

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 April 23, 2020, 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 January 30, 2020 the ministry received the appellant's PWD application comprised of a Medical Report (MR) and an Assessor Report (AR) completed by the appellant's general practitioner (the "Physician") on November 14, 2019, and the appellant's self-report (SR) dated January 27, 2020.

On March 6, 2020, the ministry denied the appellant's request for PWD designation. On March 24, 2020 the ministry received the appellant's request for reconsideration form (RFR) dated March 23, 2020, and an amended MR with revisions by the Physician dated March 23, 2020 ("Amended MR").

On April 23, 2020 the ministry completed its review.

On May 4, 2020 the tribunal received the appellant's Notice of Appeal dated May 4, 2020.

Summary of relevant evidence

Diagnoses

In the MR, the Physician indicates that the appellant has been diagnosed with fibromyalgia, depression, and iron deficiency, date of onset being "years". The Physician indicates that the appellant has been a patient for two years and the Physician or other doctors at the clinic have seen the appellant two to ten times in the past 12 months.

In the SR, the appellant indicates that the appellant has had fibromyalgia for about 20 years. The SR indicates that the appellant has a hard time concentrating and prioritizing. The appellant suspects severe damage to the appellant's hippocampus and memory as well as post-traumatic stress disorder (PTSD).

Physical Impairment

In the MR for Functional Skills, the Physician indicates that the appellant is able to walk 4+ blocks unaided (very sore the next day), can climb 5+ stairs unaided (increased symptoms with repetitive stair climbing), can lift 15 to 35 pounds (increased symptoms with repetitive lifting), and can remain seated less than one hour.

In the Health History portion of the MR the Physician indicates that the appellant has persistent fatigue and muscle pain (especially upper body but lower body as well), pain with stress and physical work, is able to work at times, but finds that the appellant is debilitated for multiple days after work.

In the AR, the Physician indicates that the appellant is independent with walking indoors, walking outdoors, climbing stairs, and standing, explaining that the appellant is independent but has reduced capacity. The Physician indicates that the appellant requires periodic assistance

from another person with lifting and carrying and holding, indicating that the appellant has decreased strength and symptoms easily flared.

In the SR, the appellant reports being unable to work longer than four hours or the appellant will have severe pain and end up in bed with pain for 2-3 days. The appellant reports severe headaches, muscle spasms, and muscle pain from the fibromyalgia and that if the appellant does too much the appellant's body will "shut down". The appellant reports that symptoms fluctuate.

Mental Impairment

In the MR, the Physician indicates that the appellant has significant deficits with cognitive and emotional function in the areas of consciousness, executive, language, memory, emotional disturbance, motivation, and attention or sustained concentration, commenting that deficits are intermittent (depending on symptoms).

In the MR the Physician indicates that the appellant has intermittent difficulties with communication when symptoms are worse. In the Amended MR the Physician indicates this occurs 3-4 days per week.

In the AR, the Physician indicates that the appellant's ability to communicate with speaking, reading, writing, and hearing are good but can be poor when the appellant's symptoms are flared up.

For Section B, question 4 Cognitive and Emotional Functioning the Physician indicates that the appellant has moderate to major impact with bodily functions, consciousness, emotional, attention/concentration, memory, motivation and language, noting major at times due to flare ups. The Physician indicates that there is minimal impact to executive, and no impact to impulse control, insight and judgment, motor activity, psychotic symptoms, other neuropsychological problems or other emotional or mental problems.

In the SR, the appellant indicates difficulty with concentrating, prioritizing, motivation as well as trouble storing and recalling simple information that should be easy to retain. The appellant reports become so stressed that the appellant forgets to eat until 8 pm or drink water. The appellant reports extreme stress after leaving a very abusive relationship. The appellant reports that the damage from the abuse by the appellant's former spouse has been devastating.

The appellant reports difficulty remembering to take medications. The appellant reports that the impact to memory and brain functioning are the most debilitating symptoms, followed by stamina and pain management. The appellant reports significant sleep disruption, only sleeping 3-4 hours per night. The appellant states that "...getting out the door can take me hours, depending on how much anxiety and stress I have, even when it's stuff that I want to do". The appellant has a dog that is very calming and helps ease the anxiety.

