

PART C – Decision under Appeal

The decision under appeal is the Ministry of Social Development (the ministry) reconsideration decision dated November 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 her impairment is likely to continue for at least two years. However, the ministry was not satisfied that the evidence establishes that she 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 she 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: applicant information dated August 9, 2012, physician report dated September 28, 2012, and assessor report dated August 31, 2012;
- 2) Letter dated October 11, 2012 from the ministry to the appellant denying person with disabilities designation and enclosing a copy of the decision summary;
- 3) Letter dated October 24, 2012 from the appellant's advocate to the social worker who prepared the assessor report detailing the findings of the ministry's denial;
- 4) Supplemental Medical Opinion by the social worker who completed the assessor report, dated October 25, 2012 stating in part that the appellant's ability to perform daily living activities (DLA) is considered severely restricted due to her impairment with the following details: for preparing own meals, motivation and cognitive deficits as noted by the general practitioner impact severely and continuously her ability to prepare meals; for shopping for personal needs, the doctor agrees there are mobility issues in and out of home and she has communication issues due to emotional disturbance and she cannot interact with business owners; for using transportation, challenges with walking, standing and sitting preclude the use of transit and she is further compromised by the symptom of anxiety regarding communication issues and emotional disturbance; for performing housework, she needs someone to support her for housework and laundry; for managing medication, the motivation issue and difficulties with communication directly impact her ability to manage medication plus the severe and continuous nature of her physical deficits; for making decisions about personal care activities, care and finance, many of the decisions are put off, ignored, or she feels exhausted and she cannot stand in a bank line; for relating to, communicating or interacting with others, the appellant is extremely socially isolated, this causes her anger and she reacts physically to frustration by yelling and hitting walls; in response to the question whether the appellant's ability to perform these DLA is directly and significantly restricted, the social worker agreed and states that because of her mental, physical issues and continuous pain and physical disability, she is assessed as significantly restricted and adds details that "...client is at risks for falls, dislocations, and depression due to the combination of physical and mental challenges; her condition is severe, permanent and continued health issues;" the DLA are restricted periodically and that "...4 out of 7 days per week client is not leaving her bed due to physical and emotional pain", that she requires help 2 to 3 times a week for "...all housework and laundry and meal prep and socialization"; in response to the question whether the appellant has a severe physical or mental impairment, the social worker indicates yes, "...she requires a life skills worker and a home support worker; life skills could help her manage her cognitive and communication issues as well as help her build a wider support network; home support is needed to help with housecleaning, meal preparation, and laundry;" and,
- 5) Request for Reconsideration- Reasons, dated February 9, 2012.

The appellant consented to the attendance at the hearing of an observer from the advocate's office. In her Notice of Appeal, the appellant stated that she disagrees with the ministry's decision because she should be on disability, that even her doctor and assessor think so. In her Request for Reconsideration, the appellant referred to the Supplemental Medical Opinion by the social worker dated October 25, 2012. The appellant stated that the physician who completed the physician report feels that what was in the original application is a reasonable opinion. The physician stated that the appellant suffers from constant daily pain that will get worse in time, her depression/anxiety is chronic, and she needs support from her family and social community organizations for her continuously restricted DLA listed in the application.

In her self-report included in the PWD application, the appellant stated that her impairments affect her life and her ability to take care of herself on a daily basis. Due to her lumbar disc disease, her hip and knee tend to pop out on a regular basis causing her severe pain for days. Due to her mood disorder, depression and anxiety, she tends to isolate herself to her house because she cannot handle being around crowds. Her substance abuse is currently under control but this severely affects her impulse control. The appellant stated that she is in constant pain on a daily basis, both physically and mentally, that a lot of her pain is associated with her depression and substance abuse. This affects many of her DLA because she feels tired and has no energy. When she starts to do something, it takes her a long time to get it done as she has to rest for constant

periods of time. On a regular basis, her depression is so bad that she cannot get out of bed in the morning. She states that often her son will try to get her out of bed and motivate her to do something but it does not always work. The appellant stated that when she is in crowds she gets anxiety attacks and she has to leave. Most of the time, her depression/anxiety runs her life and when she is "down and out" she wants to self-medicate herself and this makes things worse and is a constant cycle. The appellant stated that her substance abuse is a disease, that she is very sick and emotionally unstable.

