

PART C – Decision under Appeal

The decision under appeal is the Ministry of Social Development (ministry) reconsideration decision dated April 5, 2012 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 for designation as a person with disabilities (PWD). The ministry found that the appellant met the age requirement and that his impairment is likely to continue for at least two years. However, the ministry was not satisfied that the evidence establishes that he has a severe physical or mental impairment. The ministry was also not satisfied that 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. As the ministry found that the appellant is not significantly restricted with DLA, it could not be determined that he 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.

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 before the ministry at the time of the reconsideration decision consisted of:

- 1) Person With Disabilities (PWD) Application: undated applicant information, physician report dated August 4, 2011, and assessor report dated October 10, 2011;
- 2) Letter from the ministry to the appellant dated February 14, 2012 denying person with disabilities designation and enclosing a copy of the decision summary;
- 3) Questionnaire signed on March 24, 2012 by the physician who completed the reports in the PWD application which states in part that the physician agrees that the appellant has a severe physical or mental disability, that he suffers from severe anxiety, depression, social phobia and simple phobia and has also been diagnosed with ADHD. The physician agrees that, based on his knowledge of the appellant's medical history and current circumstances, the appellant is significantly restricted in the ability to perform daily living activities (DLA) as doing any activities of daily living takes at least 5 times longer and many activities go undone because of high levels of anxiety and phobias and inability to maintain concentration; he is often unable to leave the house. The physician agrees that the appellant requires significant help with DLA as a direct result of his impairment, that he requires "...significant and ongoing support; most tasks are left undone due to severe anxiety; he needs assistance with all DLA and requires psychiatric support;" ; and,
- 4) Request for Reconsideration.

Prior to the hearing, the appellant's advocate provided an additional document, namely an undated page from the physician report of the PWD application completed by the physician who prepared the original physician and assessor reports. The advocate explained that this page was prepared by the physician and faxed to her the day before the hearing. At the hearing, the appellant's advocate provided a letter dated May 8, 2012 from the appellant's mother and explained that the appellant's mother wanted to attend in person but today is also food bank day in her community and she needed to attend; her letter states that she is the appellant's care provider and details some of the ways she provides assistance. The advocate also provided a written submission on behalf of the appellant. The ministry did not object to the admissibility of these documents. The panel reviewed the completed page for the physician report and the letter from the appellant's mother and admitted them as being a further description of the impacts from the appellant's diagnosed impairments and his need for assistance, and being in support of the information and records before the ministry on its reconsideration, pursuant to Section 22(4) of the Employment and Assistance Act. The panel accepted the advocate's written submission on behalf of the appellant as argument.

In his self report included with the PWD application, the appellant states that he has high anxiety and is not able to be in, near, or around large or even small numbers of people. He is not able to leave his room or house for long periods of time in case he is not able to locate a bathroom. These are phobias. The appellant states he also has ADHD and depression. The appellant states that he is never able to hold down a job because of being too "moody" and never finding a middle ground with his emotions. The appellant states that he is not able to concentrate or sleep for a reasonable amount of time, and that he lacks both education and energy. The appellant states that he has great difficulty leaving his home for long before he starts to have massive panic attacks.

In her letter, the appellant's mother states in part that she is a care provider of her son. She states that her son's anxiety and agrophobia (sic) can cause a severe delay of leaving their residence to walk to a nearby store or the food bank a block away from their residence. The appellant's mother states that her son will have to return to their residence quickly to use the washroom or not be able to leave their residence whatsoever. The appellant's mother states that her son spends all day in his bedroom and has been diagnosed with ADHD. The appellant's mother states that traveling by public transportation is not feasible for her son and since taxi cabs are not affordable she does her son's banking, grocery shopping, and helping him with appointments.

