

**PART C – DECISION UNDER APPEAL**

The decision under appeal is the Ministry of Social Development and Poverty Reduction's ("ministry") reconsideration decision dated January 15, 2021, in which the ministry found the appellant was not eligible for designation as a Person with Disabilities ("PWD") under section 2 of the *Employment and Assistance for Persons with Disabilities Act* ("EAPWDA"). The ministry found that the appellant met the age and duration requirements but was not satisfied that:

- the appellant has a severe mental or physical impairment;
- the appellant's impairment, in the opinion of a prescribed professional, directly and significantly restricts the ability to perform daily living activities ("DLA") either continuously or periodically for extended periods; and
- as a result of restrictions caused by the impairment, the appellant requires an assistive device, the significant help or supervision of another person, or the services of an assistance animal to perform DLA.

The ministry also found that the appellant was not one of the prescribed classes of persons who may be eligible for PWD designation on the alternative grounds set out in section 2.1 of the *Employment and Assistance for Persons with Disabilities Regulation* ("EAPWDR"). As there was no information or argument provided for PWD designation on alternative grounds, the panel considers that 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 - section 2

**PART E – SUMMARY OF FACTS**

The evidence and documentation before the minister at the reconsideration consisted of:

1. Information from the ministry's record of decision indicating that the PWD application was received on October 21, 2020 and denied on October 27, 2020. On January 7, 2021, the appellant submitted the *Request for Reconsideration* ("RFR"). On January 15, 2021, the ministry completed the review of the RFR.
2. An RFR signed by the appellant on January 5, 2021, with a hand-written submission describing chronic back pain that started in 2005. The appellant describes how the pain affects her life and impacts her mood. The appellant writes that she cannot walk, shop, or participate in family outings or sexual relations with her spouse. The appellant says her spouse helps with most house duties because "I cannot stand for long...prepare food for my family, I cannot bath myself, I cannot do any sport, or hang out with friends. "

The RFR includes a letter from the appellant's friend describing the appellant's sadness and depression from not being able to do family activities. The friend writes that the appellant's spouse "does everything" because the appellant is "sitting at home" unable to do anything.

3. The PWD application comprised of:

- the *Applicant Information* (self-report - "SR") dated August 27, 2020, in which the appellant describes her chronic back pain which flared up 2 months ago causing her 3 weeks of suffering. The appellant reports having pain episodes 3-4 times per year with each episode lasting 1-3 weeks.

During the recent episode, the appellant describes not being able to sleep on her bed, she had to lay down on the carpet to try and have a nap. When the episodes occur, the appellant reports she is unable to walk, shop, stand for very long, cook, go up and down stairs, or participate in family activities or have sexual relations with her spouse.

The appellant writes that she cannot go on family outings because she does not have a wheelchair and she cannot participate in any sports or exercise activities. The appellant writes that she cannot clean the house and her spouse does all of the house duties. The appellant says she cannot brush her hair so her spouse does that for her as well. The appellant describes the impact of the pain on her mood; the pain makes her very depressed because she cannot enjoy her life.

- a *Medical Report* ("MR") dated October 5, 2020, signed by the appellant's general practitioner ("doctor") who has known the appellant for 4 years and has seen the appellant 2 to 10 times in the past 12 months; and an
- *Assessor Report* ("AR") dated October 5, 2020, also completed by the doctor who based the assessment on an office interview with the appellant.

4. A letter from the ministry dated October 27, 2020, with attached *Denial Decision Summary* advising that the appellant did not meet all of the criteria for PWD designation.

*Summary of relevant evidence from the application:*

**Diagnoses**

In the MR, the appellant is diagnosed with lumbar spinal disc displacement (onset 2016), and cervical spinal degenerative disc disease (onset 2018).

Under Section F - *Additional Comments*, the doctor explains the appellant suffers from chronic low back pain and was "tried an oral medication with some relief." The appellant was referred to neuro-surgery and tried an epidural lumbar nerve block which helped "for a short period of time only." The doctor states the appellant is currently not a surgical candidate.

