
PART C – DECISION UNDER APPEAL

The decision under appeal is the Ministry of Social Development and Poverty Reduction (the ministry) reconsideration decision dated December 4, 2018 which found that the appellant did not meet three of the five statutory requirements of Section 2 of the *Employment and Assistance for Persons with Disabilities Act* for designation as a person with disabilities (PWD). The ministry found that the appellant met the age requirement and that her impairment is likely to continue for at least two years. However, the ministry was not satisfied the evidence establishes that:

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

PART D – RELEVANT LEGISLATION

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

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



PART E – SUMMARY OF FACTS

With the oral consent of the Appellant, a Ministry observer attended but did not participate in the hearing.

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 dated May 20, 2018, with no self-report completed, a medical report (MR) dated May 12, 2018 and an assessor report (AR) dated May 3, 2018, both completed by a general practitioner (GP) who has known the appellant since 2016 and has met with her 2 to 10 times in the past 12 months.

The evidence also included the following documents:

- 1) Letter with fax dated September 14, 2016 from a physician who is a specialist in obstetrics and gynaecology;
- 2) Surgical Operation Note dated July 21, 2017;
- 3) Medical Imaging Report dated May 1, 2018 for an X-Ray of the lumbar spine; and,
- 4) Request for Reconsideration dated November 20, 2018.

Diagnoses

In the MR, the GP diagnosed the appellant with Type 2 Diabetes Mellitus, chronic neck, shoulder, back pain, fibromyalgia syndrome, chronic fatigue syndrome, depression, and anxiety disorder. Asked to describe the appellant's mental or physical impairments that impact her ability to manage her daily living activities (DLA), the GP left this section of the AR incomplete.

Physical Impairment

In the MR and the AR, the GP reported:

- In terms of the appellant's health history, the appellant "has multiple health problems" with "chronic lower back pain aggravated by prolonged walking and standing and any lifting." She has "severe menorrhagia and dysmenorrhea due to internal fibroids, underwent hysterectomy" and "subsequently has frequent lower abdominal discomfort aggravated by prolonged walking, standing or any lifting." She also has "fatigue, general malaise, polymyalgia" and "has developed symptoms of fibromyalgia."
- The appellant does not require any prostheses or aids for her impairment.
- In terms of functional skills, the GP reported that the appellant can walk 1 to 2 blocks unaided on a flat surface, climb 5 or more steps unaided, cannot sit more than 30 minutes (less than 1 hour), and cannot do any lifting.
- The appellant is not restricted with her mobility inside and outside the home.
- In the AR, the appellant is assessed as being independent with walking indoors, walking outdoors, climbing stairs, and standing. The appellant requires continuous assistance from another person for lifting and periodic assistance from another person for carrying and holding. The GP did not add any comments.
- In the section of the AR relating to assistance provided, the GP indicated that the appellant does not require an assistive device as this section is "not applicable."

The Medical Imaging Report dated May 1, 2018 for an X-Ray of the lumbar spine indicated:

- “There is mild rotation. A 1 cm curvilinear opacity overlying the left lower quadrant is likely postoperative. There is minimal multilevel degenerative osteophytosis. The bones are intact, and the alignment and disc spaces otherwise maintained.”

In her Request for Reconsideration, the appellant wrote:

- She cannot sit or stand for longer periods of time.
- She has seen many doctors including acupuncturist but nothing works.
- After her surgery, she has noticed her legs and hands are numb. Her hands have no sensation from time to time and her shoulders hurt.

