

**PART C – DECISION UNDER APPEAL**

The decision under appeal is the Ministry of Social Development and Poverty Reduction (the Ministry) Reconsideration Decision dated April 10, 2019, 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* (EAPWDA) for designation as a person with disabilities (PWD). While the Ministry found that the Appellant met the age requirement and had an impairment which was likely to continue for at least two years, it was not satisfied that the evidence establishes that:

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

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

**PART D – RELEVANT LEGISLATION**

EAPWDA, Section 2

EAPWDR, Section 2

**PART E – SUMMARY OF FACTS**

The evidence before the Ministry at the time of the Reconsideration Decision included the PWD application comprised of a Self Report (SR) dated November 8, 2018, a Medical Report (MR) dated January 15, 2019 and completed by the Appellant's General Practitioner (GP) who, at that time, had known the Appellant for 6 months and who had seen the Appellant 2 - 10 times in the past year, and an Assessor Report (AR) dated January 15, 2019 completed by the GP.

The evidence also included a Request for Reconsideration (RFR) completed by the Appellant on February 26, 2019.

***Diagnoses***

In the MR, the GP diagnosed the Appellant with Bilateral Foot Osteoarthritis (OA) with an onset of March 2013, and Bilateral Knee Arthritis, Anxiety and Depression, all with no dates of onset provided.

***Physical Impairment***

In the medical history section of the MR, the GP stated that the Appellant has been struggling with Bilateral Foot OA since 2013, that there is radiographic evidence that her Metatarsophalangeal Joints (MTP's) are involved, and that her condition has clinically progressed since 2013. He also states that she has moderate Radiographic Arthritis (RA) in her right knee and mild RA in her left knee. He further indicates that the Appellant reports that she cannot stand for more than 3 minutes and that as a result she has been unable to work since 2013. He states that she also reports that her pain is so bad that she has difficulty ambulating to the toilet at night and resorts to voiding into a 5 gallon bucket by the bed and has difficulty showering for similar reasons. He also writes that her exercise balance is poor due to pain.

With respect to functional skills, the GP reports that the Appellant can walk less than 1 block unaided on a flat surface, climb 5 or more steps unaided, lift under 7 to 16 kg, and has no limitation with respect to how long she can remain seated. Where asked to provide any additional information considered relevant to understanding the significance of the Appellant's medical condition, the nature of her impairment and the impact the impairment has on her daily functioning, the GP states that the cumulative effects of the Appellant's arthritis, together with her mental impairment (anxiety) and living for many years without stable finances "*add up to a significantly reduced quality of life ...*". He writes that the Appellant would benefit from weight loss but that she cannot afford healthy food and has minimal exercise capacity.

The evidence before the Ministry at reconsideration includes two versions of the AR. One was prepared by a Social Worker (SW) and is incomplete, unsigned and undated; the other contains the same information with additional sections completed, and is signed and dated by the GP. In the section of the complete AR that asks what approaches and information sources were used to complete the form, the GP writes "*(SW) filled out majority of (the AR). I filled in the blanks*". As the complete AR is signed by the GP, the Panel considers it as the appropriate report for the purpose of assessing PWD eligibility.

Where asked in the AR what physical impairments impact the Appellant's ability to manage DLA, the GP has written "*(OA) in feet and knees*". Regarding mobility and physical ability, the GP indicates that the

Appellant uses a cane and that she is independent with respect to all listed activities, adding the following explanations and limitations (with the GP's comments *in italics*):

- **Walking** - she can walk indoors for a "max 5 mins" and "less than 1 block" outdoors;
- **Climbing stairs** - "using rail";
- **Standing** - "max 5 mins";
- **Lifting** - "hard to lift purse"; and
- **Carrying and holding** - "limited – too much pain".

In the SR, where asked to describe her physical disability, the Appellant states that she has OA, Plantar Fasciitis (heel spur) and Colitis. In a three page hand-written document submitted with her SR, the Appellant says that she experiences pain in the small of her back after sitting for 15 minutes, and that while the GP recommended that she exercise by walking around her property every day, she uses a cane most of the time when she walks outside and carries a bucket that she can sit on "*in case her body hurts too much*". She also states that when she drives she "*sets the speed when (she) can so (her) right knee doesn't get sore*".

### ***Mental Impairment***

In the medical history section of the MR, the GP states that the Appellant has had a long-standing struggle with anxiety which has been exacerbated in recent years due to lack of stable finances. The GP indicates that the Appellant has cognitive difficulties with communication and has significant deficits with cognitive and emotional functioning in the areas of memory, emotional disturbance, motivation and attention or sustained concentration, with no additional comments or explanation provided.

