



**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 30 January 2019 that denied the appellant designation as a person with disabilities (PWD). The ministry determined that the appellant did not meet all of the required criteria for PWD designation set out in section 2 of the *Employment and Assistance for Persons with Disabilities Act*. 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.

[Redacted]

## PART E – SUMMARY OF FACTS

The evidence before the ministry at reconsideration consisted of the following:

1. The appellant's PWD Designation Application dated 13 September 2018. The Application contained:
  - A Self Report (SR).
  - A Medical Report (MR) dated 17 September 2018, completed by a specialist in endocrinology ("the specialist") who has known the appellant for 3 years and indicates that he has seen her 2-10 times in the past year.
  - An Assessor Report (AR1) dated 17 October 2018, only minimally completed by the specialist
  - An Assessor Report (AR2) dated 16 January 2019, completed by a registered social worker (SW) in private practice who had met the appellant once for an interview.
2. The appellant's Request for Reconsideration dated 18 January 2019, putting AR2 before the ministry

In the MR, the specialist provides the following diagnoses related to the appellant's impairment: Type 1 Diabetes (onset 2011), Depression (onset unknown), and Anxiety (onset unknown).

In AR 2, the SW describes the appellant's impairment as follows: Diabetes Type 1, insulin dependent since age 16, Anxiety, Depression, IBS and hormonal imbalance.

From the Record, it appears that the application was submitted to the ministry for adjudication with parts of the MR not completed and the AR not completed at all. Subsequently, when requested by the ministry, the specialist made some additions to the MR, but provided only commentary in the AR (AR1), with the top of most pages showing: "Not applicable [name of appellant]." At reconsideration, the appellant submitted a new AR (AR2) completed by the SW, with information sources given as an office interview with the appellant, other assessments ("Physician") and other professionals (an advocate).

The panel will first summarize the evidence from the MR, the commentary from AR1, and the detailed assessments set out AR2 as these relate to the PWD criteria at issue in this appeal.

### Severity/health history

#### *Physical impairment*

MR:

Under Health History, the specialist writes:

"[The patient] has extremely brittle type I diabetes with severe glycemic fluctuations, frequently hypoglycaemic reactions and overall poor glucose control as shown by elevated A1C of 8.6.

This condition is both aggravated by, & aggravates her anxiety and depression.

To try to stabilize her diabetes, it is essential to remove as much external stress as possible by allowing her to focus on her disease. In view of her multiple medical conditions, I believe that the stress of the job would adversely affect her health to a high degree.

Therefore I consider her to be completely disabled at this time from the combination of her

diabetes, depression & anxiety.”

Under Additional Comments, the specialist writes:

“While many patients with this Type 1 can work, some are so brittle that work is not advisable. Depression & anxiety aggravate this. I hope that she can become stabilized over [the] 2 yrs. & be able to return to work. She is most likely to be [illegible] if she doesn’t need to work at this time.”

Regarding functional skills, the specialist reports: “Unknown” for how far the appellant can walk unaided on a flat surface; for how many stairs she can climb unaided; for her lifting ability; and for how long she can remain seated.

The specialist indicates that the appellant has not been prescribed any medication and/or treatments that interfere with her ability to perform DLA. He explains that the medication/treatment is expected to last indefinitely, commenting, “It is possible that the severity will change in the future such that she may be able to work. This is most likely if she can be given time now off work to stabilize her conditions.”

AR1:

Under Additional Information, the specialist writes:

“I am recommending the applicant is considered designated on the basis of type I diabetes + mood disorder + family stress. The most immediate threat to her health is her brittle poorly controlled type I diabetes with unpredictable wide swings in glucose, both high and low. Her ability to manage her disease would be greatly improved if the other stressors in her life were minimized, including her financial stability. At present her disease makes her unable to hold any type of job. I hope, but cannot be certain, that after a period of stability, it may be possible for her to return to work.”

AR2:

Under Mobility and Physical Ability, the SW provides the following assessments (her comments in parentheses):

Continuous assistance from another person or unable, and takes significantly longer than typical for walking indoors (3x longer [due] to physical and mh), walking indoors (3x longer and needs someone with her), climbing stairs (3x longer and handrail), standing (3x longer and uses furniture – dizzy), lifting (needs ongoing assistance), and carrying and holding (needs ongoing assistance).

