

PART C – Decision under Appeal

The decision under appeal is the Ministry of Social Development (the "Ministry") January 21, 2013 reconsideration decision in which the Ministry determined that the Appellant was not eligible for Persons with Disabilities ("PWD") designation because she did not meet all the requirements in section 2(2) of the Employment and Assistance for Persons with Disabilities Act. The Ministry was not satisfied 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 was satisfied that the Appellant has reached 18 years of age and in the opinion of a medical practitioner her impairment is likely to continue for at least 2 years.

PART D – Relevant Legislation

Employment and Assistance for Persons with Disabilities Act ("EAPWDA") Section 2(2) and 2(3).

Employment and Assistance for Persons with Disabilities Regulation ("EAPWDR") Section 2.

PART E – Summary of Facts

For its reconsideration decision the Ministry had the following evidence:

1. Appellant's PWD application consisting of:

- A self-report dated June 26, 2012 prepared with the help of an advocate and with the Appellant's confirmation of the information.
- Physician's report ("PR") completed by a doctor on May 31, 2012 who indicated that the Appellant has been his patient since February 2012 and he has seen her between 2-10 times in the 12 months preceding the report.
- Letter dated June 25, 2012 from the Appellant's advocate to the doctor asking that he also complete the assessor's report portion of the application, providing information about the criteria for PWD designation and referring to the information in the Appellant's self-report which was gathered in an interview lasting 1 hour and is described as a reflection of the Appellant's interpretation of her diagnoses.
- Assessor's report ("AR") completed by the same doctor on August 20, 2012.

2. Appellant's request for reconsideration with a letter from the same doctor dated January 17, 2013 and indicating that the Appellant was seen on January 17, 2013.

Diagnoses

In the PR, the Appellant's doctor diagnosed the Appellant with PTSD [Post traumatic stress disorder], anxiety disorder with pain onset 2011, chronic back pain onset 2007, depression onset 2011 and rheumatoid arthritis. The doctor answered yes to the question - is the impairment likely to continue for two years from today. He also added, "depends on stability/safety & response to treatment".

In the January 17, 2013 letter, the same doctor states that the Appellant "has been diagnosed with Post Traumatic Stress Disorder, Anxiety Disorder and Chronic Pain".

Physical Impairment

The following information about the Appellant is in the self-report:

- She suffers from chronic pain in her back and neck as a result of past injuries; ruptured discs between her vertebrae, neck fractured by her ex-husband and she was in two car accidents; from these she suffers from regular severe back and shoulder pain that greatly restrict her daily activities; she has an extensive list of pain medications that she takes to get a few hours sleep, yet is still prevented from executing many daily tasks.
- The chronic pain she experiences affects her daily life and ability to perform many tasks - walking, sitting for extended periods of time, climbing stairs and lifting - she is unable to do or has great difficulty doing; avoids these as much as possible and seeks help to carry or lift groceries; takes elevators and avoids walking any long distance; if she sits for long periods she has strong tension migraines.
- She is able to maintain personal hygiene, but because of severe pain it takes her ten times longer than the average person; if she attempts to do housework, she experiences intense pain for a series of days; pain greatly affects her ability to sleep.

In the PR, the doctor described the severity of the Appellant's medical conditions as follows:

- Unable to leave home to be sufficiently active to rehabilitate back; further rheumatologic investigations are pending.
- Arthritis limits shopping, basic activities.

The doctor reported:

- Physical functioning as being able to walk unaided on a flat surface for 2-4 blocks, able to climb 5+ steps unaided, lift 5-15 lbs, and remain seated without limitation.
- She does not require any prostheses or aids for her impairment.

Mental Impairment

The following information about the Appellant is in the self-report:

- She has been diagnosed with and suffers from anxiety, depression and post-traumatic stress disorder; prescribed medications to deal with anxiety and with depression.
- These disabilities affect her motivation and ability to function on a continual daily basis to such a degree that she is afraid to leave her own house and lacks motivation to perform necessary daily tasks; her depression leads to an extreme lack of motivation and appetite, and she only eats when others such as her daughter or friends make food for her.
- Her depression and anxiety have a strong impact on her day to day life as she rarely leaves the house and seeks assistance from a friend when she does; her daughter or friends do grocery shopping and errands, and she does her banking on-line so as to not face the fear of leaving her house.
- Her illnesses have greatly affected her social connections with family and friends as she isolates herself and is often unable to ask for help and connect with others.