Mental Impairment

In the MR and the AR, the GP reported:

- In terms of the appellant’s health history, the appellant has “depressive illness, chronic anxiety.” The appellant “experiences family conflict which has resulted in severe depressive illness.”
- The appellant has no difficulties with communication.
- The appellant has significant deficits with her cognitive and emotional functioning in the areas of memory, emotional disturbance, motivation, and attention or sustained concentration.” The GP commented “depressive symptoms, chronic anxiety and depression affecting cognitive functions at times.”
- The appellant is periodically restricted in her social functioning, and the GP wrote that she “has symptoms of depression which can affect self confidence and social functioning.”
- In the AR, the GP indicated that the appellant has a good ability to communicate in all areas, specifically: speaking, reading, writing and hearing.
- With respect to the section of the AR relating to daily impacts to the appellant’s cognitive and emotional functioning, the GP assessed no major impacts in any area. The appellant is assessed with moderate impacts in the areas of emotion, attention/concentration and motivation. There are minimal or no impacts to the remaining 11 listed areas of functioning. The GP did not provide any comments.
- For social functioning, the appellant is assessed as independent in all areas, specifically with making appropriate social decisions, developing and maintaining relationships, interacting appropriately with others, dealing appropriately with unexpected demands, and securing assistance from others. The GP did not provide further comments.
- The appellant has good functioning in both her immediate and her extended social networks.
- Asked to describe the support/supervision required to maintain the appellant in the community, the GP left this section incomplete.

Daily Living Activities (DLA)

In the MR and the AR, the GP reported:

- The appellant has not been prescribed medication and/or treatment that interfere with her

ability to perform DLA.

- The appellant is not restricted with several DLA, specifically the personal care DLA, the meal preparation DLA, the management of medications DLA, the mobility inside and outside the home DLA, the use of transportation DLA and the management of finances DLA. The appellant is periodically restricted with the basic housework DLA, the daily shopping DLA, and her social functioning. Regarding the degree of restriction, the GP wrote that "at times her chronic fatigue, general malaise can affect her ability to perform basic housework and shopping for food."
- In the AR, the appellant is assessed as independent with all of the tasks of the personal care DLA, specifically dressing, grooming, bathing, toileting, feeding self, regulating diet, transfers in/out of bed, and transfers on/off chair.
- Regarding the DLA of basic housekeeping, the appellant requires periodic assistance with doing laundry and basic housekeeping, with no comment provided by the GP.
- For the shopping DLA, the appellant is independent with all of the tasks. Specifically, she is independent with the tasks of going to and from stores, reading prices and labels, making appropriate choices, paying for purchases, and carrying purchases home.
- Regarding the meals DLA, the appellant is independent with all of the listed tasks, specifically, meal planning, food preparation, cooking and safe storage of food.
- For the pay rent and bills DLA, the appellant is independent with all tasks, including banking and budgeting.
- Regarding the medications DLA, the appellant is independent with all of the tasks, specifically: filling/refilling prescriptions, taking as directed, with safe handling and storage.
- For the transportation DLA, the appellant is independent with the task of getting in and out of a vehicle and requires periodic assistance from another person with the tasks of using public transit and using transit schedules and arranging transportation.

Need for Help

The GP reported in the AR that the appellant receives help from family and wrote that the appellant "requires help from family members for help with transportation, basic housekeeping and shopping for food." The appellant does not require an assistive device.

Additional information

In her Notice of Appeal dated December 13, 2018, the appellant expressed her disagreement with the ministry's reconsideration decision and wrote that she believes that she is eligible for Persons With Disability designation since [her disability] has restricted and prevented her from completing her daily routine, chores, ability to prepare food at occasional times and prevents her from being mobile. She cannot stand for long periods of time and has been taking excessive amounts of medication and chiropractor sessions to treat her condition.

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

- 1) Letter dated November 1, 2018 regarding trigger point injection therapy for flare of lower back pain;
- 2) Letter dated November 21, 2018 in which a physician who is a specialist in otolaryngology, head and neck surgery referred to "intermittent discomfort" in the appellant's left ear "where she has undergone previous tympanoplasty"; and,

[REDACTED]

3) A second PWD Application comprised of the appellant's information and a self-report dated December 17, 2018, a MR and an AR dated December 16, 2018 and both completed by the GP who completed the original PWD application in May 2018. While the diagnoses are the same, there are many amendments to the GP's assessment, including:

- Whereas the GP changed his response from 'no' to 'yes,' and indicated that the appellant has been prescribed medications that interfere with her DLA. The GP noted the prescribed medications "may cause dizziness or daytime drowsiness."
- Although the GP originally indicated that the appellant could not perform any lifting and that she could not sit more than 30 minutes, the GP assessed the appellant as able to lift 2 to 7 kg (5 to 15 lbs.) and to remain seated 1 to 2 hours. No comments are added by the GP.
- While the GP originally indicated that the appellant has no difficulties with communication, the GP changed his assessment to report that the appellant has cognitive difficulties with communication and the GP noted "mild dementia."
- The GP added an assessment that the appellant also has a significant deficit in cognitive and emotional functioning in the area of psychotic symptoms and the GP wrote: "unable to focus on job at times."
- Whereas the GP originally indicated that the appellant has a good ability to communicate in all areas, the GP changed his assessment to report that the appellant has a poor ability to communicate in all areas, specifically speaking, reading, writing and hearing. The GP did not provide comments to explain or describe.
- For the task of carrying and holding, the GP originally reported that the appellant requires periodic assistance from another person, the GP changed the assessment to a requirement for continuous assistance from another person. The GP wrote: "has difficulty performing these functions because of chronic fatigue and polymyalgia."
- With respect to the appellant's cognitive and emotional functioning, the assessment of the impact in the area of bodily functions changed from no impact to moderate impact. For consciousness, the assessment changed from no impact to moderate impact. The assessment for the area of impulse control changed from no impact to minimal impact. For insight and judgment, the assessment changed from no impact to minimal impact. The assessment for the area of attention and concentration changed from moderate impact to major impact. For the executive area, the assessment changed from minimal impact to major impact, The assessment for memory changed from minimal impact to major impact. The assessment for the area of motivation changed from moderate impact to major impact. For motor activity, the assessment changed from no impact to major impact. The assessment in the area of language changed from no impact to moderate impact. The assessments in the areas of psychotic symptoms, other neuropsychological problems and other emotional or mental problems changed from no impact to minimal impacts. The GP did not provide comments to explain these amendments.
- For the shopping DLA, the assessment changed from independent with all tasks to requiring periodic assistance from another person with the tasks of reading prices

and labels and paying for purchases, and continuous assistance from another person with making appropriate choices and carrying purchases home. The GP wrote that the appellant "has difficulty performing all the activities of daily living because of her fibromyalgia, depression and chronic fatigue. Requires help from family members with some of her activities of daily living."

- With respect to the pay rent and bills DLA, the assessment changed from independence with all tasks to taking significantly longer than typical with all tasks.
- For the medications DLA, the assessment changed from independence with all tasks to requiring continuous assistance from another person with all tasks.
- The GP provided additional comments that the appellant "consults her family or friends for most of her daily activities. She appears to be mentally confused and depressed."
- For social functioning, the GP originally assessed the appellant as independent in all 5 areas and as having good functioning in both her immediate and extended social networks. The GP' assessment changed to the need for continuous support/supervision in all 5 areas and as having very disrupted functioning in her immediate social networks (aggression or abuse; major withdrawn; often rejected by others) and very disrupted functioning in her extended social networks (overly disruptive behavior; major social isolation).

At the hearing, the appellant stated:

- Every time she receives a letter from the ministry, she takes it to a settlement counselor who helps her understand the information and decide what to do next. They suggested that she have another application prepared for the ministry. She does not understand English and this makes the process difficult.
- When she wakes up in the morning, sometimes she cannot get up because her hands are numb. Her left hand is not working very well. Her left thumb is stiff and if it bends at the digit it will not get better. Her other hand is working a little.
- The pain starts in her lower back and then goes all the way up to the bottom of her neck at the back. There is a bone in her neck and it gets swollen there. There is also pain in her leg and she believes that the nerve has been pinched since she had surgery.
- The side of her leg is sore. She goes to the hot tub and the steam room to warm up her body. She does not know how to swim but she does exercises in the water because she can move her legs and arms in the water. Although she does these things, it is very hard on her. She has no help.
- When she was healthy, she was never tired of working. But now, she does not know if she is going to live or not.
- For her daily living activities, she cannot wear tight clothes, she cannot dress herself. She only does her hair after 2 to 3 days and is hard for her.
- She goes to the gym and sits in the hot tub and takes a bath and her body warms up. She does not take a bath at home. She takes a shower at home when she wakes up because her body goes numb.
- She can feed herself.
- She takes time getting out of bed and she does this slowly.
- Sitting is not a problem, but it is difficult when she needs to get out of a chair.
- The children do the laundry. Everyone does their own laundry. She does not have many

