

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 June 17, 2019, which held that the appellant did not meet 3 of the 5 statutory requirements of section 2 of the *Employment and Assistance for Persons with Disabilities Act* (EAPWDA) for designation as a person with disabilities (PWD). The ministry found that the appellant met the age and duration requirements, but 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 those restrictions, the appellant requires an assistive device, the significant help or supervision of another person or the services of an assistance animal to perform DLA.

PART D – RELEVANT LEGISLATION

EAPWDA, section 2

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

PART E – SUMMARY OF FACTS

On March 6, 2019 the ministry received the appellant's PWD application comprised of a Medical Report dated February 23, 2019 (MR) and an Assessor Report dated February 22, 2019 (AR) completed by the appellant's general practitioner (the "Physician") on February 23, 2019, and the appellant's self-report (SR) dated February 21, 2019.

The appellant also provided the following:

- MRI Cervical Spine dated May 8, 2018
- Head Scan dated January 26, 2018
- Report of a neurologist (the "Neurologist") dated January 8, 2019
- Report of another neurologist (the "Second Neurologist") dated January 24, 2019

The appellant's request for PWD designation was denied on March 26, 2019. On May 22, 2019 the ministry received the appellant's request for reconsideration form (RFR) dated May 20, 2019. The appellant also provided a letter dated May 28, 2019 (the "Letter") setting out the reasons she disagreed with the ministry's decision and indicating inaccuracies in the information provided by the Physician in the MR and the AR. The appellant also provided a copy of Section 3 – Assessor Report indicating the appellant's own assessment of her cognitive and emotional functioning and DLA (the "Appellant AR").

On June 17, 2019 the ministry completed its review.

On July 3, 2019 the tribunal received the appellant's Notice of Appeal dated July 2, 2019.

Summary of relevant evidence

Diagnoses

In the MR, the Physician indicates that the appellant has been diagnosed with chronic pain, tension headaches (date of onset January 2018) as well as anxiety and central sensitization (date of onset March 2018). The Physician indicates that the appellant has been her patient for one year and she has seen her 11 or more times in the past 12 months.

The Neurologist indicates that the appellant has chronic pain, chronic headache, and reactive depression.

The Second Neurologist indicates that the appellant has tension-type headache, possible post-traumatic headaches with migrainous features, and anxiety.

In the Letter, the appellant states that she is unsure how "...the diagnosis of "central sensitization" was determined by the Physician, as attached to "anxiety". The appellant states that she was verbally advised that "...her condition falls under an umbrella term called central sensitization since the duration of the length of time severe headaches were still being suffered, that it could no longer be considered post-concussive disorder". The appellant states that she

was never sent for testing for this diagnosis but given information on how to live with chronic pain. The appellant says that she was advised that she has characteristics of some very serious and devastating illnesses such as MS, chronic fatigue, fibromyalgia, and lupus.

In the Letter the appellant states that she has had IMS injections, nerve block injections, physiotherapy, acupuncture, massage therapy, and chiropractic treatment and that despite every effort to find relief she has not experienced any positive results and that her condition has worsened due to the commutes to the appointments which escalated her pain experience and fatigue.

In the Letter, the appellant says that she has chronic overall body pain, chronic digestion issues, chronic lower abdominal pain, unbearable daily tension headaches, and chronic migraine headaches.

Physical Impairment

In the MR for Functional Skills, the Physician indicates that the appellant is able to walk 4+ blocks, can climb 5+ stairs unaided, has no limitations with lifting, and no limitations with remaining seated. In the Health History portion of the MR the Physician indicates that the appellant developed pain after hitting her head on the side of a car in 2017 and that the appellant's symptoms have severely limited her life. The Physician indicates that on days when the appellant is in pain, she is limited to bed or house only, cannot lift or walk, and cannot be around noise.

The Physician indicates that the appellant recently developed episodes of abdominal pain that cause her to feel sick and unable to eat.

In Part F – Additional Comments of the MR, the Physician indicates that the appellant is living in fear that her pain will dominate her life and when she gets pain her fear is confirmed. The Physician indicates that the appellant has receded into herself and has become severely disabled despite no physical manifestations of pathology (see CT and MRI scan).