In the PR, the doctor reported the Appellant's medical conditions as follows:

- "Debilitating anxiety regarding ongoing abuse by ex-partner despite restraining order and police involvement; flashbacks to prior assaults; panic attacks", "Severe disability as a result of the above".
- Has significant deficits with cognitive and emotional function in the areas of emotional disturbance (depression, anxiety), motivation, motor activity and attention or sustained concentration.

The doctor added:

- "She has been offered hospitalization for stabilization of anxiety and safe haven".
- Does not leave home alone because of panic, acrophobia.
- "Disability remains severe despite medical and psychological treatment".

In the AR, the doctor reported:

- For impacts to cognitive and emotional functioning - major impact to emotion, motor activity and to other emotional or mental problems; moderate impact to bodily functions and motivation; minimal impact to consciousness and to attention/concentration; and, no impact to impulse control, insight and judgement, executive, memory, language, psychotic symptoms and other neuropsychological problems.
- Adding "sleep disturbance/insomnia", "anxiety, panic attacks", "difficulty with short term memory (forgets where she is going)", "low motivation, psychomotor retardation", "fear of being re-assaulted".

Restrictions to Daily Living Activities

The following is in the self-report about the Appellant:

- The chronic pain severely affects her daily life and ability to perform many tasks.
- She seeks help to do things such as carrying or lifting groceries; her daughter and friends do errands, help with daily chores and other tasks; she is able to maintain personal hygiene, but

because of severe pain it takes her ten times longer than the average person.

- Depression and anxiety have a strong impact on her day to day life as she rarely leaves the house and seeks assistance from a friend when she does; her daughter or friends do grocery shopping, errands and she does her banking on-line to not face the fear of leaving her house.

In the PR, the doctor indicated that the Appellant has been prescribed medication for about 12 months, which interfere with her ability to perform daily living activities, and that she is:

- Periodically restricted in personal self-care, meal preparation, basic housework, daily shopping, mobility outside the home, use of transportation – periodic meaning – “depends on sense of safety, level of pain”.
- Independent with management of medications, mobility inside the home and management of finances.
- Restricted in social functioning – “does not feel safe outside home”.
- Limited to shopping, basic activities.

The doctor also reported that the Appellant has been prescribed medication that interferes with her ability to perform daily living activities, and he named the medication “as needed for anxiety”.

In the AR, the doctor wrote that anxiety, [illegible], asthma and migraines are the mental or physical impairments that impact her ability to manage daily living activities, and he reported that:

- The Appellant has good communication abilities.
- For mobility and physical ability, the Appellant is independent walking indoors, takes significantly longer walking outdoors – “up to 10 min. to walk 1 block”, uses a railing to climb stairs, uses an assistive device for standing, and needs continuous assistance with lifting and with carrying and holding.
- She is independent in all tasks for personal care, for paying rent and bills and for medications; and, independent with meal planning and safe storage of food, using public transit and transit schedules, reading prices and labels, making appropriate shopping choices and paying for purchases.
- She needs continuous assistance with laundry, basic housekeeping and carrying purchases home, all noted as “done by family”.
- She needs periodic assistance with going to and from stores – “helped by family”, with food preparation and cooking, and with getting in and out of a vehicle – “difficulty with low vehicle”.
- For social functioning, the Appellant is independent in her ability to develop and maintain relationships, interacting appropriately with others and ability to secure assistance; needs periodic assistance with making appropriate social decision – “friend helps with safety” and with her ability to deal appropriately with unexpected demands – “high stress/fear interferes”.
- She has marginal functioning with her immediate social network and very disrupted functioning with her extended social network.
- Friends and family assist with ensuring her safety and basic socialization; ongoing threat of violence from ex-husband.

Help with Daily Living Activities

The self-report notes the following about the Appellant:

- She has regular support from her daughter who lives with her and other friends to do errands, help with daily chores and anything else she has to accomplish.
- Her daughter does laundry, vacuuming and other housework for her.

- Because of her depression and anxiety, friends help when she leaves the house, her daughter or friends do grocery shopping or errands for her and she banks on line to not face the fear of leaving her house.

In the PR, the doctor wrote "help housekeeping/shopping".

In the AR, the doctor wrote that friends and family assist with ensuring safety and basic socialization, and:

- Reported that friends and family provide assistance.
- Wrote that the Appellant needs help with mobility outside the home, shopping, meals, laundry and social.
- Reported no assistance from assistance animals; did not complete the section for use of assistive devices.

