

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 16 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*, section 2. Specifically, the ministry determined that the information provided did not establish that the appellant has a severe mental or physical impairment that in the opinion of a prescribed professional

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

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

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

The ministry also found that it has not been demonstrated that the appellant is in one of the prescribed classes of persons who may be eligible for PWD designation on the alternative grounds set out in section 2.1 of the *Employment and Assistance for Persons with Disabilities Regulation*. As there was no information or argument provided by the appellant regarding alternative grounds for designation, the panel considers this matter not to be at issue in this appeal.

PART D – RELEVANT LEGISLATION

Employment and Assistance for Persons with Disabilities Act (EAPWDA) – section 2
Employment and Assistance for Persons with Disabilities Regulation (EAPWDR) – sections 2 and 2.1.

PART E – SUMMARY OF FACTS

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

1. The appellant's PWD Designation Application dated 05 July 2018. The Application contained:
 - A Self Report (SR).
 - A Medical Report (MR) dated 15 December 2018, completed by a general practitioner (GP) who has known the appellant for 5 years has seen her 2-10 times in the past year.
 - An Assessor Report (AR) dated 15 January 2019, completed by the same GP.
2. The appellant's Request for Reconsideration, dated 01 March 2019, providing no new substantive information or argument.

In the MR, the GP provides the following diagnoses related to the appellant's impairment: depression (onset 2010), diabetes, mild (onset 2014), over-active bladder (onset 2012), and hypertension, controlled (onset 2012).

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

Severity/health history

Physical impairment

MR:

Under Health History, the GP leaves the section blank.

Under Additional Comments, the GP writes:

- " 1. Living alone; little support.
2. Not working since moving to [City] from [another province] in 2005.
3. Currently unable to work."

Regarding functional skills, the GP reports that the appellant can walk 2 to 4 blocks unaided on a flat surface; can climb 2 to 5 steps unaided, is limited to lifting 5 to 15 lbs., and is limited to remaining seated to 1 to 2 hours.

The GP indicates that the appellant has been prescribed medication and/or treatments that interfere with her ability to perform DLA, explaining that, "psychotropic medications may have S-E [side-effects] of dizziness." The anticipated duration of the medications is "as long as taken."

AR:

Respecting mobility and physical ability, the GP assesses the appellant as Independent for walking indoors and standing; requiring periodic assistance from another person for walking outdoors, climbing stairs, lifting, and carrying and holding.

Mental impairment

MR:

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

The GP indicates that the appellant has significant deficits with cognitive and emotional function in the areas of memory, emotional disturbance, motivation, impulse control, motor activity, and attention or sustained concentration.

AR:

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

The GP assesses the degree to which the appellant's mental impairment impacts her daily functioning as follows:

Major impact: none.

Moderate impact: impulse control, insight and judgment, memory, and motivation.

Minimal impact: bodily functions, emotion, attention/concentration, executive, and motor activity.

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

Ability to perform DLA

MR:

The GP reports that appellant's ability to perform DLA is restricted as follows:

Not restricted: personal self-care, management of medications, daily shopping, mobility inside the home, use of transportation, and management of finances.

Restricted on a periodic basis: meal preparation, basic housework, mobility outside the home, and social functioning.

The GP does not explain the basis of how the restrictions are "periodic," or how social functioning is impacted.

AR:

The GP provides the following assessments of the assistance the appellant requires in performing DLA (the GP provides no expository comment in the spaces provided).

- Personal care – independent for dressing, grooming, bathing, toileting, and feeding self; periodic assistance from another person required for regulating diet, transfers in/out of bed, and transfers on/off chair.
- Basic housekeeping – periodic assistance from another person required for laundry and basic housekeeping.
- Shopping – independent for going to and from stores, reading prices and labels and paying for purchases; periodic assistance from another person required for making appropriate choices and carrying purchases home.
- Meals – independent for meal planning and safe storage of food; periodic assistance

from another person required for food preparation and cooking.

- Pay rent and bills – independent for all aspects: banking, budgeting, and paying rent and bills.
- Medications – independent for filling/refilling prescriptions and taking as directed; periodic assistance from another person required for safe handling and storage.
- Transportation – periodic assistance from another person required for all aspects: getting in and out of the vehicle, using public transit, and using transit schedules and arranging transportation.

The GP provided no explanation in the spaces provided for the type or duration of the periodic assistance required.

