APPEAL

PART C – Decision under Appeal

The decision under appeal is the reconsideration decision of the Ministry of Social Development (the ministry) dated 08 Aug 2012 denying the appellant designation as a person with disabilities (PWD). The ministry determined that the appellant did not meet all of the required criteria for PWD designation set out in the Employment and Assistance for Persons with Disabilities Act, section 2. Specifically the ministry determined that the information provided did not establish that the appellant has a severe mental or physical impairment that in the opinion of a prescribed professional

(i) directly and significantly restricts the person's ability to perform daily living activities (DLA) either continuously or periodically for extended periods; and,

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

The ministry did determine that the appellant satisfied the other 2 criteria: she has reached 18 years of age; and her impairment in the opinion of a medical practitioner is likely to continue for at least 2 years.

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 reconsideration consisted of the following:

1. The appellant's PWD Designation Application dated 03 May 2012. The application included the appellant's Self Report (SR), a Physician Report (PR) dated 09 May 2012 and an Assessor Report (AR) dated 02 May 2012. The PR was prepared by the appellant's general practitioner (GP), who indicated the appellant had been her patient since moving from another province in January 2012 and she had seen her 2 -11 times in that period. The AR was completed by a health authority social worker (SW) who had seen the appellant once.
2. The appellant's Request for Reconsideration dated 26 July 2012, to which is attached a "To whom it may concern" letter from the appellant dated 25 July 2012 and an Internet print-out providing information about Hidradenitis Suppurativa

In her SR, the appellant describes her disability as follows:

- "Vertebral displacement in three areas due to T-bone car collision [fall, 2011], chronic pain, limits movement, unable to stand for long periods.
- "Post traumatic stress disorder - insomnia, anxiety attacks, night terrors, panic attacks, memory loss.
- "Hidradenitis Suppurativa – groin. Numerous surgical open wounds which constantly swell, bleed and exude serious sanguineous fluid and pus. Affects both positioning and impedes mobility on a regular basis."

In the PR, the GP diagnoses the appellant with anxiety disorder, PTSD (onset unknown); Hidradenitis Suppurativa (HS), (onset chronic); and chronic back pain (onset 2011). Under health history, the GP reports that the appellant: (1) Has chronic infection left groin with suppurativa abscesses, drainage - has been drained surgically several times and now awaits more extensive surgery to remove the area entirely - very painful condition. Has to wear dressings. Will require extensive post op recovery to allow granulation. (2) Anxiety disorder/PTSD - left another province to escape abusive situation. She is a new patient to her practice - she does not have any old medical records. The GP reports that the appellant has been prescribed analgesics and antibiotics, but does not indicate whether these interfere with her ability to perform DLA. She expects the anticipated duration of these medications to be long-term.

The GP indicates that the appellant's impairment is likely to continue for two years or more. She explains that recovery from surgery may be several months. Psychiatric symptoms are likely long-term – may resolve in the new environment once surgical issues are dealt with.

With respect to functional skills, the GP indicates that the appellant can walk 4+ blocks unaided, climb 5+ steps, her lifting limitations are unknown, there are no limitations for remaining seated and there are no difficulties with communications. The GP indicates that there are significant deficits with cognitive and emotional function in the following areas: emotional disturbance and attention or sustained concentration.

As to the ability to perform DLA, the GP indicates that the appellant is not restricted with respect to personal self care, meal preparation, management of medications, basic housework, use of transportation, management of finances, and social functioning. No assessment is given with respect to daily shopping. The GP indicates that the appellant is restricted on a periodic basis with respect to mobility inside the home and mobility outside the home, commenting that pain/infection in leg limits

mobility and that anxiety/panic attacks are variable. The GP provides no indication that the appellant requires any assistance with her DLA.

In the AR, the SW notes that the appellant lives alone. The SW lists the appellant's mental and physical impairments that impact her ability to manage DLA as follows: (1) HS -chronically draining abscess in left groin - needs surgery but too close to femoral nerve; (2) PTSD; (3) chronic pain - scapula, lumbar, related to car accident.

In terms of ability to communicate, the SW assesses the appellant good in the areas of speaking, reading and hearing and poor for reading, commenting that this is due to PTSD - poor concentration, takes significant time to process information.