The SW further comments:

“brittle diabetic with frequent episodes of extreme high and low blood sugars throughout day = dizziness, fatigue, disorientation. Hospital many x.”

### *Mental impairment*

MR:

The specialist provides no assessment as to any difficulties with communication.

The specialist indicates that the appellant has a significant deficit with cognitive and emotional

function in the area of emotional disturbance, commenting, "Depression is one of her diagnoses."

AR2:

The SW assesses the appellant's ability to communicate as poor-satisfactory for speaking (loses train of thought and lacks focus), poor for reading (lacks focus and concentration), poor for writing, and good for hearing.

The SW assesses how the appellant's mental impairment impacts her daily functioning as follows:

Major impact: bodily functions, consciousness, emotion, impulse control, insight and judgment, attention/concentration, executive, memory, motivation, motor activity, and language.

Moderate impact: none.

Minimal impact: none.

No impact: psychotic symptoms, other neuropsychological problems, and other emotional or mental problems.

The SW comments:

" [The appellant] has tried a pump for her diabetes but had a DKA event. She has anxiety about her health, particularly since she now has a baby. Her anxiety and depression (her husband left her this summer) affect her ability to focus, plan, make decisions. She has avoiding behaviour, lacks motivation due to mood and has checking behaviour which can paralyze her from activities. [She] will sometimes call her step-mother repeatedly until she comes home as she is convinced something has happened to her. Her hormone imbalance with her menstruation can create additional mood and focus/concentration, confusion problems with blood sugars. IBS symptoms due to anxiety mean she is more isolated, needing to be near a bathroom at these times."

### Ability to perform DLA

MR:

The specialist does not provide any information regarding the appellant's ability to perform DLA.

AR2:

The SW provides the following assessments of the assistance the appellant requires in performing DLA (for brevity, only the most salient of the SW's comments in parenthesis):

- Personal care – continuous assistance from another person or unable and takes significantly longer than typical for dressing, grooming, bathing, toileting, and regulating diet (frequent ups/downs with blood sugars; [appellant] needs supervision from her father/stepmother to ensure she is conscious and able to care for her daughter); continuous assistance from another person or unable for feeding self; periodic assistance from another person and take significantly longer than typical for transfers in/out of bed and transfers on/off of chair.
- Basic housekeeping – continuous assistance from another person or unable and take significantly longer than typical for laundry and basic housekeeping (needs ongoing

help).

- Shopping – continuous assistance from another person or unable and takes significantly longer than typical for going to and from stores, reading prices and labels, making appropriate choices, paying for purchases, and carrying purchases home (stepmother shops).
- Meals – continuous assistance from another person or unable and take significantly longer than typical for meal planning, food preparation, and cooking (needs ongoing help); periodic assistance from another person for safe storage of food (reminders).
- Pay rent and bills – periodic assistance from another person and take significantly longer than typical for banking, budgeting, and paying rent and bills (poor executive functions).
- Medications – periodic assistance from another person and takes significantly longer than typical for filling/refilling prescriptions and taking as directed (checks sugars all day long as it is life-threatening not to); independent for safe handling and storage.
- Transportation – takes significantly longer than typical for getting in and out of the vehicle (has a restricted driver's license); uses an assistive device and take significantly longer than typical for using public transit ([uses glucometer] can only drive if her blood sugar levels are above 7); independent for using transit schedules and arranging transportation (gets rides).

The SW comments:

“[The appellant] avoids social situations as she feels anxious and cannot wait in line. She also has worries about banking as she cannot recall details, has difficulty planning/organizing. Her motivation/negative self worth affects her ability to do these tasks and without support she would not. She has hormonal imbalance with menstruation which affects blood sugars and can take up to a week to control. This results in extreme vomiting, diarrhea, and dizziness. She has many symptoms of anxiety including checking, racing heart, palpitations and dizziness.”

And

“[The appellant] has [had] numerous hospital visits because of her blood sugar control and her symptoms related to anxiety/depression and hormonal imbalance during menstruation. She has support and assistance on a regular basis from her parents and a friend who lives nearby and who supports her emotionally and does child care/drives her to medical [appointments] and hospital when needed.”

