

Part C – Decision Under Appeal

The decision under appeal is the Ministry of Social Development and Poverty Reduction (the Ministry) Reconsideration Decision (RD) dated September 20, 2021, which found that the Appellant did not meet three of the five statutory requirements of Section 2 of the *Employment and Assistance for Persons with Disabilities Act* (EAPWDA) for designation as a person with disabilities (PWD). While the Ministry found that the Appellant met the age requirement and had a severe physical impairment, it was not satisfied that the evidence establishes that:

- The Appellant, in the opinion of a prescribed professional, has an impairment which was likely to continue for at least two years;
- The Appellant's daily living activities (DLA) are, in the opinion of a prescribed professional, directly and significantly restricted either continuously or periodically for extended periods; and,
- As a result of these restrictions, the Appellant requires the significant help or supervision of another person, the use of an assistive device, or the services of an assistance animal to perform DLA.

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

EAPWDA, Section 2

Employment and Assistance Act (EAA), Section 22(4)

The relevant legislation is provided in the Appendix.

Part E – Summary of Facts

The Appellant is an applicant for a PWD designation who is over 18 years of age.

The evidence before the Ministry at the time of the RD included the PWD Application comprised of the first and last pages of a four-page applicant information and self report (SR), completed by the Appellant on February 24, 2021, a Medical Report (MR) dated February 23, 2021 and completed by the Appellant's Family Physician (FP), who has known the Appellant for 7½ years and who has seen the Appellant 11 or more times in the past year, and an Assessor Report (AR) dated February 23, 2021, also completed by the FP.

In its Reconsideration Decision (RD), the Ministry found that there was evidence of a severe physical impairment, so that criterion is not at issue in this appeal. In addition, because EAPWDR Section 2(2) only requires that the Ministry be satisfied that a PWD applicant has a severe mental *or* severe physical impairment, the Panel need only consider the reasonableness of the Ministry's decision with respect to the other criteria that the Ministry found were not met, namely that a prescribed professional has not provided an opinion that the Appellant's severe physical impairment was likely to last for at least two years, that the severe impairment does not directly and significantly restrict her ability to perform DLA either continuously or periodically for extended periods, and, as a result of those restrictions, that the Appellant does not require help to perform DLA.

Diagnoses

In the MR, the FP diagnosed the Appellant with Chronic Pain Syndrome (CPS) with a date of onset of June of 2020, and at risk of an Adjustment Disorder (AO) due to the chronic pain she suffers, adding "*past history of significant AO requiring psychiatrist treatment (in 2017), which has improved*".

Duration of Severe Impairment

In the MR, the FP indicates that the duration of the Appellant's impairment is "*uncertain*", adding the comment "*pain has persisted since January 2020 and worsening. Needs further investigation to clarify etiology and treatment options*".

Restrictions in the Ability to Perform DLA

In the MR, the FP indicates that the Appellant has been prescribed medications that interfere with her ability to perform DLA, and provides the following explanation of how the Appellant's medications affect her ability to perform DLA:

"Sedating effect of most pain medications, so has had to stop. If needs increased meds often sleeps up to 16 hours the next day. Currently on (a specific pain medication, including dosage), Tylenol No. 3, 1 – 2 tab, four times a day → working on slow taper down. Tried: (list of 10 pain medications, most of which require a prescription)".

When asked the specific duration of the medications, the FP has written "*Likely needs (the specific medication mentioned above) long-term. Attempting to slowly taper off Tylenol No. 3, will likely take months. Awaiting pain clinic appointment to see if interventions like trigger point injections help.*"

When asked to provide any additional information that might be considered relevant in understanding the impact of the Appellant's medical condition on daily functioning, the FP has written "*(Appellant) has had*

significant change (worsening) in daily functioning since June 2020. Prior to this (she) was doing well emotionally and physically and was working. Significant limitations in daily activity and decreased physical tolerance since pain onset. Pending appointments with neurologist, pain clinic psychiatrist and will likely order magnetic resonance imaging (MRI)."

