

PART C – Decision under Appeal

The decision under appeal is the Ministry of Social Development (ministry) reconsideration decision dated May 9, 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) Neuropsychological and Vocational Assessment dated July 18, 2011 which states in part that the appellant sustained a broken nose and a fracture to his left orbital socket approximately 6 years ago during a fight, and did not lose consciousness, but he has had several alcohol-related blackouts. As ongoing medical issues, the appellant was diagnosed 2 years ago with diabetes and he currently suffers from dyslipidemia, hyper-parathyroidism and obesity. He has not been prescribed any psychotropic medications and has never been hospitalized under psychiatric care. Observations included that the appellant was alert, pleasant and cooperative and he made good eye contact. His affect was broad and appropriate to topic, his thought processes were logical, coherent and goal directed. There were no indications of abnormalities of thought form or content nor of perceptual disturbance. He was able to tolerate a full day of testing with a standard number of breaks and without exhibiting signs of fatigue. With respect to emotional functioning and personality, the psychologist reports that his overall score on screening measures designed to address physical, cognitive and affective symptoms associated with a major depressive episode was with the "severe" depressive range; he endorsed 18 of the 21 symptoms included in this inventory. The resulting profiles are interpreted with caution as they may over-estimate current difficulties and problematic behaviours. The summary and conclusions state in part that the appellant has a history of cocaine addiction but is currently abstinent from drugs and he attends regular Narcotics Anonymous (NA) meetings. The appellant has average verbal and non-verbal intellectual abilities and solidly average expressive and receptive language abilities, generally average performance on verbal memory measures and highly variable performance on both attention measures and information processing speed and accuracy, as well as visual memory tasks. His performance on problem solving measures was highly variable, there was evidence of poor planning and organization and of left-sided neglect in his recall of a complex design. Overall assessment of cognitive functioning reveals executive or frontal function deficits with particular involvement of the right hemisphere. A diagnosis of Cognitive Disorder Not Otherwise Specified likely secondary to a brain injury sustained in the assault incident around 2006. Emotional distress cannot fully account for the cognitive deficits observed although distress is likely playing a role in his current presentation, particularly the slowness in information processing. Assessment of emotional functioning revealed significant emotional distress. The degree of distress evident is sufficient to be interfering with his cognitive efficiency and he may present as distractible and disorganized. He likely meets the criteria for Major Depressive Disorder and he may also meet the criteria for an anxiety disorder (rule out Social Phobia). Recommendations included certificate or diploma programming with supports to address cognitive deficits identified. Given the indication of subtle executive function deficits, the appellant would likely benefit from a number of minor workplace accommodations. The appellant's profile suggests significant distress and fairly limited social support system and although some improvements in his mood may occur in response to development of a regular schedule of work and community activities, he would likely benefit from formal treatment to address mood management and anxiety. Development of a regular fitness routine may also be quite helpful in managing his mood.
- 2) Person With Disabilities (PWD) Application: undated applicant information consisting of 3 typewritten pages, physician report dated November 21, 2011 and assessor report dated February 23, 2012;
- 3) Letter from the ministry to the appellant dated March 26, 2012 denying person with disabilities designation and enclosing a copy of the decision summary;
- 4) Letter dated April 16, 2012 from the appellant's mother stating in part that the appellant spends much of his waking hours in his room alone and that meal planning and preparation and laundry are done mostly by the appellant's mother. The appellant's mother states that he does very little walking and general exercise and spends many long hours playing video games. The appellant's mother states that he will do things for her if she asks, but always procrastinates and never without protest and never on his own initiative. She states the appellant eats constantly and often forgets to take his medications. The appellant's mother states that he cares nothing about his appearance and often dresses inappropriately, e.g. heavy boots in summer and sandals in winter. If she nags, the appellant will shave and get a haircut occasionally but never without a confrontation. The appellant's mother states that he takes all of his meals in his room, even when family gathers for special occasions, including visits from his daughter. She states that the appellant talks to

himself, that it is happening more often and becoming louder and often angry; in conversation he is unnecessarily loud. The appellant's mother states that he is a very poor manager of money, never plans for the future, and she does his income taxes for him; and,

5) Request for Reconsideration prepared by an advocate on behalf of the appellant.