DLA

In the MR, the Physician indicates that the appellant has been prescribed medications that interfere with the ability to perform DLA, explaining that amitriptyline is sometimes sedating.

In the Health History portion of the MR, the Physician indicates that light housework is manageable but anything heavier can leave the appellant "laid up" for a few days (2-3 days).

In the Health History portion of the Amended MR, the Physician indicates that the appellant's symptoms can be triggered by cold weather or housework and that the appellant is "laid up" on average 3-4 days per week.

For Section E – DLA, the Physician indicates that the appellant's impairment directly restricts the appellant's ability to perform DLA. The Physician indicates that the appellant's DLA of personal self-care, meal preparation, management of medications, basic housework, daily shopping, mobility inside the home, use of transportation, and management of finances are not restricted. The Physician indicates that mobility outside the home is continuously restricted and social functioning is periodically restricted. For this periodic restriction, the Physician explains that the symptoms are worse when pain or fatigue is worse. For social functioning, the Physician explains that the appellant has difficulty communicating and sometimes has impairment to memory and concentration. Regarding the degree of restriction, the Physician indicates that the appellant can only do a moderate level/duration of physical exertion before symptoms flare.

In the AR, the Physician indicates that the appellant is independent with all aspects of DLA of personal care, meals, paying rent and bills, medications and transportation. The Physician indicates that the appellant requires periodic assistance with laundry and basic housekeeping, that it takes significantly longer than typical, explaining that the appellant may need more breaks or to pace self, taking "maybe twice as long".

With DLA of shopping the Physician indicates that the appellant is independent with going to and from stores, reading prices and labels, making appropriate choices, and paying for purchases but requires periodic assistance from another person with carrying purchases home, indicating that it takes the appellant significantly longer than typical (twice as long).

For social functioning, the Physician indicates that the appellant is independent with making appropriate social decisions but needs periodic support/supervision with developing and maintaining relationships, interacting appropriately with others, dealing appropriately with unexpected demands and securing assistance from others. The Physician indicates being unsure of what assistance would be helpful when symptoms are flared as social interactions are much more difficult.

The Physician indicates that the appellant has very disrupted functioning with immediate social network, indicating that the appellant is separated from spouse, and marginal functioning with extended social networks commenting, "intermittent with symptoms".

In the SR, the appellant states that many household duties are neglected due to limited energy and capabilities. The appellant reports that the high stress makes the fibromyalgia symptoms worse. The appellant reports struggling "...to get out of bed for the past few weeks but that the

stress seems to be easing up enough to the point I can somewhat think again and take care of myself and my children". The appellant reports that symptoms fluctuate.

Need for Help

In the MR, the Physician indicates that the appellant needs help with housework, though often has none.

In the AR, the Physician indicates that the appellant lives with two children, requires help with heavier housework, and that no help is available. The Physician does not indicate that the appellant uses any assistive devices. The Physician indicates that the appellant has an Assistance Animal, explaining that the appellant's pet dog provides significant emotional support.

Additional information provided

The NOA indicates that the appellant disagrees with the ministry's decision.

At the hearing, the appellant stated that until 2018 the appellant worked a physical, cleaning job but had to call in sick frequently due to pain symptoms. The appellant obtained different employment but was unable to continue that work and has no longer been working since 2019. The appellant stated being able to perform self-care "for the most part", but that if having a major flare-up, is unable to do anything. The appellant reported decreased mobility outside the home if experiencing a flare-up. The appellant reported that the last few months have not been "terribly horrible" but that after helping move furniture one week ago the appellant had a major flare-up that lasted several days.

The appellant also reported enjoying social activities with friends such as hiking or playing darts but can be sore after participating in these activities or not attending if having a flare up of symptoms.

The appellant lives with the appellant's two children in a house with a yard. The appellant confirmed being responsible for most household tasks although the children help some with laundry and dishes. The appellant does some yard work but will occasionally pay someone to help with weed trimming.