At the hearing, the appellant's friend stated that he has known the appellant since 1989, that the appellant helped him to get out and "they used to go to the bars together" but the appellant's condition has gotten worse and escalated. The friend stated that the appellant "does not have many friends left" and that his biggest

challenges are "...making friends, with his physical routines and thinking and deciding what to do next." The friend stated that he is the one that takes the appellant out, that it takes the appellant 1 to 1 1/2 hours to get going and they have to travel a set route that the appellant has planned out "...so that he can stop at washrooms along the way." The friend stated that they cannot travel on highways, they "...stay within the city limits and there always has to be gas stations or other facilities with washrooms nearby." The friend stated that the appellant has a good relationship with his mother, that she has taken on a burden with the appellant and that he has a vehicle and has known the appellant for a long time so he helps the appellant out, but their social activities have gone by the way. The friend stated that he has seen the appellant's urgency to get to a washroom due to his digestive problems and that "...sometimes he appears to be on the verge of vomiting." The panel accepted the friend's oral testimony as further information regarding the appellant's diagnosed impairment and being in support of the information and records before the ministry on its reconsideration, pursuant to Section 22(4) of the Employment and Assistance Act.

The appellant stated he tries to keep busy, that he takes about an hour to get up in the morning, that "...he thinks about what he would like to do with his day, which is not much." The appellant stated that he stays in bed many days. The appellant stated that he will "...have a shower if there are important things to do", but he does not like to bother people and he has to wait for his mother to go out so he can use the bathroom. The appellant stated that he likes to fix things in his room, that he moves things around a lot and that his room is "a pretty big mess." The appellant stated that he is supposed to go to counseling once a week with mental health but it is difficult for him to get there. The appellant stated that he takes Ativan but he knows it is highly addictive and only takes it when needed and he also has medications prescribed for ADHD but he cannot afford to take them and some of them "...made his head feel funny." The appellant stated that he has had many jobs but he only left two on his own accord since he is "...too slow at picking things up and getting things done." The appellant stated that he last worked for a furniture company in 2009 and he could not go out in the delivery truck because he would have to plan a route to the location with access to washrooms and he "...would be too late for deliveries and pick-ups." The appellant stated that it did not work out in the warehouse either since he "...has mood swings that not many people can handle" and there was only one washroom for 16 employees. The appellant stated that with his anxiety and agoraphobia, he has found it is "safer to stay at home." The appellant stated that he does not like to bother people so he keeps a bottle in his room so he will not wake his mother going to the washroom at night.

The appellant stated that his condition has worsened as he had to move to another community to stay with a friend since he had gone through 3 house fires and needed somewhere to stay. The appellant stated that he did not set the fires and no one was injured in the fires but "...it takes a lot out of a person when this happens 3 times." The appellant stated that when he was in the other community he went to the emergency department at the hospital because he was having chest pains and "his breathing was bad" and he ended up seeing the psychiatrist who completed the reports for the PWD application. The appellant explained that he has also consulted with the psychiatrist by way of video conference. The appellant stated that he had never understood before the reason for the way he is. The advocate added that, according to information obtained from the internet, the GAF score, referred to by the psychiatrist in the physician report, is a measure that provides a global assessment of functioning and that 50 out of 100 indicates a serious impairment in social functioning. The appellant stated that he does not like to bother his friend since he has a family of his own but if there is something important that he needs to get to, like this hearing, then he asks his friend to drive him. The appellant stated that in the last two months he has only been out to meet with his advocate, to go to the ministry office because he misplaced his stub and to the clinic. The appellant stated that he does not know what he would do without his friend and his mother to help him, "...that he would be very alone."

The appellant stated that he has a deal with his mother, that if she cooks, he will clean. The appellant stated that he used to be good at cooking but now he finds the quickest thing, "like opening a can of beans." The appellant stated that his mother does the housekeeping and she goes to the bank and the store. The appellant stated that he has direct banking and he gives his mother his bank card to do his banking and "...it is not too much of an inconvenience for her because she is going to the bank anyway." The appellant stated that if he

were to do his own shopping, he would "...grab whatever looked good, like lots of snacks", and it has been two months since he went out to purchase food. The appellant stated that his mother also takes his stub to the ministry for him, when he remembers to find it in his room and give it to her, and he has misplaced it in the past. The appellant stated that he does not like to bother her but "she is kind enough to do it." The appellant stated that they live in a third floor apartment but if they had a yard he would like to work in it, which he could do because there would be a bathroom available. In response to a question, the appellant stated that he believes he has a digestive problem since he goes to the washroom 4 to 5 times on a bad day but he has not sought medical care because "...he is afraid of hospitals and doctors." The appellant stated that he likes to try to do his hobbies which are carving wood and soapstone since this is one of the few things on which he can concentrate.