clothes.

- Her home is small. The children live upstairs and her space is very small. She does not have to do much housekeeping.
- When she is suffering more, on bad days, she does not go to the stores. Since they moved, she only goes to a couple of stores and she only buys what is cheap. She does not carry things. She pays for her purchase.
- She usually makes soup and the children bring food from outside. Although she used to work as a cook, she has to prepare food with one hand, which is hard. She usually makes small portions.
- She only goes to the bank about every 2 weeks, when she gets bills.
- She gets her prescriptions refilled and takes the medication as directed by her doctor. She gets them in a bubble pack.
- She has no problem getting in and out of a vehicle but is a little slow.
- She uses public transit but does not know the schedules. She does not know how to use a smart phone so if she sees someone at the stop checking their phone for the schedule, she will sometimes ask when the bus is scheduled to arrive.
- When the pain increases, she gets upset and starts thinking about who will take care of her. Sometimes she will take a nap. If nobody is at home, she weeps and cries loudly and that makes her feel better.
- At night, she has to put a heating pad on to help her get to sleep because the pain in her back and neck bother her so much.
- She has gone through 9 different surgeries and it seems like there is no strength left in her body. Her whole back hurts and she would like to work but she cannot do it anymore. She cannot sit or stand too long.
- For the trigger point injection therapy, there are needles given in different places, in her lower back and her right shoulder. She told the therapist that it was not working. He treated her for 6 ½ months and only made her condition worse.
- She went to another therapist who does acupuncture, and he applied cups and this therapy allowed her to move a little bit.
- The GP is her family doctor. He took the application form and completed the reports later when he had time. The GP speaks her language and has someone else in his office that can also help with language translation.

The ministry relied on the reconsideration decision as summarized at the hearing. At the hearing, the ministry clarified that if the appellant is not successful with her appeal, she is able to apply to the ministry again for PWD designation.

Admissibility of Additional Information

The ministry objected to the admissibility of the second PWD application completed in December 2018 on the basis that the ministry did not have an opportunity to consider this new application. The ministry did not object to the admissibility of the letters dated November 1 and November 21, 2018. The panel considered the letter dated November 1, 2018, which referred to therapy for the flare of lower back pain, 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*.

The panel considered the new self report, MR and AR as a package composing a second PWD application that was not before the ministry at reconsideration and which the ministry had not yet had an opportunity to consider. The panel did not admit the second PWD application of December 2018 as the GP's assessment of the appellant's mental and physical functioning had changed in many respects since May 2018, as detailed above, to the extent that the reports do not tend to corroborate but, rather, contradict the information and records before the ministry at reconsideration. As well, the letter dated November 21, 2018 referred to investigation of discomfort in the appellant's left ear, which was not a condition raised at reconsideration and, therefore, was not in support of information before the ministry at reconsideration. Therefore, the second PWD application and the letter dated November 21, 2018 do not meet the requirements of Section 22(4)(b) of the *Employment and Assistance Act*.



PART F – REASONS FOR PANEL DECISION

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

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

Persons with disabilities

2 (1) In this section:

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

"daily living activity" has the prescribed meaning;

"prescribed professional" has the prescribed meaning.

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

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

(b) in the opinion of a prescribed professional

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

(A) continuously, or

(B) periodically for extended periods, and

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

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

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

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

(i) an assistive device,

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

(iii) the services of an assistance animal.