The MRI indicates that the appellant had a small amount of fluid within the anterior C1 and C2 articulation anteriorly but there was no evidence of any post traumatic injury to the cervical spine and no evidence of a facet injury or acute disc pathology.

The CT Head Scan findings were normal with no acute intracranial injury or haemorrhage.

In the AR, the Physician indicates that the appellant is independent with walking indoors, walking outdoors, climbing stairs, standing, lifting, and carrying and holding. The Physician indicates that all aspects of mobility and physical ability are fine until the appellant has abdominal pain then she finds walking painful and she bends over.

The Neurologist indicates that the appellant reported having "...constant pain in the top of her head and the occiput but can have headaches and pain everywhere in the body", a little bit of neck pain, and occasional headaches. The Psychiatrist indicates that the appellant reported that she had to go to emergency once in the last year and when she feels really intense pain

she "... cannot handle anything and has to go lie down in the room".

The Neurologist's report indicates that examination of the lumbar spine, flexion extension, paravertebral muscles, straight leg raising, SI joint and hip joints were normal. He notes that the appellant's trapezius was stiff but not overly tender. He also notes that "...even very gentle touch on the top of the head diffusely on the occiput she perceived as headache".

The Second Neurologist indicates that the appellant reported having "pain at all times, at around 5 or 6 out of 10, but once every month or 2 she gets a severe 10 out of 10 headache which will last for a period of 5-14 days". Triggers for this include "doing too many activities" or "walking too much." The appellant reported that her day consists of walking, doing small errands and organizing things around the house and her exercise includes walking, grocery shopping and light squats.

In the SR, the appellant states that she has moderate to severe daily headaches that prevent her from doing anything such as self-help, traveling, attending school, or working. She states that she has aches and pains all over her body from head to toe and is sensitive to touch, sounds, lights and other sensory messages. The appellant says that her lower abdominal pain is so severe that she can't move some days and it makes her nauseated. Although she is physically able to complete certain tasks, her pain is aggravated and becomes more unmanageable by over-working herself. On very bad pain days (over 50% of the time) it is hard for her to attend doctors' appointments, physio, acupuncture or any other commitments.

In the RFR the appellant says that she spends 80-85% of time in bed and that she lives in constant pain.

In the Letter, the appellant says that she hit her head getting out of a car, fully jarring her head into the upper door jam of a car. The appellant says that she did not hit her head on the side of a car as reported by the Physician.

In the Letter the appellant says that the level of independence reported in the functional skills represents her ability when she is well but that is only 10-15% of the time. The appellant says that the MR should be a measurement of the days she suffers from the most pain, which is minimum 85% of the time. The appellant says that when she is unwell, she is bed-ridden in a dark, quiet room.

The appellant says that pain is the main reason for her impairments to DLA.

Mental Impairment

In the MR, the Physician indicates that the appellant has significant deficits with cognitive and emotional function in the areas of executive, emotional, and attention or sustained concentration. The Physician comments that background anxiety and dysthymia are present all the time and on pain days the appellant's attention and executive function are severely restricted. The Physician indicated that the appellant has no difficulties with communication.

In the Health History portion of the MR, the Physician indicates that on days where the appellant

has pain she cannot try to read or complete complex cognitive tasks as the pain gets worse.

In the AR, the Physician indicates that the appellant's ability to communicate with speaking, writing, and hearing is good and that her reading is satisfactory (worse with headache).

For Section B, question 4 Cognitive and Emotional Functioning the Physician indicates that the appellant has major impact in the area of emotion, moderate impact to bodily functions and attention/concentration, minimal impact to memory and no impact to consciousness, impulse control, insight and judgment, executive, motivation, motor activity, language, psychotic symptoms, other neuropsychological problems or other emotional or mental problems.

The Neurologist indicates that the appellant reported that she occasionally cries in the morning but denies having any suicidal thoughts. The Second Neurologist indicates that the appellant feels tired, but denied having depression, although the appellant's mother reported that the appellant is depressed. The Second Neurologist recommended that the appellant be seen by a psychologist for support and by a psychiatrist regarding her reactive depression.