In the section of the MR where the prescribed professional is asked to indicate the severity of medical conditions relevant to the applicant's impairment, the FP has written "*Difficult to do light household activity, go for walks, or sit for prolonged periods ... often sleeping most days*".

The FP also indicates in the MR that the Appellant is continuously restricted with the DLA of personal care, meal preparation, basic housework, daily shopping and mobility both inside and outside the home. Where asked if social functioning is impacted, the FP writes "*(Appellant has) some depressed mood related to chronic pain but primary diagnosis is pain related.*"

In the AR, the FP states (with comments in *italics*) that the Appellant is independent with respect to the personal care DLA of feeding herself and transfers in and out of bed and chairs (*may take longer when pain (is) worse*). The FP indicates that the Appellant takes significantly longer than typical with dressing, grooming and bathing (*Takes significantly longer to do tasks like washing hair due to pain so now washes hair once/week instead of daily. Slower movements due to pain, could take her 2 –3 times longer than average and would need to take frequent breaks*). Regarding basic housekeeping, the FP indicates that the Appellant takes significantly longer than typical with the DLA of laundry and is periodically restricted and takes significantly longer than typical with basic housekeeping (*Can no longer monitor ... household cleaning due to pain*). Regarding the DLA of shopping, the FP indicates that the Appellant is independent with reading prices and labels, making appropriate choices and paying for purchases, but takes significantly longer than typical with going to and from stores and carrying purchases home (*slower to walk to/from stores and must make multiple trips and carry lighter items instead of one heavy load*). The FP indicates that the Appellant is independent with the meals DLA of meal planning and safe storage of food, but requires the periodic assistance of another person and requires significantly longer than typical with food preparation (*Can no longer prepare nutritious meals*) and takes significantly longer with cooking. The FP indicates that the Appellant is independent with respect to all other DLA (i.e., all aspects of paying rent and bills, medications and transportation).

In the section of the AR where the assessor is asked to indicate the assistance required related to impairments that directly restrict the applicant's mobility and physical ability, the FP has written "*Pain flares (are present significantly) within (approximately) 15 minutes of walking, standing to do dishes, carrying items in (right) hand, attempting to grocery shop, meal prep, etc.*".

In the section of the AR where the prescribed professional is asked to provide additional comments relating to the applicant's ability to perform DLA, the FP has written "*(The Appellant) spends many days mostly sleeping when pain levels worsen or if (she) needs to take more medication then can be more sedated. Pain prevents her from going for walks, decreased attention span when pain worse and is in chronic daily pain ... (she) cannot do household cleaning, pain with washing hair, attempting meal prep, etc.*"

Need for Help

In the MR the FP indicates that the Appellant does not require any prostheses or aids for her impairment.

In the section of the MR where the prescribed professional is asked to indicate the severity of medical conditions relevant to the applicant's impairment, the FP has written "*(The Appellant's) mother visits regularly to cook for her and freeze meals due to (the Appellant's) limitations*".

In the section of the AR that asks who provides the help required for DLA, the FP has ticked "family" and "community social agencies", adding the comment "*on waitlist for counselling ... would benefit from comprehensive pain management program, on waitlist*". The FP has not indicated that any assistive devices are required in the section of the MR where the prescribed professional is asked what assistance is provided through the use of a specific list of assistive devices. The FP also indicates that the Appellant lives alone and does not have an assistance animal.

In the section of the AR where the assessor is asked to indicate which DLA's are either periodically or continuously restricted, the FP has written that the Appellant's mother visits once a month to help the Appellant with basic housekeeping, and in the "Additional Comments" section has written "*Once per month (the Appellant's) mother makes (a) special visit from (another part of the province) to visit her to do heavier cleaning (like bathroom) and cook meals for her to freeze as patient's chronic pain prevents her from doing these activities*".