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

The EAPWDR provides as follows:

Definitions for Act

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

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

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

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

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

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

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

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

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

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

if qualifications in psychology are a condition of such employment.

Part 1.1 — Persons with Disabilities

Alternative grounds for designation under section 2 of Act

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

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

Severe Physical Impairment

In the reconsideration decision, the ministry was not satisfied that the information provided establishes a severe physical impairment. The ministry acknowledged that the appellant was diagnosed by the GP with Type 2 Diabetes Mellitus, chronic neck, shoulder, and back pain, as well as fibromyalgia syndrome and chronic fatigue syndrome. The GP wrote in the MR that the appellant "has multiple health problems" with "chronic lower back pain aggravated by prolonged walking and standing and any lifting." The ministry considered that, according to the Medical Imaging Report dated May 1, 2018, an X-Ray of the appellant's lumbar spine showed "mild rotation" and "minimal" multilevel degenerative osteophytosis and that "the bones are intact, and the alignment and disc spaces otherwise maintained."

The GP wrote in the MR that the appellant has "severe menorrhagia and dysmenorrhea due to internal fibroids, underwent hysterectomy" and "subsequently has frequent lower abdominal discomfort aggravated by prolonged walking, standing or any lifting." The GP commented that the appellant also has "fatigue, general malaise, polymyalgia" and "has developed symptoms of fibromyalgia" and that her several health problems "have prevented from any gainful employment." At the hearing, the appellant stated that she has gone through 9 different surgeries and it seems like there is no strength left in her body. The appellant stated that her whole back hurts and she would like to work but she cannot do it anymore as she cannot sit or stand for too long. The panel finds that the ministry reasonably determined that employability, or the appellant's ability to work, is not a criterion in section 2(2) of the EAPWDA nor is it listed among the prescribed DLA in section 2 of the EAPWDR.

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 considered that the GP reported in the MR that the appellant is able to walk 1 to 2 blocks unaided on a flat surface, she can climb 5 or more steps unaided, cannot remain seated longer than 30 minutes, and cannot perform any lifting. At the hearing, the appellant clarified that "sitting is not a problem," but it is difficult for her when she needs to get out of a chair. The GP also reported in the MR that the appellant is not restricted with her mobility inside and outside the home. In the AR, the appellant is assessed by the GP as being independent with walking indoors, walking outdoors, climbing stairs, and standing.

The GP assessed the appellant as requiring continuous assistance from another person for lifting and periodic assistance from another person for carrying and holding. The ministry reasonably considered that the GP also reported that the appellant is capable of performing tasks of DLA that require the appellant to lift at least small amounts of weight, especially for cooking and food preparation. In the AR, the GP assessed the appellant as independent with the tasks of carrying purchases home when shopping and with food preparation and cooking. At the hearing, the appellant stated that she does not carry things when shopping, but that she does make soup and has to prepare food with one hand, which is hard, so she usually makes small portions. The appellant clarified that her left hand is not working very well, that her left thumb is stiff and if it bends at the digit it will not get better and her other hand is working "a little." In her Request for Reconsideration, the appellant wrote that after her surgery, she has noticed her legs and hands are numb. Her hands have no sensation from time to time and her shoulders hurt. Although the GP did not provide any comments to specify the periodic nature of the appellant's restrictions to carrying and holding, the ministry reasonably considered that the appellant can carry and hold small amounts 'at times' as required for performing some tasks of DLA.

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

Given the GP's assessment of physical functioning in the moderate range of functional skills limitations, with the exception of lifting, and with evidence that the appellant is capable of lifting small amounts to perform tasks of DLA, the panel finds that the ministry reasonably determined

that the evidence is not sufficient to establish that the appellant has a severe physical impairment under Section 2(2) of the EAPWDA.