The Second Neurologist indicates that the appellant denied significant depression but endorsed anxiety symptoms.

In the Letter, the appellant says that in the MR, for significant deficits with cognitive and emotional function, the box titled perceptual psychomotor (visual spatial) should be checked off too. The appellant says that anxiety is a result of her pain and inability to carry out DLA.

In the Appellant's AR, she indicates that in addition to the impacts noted by the Physician, she has major impact to bodily functions and moderate impact to executive, memory, and language.

DLA

In the MR, the Physician indicates that the appellant has not been prescribed any medications that interfere with her ability to perform DLA.

Under the Health History portion of the MR, the Physician indicates that the appellant hit her head on the side of a car in late 2017 and developed pain at the site of the impact, which became debilitating. The Physician indicates that since the development of the pain the appellant dropped out of college, reduced her social circle to just family, finished her job, and limited her recreation to walking.

The Physician indicates that on days when the appellant is not in pain she could lead a normal life, but she is extremely fearful that the pain will return at anytime and so she continues to limit her activities.

In the AR, the Physician indicates that the appellant is independent with all aspects of DLA except with the tasks of bathing and laundry (periodic assistance needed from another person) and using public transit (takes significantly longer as headache gets worse). The Physician comments that headaches cause the appellant to be unable to bathe or wash her hair as her scalp is sensitive, and that headache and abdominal pain prevent her from concentrating and

conversing with her family. The Physician indicates that there is significant anxiety overlay and that the appellant is tearful and fearful of pain. The Physician also comments that with a headache, any travel makes the appellant feel very sick and transit with noise and lights may induce a headache.

The Physician indicates that the appellant is independent with all aspects of social functioning. The Physician indicates that the appellant has marginal functioning with her immediate social network, noting "with pain" and marginal functioning with her extended social networks.

The Second Neurologist indicates that the appellant reports that her day consists of walking, doing small errands, and organizing things around the house. Her exercise includes walking, grocery shopping and light squats.

In the SR, the appellant states that she is extremely fatigued, and on very bad pain days even small tasks such as brushing her teeth seem impossible. The appellant states that although she is physically able to complete certain tasks, her pain becomes aggravated and more unmanageable by over working herself. She states that her pain has completely affected her life and ability to function normally and she is not able to attend school, social events, or work. She states that on very bad pain days (over 50% of the time) it is hard for her to attend doctors appointments or appointments with other treating practitioners.

In the RFR the appellant says that she spends her days (80 to 85% of the time) in bed and has no social support except for close family.

In the Letter the appellant says that she is independent in the reported DLA but only when not in severe pain, which is only 10-15% of the time. However, the appellant states that she is limited during those times and the activity worsens her condition, making the following days even more difficult. The appellant says she has great difficulty traveling in a passenger vehicle for more than 10 minutes and has had to cancel many medical appointments. The appellant says she is uncertain why it is "unclear" as to how often the headaches occur as in the SR she indicates that her headaches are daily, days and nights. The appellant says that if this is not reflected in the MR, then it is a deficiency on the part of the Physician.

In the Letter the appellant says that due to the pain she no longer has a social life and is unable to leave the house most days, let alone attend a social function.

In the Appellant's AR, she indicates that in addition to the impacts reported by the Physician, she requires periodic assistance with regulating diet, basic housekeeping, and that she is not able to perform the tasks for the DLA of shopping 80-85% of the time. The appellant indicates that she requires continuous assistance with all tasks of the DLA of meals 80-85% of the time. She also indicates that she takes significantly longer than typical with getting in and out of a vehicle and using transit schedules and arranging transportation. For social functioning the appellant indicates that she has very disrupted functioning with respect to her extended social networks, underlining major social isolation.

Need for Help

In the MR, the Physician indicates that the appellant does not require prosthesis or aids for her impairment.

In the AR, the Physician indicates that the appellant's family is supporting her but her parents work so this causes strain. The Physician does not indicate that the appellant uses any assistive devices and she does not have an Assistance Animal.