At the hearing, the appellant's advocate provided a written submission, and the panel accepted it as argument on behalf of the appellant.

In his Notice of Appeal, the appellant states that his mental impairment has a severe affect on his daily living activities, he has difficulty expressing himself and feels despondent most of the time. Depression and anxiety resulting in low motivation and frustration.

In his Request for Reconsideration, the appellant states that he lives with his mother and she assists him with managing daily living activities. The appellant states that he has difficulty with paper work so she helps him with things like income tax filings. He states that anxiety interferes with managing daily living activities and his English writing skills are very limited. The appellant states that he is socially isolated and cannot relate to most people; a high level of frustration makes him shut down and withdrawn. He states that unexpected demands are overwhelming and he needs assistance with planning and organizing. The appellant states that his ability to shop is limited, that he does not have enough patience and if he has to wait he wants to leave because of anxiety. The advocate states that the appellant's physician has diagnosed anxiety disorder and cognitive disorder and that he defers to the psychologist in regards to the severity of the condition. The registered psychologist states that the assessment of emotional functioning revealed significant emotional distress and the degree of distress evident is sufficient to be interfering with his cognitive efficiency and he may present as distractible and disorganized. The psychologist also states he likely meets the criteria for major depressive disorder and an anxiety disorder. The appellant required the assistance of a worker with employment services to complete his self report and she records his description of a very marginal, withdrawn existence with minimal social contact. The appellant rents the basement in his mother's home and she supplies assistance with daily living activities. The appellant states that depression severely impacts motivation, this affects personal self care and limits social interaction, and anxiety compounds his need for assistance with daily living.

In his self report included with the PWD application, the appellant states that he sees things in black and white, there are no rainbows out there, it is one extreme or another. The employment services worker who assisted the appellant points out that the appellant's interpersonal communication is severely, negatively impacted by his cognitive disability. The appellant will tend to express thoughts in an inappropriate way and has difficulty reading social cues, using profanity without any foresight to the impact this has on others. He is socially isolated and has few friends. For cognitive and emotional function, the worker states that the appellant has a difficult time asking for supports, his organizational skills are severely impacted and he is unable to set goals and follow through. His judgment is severely impacted and he engaged in unprotected sex with a woman whom he knew to be HIV positive and he did not seem to appreciate the possible consequences of his poor judgment. The worker states that the appellant's language is severely impacted and the appellant has a difficult time with filling out forms, and he says he does not care for paper work, it is something that he avoids and does without resources. He was unable to complete the volunteer form for a philanthropic organization. Memory is severely impacted and the appellant struggles with remembering times and dates of appointments. The worker states that the appellant reports loss of initiative and interest in everyday life, that he gets frustrated and gives up easily. He does not participate in community events. The appellant states that he has lived with his mother for the past 6 years and that he stays in his room in the basement and spends most of his time there. Personal self care is severely impacted during depressive times. The appellant relies on his mother to do all the meal preparation and he does not cook or shop anymore.

At the hearing, the appellant stated that his self report was completed with an employment services worker who he has known for 2 years and she met with him and then typed up the 3 pages. The appellant stated that this worker also referred him to have the Neuropsychological Vocational Assessment Report done. The

appellant explained that he sees everything in black and white and every day is kind of bland. The appellant stated that he stays in his room mostly and only goes out once in a while. He explained that he tries not to make plans because things do not always work out, and he would rather do things spontaneously. The appellant explained that with forms he finds that there is too much information requested and he cannot find the information, it is like a mental block. The appellant stated that he likes to keep to himself and the fact that he is not socializing and taking meals with others seems normal to him; he does not want to get into arguments and does not want to deal with people. The appellant stated that he thinks it is normal not to be happy, that it takes a lot to make him happy. The appellant stated that he manages his diabetes "as best as he can" and takes pills which he has to have with food but he got frustrated with the machine to monitor his blood sugar level so he no longer uses it. The appellant stated that he ran out of medication for his diabetes, that he can only get it through an appointment with his doctor so he went without the medications for about a month.