At the hearing, the appellant's advocate stated that although the ministry raised an issue with the assessor report as being problematic, the social worker who prepared the assessor report is a prescribed professional and the advocate has a relationship with the appellant and provided information to the social worker to assist with her assessment. The advocate stated that the self-report and assessor report are often prepared prior to completion of the physician report, so that this is not an unusual occurrence. The advocate confirmed that the physician had been given an opportunity to provide a supplemental opinion but declined as he believes the original assessment is a reasonable one. The advocate referred to the physician report as diagnosing chronic pain in the appellant's back, hip and knee, as well as depression/anxiety and substance misuse. The advocate highlighted the physician's comments that the appellant experiences constant daily pain which restrains her from normal activities, and her depression/anxiety is an ongoing issue for which she needs support and counseling. The advocate stated that the appellant takes Tylenol 3 for pain and this interferes with the appellant's ability to perform DLA. The appellant stated that she has also recently received a cortisone injection in her hip to help control the pain but the shot itself was very painful. The advocate referred to the physician's comments that the appellant's chronic pain might get worse in time and that her mood/anxiety is chronic in nature for her. The advocate clarified that the physician would have checked the response to the assessment of how far the appellant can walk unaided, indicating 1 to 2 blocks, as the advocate never makes changes to the original documents. The advocate stated that the physician confirms that the appellant is restricted with basic housework, daily shopping and mobility when her pain is worse.

The advocate referred to the assessor report and the social worker's assessment that the appellant has poor speaking ability due to her anxiety and that her hearing is poor due to a punctured ear drum. The advocate stated that the social worker assessed the appellant as requiring assistance in all areas of mobility and physical ability. The advocate pointed to the assessment of impacts to the appellant's daily functioning as being all major impacts with the exception of language and other neuropsychological problems, and that the social worker commented that these all severely impact the appellant's DLA. The appellant stated that she is not followed by a psychiatrist but she sees her doctor about twice a week and he recently prescribed a psychiatric medication that she has taken before. The advocate stated that the social worker confirmed that the appellant needs continuous assistance with most tasks of personal care, with housekeeping and shopping and that these take four times longer than typical. The advocate stated that the social worker confirmed that the appellant requires continuous assistance with meals, most tasks of finance and transportation and that her mental health and pain keep her in bed 4 out of 7 days per week. The advocate referred to the social worker's assessment of the appellant's social functioning, pointing out that the appellant requires continuous support/supervision in all aspects and that she has very disrupted functioning in both her immediate and extended social networks, and that the appellant is "...totally isolated, becomes angry and frustrated, yelling, hitting things, throwing things." The advocate stated that the appellant gets help from her family and friends and community service agencies.

The physician who completed the physician report confirmed that the appellant has been his patient for less than a year and that he has seen the appellant 2 to 10 times in that period. In the physician report, the physician confirms a diagnosis of chronic back, hip, knee pain, depression/anxiety, and substance misuse, with no diagnostic codes or dates of onset provided. The physician added comments regarding the severity of the appellant's medical conditions relevant to her impairment as "...constant daily pain at her lower back, hips and knees restrains her from normal activities...her depression/anxiety is another ongoing issue, poor judgment exposed her to get physical and verbal abuse which made her anxiety and depression worse, need ongoing support and counseling; her substance use is getting better, still use occasionally." The physician report