The Second Neurologist indicates that he encouraged the appellant to actively and aggressively pursue lifestyle modifications such as addressing anxiety, speaking with a counsellor, increasing her DLA, and increasing exercise. He states that Botox injections could be considered but that the appellant does not have insurance or funds to cover the cost. The Second Neurologist prescribed headache medications.

Additional information provided

Prior to the appeal the appellant provided a letter from a friend (the "Friend") dated July 17, 2019 indicating that the appellant is not the girl she used to be. The Friend indicates that the appellant was a happy, energetic, playful child, participated in cultural dance and had aspirations of working and an educational degree. The Friend states that they spent much time together over the years and participated with hiking, snowshoeing, excursions, and traveling abroad. The Friend states that it saddens her to see the appellant in her current state and that she wants to see the appellant get the medical attention she needs.

The Friend enclosed a newspaper article about another woman who had a negative experience with the healthcare system and indicates that her situation was similar to the appellant's. The Friend says that the appellant is in need of support, both medical and financial, in order to regain her health.

The appellant also submitted a letter from a hospital health centre dated January 22, 2019 indicating that the appellant has been referred to their complex chronic disease program which provides care to people with symptoms or a diagnosis of chronic fatigue syndrome, fibromyalgia, and/or tick borne illnesses. The letter indicates that due to the high demand of the program, the wait list can be up to two years and at times, longer.

The panel has admitted the letter from the Friend and the letter from a hospital health centre into evidence as they are in support of information and records that were before the ministry at the time of reconsideration, in accordance with section 22(4) of the *Employment and Assistance Act*. In particular, the letter from the Friend supports the information from the appellant regarding her limitations. The letter from the hospital health centre supports the appellant's referral to a pain clinic.

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

PART F – REASONS FOR PANEL DECISION**Issue on Appeal**

The issue on appeal is whether the ministry's decision to deny the appellant 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. In particular, was the ministry reasonable when concluding it was not satisfied that

- a severe physical or mental impairment was established;
- 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 those restrictions, in the opinion of a prescribed professional, the appellant requires help, as it is defined in the legislation, to perform DLA?

Relevant Legislation**EAPWDA**

2 (1) In this section:

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

"daily living activity" has the prescribed meaning;

"prescribed professional" has the prescribed meaning.

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

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

EAPWDR

Definitions for Act

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

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

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

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

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

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

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

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

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

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

Act,

if qualifications in psychology are a condition of such employment.

(3) The definition of "parent" in section 1 (1) applies for the purposes of the definition of "dependent child" in section 1 (1) of the Act.

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).

Panel Decision

The legislation provides that the determination of severity of an impairment is at the discretion of the minister, taking into account all of the evidence including that of the appellant. However, the legislation is also clear that the fundamental basis for the analysis is the evidence from a prescribed professional respecting the nature of the impairment and its impact on daily functioning. While the legislation does not define "impairment", the MR and AR define "impairment" as a "loss or abnormality of psychological, anatomical or physiological structure or functioning causing a restriction in the ability to function independently, effectively, appropriately or for a reasonable duration." While this is not a legislative definition, and is therefore not binding on the panel, in the panel's opinion, it reflects the legislative intent and provides an appropriate analytical framework for assessing the degree of impairment resulting from a medical condition.

When considering the evidence provided respecting the severity of impairment, the ministry must exercise its decision-making discretion reasonably by weighing and assessing all of the relevant evidence and cannot simply defer to the opinion of a prescribed professional as that would be an improper fettering of its decision-making authority.

Severe Physical Impairment

The appellant argues that she has daily, chronic pain and headaches and that she is in severe pain 80-85% of the time. The appellant argues that the functional skills reported by the Physician represent her ability only 10-15% of the time.

The ministry's position is that the functional skills reported by the Physician in the MR and the assessment of mobility and physical ability in the AR are not indicative of a severe physical impairment. The ministry notes that the appellant's assessment of her mobility and physical ability are much more restricted than the Physician's assessment of her basic functional skills. The ministry's position is that the fundamental basis for the analysis is the evidence from the Physician and that the Physician does not confirm that the appellant's physical functioning is restricted a minimum of 85% of the time as the appellant indicates.