In the section of the AR where the assessor is asked what information sources were used to complete the AR, the FP has written "*Collateral information from (the Appellant's) mother supports patient's history*".

Additional Information Submitted after Reconsideration

Section 22(4) of the EAA says that a panel may consider evidence that is not part of the record that the panel considers to be reasonably required for a full and fair disclosure of all matters related to the decision under appeal. Once a panel has determined which additional evidence, if any, is admitted under EAA Section 22(4), instead of asking whether the decision under appeal was reasonable at the time it was made, a panel must determine whether the decision under appeal was reasonable based the requirements set out in the legislation and on all admissible evidence.

In the section of the Notice of Appeal (NOA) asking why the appellant disagrees with the Ministry's RD, the Appellant has indicated that she needs more time to find an advocate.

The Appellant provided a submission on January 20, 2022 (the January 20 Submission). The January 20 Submission comprised a three-page letter dated January 11, 2021, signed by the FP (the January 11 Letter), and a five-page medical assessment of the Appellant, signed by a medical practitioner on November 22, 2021 (the November 22 Assessment).

The November 22 Assessment identifies treatment goals (including the Appellant being able to "*clean (her) house without serious pain*"), a clinical update since a previous visit, past and current medications, previous treatments, the results and overall impressions of an examination of the Appellant, and a treatment plan. The November 22 Assessment also includes new information about the Appellant's hypersensitivity to touch and inability to tolerate some of her treatments.

In addition to restating many of the points raised in the MR and the AR sections of the Appellant's original application, the January 11 Letter contained the following new information:

- Regarding the Appellant's **duration of impairment**, the FP writes:

"(The Appellant) is working with ... a pain clinic ... and has undergone multiple treatments with minimal improvement. In addition, she is waitlisted for a pain clinic (closer to her home

community), which unfortunately might take two additional years until space is available. While a definitive diagnostic cause has yet to be fully determined, I can confirm (that the Appellant has had) no discernable improvement. Based on the amount of time that has passed and the absence of any significant improvement, I can confirm (the Appellant's) severe physical impairment is likely to continue for at least 2 or more years from now.”;

- Regarding the Appellant's **restrictions in ability to perform DLA and need for help**, the FP writes:

“Outside of monthly medical treatment (in a community distant from her home community, the Appellant) reports she is restricted to home approximately 17-22 days per month, due to debilitating neuralgic pain and associated severe fatigue. During this time, she is unable to consistently walk outside, purchase groceries, go to her bank, pick up prescription medications, or use public transit.”

With respect to specific DLA, the FP writes:

“**Dressing:** Due to severe pain, (the Appellant) describes spending at least 75-85% of the time wearing pyjamas and sleepwear, comprised of stretchy, non-restrictive fabrics ... (and) relies on slip-on shoes.”;

“**Grooming:** ... Many grooming tasks are simply not done, for example, combing, brushing, and blow-drying her hair, due to severity of her pain.”;

“**Regulating Diet:** The severity of (the Appellant's) pain frequently results in significant nausea and lack of appetite, which can lead to low motivation in preparing meals and feeding herself at times.”;

“**Transfers (bed):** The degree of pain experienced by (the Appellant) in the mornings is very severe, and it typically takes ... 2-3 times longer for her to get up and out of bed as a result.”;

“**Laundry:** Until (the Appellant's mother arrives on her monthly visits) the Appellant typically wears the same clothes for at least a week, and is unable to do laundry without help, meaning at most laundry is done once, potentially twice a month.”;

“**Housekeeping:** (The Appellant is unable to perform) tasks like vacuuming, mopping, sweeping floors, bending down to clean toilets and bathtubs, and taking out garbage and recycling. (While the Appellant) receives periodic help from her mom during the month ... in actuality she requires continuous help with basic household cleaning.”;

“**Going to and from stores:** (The Appellant) requires ongoing assistance by others (friends, family) to get her groceries, and would benefit from home delivery services.”;

