severe physical impairment has been established.

The ministry's position is that the physician who has known the appellant since July 2010 reports that she can walk 4+ blocks unaided on a flat surface, climb 5+ stairs unaided, lift 5 to 15 lbs., and it is unknown how long she can remain seated while the assessor who had seen the appellant only once indicates she takes significantly longer with walking outdoors, and standing, lifting and carrying and holding. As no explanation is provided regarding the differences between the PR and AR, the ministry is not satisfied that the information provided is evidence of a severe physical impairment.

With respect to the appellant's physical impairment, the panel finds that a medical practitioner has diagnosed the appellant with; poor hearing (right ear), headache, right shoulder pain, hypothyroidism and anxiety. In terms of the impact that these medical conditions have on the appellant's ability to function, the panel finds that the evidence establishes that despite her morbid obesity and pain in right shoulder, knee and back, the appellant is able to maintain a reasonable level of physical function. In particular, the appellant manages walking indoors and outdoors (taking longer than typical) independently, without the daily use of any

assistance device or the assistance of another person.

Additionally, the panel finds a contrast with the reported functioning in terms of the distance the appellant can walk steps she can climb and weight she can carry between the PR and AR. The panel relies on the evidence of the appellant's GP as he has seen the appellant 11 or more times since July 2010 whereas the assessor had met the appellant only on one occasion to complete the AR. In view of the above noted evidence respecting the appellant's level of independent physical functioning, the panel finds that the ministry reasonably determined that a severe physical impairment was not established under section 2(2) of the EAPWDA.

Mental Impairment

With respect to a severe mental impairment, the appellant's position is that the PR reports significant deficits with cognitive and emotional function; specifically for emotional disturbance with a comment, "needs further workup and possible treatment." Although the anxiety and depressive symptoms had not been formally diagnosed at that time, in the questionnaire dated December 5, 2012, the GP agrees that the appellant requires a mental health assessment and further comments that, "It seems that her most limiting problem is anxiety and depression." The appellant's advocate submits that the appellant first self-referred on November 30, 2012 to mental health services because she was "anxious and crying all the time" and on December 5, 2012, the appellant's GP, in response to the questionnaire and having the new information, changed his assessment of the significance of the appellant's mental impairment.

The ministry's position is that the GP who has known the appellant since July 2010 reports that the appellant has a significant deficit with cognitive and emotional function specifically; emotional disturbance with a comment "needs further workup and possible treatment." The ministry also notes that the assessor, who has seen the appellant once, identifies that she has a major impact; to bodily functions, impulse control, insight and judgement, executive, motivation, other neurophysical problems and other emotional or mental problems; a moderate impact to memory; a minimal impact; to consciousness, attention/concentration and motor activity and no impact to language and psychotic symptoms.

The ministry notes that the GP indicates that the appellant doesn't have any difficulties with communication except; some anxiety which may complicate public speaking and that in the AR, the appellant is reported to have satisfactory ability to communicate in the areas of speaking, and writing, while poor ability is indicated for reading and hearing. The prepared letter from the assessor indicates that the appellant's decreased vision and hearing affect her ability to interact with the world and that she failed to check the appellant's status as serious depression and anxiety. Added by the appellant's physician, in the December 5, 2012 document, is that the appellant's most limiting problem at present is her anxiety and depression. The ministry concludes that the GP does agree that the appellant requires an assessment for her mental health however has not provided any information as to how her medical problems impact DLA. The ministry concludes that a severe mental impairment has not been established by the information provided in the PWD application and/or the information included with the Request for Reconsideration.

The panel finds that a significant contrast exists between the PR and AR in regards to cognitive and emotional functioning. Detailed information from the PR respecting the appellant's mental functioning is that she has 1 of 11 significant deficits with cognitive and emotional function, while in the AR; the assessor reports some degree of impact for all but 3 of 14 listed areas of cognitive and emotional functioning, including 7 aspects which are reported as having a major impact.

With respect to Social Functioning; the appellant's physician reports that it is unknown if Social functioning is

restricted with a comment that decreased hearing will affect social functioning in some situations and a hearing aid may resolve this, while in the AR; the appellant is noted as requiring continuous support/supervision for appropriate social decisions, interacts appropriately with others and being able to deal appropriately with unexpected demands while she is independent for being able to develop and maintain relationships and being able to secure assistance from others. Marginal functioning is noted both with the appellant's immediate social network and for her extended social network.

Given the information from the self- referral intake forms to 2 different mental health agencies as well as the testimonies from both the appellant and her assessor, the panel finds that the information does describe a significant deficit with cognitive and emotional function specifically; emotional disturbance as indicated in the PR. With regard to cognitive and emotional functioning, the panel finds that although major, moderate and minor impacts to the appellant's functioning are identified, there is no explanation whether the impact is episodic or varies over time other than comments such that; the appellant's headache wakes her up 2-3 times, emotional and physical abuse occurred during an abusive relationship, crying easily through the interview; has been in several unsafe relationships in the past and lacks interest in feeding herself and preparing food. The panel does acknowledge that both the appellant's physician and assessor agree that the appellant requires further mental health assessment.