In response to a question, the appellant explained that he talks to himself when he is playing a video game and makes a mistake and also if he is driving and needs to pay attention or slow down either the car or his thoughts. The appellant stated that he does not agree with his mother's statement in her letter that he procrastinates since he sees it more that he chooses to do things later than when his mother would prefer and this ends up with conflict between them. The appellant stated that he went to counseling through mental health but it was drug and alcohol counseling and he has already been through a program and he did not see much benefit in it so he only attended a few times. The appellant explained that there was some discussion about being referred to a psychiatrist but he is not sure what happened with that. The appellant stated that he attends NA meetings 2 to 3 times per week and that he also volunteered with NA as the secretary and treasurer. The appellant explained that he volunteered for 2 years and was attending 4 meetings each week and traveling to another community one time each month, but he found that he was doing all the work and it became too much so about 6 or 7 months ago, in the fall of 2011, he surrendered all his duties. The appellant explained that the assault incident referred to in the Report dated July 18, 2011 was when he was in his addiction and he did not lose consciousness but suffered a broken bone around his left eye.

The appellant stated that he recently found out that he has seasonal adjusted disorder (SADS) and he finds that he is more depressed in the winter months, when it is darker, for about 6 months of the year. The appellant stated that he is only taking medication for his diabetes and not for his depression. The appellant explained that he sometimes goes to the library to get books but he does not stay long because he feels a bit anxious but also excited because it is something different. The appellant stated that he used to swim at the pool once a week but he stopped going about 2 years ago. He explained that he will drive to another community for some excitement if he has someone to go with. The appellant explained that his mother does laundry about once a week and he will throw some clothes in since he only does laundry about once a month. The appellant stated that he does not allow his mother in his room since this is his private living space and he will clean his bathroom about once every 2 months since it hurts to get down on his hands and knees to clean because it is so tight in the room. The appellant stated that he does not like going to the grocery store because he gets impatient with crowds and he prefers to go to a convenience store 3 times week to pick up a few items at a time. The appellant explained that he does not store food in his room, that his mother prepares food upstairs and he will go up to get his meals and bring them down to his room. The appellant explained that he does not take public transit because he owns a car and drives but he cannot afford much gas so he limits the amount that he drives. He stated that he will drive about 2 times a week, sometimes by himself, to go to an appointment, and other times to help someone out, like driving his niece to work or if his mother needs something picked up.

The physician who completed the physician report does not indicate how long the appellant has been his patient but confirms that he has seen the appellant 11 or more times in the past 12 months. In the physician report, the physician confirms a diagnosis of anxiety disorder not otherwise specified and cognitive disorder not otherwise specified. The physician adds a comment regarding the severity of the medical condition relevant to the appellant's impairment "...moderate, please see attached [specialist reports]." The physician indicates that the appellant has not been prescribed medications or treatments that interfere with his ability to perform daily

living activities (DLA) and he does not require any aids for his impairment. The physician reports that the appellant can walk 4 or more blocks unaided on a flat surface, he can climb 5 or more steps unaided, and has no limitation with lifting or with remaining seated. The physician indicates that there are no difficulties with communication and notes "...however, some situations will cause anxiety that may affect communication." The physician indicates that it is unknown whether there are significant deficits with cognitive and emotional function and comments "...please read psychologist report attached." In response to the question whether the appellant's impairment directly restricts his ability to perform DLA, the physician indicates "unknown" and comments "...no obvious significant restriction, may have subjective restrictions." The physician reports that the appellant is not restricted in the areas of personal self care, meal preparation, management of medications, basic housework, daily shopping, mobility inside the home, mobility outside the home, use of transportation, and management of finances, and it is unknown whether he is restricted with social functioning with the comment "...please read attached psychologist report." For assistance required with DLA, the physician comments "...patient gets counseling from mental health, his mother gives him assistance with budgeting and bill payment, support from employment services."