indicated that the appellant has been prescribed medication that may interfere with her ability to perform DLA and that she does not require an aid for her impairment. The physician reports that the appellant can walk 1 to 2 blocks unaided on a flat surface, she can climb 2 to 5 stairs unaided, she has no limitation with lifting and she can remain seated for 1 to 2 hours. The physician reported that the appellant has no difficulties with communication. The physician indicated that there are significant deficits with cognitive and emotional function in the areas of emotional disturbance and motivation. The physician reported, in Part E, that it is unknown whether the appellant's impairment directly restricts her ability to perform DLA. The physician goes on to assess the appellant as restricted on a periodic basis with basic housework ("need help when her pain getting worse") and restricted continuously in the areas of daily shopping and mobility inside and outside the home and that she is not restricted in the areas of personal self care, meal preparation, management of medications, use of transportation, management of finances and social functioning. The physician added a note regarding assistance that the appellant needs with DLA as "...she need support from family/social service for support and when her pain is worse; she need more physical help for shopping/ house works."

The assessor report was completed by a social worker who met with the appellant once for the purpose of the assessment and based her assessment on an office interview with the appellant as well as the advocate's appeal guide and the appellant's self-report. The social worker describes the appellant's mental or physical impairments that impact her ability to perform DLA as "...lumbar disc disease severely limiting hip, knee and spine mobility, she also lives with a mood disorder as well as depression, anxiety and mood disorder." The social worker assessed the appellant's ability to communicate as good writing and satisfactory reading but poor speaking ("anxiety interferes with ability to communicate") and hearing ("left ear drum punctured"). The social worker indicated that the appellant requires continuous assistance from another person or she is unable and that she takes significantly longer than typical with walking indoors ("must brace herself every 10 feet"), walking outdoors ("2 blocks max.; takes 4 times longer; 4 blocks of walking takes 45 minutes; must walk at a tedious rate"), climbing stairs ("cannot climb any stairs, re: lumbar disc disease, hips dislocate immediately"), standing ("not longer 5 minutes/ hip dislocate"), lifting ("any weight causes d.d. to dislocate hips and causes fatigue") and with carrying and holding.

The social worker indicated that the appellant requires continuous assistance from another person or she is unable and she takes significantly longer than typical ("4 times longer") with most tasks of personal care, including dressing, grooming, bathing, feeding self, transfers in/out of bed and transfers on/off of chair, while being independent with regulating diet and not requiring assistance with toileting. The social worker reported that the appellant requires continuous assistance from another person or she is unable and she takes significantly longer than typical with laundry ("friend helps her with laundry, 4 times longer than typical") and with basic housekeeping ("kids help with housekeeping, takes 4 times longer than typical") and with all tasks of shopping, including going to and from stores, reading prices and labels, making appropriate choices, paying for purchases, and carrying purchases home ("cannot carry anything more than a loaf of bread"). Additional comments are that "...isolation, frustration, depression, anxiety, mood disorders and substance misuse are all safety concerns; life skills, home support 2 to 3 times per week is the level of assistance required." The social worker indicated that the appellant requires continuous assistance from another person or she is unable to perform all tasks of managing meals, and also takes significantly longer than typical with food preparation and cooking ("lumbar disc disease- can only stand 5 minutes, cannot carry or lift"). The social worker indicated that the appellant also requires continuous assistance from another person with banking and budgeting ("4 out of 7 days per week, unable to get out of bed") and is independent with paying rent and bills. The social worker reported that the appellant is independent with taking medications as directed and with safe handling and storage, while requiring continuous assistance from another person or she is unable and taking significantly longer than typical with filling/refilling prescriptions ("4 times longer; cannot stand more than 5 minutes, mental health and pain keeps her in bed 4 out of 7 days per week"). The social worker reported that the appellant requires continuous assistance from another person with getting in and out of a vehicle ("4 times longer than typical, bad day pain would preclude her from getting in"), and using public transit ("anxiety disorder precludes transit as well as physical ability"), while being independent with using transit schedules and arranging transportation.