The panel finds that the ministry reasonably determined that the information provided did not establish that the appellant has a severe physical impairment as required by section 2(2) of the EAPWDA. In particular while the appellant states that the Physician's assessment in the MR and the AR represent her functional abilities only 10-15% of the time, the appellant did not provide any further information from the Physician assessing her physical abilities on a "pain day" and supporting her position that she is severely limited 80-85% of the time. The Second Neurologist indicates that the appellant reported having "pain at all times, at around 5 or 6 out of 10, but once every month or 2 she gets a severe 10 out of 10 headache which will last for a period of 5-14 days," that triggers for the severe headache include "doing too many activities" or "walking too much," which was a report by the appellant of a different frequency of her pain than that at reconsideration, with no explanation for the discrepancy.

While the Physician indicates that the appellant has become severely disabled despite no physical manifestations of pathology, the Physician indicates that the appellant is limited due to fear. The panel notes that the functional skills reported by the Physician indicate that the appellant can walk 4+ blocks unaided on a flat surface, can climb 5+ steps unaided, and has no limitations with lifting or remaining seated. In the AR, the Physician indicates that the appellant is independent with walking indoors, walking outdoors, climbing stairs, standing, lifting, and carrying and holding. The Physician indicates that when the appellant has abdominal pain she finds walking painful and bends over, but the Physician did not provide information as to how often the appellant has abdominal pain or how often she limits her walking.

While the Physician wrote that "on pain days" the appellant is limited to staying in bed or doing nothing, the Physician did not specify the frequency or duration of the pain days and the panel finds that the ministry reasonably relied on the Physician's assessments of her mobility and physical ability as reflecting the appellant's functioning a majority of the time. The panel finds that the functional skills reported by the Physician indicate a reasonably high level of functional ability, so the description that the appellant is severely disabled contradicts the assessments of the appellant's mobility and physical ability. Although the appellant states that her severe pain has not been properly diagnosed, the panel finds that the ministry reasonably relied on the assessments provided by the Physician in reaching its decision.

Although the Neurologists indicate that the appellant has chronic pain and headaches, their reports do not provide further information regarding the appellant's functional skills. Likewise the MRI report and the CT scan do not provide information confirming the appellant's assessments of her physical skills.

While the information provided indicates that the appellant had to stop school and is unable to continue working, employability is not a criterion of designation for PWD. Accordingly, given the

assessment of independent physical functioning by the Physician and the absence of specific information about the frequency and duration of exacerbations to the appellant's pain, and the inconsistency between the appellant's information and the Physician's information, the panel finds that the ministry reasonably determined that the information provided did not establish that the appellant has a severe physical impairment.

Severe Mental Impairment

The appellant's position is that she has significant anxiety resulting from her pain and inability to carry out her DLA, including having a productive life. The appellant argues that the MR is not complete as she also has significant deficits with cognitive and emotional function into perceptual psychomotor (visual spatial). The appellant also says that in addition to the impact on daily functioning noted in the AR for cognitive and emotional functioning, she also has major impact to bodily functions and moderate impact to executive, memory, and language. The appellant also argues that she has very disrupted functioning, not marginal functioning with respect to her extended social networks.

The ministry's position is that the information provided does not demonstrate a severe impairment of the appellant's mental functioning. The ministry's position is that although the appellant's assessment of her functioning is more restricted, she has not produced any further information from the Physician confirming the appellant's assessments.

The panel finds that the ministry reasonably determined that the information provided does not demonstrate a severe mental impairment as required by section 2(2) of the EAPWDA. Although the MR indicates that the appellant has significant deficits with cognitive and emotional function in the areas of executive, emotional disturbance and attention or sustained concentration, the AR indicates that the appellant only has major impact to emotion and moderate impact to bodily functions and attention/concentration. In addition while the MR indicates that the appellant has significant deficits in the executive area, the AR indicates that there is no impact to executive and the Physician has not provided any further information to explain this inconsistency between the MR and the AR.