Where asked in the AR what mental impairments impact the Appellant's ability to manage DLA, the GP has written "*longstanding anxiety*". In the section of the AR where the assessor is asked to indicate the level of ability to communicate, the GP has indicated "Good" for all areas (speaking, reading, writing and hearing), with no additional comments or explanation. In the section of the AR where the assessor is asked to indicate to what degree the applicant's mental impairment restricts or impacts her functioning, the GP has indicated (with comments in *italics*) a major impact on emotion ("*emotionally labile/poverty*"), insight and judgment ("*no plan, suicidal ideation*"), attention/concentration, memory and motivation, a moderate impact on her bodily functions (underlining "sleep disturbance" and adding the comment "*controlled by meds*"), consciousness (underlining "drowsy" and adding the comment "*lack of sleep*"), and motor activity, and no impact on impulse control, executive functioning, language, psychotic symptoms, or any other neuropsychological, emotional or mental problems.

In assessing how the Appellant's mental impairment impacts her relationship with her immediate social network (family and friends), the GP has ticked "marginal functioning", and has not provided an assessment with respect to how the Appellant's mental impairment impacts her relationship with her extended social networks, but has written "*very socially isolated/only has ... (family member)*".

In the SR, where asked to describe her mental disability, the Appellant writes "*... a lifetime of anxiety and depression*". In addition, in the hand-written document submitted with her SR she writes that anxiety and depression have been a life-long battle and she takes medication for major depression and anxiety

disorders which “*has helped her somewhat with sleeping*” but not her anxiety. The Appellant also states that her concentration and focus is very short and she feels confused and unable to start a new task without a list because, while she can “*function when things are consistent ... , when something new is added (she doesn't) know where to start or what to do*”. She provides the example of applying for the PWD designation, indicating that a family member intervened by getting her an appointment with the SW who “*helped (her) with a list of things to do ...*”. She also stated that she gained weight because she was not able to afford vegetables when they were too expensive and wonders if some of the issues of poor concentration and anxiety might be “*helped with a proper diet and more secure finances*”, and, that she has been isolated and “*in survivor mode*” for so long that when she does have to go out she is filled with anxiety.

### ***Restrictions in the Ability to Perform DLA***

In the MR, the GP states that the Appellant has not been prescribed any medications that interfere with her ability to perform DLA. The GP also indicates in the MR that the Appellant requires continuous assistance with personal self-care and mobility outside the home and periodic assistance with basic housework, adding “*housework limited to small amounts of time with many breaks.*” and “*mobility outside home limited due to pain. Needs cane for distances < 1 block*”. Where asked to provide additional comments regarding the degree of restriction, the GP writes “*self care – difficulty getting into shower*”.

In the AR, the GP states that the Appellant is independent with respect to all listed DLA in the areas of:

- **Personal care**, though she takes significantly longer with dressing, grooming and bathing, adding “*wears slip-on shoes, significantly impaired bending, has bath bench*” and the comments “*sit and roll / rolls in and out*” for transfers in and out of bed and “*relies on arms of chair to lift*”, in transfers out of chairs;
- **Basic housekeeping**, though she takes significantly longer than typical, adding “*does it in spurts with many breaks*”;
- **Shopping**, except for carrying purchases home, for which she requires continuous assistance from a family member. The GP also states that it's hard for her to pay for purchases when she has no money and that she uses a shopping cart to hold herself up when she is shopping;
- **Meals**, stating that planning meals is “*hard when no money*” and that she takes significantly longer with food preparation and cooking, adding “*sits to prepare, cooks in increments*”;
- **Payment of rent and bills**, adding that it's hard to “*when she has no income*”; and
- **Medications.**

With respect to the transportation DLA the GP states that she is independent with getting in and out of a vehicle but that it takes significantly longer than typical, and he does not indicate whether she is independent with using public transit (adding the comment “*None available. Lives rurally*”) or using transit schedules or arranging transportation (“*N/A*”).

In the hand-written document submitted with her SR, the Appellant writes that she cannot make it to the bathroom in time when she gets up in the morning due to pain in her feet, knees, hips and back and has to use a five gallon bucket that she keeps beside the bed, and that she has to rely on the left part of her

body to get in and out of the bathtub because the pain seems to be worse in her right foot, knee and hip. She explains that she has to keep the weight off her left heel when walking or standing due to the pain. When she makes meals she has to sit down every 2 or 3 minutes because she feels a lot of pain in her feet, knees, hips and back after standing for 3 minutes, and she can't squeeze out a dish cloth using both hands because it hurts. The Appellant also states that she doesn't buy anything in jars because she can't open them and she carries pots and pans with both hands because she experiences severe stabbing pain in her hands, feet knees, and hip and she cannot carry heavy pots.