### ***Functional skills***

#### Self-Report

During the recent pain episode (that started 2 months ago and lasted for 3 weeks) the appellant describes not being able to sleep on her bed, she had to lay down on the carpet to try and have a nap. During episodes of lasting pain, the appellant says she is unable to walk, stand for very long, go up and down stairs, participate in family activities, or have sexual relations with her spouse. The appellant says she cannot go on family outings because she does not have a wheelchair and she cannot participate in any sports or exercise activities. The appellant describes the impact of the pain on her mood; the pain makes her very depressed because she cannot enjoy her life.

#### Medical Report

Under Section D - *Functional Skills*, the appellant can walk less than 1 block unaided on a flat surface and cannot climb any stairs or do any lifting. The appellant can remain seated for less than one hour.

The doctor checked that the appellant has no difficulties with communication and no significant deficits with cognitive and emotional function.

#### Assessor Report

Under Section B-2, *Ability to Communicate*, the doctor indicates a *good* ability for the 4 areas listed: *Speaking, Reading, Writing, and Hearing*.

Under section B-3, *Mobility and Physical Ability*, the doctor marked *periodic assistance from another person* for the 6 areas listed: *Walking indoors, Walking outdoors, Climbing stairs, Standing, Lifting, and Carrying/holding*. The doctor explains that the appellant relies on her spouse to help with daily activities "at all times when she experiences low back pain." The doctor comments, "patient gets episodes of low back pain 3 - 4 times per year causing significant impairment in her daily function."

For section B-4, *Cognitive and Emotional Functioning*, the doctor drew a line through the page and wrote, "N/A."

### ***Daily Living Activities***

#### Self-report

The appellant states that during the episodes of back pain she cannot shop or cook for her family. The appellant writes that she cannot clean the house and her spouse does all of the house duties. The appellant says she cannot brush her hair so her spouse does that for her as well.

#### Medical Report

The doctor check marked *no* when asked if the appellant is prescribed medications or treatments that interfere with the ability to perform DLA.

In Section E - *Daily Living Activities*, the doctor checked yes, the impairment restricts the appellant's ability to perform DLA. On the list of specific DLA, the doctor indicates that 7 of the 10 DLA are periodically restricted:

- ***Personal self-care***
- ***Meal preparation***
- ***Basic housework***
- ***Daily shopping***
- ***Mobility inside the home***
- ***Mobility outside the home***
- ***Use of transportation***

When asked to explain the periodic restrictions, the doctor wrote: "patient experiences episodes of low back pain 3-4 times a year, each lasting 1- weeks at a time during which her activities are restricted as above. During episodes of low back pain, patient becomes severely impaired in above activities."

The doctor indicates that 3 DLA on the list are not restricted either continuously or periodically:

- ***Management of medications***
- ***Management of finances***
- ***Social Functioning***

#### Assessor Report

In Section B - *Mental or Physical Impairment*, the doctor states, "chronic low back pain and neck pain" from the appellant's medical conditions impair the ability to manage DLA.

In Section C - *Daily Living Activities*, the doctor marked *periodic assistance from another person* for all areas for 5 (out of 8) DLA listed on the form:

- ***Basic Housekeeping:***
- ***Shopping***
- ***Meals***
- ***Pay Rent and Bills***
- ***Transportation***

The doctor comments, "patient completely relies on her [spouse] with all activities of daily living when she experiences episodes of low back pain."

For 2 DLA, the doctor indicates the appellant is independent with 2 areas but requires periodic assistance with the remaining areas:

- ***Personal Care:*** the appellant is independent with *Feeding self* and *Regulating diet*. The appellant requires periodic assistance with *Dressing, Grooming, Bathing, Toileting, Transfers (in/out of bed), and Transfers (on/off chair)*;
- ***Medications:*** the appellant is independent with *Taking as directed*, and *Safe handling and storage*. The appellant needs periodic help with *Filling/refilling prescriptions*.

The doctor indicates the appellant is independent with all areas of *Social Functioning*. The appellant has good functioning with her immediate and extended social networks.

***Need for help***Medical Report

Under *Health History* (Part B), the doctor marked *no*, the appellant does not need any prostheses or aids for the impairment. In Part E - *Daily Living Activities*, the doctor explains, "patient requires help from [family] on a continuous basis with almost all daily activities like self-care, walking and transferring during episodes of back pain."

Assessor Report

In the AR, the doctor indicates the appellant lives with family and "requires help with daily activities all the time that her [spouse] has to stay home from work. Patient's [spouse] helps patient with all above activities at all times when her back pain gets worse."