As to social functioning, the SW assesses the appellant as requiring continuous assistance from another person or unable as follows:

- Making appropriate social decisions (panic episodes/no judgment/checking)
- Ability to develop and maintain relationships (isolated due to medical/psychiatric issues)
- Interacting appropriately with others (generalized anxiety disorder/depression)
- Ability to deal appropriately with unexpected demands (low stress tolerance/overwhelmed/anxious)
- Ability to secure assistance from others (family/friend helper access support)

[Redacted]

Help provided/required

MR:

The specialist does not indicate whether the appellant requires any prostheses or aids to compensate for her impairment.

AR2:

The SW indicates that the appellant requires the use of a glucometer.

The SW indicates that the appellant does not have an assistance animal.

The SW indicates that assistance is provided by family and friends. She comments, “[The appellant’s] father, step-mother and friend are main and major supports to her for her own personal care, daily activities and child care when needed.

Additional child care support may be helpful so that [the appellant] can attend the Mental Health appointments and group [location] Mental Health

**Self Report**

In her self-report, the appellant describes her disability as Type I Diabetes, diagnosed in September 2011. She writes:

“This type of diabetes cannot be managed by diet, exercise, etc. I am required to carry around glucometer, blood sugar tester and insulin at all times. This disability cannot be cured and negatively impacts every second of my life. Hypoglycemia and hyperglycemia fluctuate on a constant basis. Due to the nature of this disease it leaves me unable to do a lot of jobs that require physical activity.

If my blood sugar is at a “normal” range, it will very quickly go low if I do any sort of activity. After a low blood sugar it is very hard to concentrate and feel normal. Sometimes this can go on for several hours.

If my blood sugar is too high, it requires quite a bit of insulin to bring it back down. My high blood sugar has caused me to end up in the hospital many times due to infections & emotional stress. I’ve stayed overnight in the ICU due to DKA [diabetic ketoacidosis]. Quite often my sugars get uncontrollable and the only thing that will help is going to the hospital and getting IV fluids and IV insulin to control the bad episodes.

Before driving I always have to make sure my sugars are above 7mmls, as well as before bed. During my day I frequently need to eat in order for my sugars to stay level. A few times with this disease I have gone so low I need sugar to wake me up. My parents frequently check in on me to make sure I’m maintaining good sugars. Emotionally, Type I drains a lot of emotions because you can never not think about having this disease. I cannot always go for a walk or drive to the grocery store because my sugars are too low. Diabetes quite often contributes to my anxiety and distress it brings to my everyday life.”

**Notice of Appeal**

In her Notice of Appeal, dated 04 February 2019, the appellant gives as her reasons for appeal:

“The ministry states I do not have a physical or mental disorder/disability that affects my

everyday life. I do have type I diabetes, anxiety and depression that greatly affect my everyday life. I would like a tribunal.”

**The hearing**

The appellant did not attend the hearing. After confirming that the appellant was notified of the hearing, the hearing proceeded in accordance with section 86(b) of the Employment and Assistance Regulation.

The ministry stood by its position at reconsideration.

[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**

#### Weight of evidence

In its decision regarding severity of mental and physical impairment and significant restrictions to DLA, the ministry gave more weight to the information provided by the specialist in the MR and AR1. In other words, the ministry placed little or no weight on the information provided by the SW in AR2.

#### *AR2 vs. MR and AR1*

For severity of physical impairment, the ministry gave the following reasons for giving more

[Redacted]

weight to the information provided by the specialist:

“While information provided by [the SW] indicates significant restrictions in all of your mobility and physical abilities, the ministry notes that [the SW] met with you once in order to complete the PWD application; it is not clear what assessments were conducted in this one meeting to confirm such a high degree of restriction. Further, your physician, whom you have been a patient of for three years, labelled your physical functioning abilities as “unknown” and “not applicable.”

Due to the contradictions between these reports [AR2 and those in the original application], the ministry finds that insufficient information has been provided to establish the degree to which you are impaired by your medical conditions.