Social functioning

The GP assesses the appellant as follows for the listed areas where support/supervision may be required to compensate for a mental impairment:

- independent for making appropriate social decisions;
- periodic support/supervision required for developing and maintaining relationships, interacting appropriately with others, dealing appropriately with unexpected demands, and securing assistance from others.

The GP provided no explanation in the spaces provided for the degree or duration of the periodic assistance required.

The GP assesses the appellant's relationship with both his immediate and extended social networks as marginal functioning.

Help provided/required

MR:

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

AR:

The GP does not indicate that the appellant requires the use of assistive device.

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

The GP indicates that assistance is provided by friends. Regarding the help required when none is available, the GP leaves the space blank.

Additional Information

AR:

Under Additional Information the GP notes:

- overactive bladder
- anxiety
- depression

- query asthma
- hypertension
- social issues

In describing the type and duration of the program or service provided by the GP, he notes:

1. Multiple issues, especially anxiety and/or depression, overactive bladder
2. Being unable to be employed currently.
3. Needs assistance such as multiple barriers person.

Self Report

In describing her disability, the appellant writes that she has a mental illness, with depression, anxiety, nervousness and loneliness, explaining that these stem from the loss of several loved ones. She also has an overactive bladder, which is getting worse, with permanent uncontrolled urination – 3 to 5 times during the night and 15 to 20 times during the day.

In explaining how her disability affects her life and her ability to take care of herself, she writes that she is taking daily medication for high cholesterol, high blood sugar, insomnia, and high blood pressure. She has endured the overactive bladder for over 10 years, since 2007. She notes that there is an age barrier as she is over 55 years. For all these reasons she is unable to work.

Notice of Appeal

In her Notice of Appeal, dated 28 January 2019, the appellant gives as her reasons for appeal the same information as that in her SR (see above), adding the following new information:

- She states that she is overweight, having gained 25 pounds within the last three years.
- Her last job was waitressing in 2008.
- She has problems with her eyes, which water a lot. She is afraid she has cataracts and is afraid to see a specialist,
- She has problems with her ears and doesn't hear well.
- She also has symptoms of "bone loss," and feels she needs a special diet, which she cannot afford.

The hearing

With the consent of both parties, the hearing was conducted in writing pursuant to section 22(3)(b) of the *Employment and Assistance Act*.

On 03 June 2019, the Tribunal received a submission from the appellant. This submission was received after the date it was due. Under section 5.3(d)(iii) of the Tribunal's *Practices and Procedures*, the submission was forwarded to the panel chair to decide whether or not to accept this late submission.

This late submission consists of a list of 2 names, with telephone numbers and a note beside each indicating the relationship of the person with the appellant. The implication is that the appellant wished the panel to interview these persons as part of the hearing process. The panel

does not have the authority to interview anyone on its own. As the hearing is to be conducted in writing, these persons cannot appear as witnesses, as would otherwise be the case with an in-person or teleconference hearing. Accordingly, the panel did not accept this late submission.

In an email dated 29 May 2019, the ministry states that its submission in this matter will be the reconsideration summary provided in the Record of Ministry Decision.

Admissibility of additional information

In its submission, the ministry did not object to the information provided by the appellant in her Notice of Appeal.

The panel finds that the new information provided by the appellant in her Notice of Appeal is not in support of the information and records before the ministry at reconsideration. This information, regarding her being over-weight, having eye and hearing problems and symptoms of bone loss, was not available to the ministry as diagnosed conditions contributing to the appellant's impairment when the ministry made its decision, and therefore this information cannot be said to corroborate or substantiate any information before the ministry at reconsideration.

The panel therefore does not admit this information as evidence under section 22(4) of the *Employment Assistance Act*.

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 sections of the EAPWDR applies to this appeal:

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

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

(i) prepare own meals;

(ii) manage personal finances;

(iii) shop for personal needs;

(iv) use public or personal transportation facilities;

(v) perform housework to maintain the person's place of residence in acceptable sanitary condition;

- (vi) move about indoors and outdoors;
- (vii) perform personal hygiene and self care;
- (viii) manage personal medication, and
- (b) in relation to a person who has a severe mental impairment, includes the following activities:
 - (i) make decisions about personal activities, care or finances;
 - (ii) relate to, communicate or interact with others effectively.

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

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

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

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

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

if qualifications in psychology are a condition of such employment.