The social worker reported that the appellant's mental impairment has a major impact on her cognitive and emotional functioning in the areas of bodily functions, consciousness, emotion, impulse control, insight and judgement, attention/ concentration, executive, memory, motivation, motor activity, psychotic symptoms, and other emotional and mental problems, and minimal or no impact in language and other neuropsychological problems. Additional comments include that "these all severely impact her DLA." The social worker indicated that the appellant requires continuous support/supervision in all aspects 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, with the explanation that mental health issues interfere severely with all categories, i.e. panic attacks, motivation, lumbar disc disease limits where she can go. The social worker reported that the appellant has very disrupted functioning in both immediate and extended social networks. For the equipment required but not currently used by the appellant, the social worker identified "...eye glasses, canes, raised toilet, grab bars, as lumbar disc disease progresses will need power wheel chair."

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 she does not meet all the criteria in Section 2 of the EAPWDA. The ministry found that she does not have a severe mental or physical impairment and that her 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.

Evidentiary Considerations:

The ministry argues that the assessor report is problematic as the social worker met with the appellant for the first time to complete the report and used the appellant's self-report and the advocate's guide as sources of information. The ministry argues that there were no psychiatric assessments, neurological, radiological, or addiction services medical reports used to substantiate the information. The ministry argues that the assessor report is intended to be completed by a prescribed professional having a history of contact and recent experience with the appellant and is to be based on knowledge of the applicant, observations, clinical data and experiences. The ministry also points out that the assessor report was completed on August 31, 2012 before the physician completed the physician report on September 28, 2012 and argues that the social worker would not have the benefit of a medical practitioner's opinion on diagnosis, restrictions to DLA or assistance required from another person. The appellant argues, through her advocate, that the information from the social worker should be given as much weight as the physician report as the advocate has a history of contact and recent experience with the appellant and shared that information, through the guide, with the social worker who met with the appellant for a 3 to 4 hour interview.

The social worker who completed the assessor report indicated that she based her assessment on an interview with the appellant as well as the guide which the advocate assisted the appellant with completing, and there were no additional specialist reports considered or provided. The panel is persuaded by the ministry's argument that the social worker would not have the benefit of the medical practitioner's opinion on diagnosis and restrictions to DLA and, in the absence of other medical reports or information from specialists, relied solely on information from the appellant. Whereas the doctor did not indicate a cause for the appellant's chronic back, hip, and knee pain, the social worker referred to lumbar disc disease without providing the source for this diagnosis and bases her assessments on this conclusion. The physician who completed the physician report indicated the appellant has been his patient for less than one year but that he has seen the appellant 2 to 10 times in that period. For these reasons, the panel places more weight on the evidence of the physician where it conflicts with that of the social worker.

Severe Physical Impairment:

The ministry argues that the evidence does not establish that the appellant has a severe physical impairment. The ministry argues that the physician diagnosed the appellant with chronic back, hip and knee pain and the impairment is related to daily pain restricting normal activities. The ministry points to the physician report where it is indicated that the appellant is able to climb 2 to 5 steps unaided, to remain seated for 1 to 2 hours and has no lifting limitation, and that it is not clear whether the appellant is able to walk between 1 to 2 blocks or 2 to 4 blocks unaided as the check marks are not definitive. The ministry points out that the social worker indicates that continuous help is required from another person with all aspects of mobility and physical abilities and diagnoses "lumbar disc disease and hips dislocate immediately" and reports "4 blocks of walking takes 45 minutes; must walk at a tedious rate" but argues that a medical diagnosis must be provided by a medical practitioner and a social worker does not have the professional qualifications to do so. The ministry argues that there is considerable discrepancy in the information from the physician and the assessor and the physician knows the appellant better than the assessor and that the information from the physician should be given precedence. The ministry argues that the social worker reported that the assistive devices required but

are not currently being used are "...eye glasses, canes, raised toilet, grab bars, as lumbar disc disease progresses will need power wheel chair" but there is no substantive evidence of this need for assistive devices in the information provided by the appellant's physician.