Therefore, the ministry determines that, based on the information provided in your original application and request for reconsideration, a severe physical impairment to your physical functioning has not been established.”

For severity of mental impairment, the following:

“It is difficult to establish a severe impairment to your mental functioning on the basis of the information submitted. Because you have met with your Endocrinologist 2-10 times in the past year, and have been his patient for 3 years, more weight was given to the report of [the specialist].

Therefore, based on the information provided, a severe impairment to your mental functioning cannot be established.”

And for significant restrictions to DLA, the following:

“However, as this same degree of restriction was not the reported by [the specialist], who has been your physician for three years, the ministry is not able to confirm the restrictions reported by [the SW].

With all the information considered, the minister cannot establish that your daily living activities are directly and significantly restricted continuously or periodically for extended periods.”

In the panel’s view, it is important to recognize the context within which the specialist completed the MR and AR1. While the specialist provided diagnoses of the appellant’s medical conditions and confirmed that her impairments would continue for 2 years, he took it upon himself to use the MR and AR as a vehicle to put before the ministry, in several narrative sections, the proposition that the appellant be granted PWD designation, and the financial support that goes with it, because her type I diabetes and mental health conditions preclude employment: “Her ability to manage her disease would be greatly improved if the other stressors in her life were minimized, including her financial stability. At present her disease makes her unable to hold any type of job.”

In putting forward this proposition, the specialist did not follow the ministry’s instructions set out in the opening page of the MR: “The emphasis is on how the medical conditions and impairment

affect the Applicant's ability to perform Daily Living Activities as defined in the [EAPWDR]." Instead, in completing the reports, the specialist, relying on his view of the logic of his proposition, avoided providing any assessments on the appellant's abilities. At first, he submitted the application without completing the AR. When the ministry contacted him advising that the AR must be completed, he returned it without any assessments, adding only a reiteration of his proposition under Additional Comments. When the ministry contacted him again requesting that the information under Functional Skills in the MR be filled out, he complied only by indicating "Unknown" against the physical skills (walking, climbing stairs, etc.), with no assessment for difficulties with communication. At some point, "Not applicable [appellant's name]" was added to the top of the pages of the AR.

From this material provided by the specialist, it is clear that he had no intention of providing any assessments on the appellant's abilities that would be useful for the ministry to apply the severity of impairment/significant restrictions in DLA criteria.

Consider a situation where the information provided by a prescribed professional in an AR conflicts with that in an MR provided by the medical practitioner, and the latter has known the applicant for a longer period of time than might likely be the shorter period of time that the prescribed professional has known the applicant. In resolving such conflicts, it might then be reasonable for the ministry to give more weight to the information provided in the MR, on the basis of the medical practitioner with this longer history of contact having a better understanding of the applicant's abilities and restrictions. However, such is not the case here. There is no contradiction or conflict between the information provided by the specialist and that by the SW, because the specialist provided no assessments whatever, so there were none that could be said to be in conflict with those of the SW. Because there is no contradiction in the evidence provided, there is no reason to give greater weight to the specialist's evidence, and therefore no reason not to give weight to the information provided by the SW in AR2.

#### *SR vs. AR2*

In the reconsideration decision, the ministry referred to the appellant's SR, noting that the information provided does not describe a severe mental or physical impairment. It is unclear whether the ministry is suggesting that there are inconsistencies between the SR and AR2. The ministry stated:

"Additionally, in your self-report, you do not identify a severe degree of physical impairment; you note you have fatigue when your blood sugar is low, and "sometimes" you are not able to go for a walk, yet do not specify how often this occurs, what distance this relates to, or your ability to lift, carry and hold."

And:

"Additionally, the information provided in your self-report does not establish a severe degree of mental impairment. You have described that after a low blood sugar episode, it is hard for you to concentrate and feel normal for several hours. You also indicate that your diabetes drains you emotionally as you always have to think about having this disease. However, based on your self-report, it is not clear what impact this has on your daily functioning."

