

Part C – Decision Under Appeal

The decision under appeal is the Ministry of Social Development and Poverty Reduction (the Ministry) Reconsideration Decision (RD) dated January 19, 2023. The Ministry found that the Appellant did not meet three of the five 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 requirement and had an impairment which was likely to continue for at least two years.

However, it 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 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 found the Appellant was not one of the prescribed classes of persons eligible for PWD on alternative grounds. As there was no information or argument on this point, the Panel considers it not to be an 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 evidence before the Ministry at the time of the RD included the PWD Application comprises:

- A self report (SR), dated October 18, 2022,
- A Medical Report (MR) dated November 10, 2022 and completed by the Appellant's General Practitioner (GP). The GP has known the Appellant for more than three years and who has seen the Appellant 11 or more times in the past year; and,
- An Assessor Report (AR) dated November 10, 2022, also completed by the GP.

The evidence available to the Ministry at the time of the RD also included a Request for Reconsideration form (RFR) signed by the Appellant on January 6, 2023. In the RFR the Appellant says that she thinks there is information missing from her application for the PWD designation and that she will be seeing the GP on January 12, 2023 *"to get these forms filled correctly"*. The Appellant also gives the reasons why she is asking the Ministry to reconsider its decision. Those reasons are detailed in the appropriate sections of the discussion below.

Also included with the RFR is a letter dated January 14, 2023, from the GP (the January 14 Letter). Information contained in the January 14 Letter is also provided in the appropriate sections of the discussion below.

Diagnoses

In the MR, the GP diagnoses the Appellant with an Anxiety Disorder with a date of onset of April 2021. In the Health History section of the MR, the GP also diagnoses the Appellant with Osteoarthritis of the knee.

Severe Physical Impairment

In the MR, under Health History, the GP wrote that the Appellant is looking after her child who has Autism. The GP adds that the Appellant says that she finds this is overwhelming, that *"(s)he believes she has chronic pain. She's not on any pain relievers that are prescribed"*. The GP states that an X-ray of her knee shows medial knee Osteoarthritis (OA).

With respect to functional skills, the GP reports that the Appellant can walk 1 to 2 blocks unaided on a flat surface, climb two to three steps unaided, and has no limitations with lifting or remaining seated. The GP also provided that the Appellant has *"Depression from looking after autistic (child)."*

In the AR, the GP indicates that the Appellant is independent with all activities (walking indoors and outdoors, climbing stairs, standing, lifting, and carrying and holding) but

takes significantly longer than normal with walking outdoors and climbing stairs. No additional comments are made in the space provided on the AR.

In the SR, the Appellant writes *"I have had knee pains for over 9 months now. I can hardly walk and it's very hard to stand. I can only walk or stand for maximum of 5 minutes and then I start crying in pain. My doctor has my results from my X-ray. I am in a lot of pain. I have been like this for the past 9 months but now it is getting worse. I am also having problems with my left foot. I can hardly walk. It feels like razor blades. Very painful. Also have other health issues but these new problems have left me almost being unable to walk. Please see doctor's results. You will understand my pain better ... If I stand up it hurts and I start crying in pain ... I can no longer go for walks with my (child). I have to be sitting with my knees on a pillow to keep it from hurting. I am going to start physio therapy, but I can only go when I can afford it. It's expensive. Basically, my life has changed. It was already very demanding. Now to do things sitting down to try to take the weight off my knees so that it doesn't cause me more pain than I already have is very frustrating. Being a single mom with a child with autism and now hardly able to walk."*

In the RFR, the Appellant writes *"I feel that there's missing information. I will be seeing my family doctor on ... January 12 to get these forms filled correctly. My knee is in major pain ... I can't stand up very long. It's too much pain. My doctor did not complete this application correctly ... I have a lot of health issues that I stated but my depression and my mobility were not listed ... I have difficulty climbing stairs. It takes me a long time to actually get to the last stairs. Also, my right knee is getting the same pains."*

In the January 14 Letter, the GP says that the Appellant believes that information that the GP provided in the Appellant's PWD application *"is incorrect and didn't elaborate her existing medical illness ... Her pain in her right knee is quite severe she states ... She has requested an orthopedic assessment of her right knee."*

Severe Mental Impairment

The GP has not completed the section of the MR where the prescribed professional is asked if there are any significant deficits with cognitive and emotional functioning.

In the AR, the GP indicates that the Appellant's abilities are good in all listed areas (writing, speaking, reading ability and hearing) and does not provide any comments or explanations in the spaces provided.