The appellant's position is that she has a severe physical impairment primarily as a result of chronic pain in her back, hip and knee. The appellant's advocate refers to the Supplemental Medical Opinion dated October 25, 2012 where the social worker provides her professional opinion that the appellant has a severe physical or mental impairment and comments that "...home support is needed to help with housecleaning, meal preparation and laundry." The advocate points to the physician's comment that the appellant's chronic pain might be getting worse in time and that there are limitations identified to the appellant's functional skills. The advocate argues that the social worker has provided comments that there are safety issues with the appellant's condition which include "...malnutrition, falls, dislocations, homelessness and isolation." The advocate argues that the social worker indicated that the appellant is severely impacted in almost all of her DLA, that the restrictions are lifelong and expected to become more severe over time.

The panel finds that the evidence of a medical practitioner confirmed a diagnosis of chronic back, hip, and knee pain and substance misuse, with no diagnostic codes or dates of onset provided. With respect to the substance misuse, the physician commented that it is getting better although the appellant still uses occasionally. In her self-report, the appellant stated that her substance abuse is currently under control but it affects her impulse control. The physician added comments regarding the severity of the appellant's medical conditions relevant to her impairment as "...constant daily pain at her lower back, hips and knees restrains her from normal activities." The panel finds that the physician has not provided a cause for the appellant's chronic back, hip and knee pain and although the social worker attributes it to lumbar disc disease, this has not been confirmed by the physician or by reports from any specialists. The physician report indicated that the appellant has been prescribed medication that may interfere with her ability to perform DLA and that she does not require an aid for her impairment. The physician reported that the appellant is continuously restricted with mobility inside the home and with mobility outside the home, with no comments provided regarding the degree of restriction, and that she can walk 1 to 2 blocks unaided on a flat surface, she can climb 2 to 5 stairs unaided, she has no limitation with lifting and she can remain seated for 1 to 2 hours. In the assessor report, the social worker indicated both that the appellant requires continuous assistance from another person or she is unable and that she takes significantly longer than typical with walking indoors ("must brace herself every 10 feet"), walking outdoors ("2 blocks max.; takes 4 times longer; 4 blocks of walking takes 45 minutes; must walk at a tedious rate"), climbing stairs ("cannot climb any stairs, re: lumbar disc disease, hips dislocate immediately"), standing ("not longer 5 minutes/ hip dislocate"), lifting ("any weight causes d.d. to dislocate hips and causes fatigue") and with carrying and holding. In her self-report, the appellant stated that, due to her lumbar disc disease, her hip and knee tend to pop out on a regular basis causing her severe pain for days. The appellant stated that she recently received a cortisone injection to help with the pain, but she acknowledged that no assistive devices are currently used by her to assist with mobility.

While the social worker indicated that the appellant cannot climb any stairs, the physician reported that the appellant can climb 2 to 5 steps without the assistance of another person or an assistive device and while the social worker indicated that the appellant requires continuous assistance from another person or she is unable to lift, ("any weight causes d.d. to dislocate hips"), the physician reported that the appellant has no limitations with lifting. The social worker referred to lumbar disc disease without providing the source for this diagnosis and the assessments for mobility and physical ability are based on this conclusion. The panel finds that, putting more weight on the evidence of the appellant's physician where it is inconsistent with that of the social worker, the evidence demonstrates that the appellant experiences restrictions to her functional skills that indicate a moderate degree of impairment. The panel finds that the ministry's determination that the evidence does not establish a severe physical impairment, was reasonable.

Severe Mental Impairment:

The ministry argues that the evidence does not show that the appellant has a severe mental impairment. The

ministry points out that the physician reported deficits to cognitive and emotional functioning in two areas of emotional disturbance and motivation and commented that poor judgment lead to physical/verbal abuse which made depression and anxiety worse, that there is a need for ongoing support and counseling. The ministry argues that the physician reported there are no difficulties with communication and no restriction to social functioning. The ministry points out that there is a discrepancy with the information provided by the social worker who reported major impacts in 12 out of 14 aspects of daily functioning. The ministry argues that no current psychiatric assessments, neurological or addiction services medical reports were used to substantiate the social worker's information nor is the social worker a qualified or treating mental health professional.