Severe Mental Impairment

In the reconsideration decision, the ministry was not satisfied that the information provided was sufficient evidence of a severe mental impairment. The ministry wrote that the GP reported in the MR that the appellant has been diagnosed with depression and anxiety disorder and the GP commented that the appellant has "depressive illness, chronic anxiety" and she "experiences family conflict which has resulted in severe depressive illness." The GP reported in the MR that the appellant has significant deficits with her cognitive and emotional functioning in the areas of memory, emotional disturbance, motivation, and attention or sustained concentration. The GP commented "depressive symptoms, chronic anxiety and depression affecting cognitive functions at times." The ministry reasonably considered that, in assessing daily impacts to the appellant's cognitive and emotional functioning, the GP reported no major impacts. The GP indicated moderate impacts in the areas of memory, emotion, and attention/concentration, and a minimal impact in the area of memory. In her Request for Reconsideration the appellant did not discuss impacts from her mental impairment. At the hearing, she stated that when the physical pain increases, she gets upset and starts thinking about who will take care of her. Sometimes she will take a nap, but if nobody is at home, she weeps and cries loudly and that makes her feel better.

Considering the two "social functioning" DLA, as set out in Section 2(1)(b) of the EAPWDR, that are specific to mental impairment – make decisions about personal activities, care or finances (decision making), and relate to, communicate or interact with others effectively (relate effectively), the panel finds that the ministry reasonably concluded that there is insufficient evidence to establish that the appellant is significantly restricted in either. Regarding the 'decision making' DLA, the GP reported in the AR that the appellant independently manages most of the decision-making components of DLA, specifically: 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 medications (taking as directed and safe handling and storage). While the GP indicated that the appellant requires periodic assistance from another person with decision making component of the transportation DLA (using transit schedules and arranging transportation), the GP provided no comments to indicate how often this assistance is required. The appellant stated at the hearing that she uses public transit but does not know the schedules and she does not know how to use a smart phone. The appellant clarified that if she sees someone at the bus stop checking their phone for the schedule, she will sometimes ask when the bus is scheduled to arrive. In the AR, the GP assessed the appellant as independent with making appropriate social decisions.

Regarding the DLA of 'relating effectively', the GP reported in the AR, that the appellant is independent with developing and maintaining relationships and with interacting appropriately

with others. When asked to describe the support/supervision required to maintain the appellant in the community, the GP left this section incomplete. The ministry considered that while the GP indicated that the appellant is periodically restricted in her social functioning and wrote that the appellant "has symptoms of depression which can affect self confidence and social functioning," the GP also assessed the appellant with good functioning in both her immediate and her extended social networks. At the hearing, the appellant stated that she does not understand English and this makes everything difficult for her. In the MR, the GP assessed the appellant as having no difficulties with communication and, in the AR, as having a good ability to communicate in all areas, specifically: speaking, reading, writing and hearing.

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

Restrictions in the ability to perform DLA

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

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

In the reconsideration decision, the ministry was not satisfied that the appellant has a severe physical or mental impairment that, in the opinion of the prescribed professional, directly and significantly restricts DLA either continuously or periodically for extended periods of time. The ministry considered that the GP reported in the MR that the appellant is not restricted with most of her DLA, specifically the personal care DLA, the meal preparation DLA, the management of medications DLA, the mobility inside and outside the home DLA, the use of transportation DLA and the management of finances DLA. In her Notice of Appeal dated December 13, 2018, the appellant wrote that she believes that she is eligible for PWD designation since her disability has prevented her from completing her daily routine, chores, ability to prepare food at

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occasional times and prevents her from being mobile. The ministry wrote that although the GP indicated that the appellant is periodically restricted with the basic housework DLA and the daily shopping DLA, the GP's comments regarding the degree of restriction that "at times her chronic fatigue, general malaise can affect her ability to perform basic housework and shopping for food" is not sufficient to allow the ministry to determine that the restriction occurs periodically for extended periods of time. At the hearing, the appellant stated that when she is suffering more, on "bad days," she does not go to the stores but when she does go, it is only to a couple of stores. The ministry also considered that the GP indicated in the AR that the appellant is independent in performing all of the tasks of the shopping DLA, including the task of carrying purchases home, and this is not consistent with his assessment in the MR of periodic restrictions with the shopping DLA. The GP consistently reported that the appellant is not restricted with her mobility and is independent with moving about indoors and outdoors.