In the AR, the GP has also indicated no major or moderate impacts, a minimal impact on bodily functions, emotion, motivation and motor activity, and no impact on the other listed areas (consciousness, attention/concentration, executive functioning, memory, consciousness, impulse control, insight and judgment, language, psychotic symptoms,

other neuropsychological problems, and other emotional or mental problems). No additional comments are indicated in the space provided.

With respect to social functioning, the GP indicates in the AR (with comments in *italics*) that the Appellant is independent in all listed areas [making appropriate social decisions, ability to develop and maintain relationships (*she's unable to at times due to the fact that she's her (child's) sole caretaker*), interacting appropriately with others, ability to deal appropriately with unexpected demands, and ability to secure assistance from others]. The GP also indicates that the Appellant has good functioning with her immediate and extended social networks.

In the SR, the Appellant writes "*I have to sit down to do things. I am not taking this very well. I always have been really strong with my legs and to get this news has left me really depressed ... I am very sad my health has taken a bad turn.*"

In the RFR, the Appellant writes "*I am suffering from depression. I am alone for everything.*"

In the January 14 Letter, the GP writes "*(The Appellant) believes (she) ... is quite depressed as a result of the pain and the inability to properly care for her (child). She alleges most jobs require her to stand for periods of time or walk, which she's unable to do. This compounds her depression she states causing her to contemplate medication for this ... She believes all this makes her 'impaired'.*"

Restrictions in the Ability to Perform DLA

In the MR, the GP indicates that the Appellant has not been prescribed any medications or treatments that interfere with her ability to perform DLA. The GP also writes "*Pain from OA - Taking meds for pain.*"

In the AR, where asked what mental or physical impairments impact the applicant's ability to manage DLA, the GP states that the Appellant is obese, has chronic arthritis, and suffers from caregiver burnout. The GP also indicates that the Appellant is independent with respect to all tasks for all of the listed DLA, but adds that the Appellant takes significantly longer than typical with basic housekeeping, carrying purchases home, getting in and out of a vehicle, and using public transit, adding "*Due to pain, it takes her a little bit longer to manage at home. She does drive and takes public transit as well at times. It takes her longer when travelling with her (child).*" Where asked what additional information might be relevant in understanding the nature and extent of the applicant's impairments and their effect on DLA, the GP writes "*(The Appellant) has caregiver burnout and depression as a result (of living alone with her severely autistic child) ... She is unable to find meaningful relationships as she's with her (child) all of the time ... She's also obese and has chronic arthritis related pain in her shoulder and knees and occasionally in her back. This affects her physically and*

emotionally. However, I'm not certain she qualifies as a person with disability. Neither her pain nor her mood is disabling."

In the SR the Appellant writes *"It takes me a long time just to try to take my garbage to the garbage dump. I have an autistic (child) who is 9 years old that needs my help for everything. She needs me to bathe, wash her, brush her teeth. She still wears pull ups."*

In the RFR, the Appellant writes *"My (child) has autism depends on me for everything."*

Need for Help

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

In the AR, the GP indicates that the Appellant lives with her child and that she gets help with DLA from family and friends but does not provide any additional information in the section of the AR where the prescribed professional is asked to describe the degree of support or supervision the applicant requires. The GP does not indicate that any assistive devices are required, or that the Appellant has an assistance animal.

In the RFR, the Appellant says she needs help to do house chores, adding *"I have a friend who comes to my house 3 to 4 times a week to help me clean and do house chores."*

In the January 14 Letter, the GP writes *"(The Appellant) states she uses assistance from a friend. (The friend) comes to visit and assist (the Appellant) three days a week doing chores. (The Appellant) states (the friend) isn't paid for assisting her as she's her friend."*

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 an introductory e-mail dated January 28, 2023, and accompanying the NOA (the NOA E-mail), the Appellant says that she is waiting to see a knee surgeon specialist, that she has depression, Type 2 Diabetes, an unspecified thyroid condition and Crohn's Disease. She also says she is a single mom with a 9-year-old child who still wears pull-ups and who depends on her for everything. She says that she can barely walk due to knee pain, her depression has gotten worse, for which she has new medication, and that she doesn't

understand how her application for the PWD designation has not been approved considering all her conditions.

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 is suffering from depression and severe knee pain for which she is awaiting surgery.

Also included with the NOA is a photograph of a bottle of prescription medication for Apo-Sertraline (the Photograph).