### ***Need for Help***

In the MR the GP indicates that the Appellant has to use a cane for any walking done out-of-doors.

In the section of the AR where the assessor is asked to indicate the level of support or supervision required by the applicant, the GP has not provided an indication with respect to making appropriate social decisions or developing and maintaining relationships, but has added the explanation "*socially awkward*" in both cases. The GP has not indicated the level of support that the Appellant requires in dealing appropriately with unexpected demands or securing assistance from others, but has added the comment "*only has (family member)*" with respect to the latter. The GP has indicated that the Appellant is independent with respect to interacting appropriately with others. Where asked to describe the support or supervision required which would help to maintain her in the community the GP wrote "*would benefit from continuous assistance from SW +/- (the Ministry) + (an Occupational Therapist's) home assessment – she is reluctant for the latter two.*"

In the AR, the GP states that the Appellant lives alone. He also indicates that a family member helps her with her DLA, in particular with carrying purchases home from shopping, and that she uses a shopping cart for support while shopping.

In the hand-written document submitted with her SR, the Appellant states that she uses a bath seat when she showers and that when she goes grocery shopping she tries to be quick because walking on a cement floor cause "*pain all over*" and she "*uses the grocery cart for a walker*";

### ***Additional Information Submitted after Reconsideration***

In her Notice of Appeal (NOA) dated April 15, 2019, the Appellant states that the pain she feels was not taken into consideration in the Ministry's Reconsideration Decision and that she "*does not agree with the sympathy shown for the daily pain felt*".

At the hearing, the Appellant stated that she had provided a one and a half page undated hand-written document to the Ministry following the original decision denying her the PWD designation and before the Reconsideration Decision, but that that document was missing from the written appeal record. She indicated that she had kept a copy and read from it at the hearing, stating:

- Family members have been helping her with basic housekeeping for the past 2 years or so, and that they come for 2 or 3 hours every 4 to 8 weeks to vacuum, wash floors, change bedsheets and bring in enough wood to heat the house (as she can only lift one piece of wood at a time in a five gallon pail and that despite the information provided by the GP in the MR she hasn't been able to lift 7 – 16 kg for several years);

- She has only been able to sit for a maximum of 10 minutes for a year or more and she has not been able to walk 5 blocks for at least a year;
- She uses a shovel or hoe to lean on to go up or down stairs at home and a shopping cart for support at the grocery store. She said that her father had fashioned a “*home-made wheelchair/walker*” from a shopping cart which she uses every day inside her home; and
- Her anxiety has affected her ability to communicate because she loses her train of thought, giving the example of a conversation she had with a family member in which she was trying to convince him that she did not have Alzheimer’s, but she forgot the subject of the conversation in the middle of her explanation, and that “*she can’t remember when things happen*”, giving another example of an appointment with her eye doctor where she forgot to pick up a family member enroute and when she arrived at the doctor’s office it was closed because it was a Sunday.

In response to a question from the Panel, the Appellant stated that she was taking antidepressants which had cleared her head for a while but that the medication had become less effective recently and that she was going to see the GP in a week about whether the dosage should be increased.

At the hearing, the Appellant also explained that her GP was new and did not know her medical history well. She explained that her previous doctor, who is now retired, had been her doctor for 30 years. She also stated that she had self-medicated with alcohol since high school. She stated that many years ago her mother had given her some antidepressants that she found “*life changing*”. She also explained that she had been in an abusive relationship with her husband, whom she has now left. She stated that she had not been able to find work in recent years and that when she turned [REDACTED] recently she felt relief because she was “*that much closer to death*”.

At the hearing, the Ministry relied on its Reconsideration Decision. When asked whether the Ministry would object to the Panel finding the additional information contained in the one and a half page undated hand-written document and read at the hearing to be admissible, the Ministry stated that it would not object and that, while any new information of this nature is helpful in understanding the severity of an applicant’s impairments, the Ministry would have to carefully review the new information before it could give it weight or determine whether it would have had any impact on the Appellant’s eligibility for PWD.