“**Carrying groceries home:** As a result of severe, debilitating chronic pain, (the Appellant) requires continuous help to bring groceries home.”;

“**Meal prep:** Foods recommended to aid in overall health, including lean proteins, fruit and vegetables require significant preparation that (the Appellant) is unable to do without exacerbating her chronic pain. Apart from meals made by her mom, (the Appellant) supplements her diet with commercial convenience foods that often lack nutrients, but take no time to heat-up.”;

“Cooking: *The number of meals prepared and cooked (by the Appellant’s mother on her visits once a month) is substantial, fills the freezer ... and are made in larger batches to provide several portions.”;*

“Filling and refilling prescriptions: *(While the Appellant) lives only a short distance from her current pharmacy ... she reports multiple times when her neuralgic pain is so severe, she’s bed-ridden and unable to walk the short-distance to pick up her prescriptions. These conditions often coincide with the medications running out, including opioid pain-relievers. (The Appellant) requires support from others to obtain her medications, such as home delivery services.”;*

“Using public transit: *Due to her ongoing severe pain, (the Appellant) is unable to expend both the energy or her restricted mobility (to be able to use) transit on a regular basis ... Most of the time, she relies on friends or family for transportation, and predominantly uses transportation for essential trips ... such as medical appointments and treatment sessions.”*

- The FP closes by writing:

“(The Appellant’s) mother’s capacity and availability is limited. In actuality, (the Appellant) requires ongoing and continuous assistance (with the DLA listed above) ... in order to better care for herself ... It is therefore my medical opinion that (the Appellant) meets the criteria for PWD designation, due to the severity of her physical health impairment, significant restrictions to her DLA, and requiring significant help from others.”

On January 24, 2022, the Appellant provided a second submission (the January 24 Submission). While the January 24 Submission largely comprises arguments made by the Appellant’s advocate (the Advocate) in support of the Appellant’s appeal, it also includes some new evidence. The new evidence contained in the January 24 Submission is that the FP continues to see the Appellant regularly on at least a weekly basis, either remotely or in person, and that she continues to make monthly visits to a pain clinic in another community some distance from her home.

Evidence Presented at the Hearing

At the hearing, the Panel confirmed with the Ministry and the Appellant that the SR provided with appeal materials was missing two pages. On further review, it was determined that the Appellant had not provided the Ministry with the missing pages 2 and 3 with her original PWD application. The Appellant said that she would provide the missing information when she gave her reasons in support of her appeal at the hearing.

At the hearing, the Advocate provided a summary of the arguments included in the January 24 Submission. Regarding need for help, the Advocate took issue with specific comments made by the Ministry in its RD. The Advocate said that the Ministry statement in the RD that *“It is reported you can no longer prepare nutritious meals or maintain household cleaning yet only require periodic assistance with basic housekeeping and food prep and have your mother help with the heavier cleaning and meal prep only once a month”* is inaccurate because when the Appellant’s mother visits monthly she prepares and freezes a large number of meals for the Appellant so that the Appellant has enough food on hand to be able to heat-up nutritious meals until the mother’s next monthly visit. The Advocate said that the Appellant can’t do the laundry, and as a result her clothes are only laundered once a month when her mother visits, and as a result the Appellant wears the same clothes for a week or two at a time. The Advocate also referred to the evidence in the January 11 Letter that the Appellant requires continuous help with groceries and prescription drugs, having to rely on deliver services when she is unable to leave

her home, and that ability to access other services more readily, such as physiotherapy, would be of benefit.

The Appellant described the pain she suffers, saying it's like there is fire under her skin and being poked with many tiny needles. She said that after her latest medical operation, which was performed in a community some distance from her home community, she was in such pain that she couldn't return home for two days and had to sleep on the floor for several days after returning home.