Alternative grounds for designation under section 2 of Act

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

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

Analysis

Severity of impairment

Preliminary Considerations

The legislation is clear that the determination of severity of impairment is at the discretion of the minister, taking into account all of the evidence, including that of the applicant. The legislation requires that for PWD designation, the minister must be "satisfied" that the person has a severe mental or physical impairment. For the minister to be "satisfied" that the person's impairment is severe, the panel considers it reasonable for the ministry to expect that the information submitted by the independent and professional medical practitioner and prescribed professional

(in this case the GP) 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. As the legislation requires the minister to make determinations regarding the degree of impairment, the degree of restrictions in the ability to perform DLA and the resulting degree of help required, it is therefore important that the MR and the AR include explanations, descriptions or examples in the spaces provided so that the minister has the information needed to make these determinations. Significant weight must also be placed on the evidence of the applicant, unless there is a legitimate reason not to do so. The reconsideration process provides the opportunity for the prescribed professionals and applicant to clarify or add to the information provided on application, and the panel hearing an appeal must consider any information provided on appeal, as long as the panel finds it admissible.

Employability

In the MR, AR and the SR, both the GP and the appellant state that as a result of her medical conditions, the appellant is unable to work.

In the reconsideration decision, the ministry noted that for the purposes of determining eligibility for PWD designation, a medical barrier to the applicant's ability to engage in paid employment is not a legislated criterion for severity of impairment.

Panel finding

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) ...*

(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 applying the impairment criteria in section 2(2) of the EAPWDA. 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.

Panel note

Employability can be an indirect factor for PWD designation. The legislation provides for "alternative grounds" for PWD designation, one of which, listed in section 2.1 of the EAPWDR, is a person who is considered to be disabled under section 42 (2) of the *Canada Pension Plan (Canada)* – i.e. a person meeting the disability criterion for a CPP disability pension eligibility. This section of the federal statute reads in part:

(a) a person shall be considered to be disabled only if he is determined in prescribed manner to have a severe and prolonged mental or physical disability, and for the purposes of this paragraph,

(i) a disability is severe only if by reason thereof the person in respect of whom the determination is made is incapable regularly of pursuing any substantially gainful

occupation, and

(ii) a disability is prolonged only if it is determined in prescribed manner that the disability is likely to be long continued and of indefinite duration or is likely to result in death;

Note that the determination must first be made, not by the BC ministry, but "in prescribed manner" – that is, through the federal CPP application and adjudication process prescribed by federal regulation, including consideration of CPP contribution history.

Severity of impairment -- the positions of the parties

The position of the appellant, as understood from her SR and Notice of Appeal, is that her mental health condition and overactive bladder together constitute a severe impairment.

In the reconsideration decision, the ministry found that the information provided does not establish a severe impairment. The ministry considered the evidence relating to physical impairment and mental impairment separately, and from a holistic lens on whether her impairments would be collectively considered severe. The panel will review the ministry's findings on a similar basis.

Physical impairment

On reading her SR and Notice of Appeal, it is clear that the appellant considers her overactive bladder, a condition which she describes as getting worse, with permanent uncontrolled urination – 3 to 5 times during the night and 15 to 20 times during the day, as a severe physical impairment.

At the outset of its analysis, the ministry noted that when asked to describe the severity of the appellant's conditions under Health History, the GP draws a line through this section, making it difficult for the ministry to determine the degree of the appellant's impairment.

The ministry noted that in the MR the GP describes the appellant's diabetes as "mild" and her hypertension as "controlled." The ministry found that these conditions are not considered severe based on these descriptions.

The ministry noted that when asked in the MR to indicate whether the appellant's DLA are restricted, the GP indicates that the appellant is not restricted in the large majority of DLA and that she is not continuously restricted in any of them. Although the GP indicates that she is periodically restricted in a few DLA, when asked to explain "Periodic," he provides no information.

Although in the AR the GP indicates that the appellant is periodically restricted with walking outdoors, climbing stairs, lifting, and carrying and holding, the ministry noted that the appellant does not require any assistive devices for her impairments and that the GP indicates in the MR that she is capable of walking 2-4 blocks unaided, climbing 2-5 stairs unaided, and lifting 5-15 pounds. In the ministry's view, these functional skills describe a moderate rather than a severe impairment.