With respect to mobility and physical ability, the SW assesses the appellant independent for walking indoors (comment: due to wounds - significant pain, needs to hop at times, limps); walking outdoors (comment: same as above; on a "bad day" does not go out or even much indoors); climbing stairs (comment: same as above); and standing (comment: weight bear on the right leg as left leg affected, back pain constant - tends not to stand much). The SW assesses the appellant requiring periodic assistance from another person for lifting (comment: lift no more than 15 pounds); and carrying and holding (comment: can carry up to 15 pounds for short distances only). The SW indicates that for all of these mobility and physical ability areas, the appellant takes significantly longer than typical.

As to cognitive and emotional functioning, the SW assesses the appellant's mental impairment as having a major impact on bodily functions, motivation, motor activity, other neuropsychological problems, and other emotional or mental problems. A moderate impact is assessed for emotion, insight and judgment, attention/concentration and memory. A minimal impact is assessed for consciousness and executive function. No impact is indicated for impulse control, language and psychotic symptoms. Under comments, the SW writes: "Writes things down to manage short term memory loss. Serious PTSD - related to long term violence by spouse. Symptoms include: nightmares, panic attacks, depression, terror of being in confined spaces or large groups, hyper vigilance, difficulty in concentrating, times of emotional shutdown, self neglect."

With respect to assistance required to manage DLA, the SW assesses the appellant's ability as follows:

- Personal care: independent with respect to grooming, toileting feeding self and regulating diet; periodic assistance from another person required for dressing, bathing, transfers in/out of bed and transfers on/off of chair, with most areas taking significantly longer than typical. The SW comments that due to pain and swelling, at times unable to get dressed. Balance poor. The same comment applies to bathing, where she needs help to avoid falling due to pressure on femoral nerve. Regarding transfers, cannot sit in one position long - cannot sit on the left buttock - pain issue and at times if chair is too low she cannot get out of the chair without help.
- Basic housekeeping: periodic assistance required for laundry and basic housekeeping, with the comment that this is due to pain - cannot transport laundry to machine.
- Shopping: independent for reading prices and labels, making appropriate choices and paying for purchases and requiring periodic assistance for going to and from stores and carrying purchases home, both taking significantly longer than typical, with the comment that this is due to pain.
- Meals: independent for meal planning and safe storage of food and periodic assistance

required for food preparation and cooking, with the comment that she cannot always stand long enough due to pain.

- Pay rent and bills and medications: independent in all aspects.
- Transportation: periodic assistance required for getting in and out of vehicle, taking significantly longer than typical, with the comment: excruciating at times, sometimes need someone to pull her out of car. Continuous assistance required for using public transit, with the comment: unable to use due to getting to bus stop, standing, and sitting on hard seats.

In terms of social functioning, the SW assesses the appellant independent in all areas: appropriate social decisions, able to develop and maintain relationships, interact appropriately with others, able to deal appropriately with unexpected demands, and able to secure assistance from others. With respect to how the appellant's mental impairment impacts her relationships with others, the SW assesses good functioning for extended social networks, with no assessment for her immediate social network as the SW explains: "not applicable as no contact with former family, friends." Under additional comments the SW notes: "Previous history of suicidal ideation, no history of suicide attempts."

Regarding assistance provided, the SW indicates that help for DLA is provided by health authority professionals and community service agencies. She comments that as the appellant has recently moved to BC she is not tapped into all possible resources yet. The SW writes:

> "I will be making a referral to case management to set up assistance for ADLs and iADLs. I will also make a referral to a volunteer agency to assist with driving to medical appointments and grocery shopping. Applicant would benefit from ongoing counseling. She would benefit from community resources to increase her social network."

The SW does not indicate that any assistance is required by way of assistive devices or an assistance animal.

The SW provides the following additional information:

> "[The appellant] recently moved to BC to get away from violently abusive husband. This abuse was long-term and traumatic. She has also lost contact with her young children because of the abuse and is grieving the loss. Her physical health is also creating serious barriers to caring for herself and she lives with the stress of not knowing if and when she will be healed. She recently moved out of a women's shelter into a 'stage 3' housing complex for abused women. She has no friends/relatives/local connections to assist with iADLs and ADLs and this has added to her difficulty in functioning. Both her physical and mental health issues have unpredictable times of acuity and this adds to the difficulty of managing her daily life."