The physician who completed the physician report is a specialist in psychiatry and confirms that the appellant has been his patient for less than a year and that he has seen the appellant once in the past 12 months. In the physician report, the psychiatrist confirms a diagnosis of social phobia, simple phobia (anxiety disorders) and ADHD (pervasive developmental disorders). The psychiatrist adds a comment regarding the diagnosed anxiety and developmental disorders "...GAF [global assessment of functioning] 50; cannot easily leave home." The psychiatrist has not completed an assessment of the appellant's functional skills, nor completed an assessment of restrictions to DLA since this page was not applicable when also completing the assessor report. The psychiatrist indicates that there are significant deficits with cognitive and emotional function in the areas of executive, emotional disturbance and attention/ sustained concentration.

The psychiatrist also completed the assessor report and indicates that the appellant's impairment that impacts his ability to manage DLA is "...high levels of anxiety and phobias." The psychiatrist reports that the appellant has a satisfactory ability to communicate in all areas, with no further comments provided. The psychiatrist also indicates that the appellant is independent in all areas of mobility and physical ability, with walking indoors and walking outdoors, with climbing stairs and standing, and with lifting and carrying and holding. The psychiatrist indicates that the appellant is independent with all tasks of personal care including dressing, grooming, bathing, toileting, feeding self, regulating diet, transfers in/out of bed and transfers on/off chair. The psychiatrist reports that the appellant is independent with doing laundry and basic housekeeping. The psychiatrist indicates that the appellant is independent with all of the tasks of shopping, including reading prices and labels, making appropriate choices, paying for purchases, and with carrying purchases home, while taking significantly longer than typical with going to and from stores, with no further comments provided. Further, the psychiatrist reports that the appellant is independent with all of the tasks of managing meals, including meal planning, food preparation, cooking and safe storage of food. The psychiatrist indicates that the appellant is independent with all tasks of paying rent and bills (including banking and budgeting), managing medications (filling/refilling prescriptions, taking as directed and safe handling and storage) and transportation (getting in and out of a vehicle, using public transit, and using transit schedules and arranging transportation). The psychiatrist reports that there is a major impact to the appellant's daily functioning in the area of emotion (e.g. excessive or inappropriate anxiety, depression), and moderate impacts to bodily functions, attention/concentration, and executive. The psychiatrist reports minimal impact to insight and judgement and no impact to the 9 remaining areas of cognitive and emotional functioning with no additional comments provided. The psychiatrist indicates that the appellant requires periodic support/supervision in 4 of 5 areas of social functioning, namely with making appropriate social decisions, developing and maintaining relationships, dealing appropriately with unexpected demands, and securing assistance from others, while being independent with interacting appropriately with others. The psychiatrist notes that the appellant "...requires psychiatric support."

The undated page from the physician report completed by the psychiatrist who prepared the original physician and assessor reports provides an additional assessment and comments by the psychiatrist. The psychiatrist agrees that the appellant's impairment directly restricts his ability to perform DLA and identifies 9 out of 10 DLA in which the appellant is continuously restricted, namely personal self care, meal preparation, management of medications, basic housework, daily shopping, mobility outside the home, use of transportation, management

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of finances and social functioning. With respect to social functioning, the psychiatrist notes that "...high levels of anxiety and phobias affect all DLA" and regarding the degree of restriction the psychiatrist comments "...significant deficits, often unable to leave the home." For assistance needed with DLA, the psychiatrist notes that "...assistance with all ADL's provided by mother." The psychiatrist reports that the appellant is not restricted with mobility inside the home.

PART F – Reasons for Panel Decision

The issue on the appeal is whether the ministry reasonably concluded that the appellant is not eligible for designation as a person with disabilities (PWD) as he does not have a severe mental or physical impairment and that his daily living activities (DLA) are not, in the opinion of a prescribed professional, directly and significantly restricted either continuously or periodically for extended periods and that, as a result of those restrictions, it could not be determined that 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 criteria for being designated as a person with disabilities (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 has a severe mental or physical impairment that

(a) in the opinion of a medical 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).