The Appellant made two additional submissions after the RD.

The first submission comprises a one-page letter from the GP, dated February 15, 2023 (the February 15 Letter). The February 15 Letter says:

- An X-ray of the Appellant's right knee "*demonstrates severe Osteoarthritis. (The Appellant) is waiting to see an orthopaedic surgeon for this*";
- The Appellant is also "*depressed as a result of the pain and inability to properly care for her (severely autistic child who requires round the clock care)*"; and,
- The Appellant "*uses assistance from a friend to assist with home chores*".

The second submission comprises a one-page letter from the GP, dated March 8, 2023 (the March 8 Letter). The March 8 Letter says "*(The Appellant) is not capable of doing home chores. She has a friend who comes in 3 times a week to assist with meal prep, laundry, and to assist with home chores and cleaning. I hope this helps her cause for appeal.*"

Evidence Presented at the Hearing

At the hearing, the Appellant said that her original application for the PWD designation was filled out incorrectly by the GP. She said that the GP had told her that the information provided in the GP's assessments in the MR ("*she alleges ...*", "*she believes ...*", "*she states ...*", etc.) were "*worded incorrectly*", that the GP had apologized to her for this, and that the GP had "*explained it clearly*" in the February 15 Letter and the March 8 Letter. The Appellant also said that she also has Type 2 Diabetes and "*thyroid and liver problems*", and that the Ministry "*had not given her a chance to explain*".

The Appellant stated that she can't walk for more than 3 minutes without pain, and that if she has to stand for 5 minutes she falls down. She said that the pain in her right knee is worse than it was when she applied for the PWD designation, and recently she has also been experiencing pain in her left knee. She also said that her knees make a popping sound when she walks. She said she has to keep her legs elevated most of the time and that she takes non-prescription pain killers (Acetaminophen), anti-inflammatories (Ibuprofen) and a topical ointment to treat the pain in her knees, adding that the topical ointment only works "*for about five minutes*". She also said that she is on a waitlist for knee

surgery and doesn't know how long she will have to wait for it – perhaps a few months or maybe a year or more – nor has her GP been able to tell her whether knee surgery will be totally effective.

Regarding the use of assistive devices, the Appellant said that she has recently started using crutches whenever she has to walk, and, in response to a question from the Ministry, that the GP had not proposed any other assistive devices, telling her that *"crutches are the best solution for now"*.

The Appellant also provided information about the challenges she has in caring for her severely autistic child. She said that her child, who is now 10 years old, needs *"round the clock care"*, doesn't even know how to brush her teeth or hair, and *"still wears pull-ups"*.

The Appellant said that until recently she has looked after her child without any help, but has just in the past few weeks been approved to receive respite services of up to 150 hours per year under a program provided by the Ministry of Children and Family Development. The Appellant said that one day last week she had respite for an hour when the assigned respite provider took her child for a walk, and that the respite provider was coming back this Saturday to assist the Appellant by caring for her child for 2 hours.

In response to a question from the Panel, the Appellant described a typical day. The Appellant said that both she and her child go to bed at 8:30 PM (*"because (her child) likes to go to sleep early"*). The Appellant said that she wakes up in a great deal of pain every night at 3:00 AM and takes non-prescription pain killers and anti-inflammatories. She and her child get up at 8:00 AM, and the Appellant takes her child to school, and returns home to rest until the child has to be picked up at 2:30 PM on most days. While her child is at school, the Appellant said that most of the time she puts a pillow under her leg and elevates it to relieve the pain, adding that on the days that she has to remain seated, any pressure on her knee is very painful. After picking up her child from school, the Appellant explained that she helps the child with homework. After that she gives the child a bath, which she supervises, and then feeds her child with a microwave-heated supper that her friend had prepared on a previous visit.

In response to another question from the Panel about the type of assistance provided by her friend and the frequency of her friend's visits, the Appellant said that her friend has been helping her with the DLA of meal preparation, laundry and cleaning for *"almost 2 months"* and that her friend *"comes when she can, usually two times a week"*. The Appellant also said that her friend sometimes takes her child out to the park to play.

In response to a question from the Ministry regarding a comment made by the GP in the AR (*"She has (her child) in play class during the day during which time she works ..."*), the Appellant said that the GP got it wrong – that she has been unable to work for a long time due to her impairment.