The SW describes the services that her organization is providing the appellant as follows:

> "Home care nursing and social work services will be provided on an ongoing basis. HCN is assisting with wound care. Social work is assisting with advocacy and connecting [appellant] with community resources. Case management may provide support for personal care."

In her letter accompanying her Request for Reconsideration, the appellant seeks to draw to the attention of those responsible for the PWD decision some facts which seem to have been overlooked.

She states she has no family or friends to rely on. This includes emotional, physical, or financial support. Right now, she can cope with simple daily routine and perform necessary tasks in an environment staffed by social workers for support. In particular she accesses the support for the sometimes overwhelming side effects of PTSD, which has affected every aspect of her life for years. She has attended all the groups and counseling available in her former place of residence in another province. She states that there are numerous triggers which lead to panic attacks that can last for hours. For example, she hates banks and cannot leave her building some days even to walk to the store. Taking a bus with strangers is extremely stressful.
She states she has chronic back pain and some days cannot bend over without sharp searing pain shooting down her legs and the sciatica sometimes causes her to fall. This is neither unavoidable nor predictable. Her sleep is constantly interrupted by pain. Her current physical health and mobility with her left leg is bearable due to antibiotic therapy, which is controlling the massive, recurring infection in her thigh; however this therapy cannot be used long-term. She has been treated for this condition for over six years. Surgery is absolutely necessary to rid the cause of the infection and save her leg and prevent septicemia. Surgery involves excising an area approximately 7" x 4" from her left upper thigh. Recovery from the surgery will require being kept strictly in bed for several weeks to prevent the skin graft from shifting. If the graft survives she faces the risk of infection, shrinkage and strictures which will affect future mobility permanently. She is on basic income assistance and cannot afford enough food conducive to healing. She cannot afford cable, Internet, transportation or home phone. This means that she will be isolated in her apartment relying on daily visits for an extended period of time, with no direct link to the outside world. Isolation is the very worst possible scenario for someone with PTSD and severe depression and she doesn't think she will survive it.

Attached to the appellant's Notice of Appeal dated 20 August 2012 are the following:

1. A letter dated 26 July 2012 from an official (a Registered Social Worker) at a traumatic stress centre in a Health Sciences Centre in another province.
2. A letter from the appellant's GP date 17 August 2012.
3. A letter dated 20 August 2012 from a psychotherapist at a mental health and addictions services clinic of the local health authority.

In the letter from the out-of-province traumatic stress centre, the official reported that the appellant had been receiving treatment at the centre for the past year and a half. She states that medical records indicate the appellant has been diagnosed with major depression and PTSD. She reviews the appellant's past history of neglectful and abusive experiences and abusive relationships and that when she managed to get out of her last relationship, she fled to the shelter system for safety and began receiving treatment at the centre. The official reports that the appellant completed a 12 week stabilization group followed by a 12 week mindfulness group. She attended weekly two hour group sessions. Her attendance was excellent and she participated actively in the sessions. More recently she completed a 24 week group which focused on self-regulation skills and again her attendance had been consistent, despite the distress of having her younger children taken into custody by the authorities. The appellant has a history of unsuccessful antidepressant trials, with more side effects than benefit. In July 2010, she decided to once again try medication and within a few days she was tremulous, with significant increase in anxiety and was completely unable to settle. She contacted the service immediately and a review was initiated by a psychiatrist. She embarked on trials of different medications through the fall of 2010 while continuing to attend group and individual sessions. At that time she will also was experiencing significant problems with her oldest son. The recent loss of custody of her children has been quite destabilizing for her and this is understandably made it difficult

for her to focus on her recovery.

In her letter the GP reviews the same diagnoses as set out in the PR. She reports that the appellant has had suicidal ideation, and was recently admitted overnight to the hospital psychiatric emergency department. She is now involved with mental health services, and will have ongoing counseling and psychiatric follow-up.

In her letter, the psychotherapist indicates that she had known the appellant only for a week, since 13 August 2012 when she began treatment at the clinic. However she does have access to a report from the traumatic stress centre referred to above, which outlines her extensive treatment at that hospital over the three years, from 2007 to 2011. The appellant came to the attention of the clinic after she was seen at a hospital psychiatric emergency department on the night of July 2012, kept overnight, and referred for follow-up assessment and treatment at the clinic. The psychoanalyst reviews her symptoms of PTSD and depression. The psychotherapist recommends that the appellant be reconsidered for disability benefits to alleviate her devastating financial distress, which is contributing to her mental instability.