Although the GP indicates in the AR that the appellant is periodically restricted for some tasks, the ministry notes again that the GP provides no comments, making it difficult to determine the degree of restriction experienced or whether the restriction is for extended periods.

Panel finding

In the panel's view, by not providing, as requested under Health History in the MR, a description of the severity of the appellant's impairment, the GP passed up an opportunity to describe in his own words the degree to which the appellant's impairment has an impact on her daily functioning, information that would have been useful for the ministry's adjudication of her application.

Given the GP's description of the appellant's diabetes as "mild," and her hypertension as "controlled," and since the GP assessed the appellant as not restricted in her ability to manage medications required for these conditions, the panel finds the ministry was reasonable in not considering these conditions as constituting a severe impairment.

In the panel's view, there is insufficient information provided by the appellant or the GP to describe the impact of the appellant's overactive bladder on her ability to manage daily tasks. It is unreasonable to expect the ministry or the panel to speculate as to whether this condition means that the appellant cannot go out of the home for fear of sudden urination, or whether she is restricted to going outside the home only to places with a nearby restroom, or whether she is reluctant to initiate in-home tasks such as cooking or housework because the task might be interrupted by the need to urinate.

As noted by the ministry, while the GP indicates in the MR that the appellant is periodically restricted in her ability to perform the DLA of meal preparation, basic housework and mobility outside the home, when asked to explain "Periodic," he provides no commentary. The panel notes that in the Application there are several footnotes that state that "Periodic assistance" refers to the need for significant help for an activity some of the time as would be the case where a person requires help due to the episodic nature of the impairment. However, no information has been provided that would suggest that the appellant's physical impairment is episodic in nature.

Considering that the GP has not provided any explanation for his assessments in the AR that the appellant requires a periodic assistance of another person for walking outdoors, climbing stairs, and lifting, and with no reference to the need for an assistive device (e.g. a cane or walker), it would be difficult for the ministry to conclude that the functional skill limitations reported by the GP represent significant restrictions in the appellant's to perform the DLA of moving about indoors and outdoors, particularly without further information provided as to the impact of the appellant's overactive bladder on this activity (and others).

Based on the foregoing review of the ministry's decision, the panel finds that the ministry was reasonable in determining that a severe physical impairment has not been established.

Mental impairment

In her Notice of Appeal, the appellant attributes her mental illness to the loss of beloved ones, and characterizes her conditions as being anxious, nervous, lonely and impatient.

In the reconsideration decision, the ministry notes that although the GP indicates in the MR that the appellant has several areas of significant deficits with her cognitive and emotional functioning, when asked in the AR to indicate the level of impact these areas have on her daily functioning, he indicates that she experiences no major impacts. The ministry reasoned that if the appellant's mental health conditions were considered severe, it would be expected that she would experience at least one area where she would experience a major impact.

The ministry noted that while the GP indicates in the AR that the appellant is periodically restricted in some areas of social functioning, he provides no comments. The ministry argued that this lack of commentary makes it difficult to determine the degree of restriction or whether the restriction is for extended periods.

Panel finding

While the appellant characterises her mental condition as being anxious, nervous, lonely and impatient, neither she nor the GP explain how these conditions restrict her ability to perform daily tasks appropriately, effectively or independently.

As the ministry noted in its decision, an "impairment" is a medical condition that results in restrictions to a person's ability to function independently, appropriately, effectively or for reasonable duration. A "severe impairment" is a matter of degree – a high level of resulting restrictions to a person's ability to function. With no major impacts assessed by the GP on cognitive and emotional functioning resulting from the appellant's depression, it would be difficult for the ministry to find that a severe mental impairment has been established.

In the panel's view, information on the nature or type, and frequency and duration of the periodic support/supervision that the GP assesses as necessary for the 4 out of 5 areas of social functioning would be crucial for the ministry in determining whether a severe mental impairment has been established.

In light of the above, the panel finds the ministry was reasonable in determining the severe physical impairment has not been established

Combination physical and mental impairment

The position of the appellant, as the panel understands it from her SR and Notice of Appeal, is that a combination of her mental health condition and her overactive bladder constitute a severe impairment, together resulting in her not being able to work.

In the reconsideration decision, the ministry notes that although the GP writes that the appellant has multiple issues, he still indicates that she is independent in the large majority of her DLA and not continuously restricted in any areas. He also provides little other narrative, especially

when asked to describe the severity of her impairments and restrictions, and describes two of her conditions as “mild” and “controlled.” The ministry concludes that these do not suggest a severe impairment.