In section D - *Assistance Provided for Applicant*, the doctor indicates that family helps the appellant with DLA and the appellant needs a "bath tub chair." The doctor did not check any of the items listed for *Assistance provided through the use of Assistive Devices*. For *Assistance provided by Assistance Animals*, the doctor checked *no*.

*Additional information*

Neither party provided additional documents or oral evidence that require an admissibility determination under section 22(4) of the *Employment and Assistance Act*. Subsequent to the reconsideration decision, the appellant filed the *Notice of Appeal* with a hand-written statement describing how she suffers with pain periodically throughout the year. The panel accepts the submission as argument.

The ministry relied on the reconsideration decision and both parties provided argument at the hearing. The panel considers both parties' arguments in Part F - *Reasons for panel decision*.

*Procedural matters*

The appellant attended the hearing with an interpreter. The ministry asked to have an observer at the hearing for training purposes. The appellant consented to the observer listening to the teleconference.

**PART F – REASONS FOR PANEL DECISION**

The issue on appeal is whether the ministry's decision that found the appellant ineligible for PWD designation was reasonably supported by the evidence or was a reasonable application of the legislation in the circumstances of the appellant. The panel's role is to determine whether the ministry was reasonable in finding that the following eligibility criteria in section 2 of the EAPWDA were not met:

- the appellant has a severe mental or physical impairment;
- the appellant's impairment, in the opinion of a prescribed professional, directly and significantly restricts the ability to perform DLA either continuously or periodically for extended periods; and
- as a result of restrictions caused by the impairment, the appellant requires an assistive device, the significant help or supervision of another person, or the services of an assistance animal to perform DLA.

The ministry based the reconsideration decision on the following 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 is in a prescribed class of persons or that the person has a severe mental or physical impairment that

**(a)** in the opinion of a medical practitioner or nurse practitioner is likely to continue for at least 2 years, and

**(b)** in the opinion of a prescribed professional

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

**(A)** continuously, or

**(B)** periodically for extended periods, and

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

**(3)** For the purposes of subsection (2),

**(a)** a person who has a severe mental impairment includes a person with a mental disorder, and

**(b)** a person requires help in relation to a daily living activity if, in order to perform it, the person requires

**(i)** an assistive device,

**(ii)** the significant help or supervision of another person, or

**(iii)** the services of an assistance animal.

**(4)** The minister may rescind a designation under subsection (2).

## **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,

### **Analysis**

#### *Severe mental or physical impairment*

To be eligible for PWD designation, the legislation requires several criteria to be met including the minister being satisfied that the applicant has a severe mental or physical impairment. The ministry found the appellant was not eligible for PWD because not all of the five criteria were met. "Severe" is not defined in the legislation but in the ministry's view, the diagnosis of a serious medical condition does not in itself establish a severe impairment of mental or physical functioning.

#### **Mental impairment**

To assess the severity of a mental impairment, the ministry considers the extent of any impact on daily functioning as evidenced by limitations/restrictions with mental functions and emotion. The ministry does not only look at the diagnosis or a medical practitioner's comment that the condition is "severe" but considers the bigger picture including whether there are restrictions to DLA requiring mental/social functioning and whether significant help is required to manage DLA. The panel finds that an assessment of severity based on mental and social functioning and restrictions to DLA is a reasonable interpretation of the legislation.

#### *Arguments*

##### *Appellant*

In her *Notice of Appeal*, the appellant writes that she does not have a severe mental impairment but she is suffering from episodes of pain. Throughout her submissions, the appellant describes sadness and depression due to the pain. The appellant is sad from not being able to participate in family activities or function without help.

The appellant stresses that the episodes of pain place a large strain on the relationship with her spouse to the point that divorce has been mentioned. The appellant reports that her spouse has to do everything for her when she's suffering from so much back pain, and cannot go to work because of the appellant's health. The appellant submits that the pain episodes adversely affect her social functioning because she cannot participate in family outings or "hang out with friends" when she is suffering from lasting pain.

##### *Ministry*

The ministry argues there was no information from the doctor to establish a severe mental impairment. The ministry acknowledges that the appellant feels depressed but notes that the doctor did not diagnose a mental impairment. The ministry notes that deficits in the appellant's cognitive, emotional, and social functioning and ability to communicate were not identified in the MR or AR.