While the Physician in the AR indicates that the appellant has marginal functioning with respect to her immediate and extended social networks, the Physician indicates that the appellant is appropriate with all listed DLA of social functioning including making appropriate social decisions, developing and maintaining relationships, interacting appropriately with others, dealing appropriately with unexpected demands, and securing assistance from others. The appellant indicates that she has very disrupted functioning with respect to her extended social networks, underlining major social isolation, but the appellant has not provided any further information from the Physician or a mental health specialist to support her self-assessment.

While the Neurologist indicates that the appellant has depression likely reactive to her life situation and the Second Neurologist indicates that the appellant has anxiety, their reports do not provide further information indicating that the appellant's depression and anxiety are severe. In particular, neither Neurologist provides further information regarding any significant deficits to the appellant's cognitive and emotional function, other than indicating the appellant's self-reports of her pain and limitations with work, studying, and recreational activities.

The Second Neurologist indicates that the appellant needs to be seen by a psychiatrist for help with her reactive depression and also recommended that she see a psychologist who would support her. There were no additional reports from a mental health specialist provided by the appellant on the appeal. In addition, the Neurologist indicates that the appellant reported that she "... cannot go anywhere because she does not feel well but occasionally her friends come to see her", but the Second Neurologist indicates that her day "... consists of walking, doing small errands and organizing things around the house", which does indicate that the appellant is able to go out and walk and complete errands such as grocery shopping.

Given the inconsistencies in the information provided and the lack of further information from the Physician corroborating the appellant's self-assessment, the panel finds that the ministry reasonably determined that the information provided by the Physician in the MR and the MR is not sufficient to establish that the appellant has a severe mental impairment.

Restrictions in the ability to perform DLA

Section 2(2)(b)(i) of the EAPWDA requires that the minister be satisfied that in the opinion of a prescribed professional, a severe mental or physical impairment directly and significantly restricts the appellant's ability to perform DLA either continuously or periodically for extended periods. While other evidence may be considered for clarification or support, the ministry's determination as to whether or not it is satisfied that the legislative criteria are met, is dependent upon the evidence from prescribed professionals. The term "directly" means that there must be a causal link between the severe impairment and the restriction. The direct restriction must also be significant. Finally, there is a component related to time or duration – the direct and significant restriction may be either continuous or periodic. If periodic, it must be for extended periods. Inherently, any analysis of periodicity must also include consideration of how frequently the activity is restricted. All other things being equal, a restriction that only arises once a year is less likely to be significant than one that occurs several times a week. Accordingly, in circumstances where the evidence indicates that a restriction arises periodically, it is appropriate for the ministry to require evidence of the duration and frequency of the restriction in order to be "satisfied" that this legislative criterion is met.

DLA are defined in section 2(1) of the EAPWDR and are listed in both the MR and the AR sections of the PWD application with the opportunity for the prescribed professional to check marked boxes and provide additional narrative. DLA, as defined in the legislation, do not include the ability to work.

The appellant's position is that she has a severe physical and mental impairment, is in constant pain, is extremely limited in her DLA, and requires help with DLA. The appellant's position is that the information provided demonstrates that she has a severe impairment that directly and significantly restricts her DLA continuously or periodically for extended periods. The appellant argues that her self-assessment should be accepted over the deficiencies she notes in the information provided by the Physician.

The ministry's position is that the information provided in the AR is not sufficient to confirm that the appellant has a severe impairment that significantly restricts her ability to perform DLA

continuously or periodically for extended periods, so the legislative criteria has not been met. The ministry notes that the Physician in the AR only indicates that the appellant requires periodic assistance with bathing and laundry and takes significantly longer than typical with using public transit, noting that her headaches get worse. The Physician indicates that the appellant's headaches cause her to be unable to bathe or wash her hair as her scalp is sensitive and that headache and abdominal pain prevent her from concentrating and is unable to converse with her family. However, the Physician does not indicate how often the appellant is unable to converse with her family.