The panel views the appellant's SR as providing a helpful description of the dynamics of her

“brittle” type I diabetes, and the consequences of when her blood sugar levels become too high or too low, with the resulting need for, and preoccupation with, keeping blood sugar at the target level. The panel does not see any conflict between the SR and the SW’s assessments in AR2. For example, the SW assesses the appellant as requiring continuous assistance from another person for such physical tasks as basic housekeeping and shopping, while in the SR the appellant writes: “Due to the nature of this disease it leaves me unable to do a lot of jobs that require physical activity. If my blood sugar is at a “normal” range, it will very quickly go low if I do any sort of activity.”

### Panel finding

Based on the foregoing, the panel finds that the ministry was not reasonable in its determination to give more weight to the MR and AR1, thereby giving no weight to AR2.

### 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 or the prescribed professional (in this case the specialist or the SW) completing 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 functioning. Significant weight must also be placed on the evidence of the applicant, unless there is a legitimate reason not to do so.

In the reconsideration decision, the ministry noted that for the purposes of determining eligibility for PWD designation, a medical barrier to the applicant’s financial security, as submitted by the specialist in his proposition described above, is not a legislated criterion for severity of impairment. In this regard, the panel notes that section 2(2) of the EAPWDA can be read as *“The minister may designate a person ... as a person with disabilities ... if the minister is satisfied that the person ... has a severe mental or physical impairment that (b) in the opinion of a prescribed professional*

- (i) directly and significantly restricts the person's to perform daily living activities ...*
- (ii) as a result ..., the person requires help to perform those activities.”*

As the focus is on whether an impairment *“directly and significantly restricts the person's ability to perform daily living activities ...”*, and as employability or ability to work is not listed in section 2(1) of the EAPWDR as a DLA, the panel finds that ministry was reasonable in not taking into account any reported employability restrictions. In other words, it is unreasonable to expect the ministry to assume that difficulty in attending or performing a job extends to other areas of daily functioning.

Referring again to the truncated wording of section 2(2) noted above, it is clear from the sentence structure of section 2 that the clause beginning *“that (b) in the opinion of a prescribed professional*

- (i) directly and significantly restricts the person's to perform daily living activities ...*

[Redacted]

*(ii) as a result ... , the person requires help to perform those activities,”* essentially serves to define “severe impairment.” Considering that the SW in AR2 has provided information that describes, as a result of the appellant’s diagnosed type1 diabetes, depression and anxiety, a high degree of restriction in the appellant’s ability to perform her DLA independently, effectively or for a reasonable duration (see Part E above), and because the panel has found that the ministry was unreasonable in giving little weight to this evidence, the panel finds that the ministry was not reasonable in determining that a severe physical and mental impairment has not been established.

*Direct and significant restrictions in the ability to perform DLA*

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 not established 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 either the specialist or the SW. As the specialist did not provide any useful assessments, it would be expected that the ministry would rely on those of the SW. 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 in order for the ministry to determine whether the restrictions are “significant.” Any information submitted by the applicant or others could be useful in adding context and detail to the picture provided by the prescribed professional(s).

Panel finding

The SW’s assessments detail a high degree of restriction in the appellant’s ability to perform DLA, as summarized in Part E above (e.g. requiring continuous assistance from another person or unable for most tasks of personal care, basis housekeeping, shopping, and meals). Because the panel has found that the ministry was unreasonable in giving little weight to this evidence, the panel finds the ministry was unreasonable in determining that, in the opinion of a prescribed professional, as a direct result of the appellant’s severe impairments she is not significantly restricted in her overall ability to perform DLA on a continuous basis.

*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 determining that as a direct result of the appellant's severe impairments she is not significantly restricted in her overall ability to perform DLA on a continuous basis.

Further, the SW has reported that the appellant requires the assistance of her mother and a friend for many DLA tasks, such as for personal care, basic housekeeping, and shopping.

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.

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**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 <b>Richard Roberts</b>	
SIGNATURE OF CHAIR	DATE (YEAR/MONTH/DAY) <b>2019 February 25</b>

PRINT NAME <b>Jean Lorenz</b>	
SIGNATURE OF MEMBER	DATE (YEAR/MONTH/DAY) <b>2019 February 25</b>

PRINT NAME <b>Chris McEwan</b>	
SIGNATURE OF MEMBER	DATE (YEAR/MONTH/DAY) <b>2019 February 25</b>