In response to another question from the Ministry, the Appellant confirmed that the GP did not have the X-Ray results confirming severe osteoarthritis when the MR and AR were completed in November 2022, and that her condition is much worse now than it was three or four months ago.

At the hearing, the Ministry relied on its RD, concluding that *"the Ministry submits that its decision was reasonable based on the information it had at reconsideration"*.

In response to a question from the Panel, the Ministry said that it would be *"difficult to confirm"* that any of the new evidence (information included in the February 15 Letter, the March 8 Letter or provided by the Appellant at the hearing) would have resulted in a different decision by the Ministry had it had that evidence when it made its RD. The Ministry said that the legislation requires that a prescribed professional, in this case the GP, has to verify that severe physical or mental impairments result in restrictions on a person's ability to perform DLA, either continuously or periodically for extended periods, and that performing specific DLA require the help of another person or an assistive device. To make that assessment, the Ministry said that it requires specific and detailed information from a prescribed professional confirming these impacts and *"(the GP) hasn't given us anything that clarifies the impact (on the Appellant's) physical abilities"*.

Admissibility of New Evidence

The NOA E-mail contains new evidence in the form of the Appellant's statement that she has additional impairments (Type 2 Diabetes, an unspecified thyroid condition and Crohn's Disease), that she is taking medication for her depression, and the Photograph, which the Appellant said at the hearing was a picture of medication prescribed to her by the GP to treat anxiety and depression. No new evidence was presented in the NOA.

New evidence contained in the February 15 Letter is the GP's statement that an X-ray of the Appellant's right knee shows she has severe Osteoarthritis for which she is waiting to see an orthopaedic surgeon, and that the Appellant is assisted with home chores by a friend.

New evidence contained in the March 8 Letter is the GP's statement that the Appellant has a friend who comes in 3 times a week to assist her with meal preparation, laundry, home chores and cleaning.

The Ministry did not object to the Panel considering any of the new evidence contained in the NOA E-mail, the February 15 Letter or the March 8 Letter, or to any of the verbal information provided by the Appellant at the hearing.

The Panel considered all the new evidence to be evidence that might reasonably be required for a full and fair disclosure of all matters relating to the decision under appeal.

The Panel did not assign any weight to the Appellant's statement that she has additional impairments because they were not identified by the GP in the MR as diagnosed ailments or subsequently confirmed by a prescribed professional. Similarly, the Panel did not assign any weight to the Appellant's statement that she has recently been taking prescribed medication for depression. This is because the GP had indicated in the MR that the Appellant has not been prescribed any medications that interfere with her ability to perform DLA, and a prescribed professional has not indicated that the prescription medication she is now taking would have an impact on ability to perform DLA.

The Panel assigns moderate weight to the new evidence in the February 15 Letter that an X-ray of the Appellant's right knee shows she has severe Osteoarthritis and that she is waiting to see an orthopaedic surgeon. The Panel only assigns moderate weight to this evidence for the reasons set out in "*Part F - Reasons for Panel Decision*" section below.

The Panel assigns moderate weight to the new evidence in the March 8 Letter that the Appellant has a friend who comes in 3 times a week to assist her with meal preparation, laundry, home chores and cleaning. The Panel only assigns moderate weight to this evidence for the reasons set out in "*Part F - Reasons for Panel Decision*" section below.

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. In other words, based on all the admissible evidence, was it reasonable for the Ministry to determine that the Appellant does not have a severe mental or physical impairment, 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 the absence 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**

Neither the terms "*impairment*" nor "*severe*" are defined in the EAPWDA. The Cambridge Dictionary defines "*impairment*" in the medical context to be "*a medical condition which results in restrictions to a person's ability to function independently or effectively*" and defines "*severe*" as "*causing very great pain, difficulty, worry, damage, etc.; very serious*". "*Impairment*" is defined in the MR and the AR sections of the PWD application form to be "*a loss or abnormality of psychological, anatomical, or physiological structure or function causing a restriction in the ability to function independently, appropriately or for a reasonable duration*". While the term is not defined in the legislation, the Panel finds that the Ministry's definition of "*impairment*" as set out in the MR and the AR is a reasonable definition of the term for the purpose of partially assessing an applicant's eligibility for the PWD designation.