At the hearing, the Physician stated that the appellant's fibromyalgia was the most disabling condition. The Physician stated that the appellant is able to do some degree of work but that it would aggravate the appellant's symptoms. The Physician stated that the appellant is able to complete DLA if not working outside the home. However, if the appellant experiences flareups due to employment, then the appellant is not able to complete DLA. The Physician indicated that the appellant's social functioning is impacted mainly by the fibromyalgia which is difficult to treat. The Physician also indicated that the appellant would benefit from physiotherapy and psychological counseling, particularly to learn pain strategies, but that the appellant cannot afford to see a psychologist. The Physician indicated that no referral to a psychiatrist was made.

Admissibility of New Information

The panel has admitted the appellant and the Physician's oral testimony as it is necessary for as it is information that is reasonably required for a full and fair disclosure of all matters related to the decision under appeal, in accordance with section 22(4) of the *Employment and Assistance Act*. In particular, the new information relates to the appellant's functioning and information provided by the Physician in the MR and the AR.

The panel has accepted the information in the NOA as argument.

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](#),

[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 disagrees with the ministry's reconsideration decision. The appellant's position is that the information provided in the MR, AR, Amended MR, and the oral testimony of the Physician confirms that the appellant has a severe physical impairment due to longstanding

fibromyalgia that causes severe pain and functional limitations. The appellant reports struggling every day for 20 years with severe major impact.

The ministry's position is that the information provided by the Physician in the MR, AR, and Amended MR indicate that the appellant has periodic restrictions in physical functioning due to fibromyalgia with consequent fatigue and muscle pain. The reconsideration decision indicates that the information provided indicates that the appellant has no significant restriction to physical functioning in terms of the amount that the appellant can mobilize, lift, carry and hold, but that the appellant is "laid up" 3-4 days a week due to exacerbation of symptoms. However, the ministry's position is that a severe degree of impairment is difficult to establish given the physical functioning reported. The ministry's position is that when considered in conjunction with the report of DLA, it is not clear that the appellant experiences a severe degree of impairment. In particular the ministry notes that while the Physician reports that the appellant can do a moderate level/duration of physical exertion before the symptoms flare.

The ministry's position is that while the appellant has some limitations with regard to mobility and physical abilities and that the appellant must be mindful to stay within moderate limits of activity, the ministry is not satisfied that the information provided established a severed impairment of the appellant's physical functioning.

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 symptoms are severe and that the appellant should qualify for PWD designation, the MR, AR and the Amended MR indicate a relatively high level of physical functioning and independence.

While the Physician, in both the Amended MR and by oral testimony, indicates that after moderate exertion and work the appellant's symptoms flare up and the appellant can be "laid up" for 3-4 days per week, the Physician reports that the appellant can walk 4+ blocks unaided, can climb 5+ steps, can lift between 15 to 35 pounds and can remain seated less than one hour. The appellant confirmed that the description of functional skills is accurate but that symptoms flare up so when in pain, the appellant would not try walking 4-5 blocks or climbing stairs. The Physician stated that if the appellant is not doing work outside the house, then the appellant is able to perform household tasks.

While the appellant indicated not being able to work any longer, the Physician indicated that the appellant is capable of some part-time work. However, the panel notes that employability is not a criterion for PWD designation.

In the AR, the Physician indicates that the appellant is independent with walking indoors, walking outdoors, climbing stairs and standing, although at a reduced capacity so the appellant's level of mobility and physical ability is still quite high. While the Physician indicates that the appellant requires periodic assistance from another person with lifting and carrying and holding due to decreased strength and symptoms easily flared, the panel finds that the ministry reasonably determined that the reported level of physical functioning is mainly independent.

While the Health History portion of the MR indicates that the appellant has persistent fatigue and muscle pain (especially upper body but lower body too), the appellant reported being independent with most household tasks.

The panel finds that the ministry reasonably determined that while the appellant has a serious medical condition that causes some periodic restrictions, the information provided does not establish that the appellant has a severe physical impairment.

Severe Mental Impairment

The appellant's position is that ongoing depression with impact to cognitive abilities and social functioning as set out in the information provided by the Physician, confirms that the appellant has a "major" mental impairment. In particular the appellant's position is that memory and motivation are particularly impacted by the severe mental impairment. The appellant also argues that high stress due to fleeing an abusive relationship has significantly impacted the appellant's abilities, including remembering to take medications.