In the AR, the doctor added "significant multi-factors", "severe anxiety complicates assistance", "ongoing fear, recurrent threats to her impair social and emotional functioning".

In the January 17, 2013 letter, the doctor wrote the following about the Appellant:

- "Has been diagnosed with Post Traumatic Stress Disorder, Anxiety disorder and chronic pain. Please note that when considered in combination these diagnoses significantly restrict independent function on a persistent and daily basis resulting in the need for ongoing support and assistance".
- "Lives a highly isolated life resulting from symptoms of anxiety, PTSD, and depression"; takes medication to help mitigate her anxiety symptoms.
- Despite treatment, she is often confined to her home for extended periods and is unable to meet basic daily functional requirements.
- Is unable to independently shop for personal needs and relies on support from friends and family with attending appointments; does not feel safe outside of her home and is unable to function adequately without direct supervision as a result.
- Has limited short term memory and requires the support of her family to ensure that she is meeting her responsibilities on a frequent and ongoing basis.
- "Chronic pain significantly limits [her] capacity for independent function resulting on her ongoing need for frequent support"; is fortunate to have family to support her to meet basic needs; although she may be able at times to lift up to 15 pounds, she is frequently unable to meet even this level of function.
- Requires frequent and continuous assistance to perform basic housekeeping and has significant difficulty with bending and lifting; requires continuous assistance with meal preparation, cleanup; is physically unable to transport groceries alone and must rely on support while shopping for personal needs.
- Has difficulty transferring in and out of a sitting position, so has difficulty getting in and out of a car; frequently depends on her family to assist her with the vast majority of her transportation.

The doctor also wrote "it is my opinion that [the Appellant] suffers from significant physical and emotional limitation that should be described as severe. She is highly dependent on her family to complete activities requiring communication and interaction, basic housekeeping, transportation, meal preparation and basic personal management. It is my opinion that without significant support [the Appellant] would not be able to complete many of the most basic daily activities required to subsist at an adequate level".

At the hearing, the Appellant's advocate submitted extensive oral and written argument. These are summarized in Part F of this decision.

The Appellant confirmed the information in her self-report, at the hearing. She also stated that she has a poor diet because she cannot stand and prepare meals. She has so much pain that often she just won't eat. If her friends or her daughter doesn't prepare meals she doesn't eat. The Appellant said she depends on her teenage daughter a lot, even too much, and she depends on friends. She also cannot lift a bag of potatoes or even a jug of milk. Sometimes, she cannot get into or out of a car because of the pain. The Appellant stated that she cannot physically maintain her house on her own. She cannot vacuum, cannot stand for long to do dishes, laundry or anything needing bending or lifting. The Appellant described her chronic pain as "all day, every day", but some days she can do some things. The Appellant said that, even sitting during the hearing, her lower back was in pain and she will leave with a headache. The Appellant said that she cannot lift her arm to shower because of the pain.

The Appellant said that if she is in a depressed mood she cannot take care of herself and friends get her to shower. The Appellant said that she does not talk with strangers and she is unable to communicate with anyone outside her network of family and friends. Her daughter, her friends and her advocate have to speak for her. She described how she almost rear-ended a car because she forgot where she was while driving. She also said she has frequent panic attacks, and had one just before coming to the hearing. The Appellant said she does not feel safe going out alone and needs someone with her for security and support. For example, she cannot leave the house on her own to go grocery shopping

The Appellant's friend, who attended the hearing to support her, confirmed the Appellant's difficulties with going out, socializing, self care and managing her home.

The Panel finds that the evidence from the Appellant and her friend at the hearing provided more details about her medical conditions and their impacts on her daily functioning and is in support of the evidence that was before the Ministry at the time of reconsideration. Therefore, the Panel admits that evidence pursuant to section 22(4) of the Employment and Assistance Act.

PART F – Reasons for Panel Decision

The issue in this appeal is whether the Ministry reasonably determined that that the Appellant was not eligible for PWD designation because she did not meet all of the requirements in section 2(2) of the EAPWDA, and specifically, that the Appellant does not have 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 eligibility criteria for PWD designation are set out in the following sections of the EAPWDA:
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 "daily living activities" referred to in EAPWDA section 2(2)(b) are defined in the EAPWDR as:

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.