In addition, a diagnosis of a severe impairment does not in itself determine PWD eligibility. Section 2(2) of the EAPWDA requires that in determining whether a person may be designated as a PWD, the Ministry must be satisfied that the individual has a severe physical or mental impairment with two additional characteristics: in the opinion of a medical practitioner or a nurse practitioner, it must both be likely to continue for at least two years [EAPWDA 2(2)(a)], and, in the opinion of a prescribed professional, it must directly and significantly restrict a person's ability to perform DLA continuously or periodically for extended periods, resulting in the need for the person to require an assistive device, significant help or supervision, or an assistance animal in performing those activities [EAPWDA 2(2)(b)]. In determining PWD eligibility, the Ministry must consider all the relevant evidence, including that of the Appellant. However, the

legislation is clear that the fundamental basis for the analysis is the evidence of prescribed professionals – in this case the GP - regarding the length of time that the severe impairment is likely to continue, and the impact on DLA and the need for assistance.

Both the duration of the impairment criterion and the Appellant's age criterion have been determined by the Ministry to have been met and are not at issue in this appeal.

Physical Functioning

The Appellant's position is that she has been experiencing severe knee pains for over 9 months, which are now getting worse, and as a result she can hardly walk or stand. The Appellant also feels that her GP did not complete the MR and AR correctly and that it is missing important information, which she believes has been adequately explained in the February 15 Letter and the March 8 Letter.

The Ministry's position is that the GP indicates that the Appellant takes significantly longer than typical walking outdoors and climbing stairs, but does not describe how much longer it takes her to manage those activities, making it difficult for the Ministry to determine if those restrictions are a significant impediment to the Appellant's overall level of physical functioning. As a result of the lack of detailed evidence provided by the GP, the Ministry has determined that the impairments identified on the PWD application reflect a moderate rather than a severe physical impairment.

Panel Decision

While the term "*severe physical impairment*" is not specifically defined in the legislation, the Ministry has developed two reports to assess the degree of a physical impairment based on an applicant's physical functioning skills. These two reports (the MR and the AR) must be completed by a prescribed professional, in this case the Appellant's GP. To assist the Ministry in assessing the degree of impairment, the MR and AR ask the prescribed professional to indicate whether the applicant has any restrictions with several specific physical functions, and to explain the restrictions or provide comments to give more detail as to how the restrictions impact the applicant's physical capabilities.

In the MR, the GP has some restrictions in walking (limited to 1 to 2 blocks) and climbing stairs (limited to 2 steps), and no limitations in sitting or carrying and holding. The Panel notes that the GP did not provide any additional comments or explanations relating to the Appellant's physical functioning capabilities in the space provided on the forms in either the MR or the AR. In addition, the Panel notes that, while the GP has indicated in the February 15 Letter that X-rays of the Appellant's right knee show that she has severe osteoarthritis for which she is awaiting a visit with an orthopedic surgeon, the GP has not indicated the degree to which this condition might impact her functional skills either

before or after consultation with an orthopedic specialist. Consequently, even with the additional information contained in the February 15 Letter, it is reasonable to conclude that the Ministry does not have sufficient information to fully assess the severity of the Appellant's physical functioning skills.

The Panel finds that the Ministry's decision in the RD that the Appellant does not have a severe physical impairment is reasonably supported by the admissible evidence.

Mental Functioning

The Appellant's position is that the restrictions in her ability to walk caused by the pain in her knees has left her very depressed, and that she is now taking prescribed medication for anxiety and depression resulting both from her physical impairment and the challenges she faces in looking after a severely autistic child.

The Ministry's position is that, because the GP does not indicate that the Appellant has any significant deficits with cognitive and emotional functioning and that she has good functioning with her immediate and extended social networks, the information provided does not establish that she has a severe mental impairment.

Panel Decision

Although the legislation contains no formalized criteria to define what constitutes mild, moderate or severe cognitive deficits, prescribed professionals are required to indicate in the MR and the AR the severity of a mental impairment by assessing the number of skill areas affected by the impairment, the severity of the deficits in psychological processes, and the degree of impairment in skill areas.

The GP has provided evidence in the MR that the Appellant experiences caregiver burnout from caring for her severely autistic child, and that she is "*unable to develop and maintain relationships at times due to the fact she's her daughter's sole care provider*". In addition, the GP writes in the February 15 Letter that the Appellant is depressed "*as a result of pain and inability to properly care for her (child)*". The Appellant also says she is suffering from depression in both the RFR and the SR.

However, the Panel concludes that the degree of the Appellant's depression cannot reasonably be considered significant enough to be evidence of a *severe mental impairment* as required by the legislation. The Panel reaches this conclusion because the GP has not described her depression as severe and no evidence has been provided by a prescribed professional to indicate that the Appellant has severe cognitive deficits or any impaired functioning with her immediate or extended social networks.