At the hearing, the appellant's advocate presented a submission, which went to argument. The submission drew extensively on a letter attached to the submission from the appellant's GP dated 17 September 2012. The letter lists the appellant's diagnoses, her recent history moving to the province. and that now with access to some of her records from her previous physicians the GP is "able to confirm that her disabilities are severe in nature, will continue for more than 2 years, and have direct and significant impact on her daily living activities." The letter goes on to read:

> "As a result of her physical impairments [the appellant] experiences severe, chronic pain and limited mobility. In addition to her physical impairments, [the appellant] experiences considerable deficits in the following areas of her cognitive and emotional functioning: emotional disturbance and attention. She experiences suicidal ideation, and has significant difficulty with sleep, concentration and maintaining relationships. [The appellant] requires counseling and psychiatric follow-up for these cognitive and emotional deficits. The appellant's physical and cognitive impairments require ongoing, considerable support but even then will remain a significant challenge for her.
>
> "As a result of her physical impairments [the appellant] is significantly restricted from moving around indoors and out, standing, and requires assistance with a number of activities of daily living. It is my understanding she will be receiving home care to assist her with basic housekeeping, laundry etc. and is being connected to a volunteer agency for assistance with transportation outside the home. Moreover she is now a client of [a mental health service clinic] for continuous support for her psychological symptoms.
>
> "The combination of the aforementioned symptoms and impairments are, no doubt, severe in nature and the resulting fatigue, pain, and burden of self care significantly restrict [the appellant's] ability to perform activities of daily living. Thus I strongly support her application for provincial disability benefits."

In answer to questions, the appellant stated the following:

- She is now seeing a psychiatrist for an hour a week for counseling. The psychiatrist has discussed with her possible medication for her PTSD/depression but given her past history with medication, no such medication has been prescribed. She is taking antibiotics and a sedative to help her sleep, but no analgesics.

- She is living in a stage 3 shelter facility, meaning in the self-contained apartment in a secure building with a social worker on staff at all times. However, she will soon be moving into a suite in a private residence.
- On good days, she is able to do her own shopping and going to the food bank, using the bus and carrying groceries home.
- When her infection flares up, she has crutches to help her get around her home.
- When she is suffering from an attack of PTSD, she is so scared that she will not leave her home, even if she needs groceries to eat.
- The wait time for her surgery is expected to be minimal, as it will be considered as an emergency situation. However, her surgeon will not schedule the procedure until she quits smoking, which she has not been able to do due to the stress she is under.

The ministry stood by its position at reconsideration.

With respect to the new information contained in the 3 letters provided by the appellant in her Notice of Appeal, the letter from the GP attached to her advocate's submission and the appellant's testimony at the hearing, the ministry did not object to this evidence being admitted. As this information relates to her medical history and conditions, clarifying, updating and providing more detail relating to material set out in the PR and AR, the panel finds this evidence to be in support of the information and records that were before the ministry at the time of reconsideration. The panel therefore admits the new information as evidence pursuant to section 22(4) of the Employment and Assistance Act.

APPEAL

PART F – Reasons for Panel Decision

The issue in this appeal is whether the ministry reasonably determined that the appellant was ineligible for PWD designation because she did not meet all the requirements in section 2 of the EAPWDA.
Specifically the Ministry determined that the information provided did not establish that the appellant has a severe mental or physical impairment that in the opinion of a prescribed professional
(i) directly and significantly restricts her ability to perform daily living activities either continuously or periodically for extended periods; and,
(ii) as a result of those restrictions she requires help to perform those activities.
The Ministry did determine that she met the 2 other criteria in EAPWDA section 2(2) set out below.

The following section of the EAPWDA applies to this appeal:

2 (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.

The following section of the EAPWDR applies to this appeal:

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 panel will consider each party's position regarding the reasonableness of the Ministry's decision under the applicable PWD criteria at issue in this appeal.