Section 2(1)(a) of the EAPWDR defines DLA for a person who has a severe physical or mental impairment 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.

The ministry argues that the evidence does not show that the appellant has a severe physical impairment. The ministry points to the physician report, where there is no physically limiting diagnosis and no functional skills limitations. The ministry also argues that all mobility/physical abilities are independent. The appellant's advocate did not argue that the appellant has a severe physical impairment. The panel finds that the evidence of a medical practitioner does not confirm a diagnosis of a physical impairment as both diagnosed conditions set out in the physician report and the Questionnaire dated March 24, 2012 are within the diagnostic codes and category of mental disorders. Therefore, the panel finds that the ministry's determination that the evidence does not establish a severe physical impairment, was reasonable.

The ministry argues that the evidence does not show that the appellant has a severe mental impairment. The ministry argues that the physician reports deficits to cognitive and emotional functioning in 3 areas, namely executive, emotional disturbance, and attention/concentration and that the appellant's ability to communicate is satisfactory. The ministry points out that the physician indicates a major impact on daily functioning to emotion, moderate impacts to bodily functions, attention/concentration and executive and one minimal impact to insight/judgement. The ministry argues that there are a number of aspects with no impact at all and aside from the problem of easily leaving the home, there is very little narrative to support a severe mental health condition. The ministry argues that the Questionnaire dated March 24, 2012 changes the physician's assessment and there is no information to demonstrate deterioration in mental health and there is no information on psychiatric treatment for anxiety, depression and phobias or the outcome of psychiatric support.

The appellant's advocate argues that the evidence establishes that the appellant suffers from a severe mental impairment as a result of anxiety, depression, social phobia and simple phobia and ADHD. The advocate points to the Questionnaire in which the psychiatrist agrees that the appellant has a severe mental impairment in that he suffers from severe anxiety, depression, social phobias and simple phobias and has been diagnosed with ADHD. The advocate argues that each of these conditions comes with a host of signs and symptoms that the appellant must cope with daily and if the psychiatrist did not believe these signs and symptoms were pathological in nature, he would not have made the diagnosis. The advocate argues that the very act of diagnosing a medical condition and completing the application indicates that the appellant is dealing with a condition outside the realm of normal functioning.

The panel finds that the evidence of a medical practitioner confirms a diagnosis of social phobia, simple phobia (anxiety disorders) and ADHD (pervasive developmental disorders). Although the psychiatrist reports in the Questionnaire of March 24, 2012 that the appellant also has depression, the panel finds it has not been confirmed by the medical practitioner that this condition is likely to continue for two years or more, as required by the legislation. In the physician report, the psychiatrist adds comments regarding the diagnosed anxiety and developmental disorders "...GAF 50; cannot easily leave home" and the advocate explained that a score of 50 out of 100 indicates a serious impairment in social functioning. The panel finds that the ministry referred to the GAF score only in passing and gave no indication that it understood the meaning or significance of the score assigned to the appellant by the psychiatrist. The panel finds the GAF score provides relevant information regarding an assessment of social functioning and that it supports a finding of a serious impairment. In the Questionnaire, the psychiatrist agrees that the appellant has a severe physical or mental disability, and that the appellant's mental disorders can be described as "severe." In the additional page

provided, the psychiatrist comments regarding the degree of restriction "...significant deficits, often unable to leave the home."