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 Physician indicates intermittent difficulties with communication and significant deficits to cognitive and emotional function in the areas of consciousness, emotion, attention/concentration, memory, motivation and language that are impacted by flare up, the information indicates that the appellant is independent with most activities. The ministry notes that while the Physician indicates that the appellant requires periodic assistance with social functioning (3-4 days a week), no support/supervision is reported. The ministry acknowledges that the appellant's life is impacted as a result of a serious medical condition but is not satisfied that a severe degree of mental impairment has been established.

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.

The MR indicates that the appellant has significant deficits with cognitive function in the areas of consciousness, executive, language, memory, emotional disturbance, motivation and attention or sustained concentration but the Physician indicates that the impact is intermittent, depending on symptoms. In the AR question for, cognitive and emotional functioning, the Physician indicates that the appellant has moderate impact to bodily function, consciousness, emotion, attention/concentration, memory, motivation and language. The Physician indicates that these can be major at times, during flare ups, but the information provided by the appellant and the Physician does not indicate that flareups are very frequent. In particular, the appellant reported having only a few flareups in the past few months and that the stress is "easing".

While the Physician indicated in the MR that the appellant has significant deficits with cognitive and emotional function in the area of executive planning, the AR indicates that there is minimal impact to executive. The Physician also indicated that there is no impact to the areas of impulse control, insight and judgment, motor activity, psychotic symptoms, other neuropsychological problems or other emotional or mental problems.

In the SR, the appellant suspects that the appellant has severe damage to the hippocampus and memory as the appellant reports having trouble storing and recalling simple information. The SR indicates that the appellant also believes that the appellant is suffering from PTSD. However, the panel notes that while the Physician diagnoses the appellant with depression, there is no diagnosis of PTSD or hippocampal damage.

While the Physician in the AR indicates that the appellant has very disrupted functioning to the appellant's immediate social network, indicating separated from spouse, for extended social networks the Physician indicates marginal functioning commenting that it is intermittent with symptoms. The Physician indicates that the appellant requires periodic support/supervision with developing and maintaining relationships, interacting appropriately with others, dealing appropriately with unexpected demands and securing assistance from others but indicates being unsure what assistance would be helpful. At the hearing the Physician indicated that counseling may be helpful but the appellant could not afford counseling. When questioned about a referral to a psychiatrist, the Physician indicated that a referral had not been made.

Given that the appellant's level of functioning remains independent in most areas and that reported symptoms are intermittent, the panel finds that the ministry reasonably determined that the information provided by the Physician in the MR and the PR 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 due to a severe physical and mental impairment in particular the stress from fleeing an abusive relationship and fibromyalgia, the appellant is in constant pain, has major impact to DLA and requires help with DLA. The appellant's position is that the

information provided demonstrates that a severe impairment directly and significantly restricts DLA continuously or periodically for extended periods.

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 the appellant's 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 MR reports that the appellant is not restricted in a majority of areas, including personal self-care, meal preparation, management of finances, basic housework, daily shopping, mobility inside the home, transportation and finances. The ministry acknowledges that the Physician indicates that the appellant is reported to be continuously restricted in mobility outside the home and that the appellant needs help with housework although often has none. The Physician indicates that the appellant can only do a moderate level/duration of physical exertion before symptoms flare.

The reconsideration decision notes that in the AR, the Physician reports that the appellant is independent in all areas of personal care, meals, financial management, medications and transportation as well as going to/from stores, reading price/labels, making appropriate decisions, and paying for purchases. While the Physician indicates that the appellant requires periodic assistance with laundry, basic housekeeping, and carrying purchases home from shopping, taking twice as long to complete, the ministry's position is that taking two times longer to complete these activities does not support a significant restriction. In addition, the Physician's note indicating that the appellant requires assistance with "heavier housework" does not support that the appellant has a significant restriction with these activities, particularly given that the MR indicates that the appellant is able to do a moderate level/duration of physical exertion

With respect to social functioning, the ministry's position is that a flare of symptoms 3-4 days per week resulting in social interactions becoming more difficult, does not support a significant restriction to the appellant's overall social functioning. The ministry acknowledges the report that the appellant has very disrupted functioning to immediate social networks due to recent separation from spouse but not directly due to the appellant's medical conditions. In addition the appellant is able to maintain marginal functioning in extended social networks.