Severity of impairment

In the discussion below concerning the information provided regarding the severity of the appellant's mental and physical impairments, the panel has drawn upon the ministry's definition of "impairment," as set out on the top of page 8 of the PR. This definition consists of "cause" and "impact" components: "impairment is a loss or abnormality of psychological, anatomical or physiological structure or function [the cause] causing a restriction in the ability to function independently, effectively, appropriately or for a reasonable duration [impact]." The cause is usually set out as a disease, condition, syndrome or even by a symptom (e.g. pain). Under this definition, the symptoms related to the cause are not as relevant as the restrictions – impacts. A severe impairment requires the identified cause to have a severe impact. The assessment of severity is therefore based on of the impact on daily functioning, in such areas as functional skill limitations, cognitive and emotional deficits, restrictions on the ability to manage DLA and assistance required.

Mental impairment

The position of the ministry is that it is not satisfied that the information provided is evidence of a severe mental impairment. In reviewing the evidence, the ministry noted in the reconsideration decision that the appellant's GP has identified significant deficits in the areas of cognitive and emotional function regarding emotional disturbance and attention or sustained concentration. The ministry also noted that in the AR, the SW indicated that the appellant has a major impact with bodily functions, motivation, motor activity, other neuropsychological problems and other emotional or mental problems, with moderate impact in other areas. The SW reported that the appellant writes things down due to short-term memory loss and reported symptoms including nightmares, panic attacks, depression, terror in confined spaces or large groups, hyper-vigilance, difficulty in concentration, emotional shutdown and self neglect. The SW also indicated that the appellant has a previous history of suicidal ideation but no history of suicide attempts. The ministry also noted that the appellant is independently able to make appropriate social decisions, to develop and maintain relationships and interact appropriately with others; and to make decisions about personal activities, care and finances. On this basis it was the ministry's opinion that the limitations for mental impairment described by the GP and SW are more in keeping with a moderate degree of impairment.

With respect to this criterion and others at issue, the appellant's advocate highlights Section 8 of the Interpretation Act [RSBC 1996 c. 238] as requiring that every enactment be construed as being remedial and given such fair, large and liberal construction and interpretation that best ensures the attainment of its object. The advocate also points to case law as authority for the position that if there is any ambiguity in the interpretation of the criteria, it is to be resolved in favour of the appellant [Abrahams v. Canada 1983 142 D.L.R. (3d) 1] and that the evidence of the physician and the assessor must be read in its entirety and in a broad way and the legislation interpreted with a benevolent purpose in mind [Hudson v. EAAT 2009 BCSC 1461].

The advocate refers to the GP's letter of 17 September 2012 in which the GP states that the

appellant's disabilities "are severe in nature... And have direct and significant impact on her daily living activities." The GP further indicates that she had received information from the health sciences center where the appellant had formerly being treated and this had provided the GP with confirmation of the severity of the appellant's disabilities.

Specifically with respect to mental impairment, the advocate referred to the letter from the health authority psychotherapist which clearly indicates the severity of the appellant's mental disability, citing her symptoms as: ongoing nightmares, sleeplessness, panic, ongoing intrusive recollections of a traumatic past event, intense distress when needing to leave her home, diminished interest, feelings of detachment and estrangement from others, a restricted range of affect, very low mood, decreased concentration, energy and appetite, increased guilt, anxiety and suicidal ideation. The advocate submits that in accordance with the direction of the court in *Hudson* "the evidence of the physician and assessor must be read in their entirety and in a broad way." Therefore the information in the letters supports the physician's initial diagnosis and clarifies the severity and impact of the appellant's disability.

After reviewing all the evidence, the panel acknowledges that the appellant has chronic mental health conditions, which adversely affect for her quality of life and for which she has been and continues to be treated by mental health professionals. The panel notes the evidence of many symptoms relating to these conditions, such as ongoing nightmares, sleeplessness, panic attacks and so on. But symptoms are not the same as restrictions. There is some evidence as to how her depression and PTSD have impacts on her daily functioning. Her deficits relating to memory and concentration require her to write things down and the appellant has testified that when she gets scared she does not leave her home even if she needs groceries; and the GP notes, regarding mobility in/outside the home, that anxiety /panic attacks is variable, but how often and for how long this happens has not been reported. On reviewing the evidence, no clear picture emerges as to how, how often and to what extent the appellant's mental health conditions restrict her ability to function independently, effectively or appropriately. Without specific descriptions or examples, the panel finds that the ministry reasonably determined that the information provided did not establish a severe mental impairment.