#### **Panel's decision - mental impairment**

Section 2(2) of the legislation requires evidence of a severe impairment. The information from the appellant is that she feels depressed and sad due to pain that prevents her from enjoying life. The appellant's friend (letter submitted with the RFR) says the appellant reports "feeling useless" because her spouse "does everything and she is sitting at home, does not do anything." Despite her low feelings, the appellant indicates in the *Notice of Appeal* that the depression she experiences is not at the level of a severe impairment.



The doctor's information does not include a diagnosis of depression or any mental impairment. The doctor does not report any deficits or impacts to cognitive, emotional, and social functioning or communication. The doctor indicates the appellant has good functioning with her social networks.

The panel finds that the ministry was reasonable to conclude the appellant does not have a severe mental impairment based on insufficient evidence for a mental impairment. The panel finds the ministry reasonably concluded the evidence as a whole does not show a severe impairment of cognitive, emotional, and social functioning. Accordingly, the ministry was reasonable in applying the legislation to find that a severe mental impairment under section 2(2) of the EAPWDA was not established on the evidence.

### ***Physical impairment***

To assess whether the applicant has a severe physical impairment, the ministry considers information on the degree of restrictions to physical functioning, restrictions to DLA involving movement, and whether the applicant requires significant help or any assistive devices to manage DLA. The panel finds that the assessment of severity based on daily physical functioning is a reasonable interpretation of the legislation.

#### *Arguments - physical impairment*

##### *Appellant*

The appellant argues she has a severe physical impairment because she cannot do anything during the episodes of back pain. The appellant reports that walking, standing, climbing stairs, and sitting are severely restricted. The appellant says her sleep was also impacted during the most recent flare up and she had to lie on the carpet to try and nap because she couldn't sleep in her bed.

In response to questions at the hearing the appellant explained that the back problem started when she gave birth to her child and her disc problem became really severe. The appellant argues the problem is getting worse and the pain episodes can occur up to 5 times per year and last up to 3 weeks each time. The appellant said the flare ups happen "4-5 times a year for sure" and are very serious and last 7-20 days.

The appellant explained that the number of flare ups depend on what activities she does; for example, her car recently broke down and she had to wait in the cold for the bus. The cold weather aggravated her back pain; she had to stay in bed for 3 weeks and even sneezing affects the problem with her disc.

When asked if the pain episodes last for up to 3 weeks despite taking medication, the appellant explained that she takes 2 medications that her doctor prescribed. For 3 weeks she "will not have as much pain" but she "has to be careful because after 3 weeks the tightness comes back." The appellant described tight muscles around her lower back that goes to the right side of her legs.

The appellant explained that even on the days that she does not have pain she has to take the medications ("every day, year-round") or she can't do any bending. The appellant argues that without her medication she would have pain episodes "10 times a year" but she still has the episodes a few times a year despite the medication. The appellant said that when she got an injection in her back to deal with the pain it only helped for 3 weeks.

##### *Ministry*

The ministry argues the appellant does not have a severe physical impairment because the information in the PWD application indicates the pain episodes occur only a few times a year. The ministry acknowledges the appellant is significantly impaired during the episodes of back pain but argues "the range provided, in which you are impaired 3-12 weeks per year, does not indicate an overall severe degree of physical impairment." The ministry submits there was no report on the appellant's ability to function for the remaining weeks of the year and the ministry could therefore not get "a good overall picture" of the appellant's functioning.

***Panel's decision - physical impairment***

The panel finds that the ministry's decision for physical impairment, (no severe impairment), was reasonably supported by the evidence. The appellant clearly has significant restrictions to physical functions during the exacerbations of back pain because the evidence indicates she can barely walk during these episodes (less than one block - MR) and she can't climb any stairs unaided or lift any weight at all. The appellant's ability to remain seated (less than 1 hour) is also on the lowest end of the rating scale in the MR.

However, the doctor explains in the AR that the significant impairment to all physical functions occurs in "episodes of low back pain 3-4 times a year." During these episodes, the appellant's activities are restricted for "1-3 weeks." In the SR, the appellant agrees that she "usually gets the lasting pain 3-4 times a year each lasting 1-3 weeks" while at the hearing the appellant argued the episodes can occur up to 5 times per year depending on the situation, in particular, what activities she does and when the weather is cold.