The panel finds that the ministry reasonably determined that the information provided does not confirm that the appellant has a severe impairment that significantly restricts the appellant's ability to perform DLA continuously or periodically for extended periods.

In the MR the Physician indicates that the appellant is independent with personal self-care, meal preparation, management of medications, basic housework, daily shopping, mobility inside the home, use of transportation, and management of finances. In the AR, the Physician indicates that the appellant is independent with all aspects of personal care, meals, paying rent and bills, medications, and transportation. In terms of shopping the Physician indicates that the appellant is independent with going to and from stores, reading prices and labels, making appropriate choices and paying for purchases.

In the MR, the two activities that are reported to be restricted are mobility outside the home (continuous) and social functioning (periodic).

For mobility outside the home the Physician indicates that the appellant's restriction is continuous but this is not consistent with the reported mobility and physical ability function in the AR where the Physician indicates that the appellant is independent with walking outdoors or the appellant's reported ability to perform most aspects of shopping independently and being independent with DLA of transportation.

In the MR, the Physician indicates that the appellant's ability to perform basic housework is not restricted but in the AR, the Physician indicates that the appellant requires periodic assistance from another person with laundry and basic housekeeping, noting that the appellant may need more breaks or to pace self, may take twice as long. At the hearing the Physician indicated that if the appellant is not working outside the house then the appellant is able to perform DLA of housework but may require some assistance with heavier household tasks. The appellant confirmed that the children provide some help with laundry and dishes but that the appellant performs all other household tasks except some yard work. The information provided indicates that the appellant maintains a high level of independence with the majority of DLA and that the continuous restriction to mobility outside the home is not significant, so the panel finds the ministry's reconsideration decision reasonable.

In the MR for social functioning, the Physician indicates that the appellant is periodically restricted, noting that the appellant has difficulty communicating and that memory/concentration are sometimes impaired. In the AR the Physician describes the appellant's immediate social network as "very disrupted functioning" noting that the appellant is separated from spouse. The Physician indicates that the appellant has marginal functioning with extended social networks that is intermittent with symptoms.

The legislation requires that the restrictions in DLA be due to a severe physical or mental impairment. While the appellant reports having extreme stress due to fleeing an abusive relationship and the appellant suspects PTSD as a result, the Physician did not diagnose PTSD or provide information indicating that the very disrupted functioning to the appellant's immediate social networks is due to an identified medical condition. While the Physician indicates that the appellant has marginal functioning with extended social networks and some difficulty communicating when symptoms are flared, the panel finds that the ministry reasonably determined that the information provided does not support a finding that the appellant's ability to perform social functioning is significantly restricted as a result of a severe impairment.

The information provided demonstrates that the appellant experiences some limitations resulting in some need for periodic assistance with a few aspects of DLA, but the majority of DLA are performed independently and the restrictions to mobility outside the home are not significant, so 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 the appellant's 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 help is required with DLA because of severe physical and mental impairments and ongoing chronic pain and limitations.

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 MR, the Physician indicates that the appellant needs help with housework, though often has none. In the AR, the Physician indicates that for social functioning, the Physician is not sure what help would be of assistance. The Physician does not indicate that the appellant has assistance provided through the use of Assistive Devices. The Physician indicates that the appellant has an Assistance Animal, a pet dog that provides significant emotional support.

At the hearing the Physician indicated that the appellant would benefit from physiotherapy and psychological counseling. At the hearing, the appellant stated that the children do some laundry and dishes, and that the appellant gets some minimal assistance with trimming weeds in the yard. The appellant also reported hiring someone to help move furniture and take some items to the dump.

While the information provided indicates that the appellant receives some assistance from children with dishes and laundry and occasionally hires someone to help trim weeds in the yard, 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
2020-00129

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)

2020/06/22

PRINT NAME

Linda Smerychynski

SIGNATURE OF MEMBER

DATE (YEAR/MONTH/DAY)

2020/06/22

PRINT NAME

John Pickford

SIGNATURE OF MEMBER

DATE (YEAR/MONTH/DAY)

2020/06/23