### ***Admissibility of Additional Information***

Section 22(4) of the *Employment and Assistance Act* (EAA) provides that panels may admit as evidence (i.e. take into account in making its decision) the information and records that were before the Ministry when the decision being appealed was made and “*oral and written testimony in support of the information and records*” before the Ministry when the decision being appealed was made – i.e. information that substantiates or corroborates the information that was before the Ministry at reconsideration. Because a panel can accept oral and written testimony in support of the information and records before the Ministry when the decision was made, there is limited discretion for a panel to admit new evidence. Accordingly, instead of asking whether the decision under appeal was reasonable at the time it was made, panels must determine whether the decision under appeal was reasonable based on all admissible evidence, including any new evidence admitted under EAPWDA Section 22(4).

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The Panel considered the evidence contained in the hand-written document summarized by the Appellant at the hearing to be information in support of the information and records that were before the Ministry at reconsideration, and therefore admitted the additional information in accordance with Section 22(4)(b) of the EAA. The Panel considered the written information in the NOA to be argument.

**PART F – REASONS FOR PANEL DECISION**

The issue under appeal is whether the Ministry's Reconsideration Decision, which found that the Appellant is not eligible for designation as a PWD, 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 not, in the opinion of a prescribed professional, directly and significantly restricted either continuously or periodically for extended periods. The Ministry also found that, as a result of those restrictions, it could not be determined that 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. In addition, the Ministry found that the Appellant is not one of the prescribed classes of persons who may be eligible for PWD designation on the alternative grounds set out in Section 2.1 of the EAPWDR.

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 ...

**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).

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### **Severity of Impairment**

Neither the terms “*impairment*” nor “*severe*” are defined in the EAPWDA. The Cambridge Dictionary defines “*impairment*” in the medical context to be “*a medical condition which results in restrictions to a person’s ability to function independently or effectively*” and defines “*severe*” as “*causing very great pain, difficulty, worry, damage, etc.; very serious*”.

A diagnosis of a severe impairment does not in itself determine PWD eligibility. Section 2(2) of the EAPWDA requires that in determining whether a person may be designated as a PWD, the Ministry must be satisfied that the individual has a severe physical or mental impairment with two additional characteristics: in the opinion of a prescribed professional, it must be both likely to continue for at least two years [EAPWDA 2(2)(a)] and it must significantly restrict a person’s ability to perform DLA continuously or periodically for extended periods, resulting in the need for the person to require assistance in performing those activities [EAPWDA 2(2)(b)]. Therefore, in determining PWD eligibility, after assessing the severity of an impairment the Ministry must consider how long the severe impairment is likely to last and the degree to which the ability to perform DLA is restricted and help in performing DLA is required. In making its determination the Ministry must consider all the relevant evidence, including that of the Appellant. However, the legislation is clear that the fundamental basis for the analysis is the evidence from a prescribed professional – in this case the Appellant’s GP.

### **Physical Functioning**

The Ministry’s position is that it is not satisfied that the Appellant has a severe physical impairment because it considers that the evidence provided does not sufficiently describe or portray a severe physical impairment as, while it acknowledges that the Appellant experiences some degree of restriction due to her impairments, the Ministry is not satisfied that the combination of her mobility and physical abilities exhibits a severe impairment. The Appellant’s position is that her OA and bilateral knee arthritis cause her such significant pain every day that she is unable to function without frequent rests or the use of assistive devices.

### ***Panel Decision***

The Panel notes that the evidence provided by the Appellant is not always consistent with the evidence provided by the GP. For example, the GP indicates that the Appellant is capable of lifting 7 to 16 kg, climbing more than 5 steps unaided, and with no limitation in the length of time she can remain seated, whereas the Appellant states that she has been unable to lift 7 to 16 kg for several years, requires physical supports in climbing stairs, walking and getting in and out of the bathtub, and can only remain

seated for 10 minutes. In its Reconsideration Decision, the Ministry has relied primarily on the GP's evidence.

The Panel has reviewed all of the evidence and notes the discrepancies between the evidence provided by the Appellant and the GP with respect to physical functioning. The Panel finds that, where evidence is inconsistent, it is reasonable for the Ministry to weigh the evidence to determine which evidence to accept. The Panel has reviewed all of the evidence and finds that the Ministry acted reasonably in relying primarily on the evidence of a prescribed professional (in this case the GP), and on that basis in concluding that the Appellant does not have a *severe* physical impairment pursuant to Section 2(2) of the EAPWDA.

### **Mental Functioning**

The Ministry's position is that it is not satisfied that the Appellant has a severe mental impairment because it considers that the evidence provided does not sufficiently describe or portray a severe mental impairment as, while it acknowledges that the Appellant experiences some degree of restriction due to her impairments, the Ministry is not satisfied that the combination of her functional skills exhibit a severe impairment. The Appellant's position is that she has had a life-long battle with anxiety and depression, that she can't remember things, and that she has been isolated for so long that when she has to go outside her home she is filled with anxiety.