Duration of Impairment & Diagnoses

In one part of its reconsideration decision, the Ministry indicated that the duration of the Appellant's impairment is likely to continue for two or more years. However, the Ministry seemed to qualify that conclusion with respect to the Appellant's mental impairment by referring to the doctor's note that the duration of the Appellant's impairment depends on stability, safety and response to treatment. The Ministry stated that the duration of symptoms cannot be confirmed. At the hearing, the Ministry confirmed that it concluded that the Appellant's physical impairment is likely to continue for two or more years, but not her mental impairment.

The Appellant's position is that the doctor diagnosed the Appellant with both severe mental health conditions and with severe physical health conditions and that the doctor indicated in the PR that the duration of all conditions was likely to be more than two years. The doctor also wrote that the Appellant's "disability remains severe despite medical and psychological treatment."

The Panel finds that in the PR the doctor wrote the following in the section for specific diagnosis: PTSD, anxiety disorder with pain, chronic back pain and depression. The doctor also wrote 13.2 in the diagnostic code section and the Panel notes that this refers to rheumatoid arthritis in the Ministry's form. Then, in response to the question whether the impairment is likely to continue for two years or more, the doctor ticked the box for yes. The Panel finds that the doctor made no distinctions between the duration of the Appellant's mental health conditions or her physical health conditions in this part of the PR or in any of his reports. The doctor did write depends on stability, safety and response to treatment; however, the Panel finds that these comments in and of themselves do not mean that any of the listed diagnosed health conditions will last less than two years. The Panel finds that the doctor was making a general statement about duration and what might impact duration. In fact, the doctor referred to the Appellant's inability to leave her home for treatment. Therefore, based on the doctor's specific evidence, the Panel finds that it was not reasonable for the Ministry to determine that the Appellant's mental impairment is not likely to last two years or more.

Severe Mental Impairment

The Appellant's position is that the evidence establishes that she has a severe mental impairment. The Appellant's advocate submitted that the Ministry failed to respect the medically informed opinion of the doctor and its conclusions directly contradict the doctor's diagnoses and supporting narrative. The doctor diagnosed the Appellant with PTSD, anxiety disorder with panic and depression. He described her cognitive impairment as debilitating anxiety and severe disability, and noted significant cognitive impairments in several areas. The advocate further argued that the Ministry failed to consider the evidence from the Appellant throughout its decision, citing the *Hudson* decision. The advocate also relied on section 8 of the *Interpretation Act* [RSBC 1996] chapter 238 and the Supreme Court of Canada decision in *Abrahams v. Canada* to support the Appellant's appeal.

The Ministry's position is that the Appellant's anxiety is "not caused by a mental health condition" and her "symptoms are related to a particular circumstance". The Ministry determined that the Appellant does not have a severe mental impairment.

The Panel's Findings

The Panel will first address the Ministry's determinations regarding the diagnoses provided by the Appellant's family doctor. In the PR, in the section requiring a medical practitioner to provide a specific diagnosis, the doctor provided the following specific information: PTSD, anxiety disorder with pain, onset 1/2011 and depression, onset 1/2011. Then, in his January 17, 2013 letter, the doctor wrote that the Appellant "has been diagnosed with Post Traumatic Stress Disorder, Anxiety disorder and chronic pain." There is in fact no medical evidence that these conditions are related to a particular circumstance. Therefore, based on the medical evidence, the Panel finds that it was unreasonable for the Ministry to determine that the Appellant's anxiety is not a mental health condition. The doctor clearly provided diagnoses of mental health conditions.

The diagnosis of a health condition, however, is not in and of itself evidence of the severity of impairment. The EAPWDA provides that the determination of severity is based on whether the

Minister is satisfied, taking into account all of the evidence, including that of the Appellant. That legislation is also clear that the fundamental basis for the assessment is the evidence from a prescribed professional respecting the type of impairment and its impact on daily functioning.

The Appellant described how her disabilities from anxiety, depression and PTSD affect her motivation and ability to function on a continual daily bases so that she is afraid to leave her house and lacks motivation to perform necessary daily tasks. She needs help from friends and her daughter to do errands, grocery shopping, preparing meals and going to appointments. The Appellant also testified about how she can forget where she is and has panic attacks.