The appellant's position is that she has a severe mental impairment as a result of depression/ anxiety. The appellant's advocate refers to the Supplemental Medical Opinion dated October 25, 2012 where the social worker provides her professional opinion that the appellant has a severe physical or mental impairment and comments that "...she requires a life skills worker and a home support worker; life skills worker could help her manage her cognitive and communication issues as well as help her build a wider support network." The advocate points out that the physician reported that the appellant has significant deficits with cognitive and emotional function in emotional disturbance and motivation and comments that her mood/anxiety is chronic in nature for her. The advocate argues that the social worker has reported that the appellant's impairment has a major impact in all areas of daily functioning with the exception of language and other neuropsychological problems. The advocate points to the social worker's assessment of the appellant's social functioning, that she requires continuous support/supervision in all aspects and that she has very disrupted functioning in both her immediate and extended social networks, and that the social worker commented that the appellant is "...totally isolated, becomes angry and frustrated, yelling, hitting things, throwing things." The advocate argues that although the physician reported that the appellant is not restricted in social functioning, the physician added comments that the appellant needs support from family/ social service "...for support and when her pain is worse" and that this is emotional pain as well as physical pain. The advocate argues that the social worker indicated that the appellant is severely impacted in almost all of her DLA, that the restrictions are lifelong and expected to become more severe over time.

The panel finds that the evidence of a medical practitioner confirms a diagnosis of depression/ anxiety with no diagnostic code or date of onset provided. The physician added comments regarding the severity of the appellant's medical conditions relevant to her impairment as "...her depression/anxiety is another ongoing issue, poor judgment exposed her to get physical and verbal abuse which made her anxiety and depression worse, need ongoing support and counseling." The physician reported that the appellant has no difficulties with communication. In the physician report, the physician indicated that there are significant deficits with cognitive and emotional function in the two areas of emotional disturbance and motivation. In the assessor report, however, the social worker reported that the appellant's mental impairment has a major impact on her cognitive and emotional functioning in 12 out of a total 14 areas, namely in the areas of bodily functions, consciousness, emotion, impulse control, insight and judgement, attention/ concentration, executive, memory, motivation, motor activity, psychotic symptoms, and other emotional and mental problems, and minimal or no impact in language and other neuropsychological problems. In Part E of the physician report, the physician indicated that the appellant is not restricted in the area of social functioning, and the panel finds that the reference to support required when the appellant's "pain is worse" refers to the chronic pain in the appellant's back, hip and knee as this is consistent with the physician's comment regarding "periodic" restrictions to housework "...when her pain getting worse." The social worker indicated in the assessor report that the appellant requires continuous support/supervision in all aspects 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, with the explanation that mental health issues interfere severely with all categories, i.e. panic attacks, motivation, "... lumbar disc disease limits where she can go." The panel finds that the social worker attributes some of the impacts to the appellant's social functioning to her lumbar disc disease, whereas this section of the report is to gage impacts from an identified mental impairment, rather than a physical impairment. The appellant stated that she is not being followed by a psychiatrist and her family physician has only recently prescribed psychiatric medication.

The panel finds that, putting more weight on the evidence of the appellant's physician where it is inconsistent with that of the social worker, the evidence demonstrates that the appellant experiences some impacts to her cognitive and emotional functioning that is not currently restricting her social functioning. The panel finds that the ministry's decision, which concluded that the evidence does not establish a severe mental impairment, was reasonable.

Direct and Significant Restriction:

The ministry argues that the evidence does not establish that the appellant's 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 reports periodic restrictions to daily shopping and mobility inside and outside the home, described as "needs help when her pain gets worse" and there is no restriction to 6 of 10 other DLA, including social functioning. The ministry points out that the information provided by the social worker presents a more severe level of impairment and related restriction in ability to perform DLA, with continuous restriction reported to the majority of daily tasks including social functioning, and argues that precedence should be given to the information provided by the physician. The ministry argues that the physician relates restriction to 4 out of 10 DLA to periods when pain is worse and there are remedial measures in the form of analgesic (Tylenol #3) to ameliorate the pain.