In response to questions at the hearing, the ministry explained there is no standard in terms of the number of times a year the episodes need to occur to demonstrate a severe physical impairment. Similarly, there is no percentage in terms of how many weeks a year the person's physical functions need to be impaired for the impairment to be considered severe. Nevertheless, the ministry said it does not view an impairment that occurs a few times a year for 1-3 weeks at a time as "severe."

The panel notes that the legislation does not provide a benchmark or percentage of time for an episodic medical condition to meet the requirement for a severe impairment but the evidence is that the appellant usually has flare ups of back pain a few times a year for up to 3 weeks each time. In light of the episodic nature of the appellant's medical conditions the evidence indicates that the flare ups are not occurring about 75% of the time. As the ministry notes, the doctor does not describe the appellant's physical functioning during the times she is not experiencing these episodes of severe pain.

The appellant argues she still experiences significant restrictions between flare ups because she still needs to take her medications every day and she has to be very careful with how she moves or her muscles tighten up and she can't do any bending. In addition, the appellant indicates the sadness she feels during the episodes of pain continues to affect her between episodes.

The ministry empathizes with the appellant's situation as does the panel, but without additional information from a medical practitioner about the degree of impairment between pain episodes, the panel finds that the ministry's decision was reasonable. The evidence in the AR and appellant self-report indicates a severe impairment of physical functioning for only a small portion of the year, whether the episodes occur 3-4 times per year or up to 5 times per year as the appellant said at the hearing. Either way, none of the episodes were reported to last longer than 3 weeks. Taking a whole year view of the appellant's circumstances based on the information provided, the panel finds that the ministry reasonably determined the requirement for a severe impairment under section 2(2) of the EAPWDA was not met.

***Restrictions in the ability to perform daily living activities***

Subsection 2(2)(b)(i) of the EAPWDA requires the ministry to be satisfied that, in the opinion of a prescribed professional, a severe impairment directly and significantly restricts a person's ability to perform DLA either continuously, or periodically for extended periods. This means that restrictions to DLA must be confirmed by the appellant's doctor or one of the practitioners named in the legislation such as a psychologist or occupational therapist.

The term "directly" means that the severe impairment must cause or result in restrictions to activities. The direct restriction must also be significant. This means that not being able to do DLA without a lot of help or support will have a large impact on the person's life.

Finally, there is a time or duration factor: the restriction may be either *continuous* or *periodic* under the legislation. Continuous means that the activity must generally be restricted all the time. The ministry views a periodic restriction as significant when it occurs frequently or for longer periods of time; for example, the activity is restricted most days of the week, or for the whole day on the days that the person cannot do the activity without help or support.

The panel views the ministry's interpretation of the legislation as reasonable. Accordingly, where the evidence indicates that a restriction arises periodically as with the appellant's back pain, it is appropriate for the ministry to require information on the duration and frequency of the restriction as well as details about the help or support that is needed. With that information, the ministry can assess whether the legislative requirement is met.

DLA are defined in section 2(1) of the EAPWDR and are also listed in the MR, with additional details in the AR. Therefore, the doctor or other practitioner completing these forms has the opportunity to indicate which, if any, DLA are significantly restricted by the applicant's impairments either continuously or periodically for extended periods and to provide additional details.

#### *Arguments - DLA*

##### *Appellant*

In her submissions the appellant argues she cannot do her DLA during the episodes of severe back pain. The appellant describes not being able to cook, clean, shop, or go on family or social outings. The appellant is especially sad about not being able to shop because she enjoys shopping. The appellant indicates she needs help with personal care as well, and cannot brush her hair or take a bath without assistance.

##### *Ministry*

The ministry acknowledges the appellant is dependent on her spouse to help with DLA "during times of back pain exacerbations." The ministry argues that restrictions to DLA that occur 3-4 times a year and last 1-3 weeks ("3-12 weeks each year total") are not significant restrictions under the legislation or meet the requirement of "periodic for extended periods of time."