Panel finding

See above under *Employability* for an explanation as to why being unable to work is not a factor in the application of the impairment criteria under appeal.

While the GP has provided some general commentary, mostly regarding her diagnoses and employability, he has provided no explanation or description for any of the detailed assessments in MR or AR regarding restrictions in the appellant’s ability to manage DLA, making it difficult for the ministry to assess the degree of severity of the appellant’s impairment. For example, in the AR he assesses the appellant as requiring periodic assistance from another person for food preparation and cooking. Is this because of a lack of motivation on the appellant’s part, or somehow as a result of her overactive bladder? What type of periodic assistance is required – someone to motivate or remind her? or someone to do the cooking, or just help? Under what circumstances? And how often and for how long? Without such detailed explanations, the ministry would not have the information to base a finding of severe impairment.

Considering the above discussion, the panel finds that the ministry was reasonable in determining that a combined mental/physical impairment has not been established.

Direct and significant restrictions in the ability to perform DLA

In her SR and Notice of Appeal, the appellant offered no evidence or argument as to restrictions in her ability to perform DLA.

In the reconsideration decision, the ministry noted that a severe impairment has not been established. The ministry further noted that the GP indicates that the appellant is independent in the large majority of the appellant’s DLA and is not restricted in any of her DLA. As the ministry also pointed out in considering severity of impairment, although the GP indicates that she is periodically restricted in some areas, when asked to explain “Periodic” and describe the degree of restriction, he leaves blank the spaces provided. Therefore, though the ministry acknowledges certain limitations as a result of her medical conditions, it finds that the information provided does not establish that an impairment significantly restricts DLA continuously or periodically for extended periods.

Panel finding

The panel notes that, according to the legislation, the direct and significant restriction in the ability to perform DLA must be the result of a severe impairment, a criterion 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 the GP. This does not mean that other evidence should not be factored in as required to provide explanation of the professional evidence, but the legislative language is clear that a prescribed professional’s evidence is fundamental to the ministry’s

determination whether it is “satisfied.” And for the minister to be “satisfied,” it is reasonable for the ministry to expect that a prescribed professional provides a clear picture of the extent to which the ability to perform DLA is restricted, as assessed in terms of the nature and duration of help required or the time it takes to perform a task, 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).

As the ministry pointed out, the GP has not assessed the appellant as continuously restricted or requiring the continuous assistance of another person. There is also no indication that the appellant requires the use of an assistive device. The GP has assessed the appellant as periodically restricted or requiring the periodic assistance from another person in several areas, including 4 out of 5 areas of social functioning. However, as discussed above under *Severity of impairment*, the GP has not provided any description or explanation of the nature or type, or frequency or duration of such periodic assistance – information that the ministry would reasonably expect in considering whether the restrictions are “significant” and “for an extended period.” Accordingly, the panel finds the ministry was reasonable in its determination that it has not been established that the appellant’s impairment directly and significantly restricts DLA continuously or periodically for extended periods.

Help required

In her SR or Notice of Appeal, the appellant provided no information regarding the help that she may require to manage her 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.

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.

Although the GP has commented that the appellant would benefit from the assistance of a “multiple barriers person,” given that the GP did not report any detailed information on the nature, type, frequency or duration of assistance required from another person, the use of an assistive device or the services of an assistance animal, and since 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 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 that determined that the appellant was not eligible for PWD designation was reasonably supported by the evidence. The panel therefore confirms the ministry's decision. The appellant is thus not successful on appeal.

APPEAL NUMBER

PART G – ORDER

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

THE PANEL CONFIRMS THE MINISTRY DECISION RESCINDS THE MINISTRY DECISION

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

LEGISLATIVE AUTHORITY FOR THE DECISION:

Employment and Assistance Act

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

and

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

PART H – SIGNATURES

PRINT NAME

Richard Roberts

SIGNATURE OF CHAIR

DATE (YEAR/MONTH/DAY)

2019 June 17

PRINT NAME

Charles Schellinck

SIGNATURE OF MEMBER

DATE (YEAR/MONTH/DAY)

2019 June 17

PRINT NAME

Joseph Rodgers

SIGNATURE OF MEMBER

DATE (YEAR/MONTH/DAY)

2019 June 17