In addition to his diagnoses, the doctor indicated that the Appellant has significant deficits with cognitive and emotional functioning in the areas of emotional disturbance, motivation, motor activity, and attention or sustained concentration. He reported major impact for emotion, motor activity and other emotional or mental problems, moderate impact in the areas of bodily function and motivation, and minimal impact in the areas of consciousness and attention/concentration. The doctor added "sleep disturbance/insomnia", "severe anxiety, panic attacks", "difficulty with short term memory (forgets where she is going)", "low motivation, psycho-motor retardation" and "fear of being re-assaulted". He described her anxiety as "debilitating", noting that she is unable to leave her house and writing "does not leave home alone b/c [because] panic acrophobia". The doctor also reported that the Appellant requires periodic assistance with appropriate social decisions and with dealing appropriately with unexpected demands. She has marginal functioning with her immediate social network and very disrupted functioning with her extended social network. The doctor wrote that the Appellant's "disability remains severe despite medical and psychological treatment", "severe anxiety complicates assistance. Ongoing fear, recurrent threat to harm impair social and emotional function" and "despite treatment she is often confined to her home for extended periods and is unable to meet basic daily functional requirements".

In January 2103, the most recent evidence from the Appellant's doctor, he provided the following detailed comments about the extent of the Appellant's impairments. The Appellant "leads a highly isolated life resulting from symptoms of anxiety, PTSD and depression", "Despite treatment she is often confined to her home for extended periods and is unable to meet basic daily functional requirements. She is unable to independently shop for personal needs" and she "has limited short term memory and requires the support of her family to ensure that she is meeting her responsibilities on a frequent and ongoing basis".

The Panel finds that the doctor provided more than diagnoses of the Appellant's mental health conditions. He described the severity of those conditions more than once and he described how those conditions specifically impair the Appellant's ability to function on a daily basis. The Appellant's descriptions of her impairments and how restricted her daily life is, is consistent with the doctor's reports. Therefore, when the Appellant's evidence is considered with the doctor's, the Panel finds that it was not reasonable for the Ministry to conclude that the information does not establish that the Appellant has a severe mental impairment.

Severe Physical Impairment

The Appellant's position is that she has been diagnosed with chronic back pain and rheumatoid arthritis that significantly restrict her capacity to independently complete daily living activities. Her advocate argued that she is significantly restricted in activities requiring basic mobility, bending, lifting and carrying. These restrictions impacting her daily functioning, the severe level of impairment and



her need for ongoing, frequent support were confirmed by her doctor.

The Ministry's position is that the Appellant is independently able to do most aspects of mobility and physical ability with continuous help to lift, carry and hold, and no assistive devices are routinely used to help compensate for impairment. The Ministry is not satisfied that the information provided is evidence of a severe physical impairment.

The Panel's Findings

The doctor diagnosed the Appellant with chronic back pain and rheumatoid arthritis. He wrote that she is unable to leave her house to be sufficiently active to rehabilitate her back. The Appellant stated that the daily, ongoing chronic pain she experiences severely affects her daily life and her ability to perform many tasks. She avoids walking distances and sitting for extended periods. She asks for help with carrying items or lifting groceries, and she has trouble getting in and out of a car. The Appellant also said that it takes her 10 times longer to maintain personal hygiene because of severe pain. If she tries to do housework, she experiences intense pain for a series of days, so her daughter does laundry, vacuuming, other housework and cooking. Pain also affects her ability to sleep.

In the PR, the doctor noted that the Appellant can walk unaided for 2-4 blocks, climb 5 steps unaided and lift 5-15 lbs. The doctor also wrote that "arthritis limits shopping, basic activities" and "disability remains severe despite medical and psychological treatments". In the AR, which was completed two months later, the doctor reported that it takes the Appellant up to 10 minutes to walk one block, and she requires a railing for climbing stairs. He also reported that the Appellant needs continuous assistance with lifting, carrying and holding, with laundry, basic housekeeping and carrying purchases home, and periodic assistance with food preparation and cooking. The doctor also indicated that the Appellant needs periodic assistance getting in and out of a vehicle, difficulty with a low vehicle. Then in January 2013, the doctor provided descriptions about how frequently and directly the Appellant's physical impairments restrict her functioning. He wrote "chronic pain significantly limits [the Appellant's] capacity for independent function resulting in her ongoing need for frequent support", "although she may be able to at times lift up to 15 pounds she is frequently unable to meet even this level of function", "she requires frequent and continuous assistance to perform basic housekeeping and has significant difficulty with bending and lifting", "she requires continuous assistance with meal preparation and cleanup", "she is physically unable to transport groceries alone and must rely on support while shopping for personal needs" and "has difficulty transferring in and out of a sitting position and so has difficulty getting in and out of a car". When all of this evidence from the doctor is considered together with the Appellant's, the Panel finds that it was not reasonable for the Ministry to conclude that the Appellant does not have a severe physical impairment.