The appellant argues, through her advocate, that the evidence of the physician together with that of the social worker shows that her DLA are directly and significantly restricted either continuously or periodically for extended periods. The advocate points to the information from the social worker in the Supplemental Medical Opinion dated October 25, 2012 that indicates the appellant's ability to perform the listed DLA is directly and significantly restricted, and that she is "...at risks for falls, dislocations, and depression due to the combination of physical and mental challenges; her condition is severe, permanent and continued health issues." The advocate argues that the social worker reported in the Supplemental Opinion that the appellant's ability to perform DLA is periodically restricted for 4 out of 7 days per week when she does not leave her bed due to physical and emotional pain. The advocate argues that the physician confirms that the appellant is restricted in housework, daily shopping and mobility inside and outside the home. The advocate argues that the social worker indicated that the impacts to the appellant's cognitive and emotional functioning severely impact her DLA. The advocate argues that in the assessor report, the social worker details the restrictions and need for assistance in all DLA.

The panel finds that the legislation requires that the ministry is 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 the physician report, the physician reported that, for preparing her own meals, the appellant is not restricted and, in the assessor report, the social worker indicated that the appellant requires continuous assistance from another person with all tasks including meal planning, food preparation, cooking, and safe storage of food or she is unable to perform these tasks. However, the social worker also indicated that the appellant can perform the tasks of food preparation and cooking but takes significantly longer than typical. In the Supplemental Opinion, the social worker reported that motivation and cognitive deficits as noted by the general practitioner impact severely and continuously the appellant's ability to prepare meals and also that this DLA is periodically restricted for 4 out of 7 days per week. The panel finds that the information from the social worker is inconsistent and conflicts with that from the physician for this DLA. For managing personal finances, the physician indicated in the physician report that the appellant is not restricted with this DLA. In the assessor report, the social worker indicated that the appellant requires continuous assistance from another person with banking and budgeting ("4 out of 7 days per week, unable to get out of bed") and is independent with paying rent and bills. In the Supplemental Opinion, the social worker added that the appellant cannot stand in a bank line. In terms of shopping for her personal needs, the physician indicated in the physician report that the appellant is continuously restricted in this area and, in the assessor report, the social worker reported that the appellant requires continuous assistance from another person or she is unable and she takes significantly longer than typical with all tasks of shopping, including going to and from stores, reading prices and labels, making appropriate choices, paying for purchases, and

carrying purchases home ("cannot carry anything more than a loaf of bread"). The panel finds that the restriction indicated with carrying does not correspond to the physician's assessment that the appellant has no limitations with lifting. In the Supplemental Opinion, the social worker argues that the doctor agrees there are mobility issues in and out of home and the appellant has communication issues due to emotional disturbance and she cannot interact with business owners. The social worker also reported that this DLA is periodically restricted for 4 out of 7 days per week. The panel finds that the information from the social worker is inconsistent and conflicts with some of the information from the physician for this DLA.

For use of public or personal transportation facilities, the physician indicated in the physician report that the appellant is not restricted in this DLA and, in the assessor report, the social worker reported that the appellant requires continuous assistance from another person with getting in and out of a vehicle ("4 times longer than typical, bad day pain would preclude her from getting in"), and using public transit ("anxiety disorder precludes transit as well as physical ability"), while being independent with using transit schedules and arranging transportation. In the Supplemental Opinion, the social worker also reported that this DLA is periodically restricted for 4 out of 7 days per week. The panel finds that the information from the social worker is inconsistent and conflicts with that from the physician for this DLA. With respect to performing housework to maintain the appellant's place of residence in an acceptable sanitary condition, the physician reported that the appellant is periodically restricted with this DLA with the comment "...need help when her pain getting worse" and, in the assessor report, the social worker indicated that the appellant requires continuous assistance from another person or she is unable and she takes significantly longer than typical with laundry ("friend helps her with laundry, 4 times longer than typical") and with basic housekeeping ("kids help with housekeeping, takes 4 times longer than typical"). In the Supplemental Opinion, the social worker indicated that the appellant needs someone to support her for housework and laundry and that this DLA is periodically restricted for 4 out of 7 days per week. For moving about indoors and outdoors, the physician indicated in the physician report that the appellant is continuously restricted with mobility inside and outside the home and, in the assessor report, the social worker indicated that the appellant requires continuous assistance from another person or she is unable and that she takes significantly longer than typical with walking indoors ("must brace herself every 10 feet") and with walking outdoors ("2 blocks max.; takes 4 times longer; 4 blocks of walking takes 45 minutes; must walk at a tedious rate"). The panel finds that these restrictions to mobility are within the range of functional skills assessed by the physician, as being able to walk 1 to 2 block without the assistance of a person or an assistive device.