#### ***Panel's decision - restrictions to Daily Living Activities***

The panel has considered the evidence from the doctor in its entirety and finds the ministry's decision that DLA were not significantly restricted for extended periods of time was reasonably supported by the evidence. In the MR and AR the doctor does not indicate any continuous restrictions to DLA but in the MR most DLA are periodically restricted and in the AR the appellant needs periodic assistance from another person to do the majority of DLA.

In the MR the doctor explains that periodic restrictions arise because episodes of low back pain occur 3-4 times per year and last 1-3 weeks each time. During the weeks that DLA are restricted the doctor says the appellant requires help with almost all daily activities including self-care, basic housework, shopping, and walking.

In the AR the doctor explains that the appellant needs periodic assistance from another person because she gets episodes of low back pain 3-4 times a year "causing significant impairment in her daily function." The doctor says the appellant needs help with DLA "at all times when she experiences low back pain."

The evidence indicates that although the appellant cannot independently manage her DLA during episodes of back pain, DLA are significantly restricted only a few times per year, for 1-3 weeks each time. The panel finds that the ministry reasonably determined that the frequency and duration of restrictions does not meet the EAPWDA criteria of significant restrictions "for extended periods."

What constitutes an extended period of time is not defined in the legislation but where DLA are restricted only a few times a year based on the evidence of the prescribed professional, (doctor), the ministry was reasonable to find there was insufficient evidence to confirm significant restrictions to DLA over a long period of time. The panel finds that the ministry reasonably determined there was not enough evidence to confirm significant restrictions to DLA under subsection 2(2)(b)(i) of the EAPWDA.

#### *Help to perform daily living activities*

Subsection 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.

#### *Arguments*

In her submissions the appellant emphasised that she sits at home during episodes of severe back pain and cannot do her daily activities without help from her family. The appellant argues that she needs so much help from her spouse that it impacts her spouse's ability to go to work. She also stated that she cannot kneel as required by her religious practice and needs a chair to sit on instead.

The appellant argues she needs a "walker, wheelchair, and stand assist" for mobility. In response to questions, the appellant reported that her spouse obtained a standing frame but the doctor has not prescribed any aids for the impairment. The appellant said she did not ask the doctor for a prescription for assistive devices because she would have to pay for the items herself. The doctor indicates the appellant needs a bath tub chair (AR) but the appellant said she does not have one yet because she still has to fill out a form for the equipment.

The ministry acknowledges the appellant needs help from her family to manage DLA and would benefit from a bath chair. However, the ministry argues that because DLA are not significantly restricted, it cannot be determined that significant help is required.

#### ***Panel's decision - help with Daily Living Activities***

The evidence clearly indicates the appellant needs help with DLA during the episodes of back pain. The panel sympathizes with the difficulties and sadness the appellant experiences from not being able to manage daily activities on her own and participate in family outings.

Under the legislation, confirmation of direct and significant restrictions to DLA is a precondition for needing help to perform DLA. The panel found that the ministry's determination that significant restrictions to DLA were not established by the information provided was reasonable because the periodic restrictions to DLA and need for periodic help were for short periods of time throughout the year. On review of the evidence from the doctor, the panel finds the ministry's conclusion that the criteria for help under subsection 2(2)(b)(ii) of the EAPWDA were not met was a reasonable application of the legislation.

#### ***Conclusion***

The panel considered the information in its entirety and finds that the ministry's reconsideration decision that found the appellant ineligible for PWD designation was reasonably supported by the evidence. The legislation requires all of the criteria to be met. The ministry found that two criteria (age, and duration of impairment) were met.

The evidence as a whole indicates the appellant suffers from episodic back pain but the episodes occur only a few times a year and the doctor does not describe the appellant's physical functioning and ability to manage DLA during the time in between pain flare ups. The panel finds that the ministry reasonably applied the legislative requirements to the information that was provided. The panel confirms the reconsideration decision. The appellant is not successful on appeal.

APPEAL NUMBER 2021-00022

**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

Margaret Koren

SIGNATURE OF CHAIR

DATE (YEAR/MONTH/DAY)

2021-02-22

PRINT NAME

Donald Storch

SIGNATURE OF MEMBER

DATE (YEAR/MONTH/DAY)

2021-02-22

PRINT NAME

Sameer Kajani

SIGNATURE OF MEMBER

DATE (YEAR/MONTH/DAY)

2021-02-22