Physical impairment

In terms of physical impairment, the ministry noted that the GP indicated that the appellant needs periodic assistance with mobility in/outside the home and the remainder of her mobility and physical abilities have no restrictions. The SW reported that she needs periodic assistance with lifting and carrying and holding and all of the mobility and physical abilities take significantly longer, with the explanation that due to wounds, she suffers from significant pain and she limps or hops at times and on bad days she does not go out or move about indoors and she can carry up to 15 pounds for short distances. However the ministry notes that the SW did not provide information on how much longer it takes the appellant to perform the mobility and physical abilities and there is no information on how often she has bad days. Based on this assessment the ministry is not satisfied that the information provided is evidence of a severe physical impairment.

The advocate's submission does not address specifically the severity of physical impairment, referring instead on the content of the GP's letter 17 September 2012: "As a result of her physical impairments [the appellant] is significantly restricted from moving around indoors and out, standing,

and requires assistance with a number of activities of daily living..."

The panel finds that the ministry fairly summarized the evidence in the PR and AR relating to the appellant's physical impairment under her current circumstances. The 17 September 2012 letter from the GP differs somewhat from that reported in the PR indicating that "As a result of her physical impairments [the appellant] is significantly restricted from moving around indoors and out, standing, and requires assistance with a number of activities of daily living..." However, no description or details are provided to confirm or substantiate an assessment of "significantly restricted." The GP noted that pain/infection periodically limits mobility in/outside the home, but there is no rationale provided to account for the difference between this and the functional skills assessment (can walk 4+ blocks unaided, etc.) The GP mentions in her letter that standing is an issue, but neither she nor the SW gives any indication of standing tolerance.

The evidence regarding physical impairment seems to the panel to relate mostly to the effects of the appellant's back pain, aggravated at times when her infection flares up, although, on these occasions, the situation appears, at least at present, to be well managed by antibiotic medications. The panel notes that the determination of the severity of physical impairment must be based on her existing condition. The panel recognizes that her situation may be dramatically different during and after her recovery from the anticipated surgery, but the panel finds such prospective circumstances are not at issue in this appeal

For the reasons set out above, the panel finds that the ministry reasonably determined that the information provided did not establish a severe physical impairment

Whether DLA are significantly restricted

The position of the ministry is that it is not satisfied that the information demonstrates a severe mental or physical impairment that in the opinion of a prescribed professional significantly restricts the appellant's ability to perform DLA either continuously or periodically for extended periods. The ministry noted that in the PR the GP indicates that the appellant needs periodic support with mobility in/outside the home with the explanation that pain/infection in leg limits mobility and that anxiety/panic attacks is variable. The ministry noted that the SW reported that the appellant needs continuous assistance using public transit and needs periodic assistance with dressing, bathing, transferring in/out of bed, transferring on/off chairs, laundry, basic housekeeping, going to/from stores, carrying purchases home, food preparation, cooking and getting in/out of vehicles. In addition, the SW reported that it takes the appellant significantly longer for dressing, grooming, bathing, toileting, transferring in/out of bed, transferring on/off chairs, going to/from stores, carrying purchases home and getting in/out of vehicles. However no information was provided on how much longer this takes her. The ministry found the information reported by the GP significantly differs from the information provided by the SW. The ministry also noted that the SW indicates that the appellant is independent in all five aspects of social functioning. On this basis the ministry found that this legislative criterion had not been met.

The appellant's advocate submits that the decision by the ministry with regard to the significant impairment of DLA is not only unreasonable but goes beyond statutory authority. The advocate refers to the ministry claim that though the assessor indicates that many activities takes significantly longer there is no description of how much longer. The advocate submits that as there is no criterion in the

legislation that requires an assessor to quantify the impairment; for the ministry to require it on adjudication is tantamount to adding another legislated criterion. It is clear that taking significantly longer on numerous DLA as well as requiring periodic assistance in the areas of lifting, carrying and holding, dressing, bathing, transferring in/out of bed and on off chairs, laundry, basic housekeeping, going to/from stores and carrying purchases home, food preparation, cooking, and using public transit, coupled with considerable deficits in attention, sleep, concentration and maintaining relationships, all demonstrate a significant restriction to at least two DLA, as required by *Hudson*.