Regarding performing personal hygiene and self care, the physician indicates in the physician report that the appellant is not restricted with this DLA and, in the assessor report, the social worker indicated that the appellant requires continuous assistance from another person or she is unable to perform most tasks of personal care, including dressing, grooming, bathing, feeding self, transfers in/out of bed and transfers on/off of chair. The social worker also indicated that the appellant can perform these tasks but takes significantly longer than typical ("4 times longer"). The panel finds that the information from the social worker is inconsistent and conflicts with that from the physician for this DLA. With respect to managing her personal medications, the appellant's physician again indicated that the appellant is not restricted in this area and, in the assessor report, the social worker reported that the appellant is independent with taking medications as directed and with safe handling and storage, while requiring continuous assistance from another person or she is unable and also taking significantly longer than typical with filling/refilling prescriptions ("4 times longer; cannot stand more than 5 minutes, mental health and pain keeps her in bed 4 out of 7 days per week"). The panel finds that the information from the social worker is inconsistent for some of the tasks and conflicts with that from the physician for this DLA.

With respect to the two DLA applicable to a person with a severe mental impairment, the panel notes that for making decisions about her personal activities, care, or finances, the physician indicated in the physician report that the appellant is not restricted with social functioning. In the assessor report, the social worker indicated that the appellant requires continuous support/supervision in all aspects of social functioning, including making appropriate social decisions. In the Supplemental Opinion, the social worker reported that

many of the decisions are put off, ignored, or the appellant feels exhausted and she cannot stand in a bank line. For relating to, communicating or interacting with others effectively, the physician reported no restrictions with social functioning or with communication while the social worker indicated that the appellant requires continuous support/supervision with developing and maintaining relationships and interacting appropriately with others, and that the appellant has very disrupted functioning in both immediate and extended social networks. The panel finds that the assessments made by the physician and the social worker are markedly inconsistent with these DLA and that the social worker also assessed impacts from the appellant's physical impairment in these areas and more weight is, therefore, placed on the evidence of the physician. The panel also notes that the physician declined an opportunity to provide a supplemental assessment as he believes that his original report is a reasonable one.

Looking at the evidence as a whole, the panel finds that the appellant's physician reported that the appellant is continuously restricted in the areas of shopping and with moving about indoors and outdoors. Although the physician also reported periodic restriction with basic housework, the panel finds that there is insufficient evidence to establish that this restriction is for extended periods of time, as required by the legislation. The evidence from the physician is that that the appellant is not restricted with all other DLA. 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.

Help in Relation to DLA:

The ministry's position is that since it has not been established that DLA are significantly restricted, it cannot be determined that significant help is required from other persons. The appellant's position is that she requires the significant help or supervision of another person in order to perform her directly and significantly restricted DLA.

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 notes the information from the physician and the social worker is that the appellant receives assistance for DLA from family, primarily two sons, friends and community service agencies. 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.

Conclusion:

Overall, the panel finds that the ministry's reconsideration decision was reasonably supported by the evidence and confirms the decision pursuant to Section 24(2)(a) of the Employment and Assistance Act.