Regarding the medication and therapies she has been taking, the Appellant said that she has been unable to tolerate many of the therapies she has been prescribed, and that she has been unable to keep up with the normal doses of those medications that are effective, resulting in more pain. She also stated that she is unable to afford her effective pain medication because it costs \$1,800 per month, and that, while three doctors have told her that they have seen good results with this medication "*nothing else works*". Regarding other therapies, the Appellant said that her doctor was not convinced that a thoracic and lumbar spine MRI would help, and other treatments are too painful.

Regarding the help she gets from her mother, the Appellant said that her mother was getting older and "*should be worrying about her retirement, not having to visit me every month*".

In response to a question from the Panel, the Advocate confirmed that the date of the January 20 Letter was wrong and should have been dated January 20, 2022, not January 20, 2021.

In response to another question from the Panel, the Appellant said that her FP's practice was in a community some distance from the Appellants home, but that she visited the FP whenever she went to that community to attend to therapy sessions at the pain clinic. She explained that she had kept the FP as her doctor because she had been her doctor when the Appellant was growing up in the FP's community before she moved to her current home in her present community. The Appellant also said that she travels to the pain clinic and sees her FP in person on those visits by taking unaccompanied public transport once a month, and that sometimes she has to stay there overnight or for a couple of days because she is in too much pain to return on the day of her appointments. In response to another question from the Panel the Appellant said that she goes to the bank by herself "*as needed*", but she will wait for her mother's monthly visit to perform DLA such as visiting her bank or shopping for necessities if she can.

In response to a question from the Ministry, the Appellant stated that the FP had told her that her CPS, which has got progressively worse since it first appeared in 2020, was now classified as myofascial pain syndrome (MPS), and was likely a result of a case of shingles she had suffered from a few years ago. The FP also told her that it was the worse case of MPS she had ever seen.

At the hearing, the Ministry stated that if the Ministry had had the information in the new evidence presented at the hearing and the new evidence contained in the January 20 Submission it would have "*(considered) the duration criterion (to have) been met*", and "*would support DLA restrictions and that the help of another person was required*".

Admissibility of New Evidence

General principles of weighing evidence require that the evidence be considered based on its credibility and its probative value. The probative value of evidence is the degree to which the information is useful in answering the question which must be addressed; in this case whether, in the opinion of a prescribed professional, the Appellant's severe physical impairment is likely to last for at least two years, whether it

directly and significantly restricts her DLA, either continuously or periodically for extended periods, and whether as a result of any direct and significant restrictions the Appellant requires the help of others to perform DLA.

No new evidence was presented in the NOA.

The Panel considered all of the new written evidence included in the January 20 Submission and the January 24 Submission, which is described in detail above, to be evidence that is reasonably required for a full and fair disclosure of all matters relating to the decision under appeal.

While the November 22 Assessment mentions the Appellant's hypersensitivity to touch and inability to tolerate some of her treatments (i.e., conditions that speak to the severity of her physical impairment), it does not address the duration of the Appellant's severe physical impairment, her restrictions in performing DLA, or her need for help, which are the legislated requirements necessary for a PWD designation at issue in this appeal. Accordingly, the Panel admitted this new evidence as the Panel considered the new evidence "*reasonably required for a full and fair disclosure of all matters relating to the decision under appeal*" it is assigned no weight because it does not address the criteria that the Ministry found were not met in this case, that is the duration of the Appellant's severe physical impairment, her restrictions in performing DLA, or her need for help.

The Panel considers the new evidence in the January 11 Letter to be credible because it has been provided by a prescribed professional, the same prescribed professional who completed the MR and AR and who has known the Appellant for 7½ years, and the Panel considers all of the new evidence to be of high probative value as it directly addresses the criteria set out in the legislation that the Ministry found in its RD had not been met. In addition, as the information is from credible sources, the Panel gives it full weight.

The Panel notes that the new evidence in the January 24 Submission speaks to the Appellant's severe physical impairment, which the Ministry has acknowledged in the RD. Because this new evidence does not answer the questions which must be addressed in this appeal (i.e. the duration of the Appellant's severe physical impairment, her restrictions in performing DLA, or her need for help) the Panel finds that the information is of no probative value and assigns it no weight.