In view of the above, the panel finds that the evidence does confirm that the appellant has a loss or abnormality of psychological functioning causing a restriction in the ability to function independently, effectively or appropriately which is indicative of a mental disorder. However, the panel also finds that the evidence does not provide a formal diagnosis or a prognosis for the degree and duration of the impairment and whether there are remedial treatments that may resolve or minimize the impairment. For these reasons, the panel finds that the ministry was reasonable in not being satisfied that a severe mental impairment was established under section 2(2) of the EAPWDA.

Significant Restrictions to DLA

Regarding the degree of restriction with DLA, it is the appellant's position that the weight should be put on the AR as the assessor is a prescribed professional with a long career of accessing persons with chronic illnesses. The assistance required with personal care, basic housekeeping, shopping, meals, paying rent and bills, managing medication and transportation are significant, therefore demonstrating that assistance with DLA has been demonstrated.

The ministry's position is that the information provided by the appellant's physician significantly differs from the information provided by the assessor. The ministry finds that it is unclear as to what are the appellant's impacts/restrictions to daily living activities. The ministry notes that the GP states it is unknown if the appellant is restricted with basic housework or social functioning, however indicates that the remainder of DLA are not restricted while the assessor reports that the appellant takes significantly longer to get dressed, grooming, bathing, regulate diet, transfers in/out of bed, housekeeping, meal planning, food preparation cooking, using transit using transit schedules and arranging transportation. Additionally noted is that the appellant requires continuous assistance with going to and from stores, reading prices and labels, making appropriate choices, carrying purchases home, banking, budgeting, pay rent and bills, filling/refilling prescriptions, taking medication as directed and getting in and out of a vehicle.

The ministry concludes that the evidence of the prescribed professional while indicating that the appellant's impairments impact her ability to manage some of her daily living activities, does not demonstrate that a severe mental or physical impairment significantly restricts the appellant's ability to perform DLA either continuously or periodically for extended periods.

As previously noted, the GP does not identify restrictions specific to any of the DLA defined in the legislation while in contrast, the appellant's assessor reports that the appellant takes significantly longer than typical for Personal Care aspects of dressing, grooming and bathing due to her problem shoulder, although no indication as to how much longer is stated and that basic housekeeping and certain aspects of Meals; meal planning, food preparation and cooking take significantly longer than typical, with no specific explanation. While it is indicated that the appellant needs continuous assistance to read labels and prices, the appellant has testified that she can read them for at least 5 minutes. The panel notes that the appellant's severe obesity also is restricting with getting in and out of a vehicle. The panel finds that assistance with other DLA which is confirmed by the appellant's testimony is that of support (emotional and financial), help with shopping, and transportation, as she doesn't ask her friends for any other assistance.

The panel finds that the ministry reasonably viewed the evidence as insufficient to establish significant restrictions with those DLA in light of the additional information respecting the appellant's physical functional abilities including the ability to walk 4+ blocks, climb 5+ stairs unaided and lift 5-15 lbs. Although, the panel finds that the appellant identifies some limitations in her ability to manage DLA due to pain in her shoulder and her morbid obesity, the panel also finds that the legislation requires that the minister be satisfied that as a result of a severe physical or mental impairment, a person be directly restricted in the ability to perform DLA. Therefore, the panel finds the ministry was reasonable in not being satisfied that in the opinion of a prescribed professional the appellant is directly and significantly restricted in her ability to perform DLA either continuously or periodically for extended periods under section 2(2) (b) (i) of the EAPWDA.

Help to perform DLA

Regarding the need for help with DLA, the appellant's position is that she requires the assistance of others with emotional and financial support, and transportation. The appellant's advocate indicates that the appellant also requires assistance with nutrition counseling and a weight loss program.

The ministry argues that it has not been established that DLA are significantly restricted and therefore, it cannot be determined that significant help is required from other persons.

Regarding the need for help with DLA, section 2(2) of the EAPWDA requires that the minister be satisfied that, in the opinion of a prescribed professional, a person needs help with DLA as a result of direct and significant restrictions in the ability to perform DLA that are either continuous or periodic for extended periods. Pursuant to section 2 of the EAPWDR, help is defined as a person requiring an assistive device, the significant help or supervision of another person, or the services of an assistance animal in order to perform a DLA.

While the panel finds that the evidence of the prescribed professional establishes that the appellant requires some assistance from health authority professionals and community service agencies, the panel also finds that the ministry reasonably determined that, as direct and significant restrictions in the appellant's ability to perform DLA have not been established, it cannot be determined that help is required to perform DLA as a result of direct and significant restrictions as is required by section 2(2)(b)(ii) of the EAPWDA.

The panel finds that the ministry's decision was reasonably supported by the evidence and confirms the decision.