The ministry reviewed the information in the AR and wrote that the GP's assessment indicated that the appellant is independent in almost all of her [tasks of] DLA, with the exception of the tasks of the basic housekeeping DLA (including laundry) and tasks of the transportation DLA (using public transit and using transit schedules and arranging transportation), for which she requires periodic assistance from another person. The absence of comments by the GP makes it difficult for the ministry to determine that the periodic assistance is required for extended periods of time. The ministry wrote that the evidence does not necessarily establish that assistance is required as a result of the impairment and, rather, suggests that it is in the nature of the duty of family members/friends to help each other when in need. At the hearing, the appellant stated that the children do the laundry, that everyone does their own laundry, and she does not have many clothes. The appellant stated that her home is small and, therefore, she does not have to do much housekeeping.

Given the GP's assessment of independence with all but three of the tasks of DLA and the lack of sufficient information regarding the frequency of flares to the appellant's condition in order to establish that periodic assistance is required for extended periods, as well as insufficient evidence of significant impacts to the two social functioning DLA that are specific to a mental impairment, the panel finds that the ministry reasonably concluded that the evidence is insufficient to show that the appellant's overall ability to perform her DLA is significantly restricted either continuously or periodically for extended periods, pursuant to Section 2(2)(b)(i) of the EAPWDA.

Help to perform DLA

In the reconsideration decision, the ministry held that, as it has not been established that DLA are significantly restricted, it cannot be determined that significant help is required. Section 2(2)(b)(ii) of the EAPWDA requires that, as a result of being directly and significantly restricted in the ability to perform DLA either continuously or periodically for extended periods, a person must also require help to perform those activities. That is, the establishment of direct and

significant restrictions under section 2(2)(b)(i) is a precondition of meeting the need for help criterion. Help is defined in subsection (3) as the requirement for an assistive device, the significant help or supervision of another person, or the services of an assistance animal in order to perform a DLA.

The GP reported in the AR that the appellant receives help from family and wrote that the appellant "requires help from family members for help with transportation, basic housekeeping and shopping for food." The GP also reported that the appellant does not require an assistive device. As the ministry reasonably determined that direct and significant restrictions in the appellant's ability to perform DLA have not been established, the panel finds that the ministry also reasonably concluded that, under section 2(2)(b)(ii) of the EAPWDA, it cannot be determined that the appellant requires help to perform DLA.

Conclusion

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

PART G – ORDER	
THE PANEL DECISION IS: (Check one) <input checked="" type="checkbox"/> UNANIMOUS <input type="checkbox"/> BY MAJORITY	
THE PANEL <input checked="" type="checkbox"/> CONFIRMS THE MINISTRY DECISION <input type="checkbox"/> RESCINDS THE MINISTRY DECISION If the ministry decision is rescinded, is the panel decision referred back to the Minister for a decision as to amount? <input type="checkbox"/> Yes <input type="checkbox"/> No	
LEGISLATIVE AUTHORITY FOR THE DECISION: <i>Employment and Assistance Act</i> Section 24(1)(a) <input checked="" type="checkbox"/> or Section 24(1)(b) <input type="checkbox"/> and Section 24(2)(a) <input checked="" type="checkbox"/> or Section 24(2)(b) <input type="checkbox"/>	

PART H – SIGNATURES	
PRINT NAME S. Walters	
SIGNATURE OF CHAIR	DATE (YEAR/MONTH/DAY) 2019-01-15

PRINT NAME Kim Read	
SIGNATURE OF MEMBER	DATE (YEAR/MONTH/DAY) 2019-01-15
PRINT NAME Roy Wares	
SIGNATURE OF MEMBER	DATE (YEAR/MONTH/DAY) 2019-01-15