The Panel also considers the new verbal evidence presented at the hearing regarding the ineffectiveness of most of the medication and therapies to treat her impairment, further details on how she is forced to defer a number of DLA until she has her mother's help, and how she relies on delivery services for groceries and prescription medication, to be evidence that is reasonably required for a full and fair disclosure of all matters relating to the decision under appeal, as the evidence provides further information regarding the duration of the Appellant's severe physical impairment, her restrictions in performing DLA, or her need for help.

The Ministry did not object to the Panel admitting any of the new evidence.

Part F – Reasons for Panel Decision

The issue under appeal is whether the Ministry's RD, which found that the Appellant is not eligible for designation as a PWD, was reasonably supported by the evidence or was a reasonable application of the legislation in the circumstances of the Appellant. Based on all of the admissible evidence, was it reasonable for the Ministry to determine that the evidence does not establish that the Appellant's severe impairment is likely to last for at least 2 years, and that the Appellant's DLA are not, in the opinion of a prescribed professional, directly and significantly restricted either continuously or periodically for extended periods? Was it reasonable for the Ministry to determine that because of any direct and significant restrictions it could not be determined that the Appellant requires the help or supervision of another person, the use of an assistive device, or the services of an assistance animal to perform DLA?

ANALYSIS**Severity of Impairment**

In the RD, the Ministry determined that the Appellant had met the legislated requirements for severity of physical impairment.

Duration of Severe Physical Impairment

The Appellant's position is that information in the January 11 Letter, which is written by the Appellant's doctor and should be considered admissible evidence, confirms that the Appellant's physical impairment is likely to continue for at least two years from the date of the January 11 Letter.

The Ministry's position, as expressed in the RD, is that there is no evidence that the Appellant's severe physical impairment is likely to continue for two or more years from the date of her application because the FP, a prescribed professional, has written '*uncertain*' in answer to this question in the MR and has indicated that her condition requires further investigation to clarify etiology and treatment options. At the hearing, the Ministry's position changed based on the evidence contained in the January 11 Letter, which the Ministry did not object to the Panel admitting. The Ministry's position now is that the duration of severe physical impairment requirement as set out in the legislation has been met.

Panel Decision

The Panel notes that there is no evidence provided prior to the RD to confirm that the Appellant's severe physical impairment was likely to last for at least two years, as the only references to the duration of impairment in the Appellant's application for the PWD designation or any other information the Ministry had at reconsideration is the FP's statement that the duration of the impairment was uncertain and that more tests were required. The Panel finds that the Ministry's RD finding regarding the duration of the Appellant's severe impairment based on all the evidence the Ministry had at the time it made the RD was reasonably supported by the evidence available at reconsideration and was a reasonable application of the legislation in the circumstances of the Appellant.

However, as noted above, the Panel has admitted the evidence in the January 11 Letter, which includes the FP's statement "*I can confirm (the Appellant's) severe physical impairment is likely to continue for at least 2 or more years from now.*" Therefore, the Panel finds, based on all the admissible evidence, that

the statutory requirement that a prescribed professional's opinion that the Appellant's severe impairment is likely to continue for at least 2 years has been met.

Restrictions in the Ability to Perform DLA

The Appellant's position is that in the initial PWD application the FP provides multiple references to the significant restrictions the Appellant faces in attempting to perform various DLA. In addition, the information provided by the FP in the January 11 Letter provides further details about the significant challenges the Appellant experiences in performing several of the prescribed DLA.

The Ministry's position, as expressed in the RD, is that because the Appellant is reported to be independent with the majority of her DLA's, and because it is not clear how often her flare-ups occur, her PWD application does not establish that a severe impairment significantly restricts her ability to perform DLA, either continuously or periodically for extended periods. At the hearing, the Ministry's position changed based on the evidence contained in the January 11 Letter. The Ministry's position now is that a prescribed professional has confirmed that the Appellant's severe impairment directly and significantly restricts her ability to perform DLA, either continuously or periodically for extended periods.