The psychologist (assessor) who prepared the Assessment dated July 18, 2011 also completed the assessor report and indicates that she has known the appellant since May 2011 and has seen him 2 to 10 times in the last year. The assessor reports that the appellant has a good ability to communicate in most areas ("average limits") with a note that hearing was not evaluated. The assessor indicates that the appellant is independent with all areas of mobility and physical ability, including walking indoors and walking outdoors, climbing stairs, standing, lifting and carrying and holding, with the comment "...no issues according to self report." The assessor 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, and notes "...no problem by self report; client has been diagnosed with diabetes and it is unclear how well his diet is regulated." The assessor reports that the appellant requires periodic assistance from another person with doing laundry and basic housekeeping ("major depression adversely affects motivation and follow through"). The assessor indicates that the appellant is independent with most tasks of shopping, including reading prices and labels, making appropriate choices, paying for purchases, and carrying purchases home, while requiring periodic assistance from another person with going to and from stores ("social anxiety affects"). Further, the assessor reports that the appellant is independent with most of the tasks of managing meals, including meal planning, food preparation, and cooking while requiring periodic assistance from another person with safe storage of food, with no further explanation or description provided. The assessor 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), with a note that the appellant sometimes requires periodic assistance using public transit ("social anxiety will affect"). The assessor also notes that the "...primary concerns related to carrying out daily activities are with respect to his mood; performance and self-care may be quite inconsistent."

The assessor indicates that there are major impacts to cognitive and emotional functioning in the areas of executive ("executive function deficits primary") and other emotional or mental problems, major-moderate impact other neuropsychological problems ("slowed processing"), and moderate impacts in emotion ("major depressive disorder"), insight and judgment, and attention/concentration. The assessor reports minimal impacts in the remaining 8 areas, including bodily functions ("sleep variable"), consciousness, impulse control, memory ("visual memory impairment"), motivation, motor activity, language, and psychotic symptoms ("some disorganization"). The assessor adds comments that in addition to major depressive disorder the appellant presents with significant anxiety symptoms and may meet the criteria for a social phobia; there are also prominent executive function and processing speed deficits secondary to a head injury; left-sided neglect also noted secondary to head injury. The assessor indicates that the appellant requires periodic support/supervision in all areas of social functioning, including making appropriate social decisions, developing and maintaining relationships, interacting appropriately with others, dealing appropriately with unexpected demands, and securing assistance from others. The assessor reports marginal functioning in both the

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appellant's immediate social network ("withdrawn and anxious; only social contact is through service group and contact with his mother") and extended social networks ("anxiety and depression affects social engagement, volunteers with NA group on very limited basis"). For the support/supervision required, the assessor comments that the appellant "... needs treatment for anxiety and depression and support to improve community engagement."

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 argues that in terms of physical functioning, no physically disabling diagnosis is reported and the physician indicates adequate functional skills and independent mobility/physical abilities. The advocate argues, on behalf of the appellant, that he has a severe physical impairment as a result of diabetes and a cognitive disorder not otherwise specified. The advocate points to the Neuropsychological and Vocational Assessment dated July 18, 2011 where the psychologist indicates that assessment of cognitive functioning reveals executive or frontal function deficits with particular involvement of the right hemisphere given indications of left-sided neglect and poor left hand dexterity, as well as visual planning and organizational deficits. The advocate points out that the psychologist's diagnosis indicates that the cognitive disorder is likely secondary to a brain injury sustained in the assault incident around 2006. The advocate also argues that the psychologist confirms a diagnosis of diabetes.