The ministry notes that the appellant indicates, in the RFR, that she is independent in doing DLA when not in severe pain which is 10-15% of the time but is even limited in those times as her condition worsens. The ministry considered the Letter in which the appellant indicates that she requires continuous assistance from another person or is unable to manage tasks of DLA 80-85% of the time, specifically: going to and from stores, reading prices and labels when shopping, making appropriate choices when shopping, paying for purchases, carrying purchases home, meal planning, food preparation, cooking and safely storing food. However, the ministry's position is that as the Physician has not confirmed that the appellant is limited to managing all aspects of her DLA to 10-15% of the time, the legislative criteria has not been met.

The panel notes that there is a significant difference in the information provided by the Physician in the AR and the information provided by the appellant in her own self-assessment. The panel finds that the ministry reasonably determined that based on the information from the Physician that the appellant did not meet the legislative criteria as the Physician indicates that the appellant is independent in all but three aspects of DLA. In addition, the Physician does not indicate that the appellant requires continuous assistance from another person with any of the listed aspects of DLA.

The Neurologist and the Second Neurologist do not provide information indicating whether the appellant requires periodic or continuous assistance with DLA and as noted above the Second Neurologist indicates that the appellant's day consists of walking, doing errands including grocery shopping, and organizing things around her house. In addition, the Neurologist indicates that he encouraged her to increase her daily activities and increase her exercise.

It is unclear why the appellant did not provide any further information from the Physician supporting her self-assessment. In addition, while the Friend indicates that the appellant is unable to participate in the study, employment, travel and recreational activities she previously did, the information from the Friend does not provide specific information indicating any assistance provided, whether periodic or continuous. In addition, as noted above, employability and ability to study is not a criterion for PWD designation.

The information demonstrates that the appellant experiences some limitations resulting in her need for periodic assistance with two aspects of DLA, but as the majority of DLA are performed independently and there is insufficient information from a prescribed professional regarding the frequency and duration of exacerbations to the appellant's pain, the panel finds that the ministry has reasonably determined that the information provided does not confirm that the appellant has a severe impairment that significantly restricts her ability to perform DLA continuously or periodically for extended periods.

Help to perform DLA

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. 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 DLA.

The appellant's position is that she requires help with DLA because of her severe physical and mental impairment and ongoing chronic pain and limitations. In the Letter, the appellant indicates that she has had to cancel many appointments as she was unable to get to them due to being debilitated.

The ministry's position is that because it has not been established that DLA are significantly restricted, it cannot be determined that help is required.

In the AR, the Physician indicates that the appellant receives help from her family but her parents work so this causes strain. The Physician does not indicate that the appellant has assistance provided through the use of Assistive Devices. The appellant does not have an Assistance Animal.

The Neurologist recommends that the appellant see a psychologist and psychiatrist and be referred to a pain clinic. The Second Neurologist indicates that Botox injections may be a consideration as well as mediations for her headaches. However, neither the Neurologist nor the Second Neurologist indicates that the appellant requires assistance with DLA.

While the information provided indicates that the appellant receives assistance from family with some aspects of DLA, confirmation of direct and significant restrictions with DLA is a precondition of the need for help criterion. As the panel found that the ministry reasonably determined that direct and significant restrictions in the appellant's ability to perform DLA have not been established, the panel also finds that the ministry reasonably concluded that it cannot be determined that the appellant requires help to perform DLA as required by section 2(2)(b)(ii) of the EAPWDA.

Conclusion

The panel finds that the ministry's reconsideration decision, which determined that the appellant was not eligible for PWD designation, was reasonably supported by the evidence and is a reasonable application of the applicable enactment, and therefore confirms the decision. The appellant is 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

Helene Walford

SIGNATURE OF CHAIR

DATE (YEAR/MONTH/DAY)

2019/09/02

PRINT NAME

Sandra Walters

SIGNATURE OF MEMBER

DATE (YEAR/MONTH/DAY)

2019/09/03

PRINT NAME

Rick Bizarro

SIGNATURE OF MEMBER

DATE (YEAR/MONTH/DAY)

2019/09/03