The Panel finds that the Ministry's determination in the RD that the Appellant does not have a severe mental impairment is reasonably supported by the evidence.

Restrictions in the Ability to Perform DLA

The Appellant's position is that her autistic child needs her help for everything, including bathing and brushing her child's hair and teeth. The Appellant has also explained that both the constant care she has to provide to her child and the impact of her osteoarthritis on her physical functioning limit and restrict her ability to perform several DLA, including preparing meals, housecleaning and laundry.

The Ministry's position is that, because the GP has indicated that the Appellant is able to manage all aspects of her DLA (with the exception of taking longer than typical in a few activities), the information provided by the GP does not establish that a severe impairment significantly restricts the Appellant's DLA, either continuously or periodically for extended periods.

Panel Decision

In determining PWD eligibility, after assessing the severity of an impairment, the Ministry must consider how long the severe impairment is likely to last and the degree to which the ability to perform DLA is restricted and assistance in performing DLA is required. 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)(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.

Section 2(2)(a) of the EAPWDR defines "*prescribed professional*" to include a "*medical practitioner*". Therefore, the GP is considered prescribed professionals 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. In addition, there is a component related to time or duration: the direct and significant restriction must be either continuous or periodic, and, if periodic, 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. The Panel notes that the GP has indicated in the MR and the AR that the Appellant is independent with respect to all DLA tasks, adding that she takes significantly longer with a few of the listed DLA, but does not indicate how much longer she takes with those activities. The GP also says that activities involving transportation takes longer when travelling with her child, presumably because the child is autistic and requires additional attention, though the GP does not say why it takes longer or how much longer it takes. In any event, the Panel notes that legislation requires that the PWD designation depends on an individual's inability to perform DLA because of that individual's severe mental or physical impairments, not impairments others have if the applicant is providing other individuals with care.

The Panel also notes that the GP has provided additional information about the Appellant's challenges with DLA in the March 8 Letter; specifically, that the Appellant is not capable of doing "*home chores*", and requires help with meal preparation, laundry and housecleaning. However, the additional information in the March 8 Letter does not reasonably provide the Ministry with necessary additional details such as whether the friend's assistance is provided because the Appellant is periodically or continuously unable to perform those activities, or, if help is provided because the Appellant is too busy with looking after her child. In addition, the Panel notes that the Appellant has provided inconsistent information about the frequency of her friend's visits to help: in the RFR the Appellant said that her friend comes 3 to 4 times a week, whereas at the hearing she said that it was 2 times a week.

Based on the admissible evidence, the Panel finds that the Ministry's determination there is insufficient evidence to confirm that the Appellant's DLA are, in the opinion of a prescribed professional, directly and significantly restricted as a result of a severe impairment, is reasonable.

Help with DLA

The Appellant's position is that she needs help with meal preparation, laundry and housecleaning, and has a friend visit her more than once a week to assist her with these DLA.

The Ministry's position is that it has not been established that the Appellant's DLA are significantly restricted, and as a result, it cannot be determined that significant help is required from other persons.

Panel Decision

Help is defined in EAPWD Section 2(3) as the requirement for an assistive device, the significant help or supervision of another person, or the services of an assistance animal to perform one or more DLA. While the GP indicates in the Appellant's PWD application that the Appellant does not require any assistive devices, the Appellant said at the hearing that she has recently acquired crutches that she now uses all the time when walking. However, there is no evidence from the GP or any other prescribed professional that she requires the use of crutches, or any other assistive device, due to a severe physical impairment.

Section 2(2)(b)(ii) of the EAPWDA says that a person must require help to perform DLA *as a result of direct and significant restrictions in their ability to perform DLA*. 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.

The Panel finds that the Ministry's conclusion that it could not be determined that the Appellant needs significant help from others because it has not been established that the Appellant's DLA are significantly restricted, is reasonable, based on all the available evidence.

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 reasonably supported by the available evidence and was a reasonable application of the EAPWDA in the circumstances of the Appellant, and therefore confirms the decision. The Appellant's appeal, therefore, is not 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 2023-0029

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)

2023/04/04

Print Name

Inge Morrissey

Signature of Member

Date (Year/Month/Day)

2023/04/04

Print Name

Carla Tibbo

Signature of Member

Date (Year/Month/Day)

2023/04/04