The advocate submits that the ministry's decision also usurps the statutory role of the prescribed professional. The Act provides that it is the prescribed professional, not the Minister, who must form the opinion on whether or not the applicant's impairment directly and significantly restricts the applicant's ability to perform DLA. Further, the Act provides that it is a matter for the prescribed professional and not the Minister as to whether the applicant requires help to perform these activities. In this case, the appellant's physician has clearly formed the opinion that the appellant meets the requirements in section 2(b) of the Act. The opinion is reasonable and supported by the evidence and therefore the Minister is bound by the opinion of the physician and must conclude that the appellant's impairments directly and significantly affect her ability to perform DLA and that she requires help to perform those activities.

The panel notes that, according to the legislation, the direct and significant restriction in the ability to perform DLA must be a result of a severe impairment, not established in this appeal. This criterion must be considered in the broader context of the legislation, which provides that the minister may designate a person as a person with disabilities "if the minister is satisfied that" the criteria are met, including this one. In exercising the discretion conferred by the legislation, it is reasonable that the minister would expect that the opinion of a prescribed professional be substantiated by information that would satisfy the minister that the direct and significant restrictions in the ability to perform DLA, either continuously or periodically for an extended period, are validated. While the reasonableness of the application of the minister's discretion in validating the information provided may be challenged, the panel does not accept the proposition advanced by the advocate that the minister does not have this discretionary authority and is instead bound by the opinion of a prescribed professional.

The evidence is that the GP has reported that the appellant is restricted in her mobility inside and outside the home on a periodic basis, with pain in leg limiting mobility and anxiety/panic attacks variable. The SW has noted restriction in several aspects of other DLA, often both as periodic assistance required and requiring significantly longer than typical, giving explanations "due to back pain." The SW gives no explanation that would lead to a conclusion that the DLA were significantly restricted, such as how often the periodic assistance is required, or its type and duration, or, as the ministry notes, on how much longer than typical an activity takes. For example, the SW indicates periodic assistance is required for food preparation and cooking, with the comment "can't always stand long enough due to pain." Similarly the SW reports a number of major and moderate impacts for cognitive and emotional functioning, noting having to write things down for short term memory loss and a list of PTSD symptoms, but no indication of the impact. For example, the SW reports a major impact for bodily functions, but no indication as to how this is manifested in terms of eating problems, toileting problems, poor hygiene or sleep disturbance. With respect to the additional DLA relating to a person with a mental impairment, i.e. make decisions about personal activities, care or finances; and relate to, communicate or interact with others effectively, the panel notes that there are no descriptions or examples of how her diagnosed PTSD/depression impacts her ability to make

decisions about her personal care, and with respect to the second, that she has good functioning with extended social networks. In the panel's view, assessing the appellant's overall ability to function as reported in the PR and AR, it is difficult to assess the evidence of the prescribed professionals as confirming that the restrictions to her ability to manage her DLA are "significant." The panel therefore finds that the ministry reasonably determined that this legislative criterion had not been met.

Whether help to perform DLA is required

In the reconsideration decision, the ministry noted that the GP has indicated that the appellant does not require any prostheses or aids and that she does not use an assistive device to compensate for her impairments. As it had not been established that DLA are significantly restricted, the ministry concludes that it cannot be determined that significant help is required from other persons and that the appellant does not require the services of an assistance animal.

The position of the appellant follows from the argument discussed above relating DLA being significantly restricted: that the minister is bound by the opinion of the GP and the evidence shows the appellant requires significant help in such activities as shopping, transportation and meals.

The panel notes that the legislation requires that in the opinion of a prescribed professional the need for help must arise from direct and significant restrictions in the ability to perform DLA that are either continuous or periodic for extended periods. The panel finds that the ministry reasonably determined that since it has not been established that DLA are directly and significantly restricted, it cannot be determined that help is required under section 2(2)(b)(ii) of the EAPWDA.

Conclusion

Having reviewed and considered all of the evidence and the relevant legislation, the panel finds that the ministry's decision that the appellant was not eligible for PWD designation was reasonably supported by the evidence. The panel therefore confirms the ministry's decision.