Panel Decision

DLA are defined in Section 2(1) of the EAPWDR and are also listed, in an expanded form and using different language, in the MR and in the AR. For example, the DLA of "*prepare own meals*" in EAPWDR Section 2(1) appears in the AR as "*meal planning*", "*food preparation*", "*cooking*" and "*safe storage of food*".

Section 2(2)(a) of the EAPWDR defines "*prescribed professional*" to include a "*medical practitioner*". Therefore, the FP is considered a prescribed professional for the purpose of providing opinions regarding the nature of the Appellant's impairment and its impact on the performance of DLA. 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. There is also a component related to time or duration - the direct and significant restriction must be either continuous or periodic. If periodic, it must be for extended periods.

In the MR and the AR, prescribed professionals are instructed to check marked boxes and to provide additional explanations; for example, a description of the type and amount of assistance required and the frequency and duration of periodic restrictions.

Section 2(2)(b) of the EAPWDA requires that the Ministry be satisfied that a prescribed professional has provided an opinion that an applicant's severe impairment directly and significantly restricts their DLA, continuously or periodically for extended periods. The term DLA appears in EAPWDA Section 2(2)(b) in the plural ("daily living activities"), which means that at least two of the activities listed in Section 2(1) must be significantly restricted for this legislative criterion to be met. EAMPWDR Section 2(1)(a) lists eight DLA that must be assessed for a person who has a severe physical impairment (which has been acknowledged by the Ministry in this case), but the legislation requires that only two DLA must have been identified by a prescribed professional as having been significantly restricted. One of the reasons given by the Ministry in the RD for its finding that the Appellant's DLA were not significantly restricted was because the FP reported the Appellant to be independent with a majority (i.e. four or more) of her DLA.

The Panel notes that there is a significant amount of evidence provided in the Appellant's PWD application to confirm that her severe physical impairment directly and significantly restricts her ability to

perform DLA either continuously or periodically for extended periods. For example, in the MR the FP indicates that the Appellant finds it difficult to perform light household activity, go for walks, or sit for prolonged periods, and often sleeps most days. The FP also indicates that the Appellant is continuously restricted with the DLA of personal care, meal preparation, basic housework, daily shopping and mobility both inside and outside the home. In the AR, the FP indicates that transfers in and out of bed and chairs take longer when the Appellant's pain is worse, that it takes her two or three times longer than typical with dressing, grooming, bathing, and laundry, and that she can no longer clean her home due to the pain she experiences. The FP also indicates that the Appellant takes significantly longer than typical with going to and from stores and carrying purchases home, and that she must make multiple trips and carry lighter loads, can no longer prepare nutritious meals, and that she takes significantly longer with cooking. Where asked to provide additional comments, the FP indicated that the Appellant spends many days mostly sleeping when pain levels worsen or if she needs to take higher doses of medication, and that her pain prevents her from going for walks, cleaning her home, washing hair or attempting to prepare meals.

Regarding the Ministry's RD finding that it is not clear how often the Appellant's flare-ups occur, the FP has indicated in the AR that her pain flare-ups "*are present significantly within ... 15 minutes of walking, standing to do dishes, carrying items in (right) hand, attempting to grocery shop, meal prep, etc.*" The Panel finds that this comment should reasonably be interpreted to mean that the Appellant's flare-ups are of significant impact and that they are both frequent and persistent.

Furthermore, the Panel finds that the additional admissible evidence, in particular the FP's comments in the January 11 Letter, provides even more detail to confirm that this criterion was met. For example, the FP identifies many of the specific housekeeping activities that the Appellant is unable to perform due to the severity of her pain. In the January 11 letter the FP says that these tasks include vacuuming, mopping, sweeping floors, bending down to clean toilets and bathtubs, and taking out garbage and recycling.