#### *Panel Decision*

In its Reconsideration Decision, the Ministry has determined that, while the GP has indicated that the Appellant experiences several significant deficits with her cognitive and emotional functioning, he has assessed her as being independent in most DLA tasks, and where restrictions are mentioned they relate to her physical impairments only. The Ministry also notes that there is no assessment from a mental health expert and that if an applicant's mental health conditions are considered severe it is expected that the applicant would require a specialist's help.

The Panel has reviewed all the evidence and finds that, in relying on the evidence provided by a prescribed professional, the Ministry reasonably determined that a severe mental impairment was not established pursuant to Section 2(2) of the EAPWDA.

### **Restrictions in the Ability to Perform DLA**

The Ministry's position is that it acknowledges that the Appellant has certain limitations in performing her DLA as a result of her medical conditions, but that the GP has indicated that she is independent in the large majority of her DLA, and therefore it finds that the information provided does not establish that an impairment significantly restricts her DLA *continuously* or *periodically for extended periods*, as required under the legislation. The Appellant's position is that the pain she suffers makes it difficult for her to perform many DLA, including getting in and out of the bathtub, walking, climbing stairs and grocery shopping.

*Panel Decision*

Section 2(2)(b) of the EAPWDA requires that the Ministry be satisfied that a prescribed professional has provided an opinion that an applicant's severe impairment *directly* and *significantly* restricts his or her DLA, *continuously or periodically for extended periods*. In this case, the GP is the prescribed professional. DLA are defined in Section 2(1) of the EAPWDR and are also listed in the MR and, with additional details, in the AR.

In its Reconsideration Decision, the Ministry notes that the GP indicates that the Appellant is not restricted with meal preparation, management of medications, daily shopping, mobility inside her home, use of transportation or management of finances, and that, while she experiences periodic restrictions with housework, she is able to perform housework in small amounts with many breaks. The Panel notes that the Appellant has provided evidence regarding her ability to perform a number of DLA which is not consistent with the evidence provided by the GP, including her reliance on additional devices not specified by the GP, and the need for infrequent, periodic assistance from family members in performing certain basic housekeeping tasks. Conflicting evidence aside, the Panel notes that some of the devices identified by the Appellant (e.g. the shovel, the hoe and the grocery cart) are not assistive devices as defined in Section 1.1 of the EAPWDA (which defines an "assistive device" as "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") as those devices are not designed for that purpose. Furthermore, the Panel notes that family help with basic housekeeping tasks for 2 to 3 hours once every 4 to 8 weeks is not indicative of "extended" periodic assistance.

The Panel has reviewed all of the evidence and finds that the Ministry acted reasonably in relying primarily on the evidence of the GP and on that basis in concluding that the Appellant's impairment does not significantly restrict her ability to manage her DLA either continuously or periodically for extended periods, thereby not satisfying the legislative criterion of Section 2(2)(b)(i) of the EAPWDA.

**Help with DLA**

The Ministry's position is that it cannot be determined that significant help is required because it has not been established that DLA are significantly restricted. The Appellant's position is that she is unable to perform many of her DLA without the aid of assistive devices such as a bath bench, a cane, a grocery cart for support, and a home-made wheelchair, or without the periodic assistance of family members.

*Panel Decision*

Section 2(2)(b)(ii) of the EAPWDA requires that, *as a result of direct and significant restrictions* in the ability to perform DLA, a person requires 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 one or more DLA.

The Panel has reviewed all of the evidence and 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 the Appellant requires help to perform DLA as a result of those restrictions, as defined by Section 2(3)(b) of the EAPWDA.

**Conclusion**

Having reviewed and considered all of the evidence and relevant legislation, the Panel finds that the Ministry's Reconsideration Decision, which determined that the Appellant was not eligible for the PWD designation under Section 2 of the EAPWDA, was reasonably supported by the evidence and was a reasonable application of the EAPWDA in the circumstances of the Appellant, and therefore confirms the decision. The Appellant's appeal, therefore, is not successful.

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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

Simon Clews

SIGNATURE OF CHAIR

DATE (YEAR/MONTH/DAY)

2019/05/07

PRINT NAME

Kim Read

SIGNATURE OF MEMBER

DATE (YEAR/MONTH/DAY)

2019/05/07

PRINT NAME

Edward Wong

SIGNATURE OF MEMBER

DATE (YEAR/MONTH/DAY)

2019/05/07