The panel finds that the evidence of a medical practitioner has not confirmed a diagnosis of diabetes nor that the condition will likely continue for 2 years or more, as required by the legislation, but confirms a diagnosis of cognitive disorder not otherwise specified. The physician adds a comment regarding the severity of the medical condition (cognitive disorder) relevant to the appellant's impairment "...moderate, please see attached [specialist reports]." In the Neuropsychological and Vocational Assessment dated July 18, 2011, the psychologist reports that the appellant sustained a broken nose and a fracture to his left orbital socket approximately 6 years ago during a fight, and did not lose consciousness, but he has also had several alcohol-related blackouts. The psychologist indicates that overall assessment of cognitive functioning reveals executive or frontal function deficits with particular involvement of the right hemisphere, with a diagnosis of Cognitive Disorder Not Otherwise Specified likely secondary to a brain injury sustained in the assault incident. The psychologist reports that the appellant has not been prescribed any psychotropic medications and has never been hospitalized under psychiatric care. The physician also reports that the appellant has not been prescribed medications or treatments that interfere with his ability to perform daily living activities (DLA) and he does not require any aids for his impairment. The physician reports that the appellant can walk 4 or more blocks unaided on a flat surface, he can climb 5 or more steps unaided, and has no limitation with lifting or with remaining seated. In the assessor report, the psychologist indicates that the appellant is independent in all areas of mobility and physical ability, including walking indoors and walking outdoors, climbing stairs, standing, lifting and carrying and holding ("no issues according to self-report"). In the Assessment Report dated July 18, 2011, the psychologist recommends that, given the indication of subtle executive function deficits, the appellant would likely benefit from a number of minor workplace accommodations. The panel finds that the evidence demonstrates that the appellant has a cognitive disorder that the physician has described as moderate and the psychologist stated causes subtle executive function deficits. 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 appellant's physician reports moderate anxiety and cognitive disorders and states that deficits to cognitive and emotional functioning are unknown to him. The ministry points out that the psychologist reports impacts on daily functioning mostly in the minimal to moderate range. The ministry argues that the appellant is able to make decisions about personal activities, care and finances, and he is able

to relate to, communicate and interact with others adequately. The ministry argues that while the appellant chooses to be withdrawn and stay in his room much of the time, his relationships with both immediate and extended social networks are marginal with recommendations by the psychologist for support to improve community engagement. The ministry argues that both the appellant's physician and the psychologist/assessor report the appellant's medical conditions to be in the moderate range with remedial measures available. The appellant's advocate argues that the evidence establishes that the appellant suffers from a severe mental impairment as a result of both an anxiety disorder and a cognitive disorder. The advocate points to the Neuropsychological and Vocational Assessment in which the psychologist reports that the appellant's overall score on screening measures designed to address physical, cognitive and affective symptoms associated with a major depressive episode was within the "severe" depressive range; he endorsed 18 of the 21 symptoms included in this inventory. The advocate points out that although the appellant's physician reported the appellant has no difficulties with communication, that he also noted that some situations will cause anxiety that may affect communication. The advocate argues that the physician refers to the psychologist report and defers to the conclusions by the specialist.

The panel finds that the evidence of a medical practitioner confirms a diagnosis of anxiety disorder not otherwise specified and cognitive disorder not otherwise specified. The physician adds a comment regarding the severity of the medical condition relevant to the appellant's impairment "...moderate, please see attached [specialist reports]." The physician indicates that the appellant has no difficulties with communication with a note that "...some situations will cause anxiety that may affect communication." The physician reports that it is unknown whether there are any significant deficits with cognitive and emotional function and whether there are restrictions to social functioning and refers again to the psychologist report. In the assessor report, the psychologist indicates that the appellant has a good ability to communicate in most areas ("average limits") with a note that hearing was not evaluated. The psychologist indicates that there are major impacts to cognitive and emotional functioning in 2 areas, namely executive ("executive function deficits primary") and other emotional or mental problems, with 1 major-moderate impact in the area of neuropsychological problems ("slowed processing"), and 3 moderate impacts in emotion ("major depressive disorder"), insight and judgment, and attention/concentration. The psychologist reports minimal impacts in the remaining 8 areas, including bodily functions ("sleep variable"), consciousness, impulse control, memory ("visual memory impairment"), motivation, motor activity, language, and psychotic symptoms ("some disorganization"). The psychologist adds comments that in addition to major depressive disorder the appellant presents with significant anxiety symptoms and may meet the criteria for a social phobia; there are also prominent executive function and processing speed deficits secondary to a head injury; left-sided neglect also noted secondary to head injury.