Need for Help with DLA

The Appellant's position is that the FP provides multiple references to the ongoing need for assistance in performing various DLA in her initial PWD application. In addition, the information provided by the FP in the January 11 Letter provides further details confirming the Appellant's need for assistance with DLA.

The Ministry's position, as expressed in the RD, was that it cannot be determined that significant help is required from others as it has not been established that DLA are significantly restricted either continuously or periodically for extended periods. At the hearing, the Ministry's position changed based on the evidence contained in the January 11 Letter. The Ministry's position now is that a prescribed professional has confirmed that the Appellant requires help to perform DLA.

Panel Decision

Section 2(2)(b)(ii) of the EAPWDA requires that, because of direct and significant restrictions in the ability to perform DLA, a person requires help to perform those activities. That is, the establishment of direct and significant restrictions under section 2(2)(b)(i) is a precondition of meeting the need for help criterion. Help is defined in subsection (3) to include the significant help of another person.

The Panel notes that there is a significant amount of evidence provided in the Appellant's PWD application to confirm that she requires the help of another person to perform the required two DLA (in this case "*prepare own meals*" [EAPWDR Section 2(1)(a)(i)] and "*perform housework to maintain the*

person's place of residence in acceptable sanitary condition" [EAPWDR Section 2(1)(a)(v)]. For example, in the MR the FP says that the Appellant's mother visits regularly to cook for her and freeze meals due to the Appellant's restrictions. In the AR the FP writes that the Appellant is on a waitlist for counselling and a comprehensive pain management program, and that the Appellant's mother visits once a month to help the Appellant with basic housekeeping and to cook meals for the Appellant to freeze as the Appellant's chronic pain prevents her from doing these activities. The FP has also indicated that "*Collateral information from (the Appellant's) mother supports (this) history*".

Furthermore, the Panel finds that the additional admissible evidence, in particular the FP's comments in the January 11 Letter, provides even more detail to confirm that this criterion was met. For example, in the January 11 Letter the FP says that the Appellant typically wears the same clothes for at least a week until her mother arrives on her monthly visits, at which point her laundry can be done, and that the Appellant requires ongoing assistance from friends and family or home delivery services to get her groceries and medications.

Conclusion

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

Appendix – Relevant Legislation

The criteria for being designated as a PWD are set out in Section 2 of the EAPWDA as follows:

Persons with disabilities

2 (1) In this section:

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

"daily living activity" has the prescribed meaning;

"prescribed professional" has the prescribed meaning.

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

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

(b) in the opinion of a prescribed professional

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

(A) continuously, or

(B) periodically for extended periods, and

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

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

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

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

(i) an assistive device,

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

(iii) the services of an assistance animal.

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

The EAPWDR provides as follows:

Definitions for Act

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

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

(i) prepare own meals;

(ii) manage personal finances;

(iii) shop for personal needs;

(iv) use public or personal transportation facilities;

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

(vi) move about indoors and outdoors;

(vii) perform personal hygiene and self care;

(viii) manage personal medication, and

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

(i) make decisions about personal activities, care or finances;

(ii) relate to, communicate or interact with others effectively.

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

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

(i) medical practitioner,

(ii) registered psychologist,

(iii) registered nurse or registered psychiatric nurse,

(iv) occupational therapist,

(v) physical therapist,

(vi) social worker,

(vii) chiropractor, or

(viii) nurse practitioner ...

The EAA provides as follows:

Panels of the tribunal to conduct appeals

22(4) A panel may consider evidence that is not part of the record as the panel considers is reasonably required for a full and fair disclosure of all matters related to the decision under appeal.

APPEAL NUMBER 2021-0196

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)

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

Part H – Signatures

Print Name

Simon Clews

Signature of Chair

Date (Year/Month/Day)

2022/01/30

Print Name

Vivienne Chin

Signature of Member

Date (Year/Month/Day)

2022/01/31

Print Name

Robert Kelly

Signature of Member

Date (Year/Month/Day)

2022/01/31