In the physician report, the psychiatrist indicates that the appellant has not been prescribed medication that may interfere with his ability to perform DLA and the appellant states that he takes Ativan but he knows it is highly addictive and only takes it when needed and he also has medications prescribed for ADHD but some of them "...made his head feel funny." In the assessor report, the psychiatrist reports that the appellant's ability to communicate is satisfactory in all areas. The psychiatrist indicates that there are significant deficits with cognitive and emotional function in the areas of executive, emotional disturbance and attention/ sustained concentration; there is a major impact to the appellant's daily functioning in the area of emotion (e.g. excessive or inappropriate anxiety, depression), and moderate impacts to bodily functions, attention/concentration, and executive. The psychiatrist reports minimal impact to insight and judgement and no impact to the 9 remaining areas of cognitive and emotional functioning with no additional comments provided. The psychiatrist indicates that the appellant requires periodic support/supervision in 4 of 5 areas of social functioning, specifically with making appropriate social decisions, developing and maintaining relationships, dealing appropriately with unexpected demands, and securing assistance from others, while being independent with interacting appropriately with others. The psychiatrist notes that the appellant "...requires psychiatric support" and the panel finds that the psychiatrist confirms the appellant's need for a level of specialized ongoing support. In her letter, the appellant's mother states that her son cannot take public transportation and he will often not be able to leave their residence whatsoever, and that he spends all day in his bedroom. The appellant explained his fear in not having a washroom readily accessible and with being around people, that he has experienced panic attacks for which he has gone to the hospital, and that he is supposed to go to mental health counseling once a week but it is difficult for him to get there. The appellant's friend stated that he has observed the appellant's isolation increase over time and that it is difficult for the appellant to leave his residence except for important appointments, to which he will drive the appellant after they have planned an acceptable route. The appellant stated that he does not know what he would do without his friend and his mother to help him, that he would "be very alone." The panel finds that the evidence of the physician, who is a specialist in psychiatry, together with that of the appellant, his friend, and his mother, demonstrates that the appellant experiences high levels of anxiety and phobias that have a marked impact on his functioning. Therefore, the panel finds that the ministry's decision, which concluded that the evidence does not establish a severe mental impairment, was not reasonable.

The ministry argues that the evidence does not establish that 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. The ministry points out that the physician indicates in the assessor report that the appellant is independent in his ability to manage all areas of DLA including personal care, basic housekeeping, shopping (going to and from stores takes longer than typical), meals, paying rent and bills, and managing medications and transportation. The ministry argues that social functioning requires periodic support in the form of psychiatric support but the appellant maintains a marginal level of functioning. The appellant's advocate stated that the psychiatrist did not have a complete understanding of the legislative criteria when he originally completed that PWD application, although he was aware that the appellant lives with his mother who provides help with all DLA. The advocate explained that she had a conversation with the psychiatrist and he stated that he considered that the DLA as set out in the assessor report only related to a physical ability and that because the appellant's mother completes the tasks for the appellant, that he lives "independently." The advocate points to the additional page from the physician report, that has been completed by the psychiatrist, and argues that the evidence establishes that the appellant is continuously restricted with 9 out of 10 DLA.

The panel finds that the legislation requires that the ministry be satisfied that the opinion of a prescribed professional confirms that the appellant's ability to perform DLA is directly and significantly restricted either continuously or periodically for extended periods. The panel considered whether to place any weight on the additional page completed by the psychiatrist given that it is a change in assessment of the appellant's ability to perform DLA from the assessor report, which indicated that the appellant is independent in all areas, and

the panel finds that, given the explanation provided, the additional page has been tendered by the psychiatrist to further explicate the Questionnaire. The panel also had reservations about accepting the hearsay evidence of the advocate regarding the psychiatrist's explanation for the discrepancy in the reports, and gave this evidence far less weight than it would have if there had been a written explanation given as part of the additional report signed by the psychiatrist, but the panel was persuaded by the consistency of the additional evidence with the March 24, 2012 Questionnaire completed by the same psychiatrist and also indicating restrictions to DLA, seen together with the evidence at the hearing of the appellant, his friend and his mother.

In terms of preparing his own meals, the psychiatrist indicated in the new evidence that the appellant is restricted on a continuous basis and the appellant stated that his mother makes the meals, that he "used to be a good cook" but that now he can only does the quickest things, "like opening a can." For managing personal finances, the psychiatrist reported in the new evidence that the appellant is restricted on a continuous basis and the appellant stated that he has direct banking and that he gives his mother his bank card and she does his banking for him, and his mother confirmed this in her letter. In terms of shopping for his personal needs, the psychiatrist indicated in the new evidence that the appellant is restricted on a continuous basis and the appellant's mother stated that she does the grocery shopping for her son and the appellant stated that if he were to go shopping he would "...pick whatever looks good, like lots of snacks." For use of public or personal transportation facilities, the psychiatrist indicated in the new evidence that the appellant is restricted on a continuous basis and the appellant's mother stated in her letter that traveling by public transportation "is not feasible" for her son. The appellant's friend explained that he drives the appellant to important appointments but it is difficult because of the appellant's fear of not having a washroom accessible to him and the need to carefully plan their route. With respect to performing housework to maintain the appellant's place of residence in an acceptable sanitary condition, the psychiatrist indicated in the new evidence that the appellant is restricted on a continuous basis and the appellant stated that he will clean up the dishes after his mother cooks for him but that he mostly stays in his own room which is "...a big mess."