The appellant stated that he sees everything in black and white and every day is kind of bland, that he stays in his room mostly and only goes out once in a while. He explained that with filling out forms he finds that there is too much information requested and he cannot find the information, it is like a mental block. The appellant stated that he attends NA meetings 2 to 3 times per week and that he also volunteered with NA as the secretary and treasurer. The appellant explained that he volunteered for 2 years and was attending 4 meetings each week but he found that it became too much so he resigned from his duties in the fall of 2011. The psychologist indicates that the appellant requires periodic support/ supervision in all areas of social functioning, including making appropriate social decisions, developing and maintaining relationships, interacting appropriately with others, dealing appropriately with unexpected demands, and securing assistance from others. The psychologist reports marginal functioning in both the appellant's immediate social network ("withdrawn and anxious; only social contact is through service group and contact with his mother") and extended social networks ("anxiety and depression affects social engagement, volunteers with NA group on very limited basis"). The advocate points to the Neuropsychological and Vocational Assessment in which the psychologist reports that the appellant's overall score on screening measures designed to address physical, cognitive and affective symptoms associated with a major depressive episode was within the "severe" depressive range, however the psychologist also reported that the resulting profiles are interpreted with caution as they may over-estimate current difficulties and problematic behaviours. In the conclusion of the report, the psychologist states that the appellant's profile suggests significant distress and fairly limited social

support system and although some improvements in his mood may occur in response to development of a regular schedule of work and community activities, he would likely benefit from formal treatment to address mood management and anxiety and that development of a regular fitness routine may also be quite helpful in managing his mood. The psychologist also reports that the appellant has not been prescribed any psychotropic medications and has never been hospitalized under psychiatric care. The appellant stated that he attended a few sessions of counseling with mental health but it was alcohol and drug counseling which he did not find of benefit and that there had been no referral to a psychiatrist. The panel finds that the evidence demonstrates that the appellant has a mental impairment that has been gauged as moderate in degree after thorough testing and for which there are no significant or immediate professional interventions recommended. The panel finds that the ministry's decision, which concluded that the evidence does not establish a severe mental impairment, was 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 appellant's physician reports no restriction to 9 out of 10 DLA and indicates "unknown" to social functioning and refers the reader to the attached psychologist's report. The ministry argues that the psychologist reports that many activities are performed independently. Although periodic help is required with laundry and basic housekeeping, going to stores, safe storage of food, and use of public transit to a varying degree (social anxiety will affect), the ministry argues that there is no indication of the frequency or duration of periodic assistance. The ministry argues that the majority of DLA are performed independently or require little help from others. The appellant, through his advocate, argues that the evidence of his family physician and the psychologist, establishes that he is directly and significantly restricted in his ability to perform his DLA, either continuously or periodically for extended periods of time. The advocate provided a copy of the court decision in *Hudson v. EAAT* 2009 BCSC 1461 as authority for the position that there must be evidence from a prescribed professional indicating a direct and significant restriction on at least 2 DLA and that there is no statutory requirement that more than 2 DLA be restricted.

The panel finds that the legislation requires that the ministry must 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. In terms of preparing his own meals, the physician indicated in the physician report that the appellant is not restricted in the area of meal preparation and, in the assessor report, the psychologist/assessor reports that the appellant is independent with most tasks, including meal planning, food preparation, and cooking, while requiring periodic assistance from another person with safe storage of food, with no explanation or description provided. The appellant stated that he does not store food in his room but rather brings his meals downstairs to his room to eat and then returns the dishes upstairs. The appellant's mother states in her letter that meal planning and preparation are done mostly by her, however the panel finds that the evidence does not demonstrate that the appellant requires assistance with these tasks. For managing personal finances, the physician reported that the appellant is not restricted and the psychologist indicates that the appellant is independent with all tasks. The appellant's mother states in her letter that the appellant is "...a very poor manager of money; he never plans for the future" while the appellant reports that he volunteered as the secretary and treasurer for his NA group for 2 years but he found that he was doing all the work and resigned his duties approximately 6 months ago, although he states that he has a mental block with filling out forms.

In terms of shopping for his personal needs, the physician indicated that the appellant is not restricted in this area and the psychologist reports that the appellant is independent with most tasks but requires periodic assistance from another person with going to and from stores ("social anxiety affects"). The appellant stated that he does not like going to the grocery store because he gets impatient with crowds and he prefers to go to a convenience store 3 times week to pick up a few items at a time. For use of public or personal transportation facilities, the physician indicates that the appellant is not restricted in this area and the psychologist indicates that the appellant is independent with all tasks including getting in and out of a vehicle, using public transit, and using transit schedules and arranging transportation, but sometimes requires assistance with using public

transit as "social anxiety will affect." The appellant explained that he does not take public transit because he owns a car and drives, that he will drive about 2 times a week, sometimes by himself and other times to help someone out. With respect to performing housework to maintain the appellant's place of residence in an acceptable sanitary condition, the physician indicated that the appellant is not restricted and the psychologist reports that the appellant requires periodic assistance from another person with basic housekeeping and doing his laundry ("major depression adversely affects motivation and follow through"). The appellant explained that his mother does laundry about once a week and he will throw some clothes in since he only does laundry about once a month. The appellant stated that he does not allow his mother in his room since this is his private living space and he will clean his bathroom about once every 2 months since it hurts to get down on his hands and knees to clean because it is so tight in the room.

For moving about indoors and outdoors, the physician reported in the physician report that the appellant is not restricted and the psychologist assesses independent mobility and physical ability. Regarding performing personal hygiene and self care, the physician indicated that the appellant is not restricted with personal self care and the psychologist reported that the appellant is independent with all tasks, including dressing, grooming, bathing, toileting, feeding self, regulating diet, transfers in/out of bed and transfers on/off chair. In her letter, the appellant's mother states that the appellant cares nothing about his appearance and often dresses inappropriately, that if she nags him he will shave and get a haircut occasionally but never without a confrontation. The appellant states that he does not agree with his mother's statement that he procrastinates and he sees it as doing it on his own time and that it often leads to confrontation between them. With respect to managing his personal medications, the physician has indicated that the appellant is not restricted and the psychologist assesses the appellant is independent with all tasks, including filling/refilling prescriptions, taking as directed and safe handling and storage. The appellant stated that he ran out of medication for his diabetes, that he can only get it through an appointment with his doctor so he went without the medications for about a month.

For making decisions about personal activities, care or finances, the physician reported that it is unknown whether the appellant is restricted in social functioning and defers to the psychologist's report. In the assessor report, the psychologist indicated that the appellant requires periodic support/supervision from another person for making appropriate social decisions. For relating to, communicating or interacting with others effectively, the physician indicated that the appellant has no difficulty with communication but noted that some situations will cause anxiety that may affect communication. In the assessor report, the psychologist assessed the appellant as having a good ability to communicate in all evaluated areas, as requiring periodic support/supervision interacting appropriately with others and having marginal functioning in both his immediate and extended social networks. The psychologist notes that the appellant is withdrawn and anxious, that his only social contact is through a service group and contact with his mother and that he volunteers on a very limited basis. The appellant stated that he goes to the library in his community to pick up books, to the convenience store about 3 times a week, that he will drive his niece to work and occasionally drive to another community with a friend, and that his volunteer commitment with the service group was taking about 7 hours per week until recently and that he prefers to mostly stay in his room and avoid conflict with people.

The panel finds that the appellant's physician reported that the appellant is not restricted in 9 out of 10 areas of DLA and that there are "...no obvious significant restrictions" but that he may have "subjective restrictions." The psychologist also assesses the appellant as independent with most of his DLA, or 24 out of a total of 33 tasks. The panel finds that the ministry reasonably determined that for many of the tasks that were assessed as requiring periodic assistance (laundry, basic housekeeping, going to and from stores and safe storage of food), there was not sufficient information to establish that the assistance is required for extended periods of time. The advocate argues that there is no statutory requirement that more than 2 DLA be restricted, however the panel finds that the ministry reasonably determined that the evidence does not establish a direct and significant restriction on a minimum of 2 DLA on either a continuous basis or periodically for extended periods of time. 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 reasonable.

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 psychologist and the appellant that he rents a room in his mother's home and receives assistance primarily from her and that he does not use assistive devices. As it has not been established that the ability to perform DLA is significantly restricted, 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 reasonable.

The panel finds that the ministry's reconsideration decision was reasonably supported by the evidence and confirms the decision.