For moving about indoors and outdoors, the psychiatrist reported in the new evidence that the appellant is restricted on a continuous basis with mobility outside the home and that he is not restricted with mobility inside the home. The psychiatrist also comments regarding the degree of restriction with DLA "...significant deficits, often unable to leave the home." The appellant's mother stated that her son is often unable to leave their residence, that he spends all day in his bedroom, and the appellant stated that he has only gone out a few times in the last two months, to meet with his advocate, to go to the ministry office and to the clinic. Regarding performing personal hygiene and self care, the psychiatrist indicated in the new evidence that the appellant is restricted on a continuous basis, and the appellant stated that he "...will have a shower if there are important things to do", but he does not like to bother people and he has to wait for his mother to go out so he can use the bathroom. The appellant also stated that he believes he has a digestive problem since he goes to the washroom 4 to 5 times on a bad day but he has not sought medical care because he is "afraid of hospitals and doctors." With respect to managing his personal medications, the psychiatrist has indicated in the new evidence that the appellant is restricted on a continuous basis and the appellant commented about his inability to afford the medications prescribed for his ADHD.

For making decisions about personal activities, care or finances, the psychiatrist reported in the additional page that the appellant is restricted on a continuous basis with social functioning ("high levels of anxiety and phobias affect all DLA") and, in the assessor report, the psychiatrist assessed the appellant as requiring periodic support/supervision from another person for making appropriate social decisions and commented "requires psychiatric support." At the hearing, the appellant's friend stated that the appellant does not have many friends left and that "his biggest challenges are making friends, with his physical routines and thinking and deciding what to do next." For relating to, communicating or interacting with others effectively, the physician assessed the appellant as having a satisfactory ability to communicate in all areas, as being independent with interacting appropriately with others and having marginal functioning in both his immediate and extended social networks. The appellant stated that has experienced problems in his past employment since he has mood swings that "not many people can handle" and, in his self report, he stated that he is never

able to hold down a job because of being too "moody" and "...never finding a middle ground with his emotions." In the March 24, 2012 Questionnaire, the psychiatrist agrees that the appellant is significantly restricted in his ability to perform DLA as "...doing any activities of daily living takes at least 5 times longer and many activities go undone because of high levels of anxiety and phobias and inability to maintain concentration; his is often unable to leave the home."

The panel finds that the psychiatrist, as a prescribed professional, has confirmed that the appellant is continuously restricted in almost all of his DLA, with the exception of mobility inside the home and communicating and interacting with others at a satisfactory/marginal level. Therefore, the panel finds that the ministry's determination that the evidence of a prescribed professional does not establish a direct and significant restriction on the appellant's ability to perform DLA either continuously or periodically for extended periods, as required by Section 2(2)(b)(i) of the EAPWDA, was not reasonable.

The ministry argues that since it was not established that DLA are significantly restricted, it cannot be determined that significant help is required from other persons. The appellant's advocate points out that the psychiatrist has responded in the March 24, 2012 Questionnaire that the appellant "...requires significant and ongoing help and support" and, in the additional page, that "...assistance with all ADLs provided by mother." The advocate argues that the appellant should not be excluded from PWD status by virtue of having a supportive mother who lives with her son in order to assist him.

In determining whether the ministry reasonably concluded that the appellant does not require the significant help or supervision of another person or the use of an assistive device, the panel relies on the information from the psychiatrist, the appellant and his mother, that he lives with his mother who provides assistance for him in all the restricted areas of DLA. The panel finds that the ministry's conclusion that the requirement for significant help or supervision of another person, an assistive device, or the services of an assistance animal to perform DLA, under Section 2(2)(b)(ii) of the EAPWDA, has not been met was not reasonable.

Overall, the panel finds that the ministry's reconsideration decision was not reasonably supported by the evidence and rescinds the decision. Therefore, the decision is overturned in favour of the appellant.