Restrictions to Daily Living Activities

The Appellant's advocate argued that the EAPWDA provides that it is the medical practitioner, not the minister, who must form the opinion on whether or not the Appellant's impairments directly and significantly restrict her ability to perform daily living activities. The Ministry was provided with sufficient evidence to determine that the Appellant has a significant level of restriction and need for assistance for the following daily living activities listed in section 2(1)(a) and (b) of the EAPWDR: prepare own meals, shop for personal needs, use public or personal transportation, perform housework to maintain her residence, move about indoors and outdoors, perform personal hygiene and self care, and relate to, communicate or interact with others effectively.

The Ministry's position is that the majority of daily living activities are performed independently or require little help from others. Therefore, the information from the prescribed professional does not establish that the Appellant's impairment significantly restricts daily living activities either continuously or periodically for extended periods.

The Panel's Findings

Section 2(2)(b) of the EAPWDA requires a prescribed professional's opinion that the Appellant's severe impairments directly and significantly restrict her daily living activities. In this case, the Appellant's family doctor is the prescribed professional. He completed the PR and the AR and provided detailed information about the Appellant's restrictions in a letter dated January 17, 2013. At the beginning of that letter, the doctor described the Appellant's diagnoses and then wrote "Please note that when considered in combination these diagnoses significantly restrict independent function on a persistent and daily basis resulting in the need for ongoing support and assistance".

The activities the doctor noted as being restricted periodically in the PR are personal self care, meal preparation, basic housework, daily shopping, mobility outside the home, use of transportation and social functioning. In the AR, the doctor reported continuous assistance required for laundry, for basic housekeeping (done by family) and for carrying purchases home (done by family), and periodic assistance required for going to and from stores, for food preparation and cooking, for getting in and out of a vehicle, for making appropriate social decisions and for the ability to deal appropriately with unexpected demands. The Appellant also has marginal functioning with her immediate social network and very disrupted functioning with her extended social network. The doctor noted that friends and family assist with ensuring safety and basic socialization. The doctor also wrote that the Appellant needs assistance with "mobility outside of home, shopping, meals, laundry [and] social". He added that "severe anxiety complicates assistance" and there are significant multi-factors in impairment.

Although there are a few differences between the PR and the AR as to which activities are noted as restricted, the Panel finds that overall, when his narratives and his January 2013 letter are also considered, the doctor generally reported the same restrictions. The Panel also finds that the January 2013 letter provides more recent and more detailed information about the Appellant's circumstances and therefore gives it more weight than the PR and the AR. In that letter, the doctor specifically described which activities are restricted and to what degree. He wrote "she is often confined to her home for extended periods and is unable to meet basic daily functional requirements", "she is unable to independently shop for personal needs and relies on support from friends and family with attending appointments", "has limited short term memory and requires the support of her family to ensure that she is meeting her responsibilities on a frequent and ongoing basis", "she requires frequent and continuous assistance to perform basic housekeeping and has significant difficulty with bending and lifting", "she requires continuous assistance with meal preparation and cleanup", "she is physically unable to transport groceries alone and must rely on support while shopping for personal needs", "she frequently depends on her family to assist her with the vast majority of her transportation outside of the home" and "she is highly dependent on her family to complete activities requiring communication and interaction, basic housekeeping, transportation, meal preparation, and basic personal management".

The Panel finds that the doctor, the prescribed professional, clearly spelled out how the Appellant's combined medical conditions impact her ability to manage her daily living activities on a frequent,

persistent and daily basis. In fact, he added "It is my opinion that without significant support [the Appellant] would not be able to complete many of the most basic daily activities required to subsist at an adequate level". Therefore, on the basis of all of the prescribed professional's evidence, the Panel finds that it was not reasonable for the Ministry to conclude that the Appellant did not meet the requirements of section 2(2)(b)(i) of the EAPWDA.

Help with Daily Living Activities

The Appellant's advocate argued that the doctor indicated that significant assistance is required in seven of the legislated daily living activities and the frequency of assistance needed is noted as periodic or continuous. The doctor also provided information about the help that family and friends provide to the Appellant.

The Ministry's position is that because it has not been established that daily living activities are significantly restricted, it cannot be determined that significant help is required from other persons. No assistive devices are required.

The Panel's Findings

Section 2(2)(b)(ii) of the EAPWDA also requires the opinion of a prescribed professional to confirm that, in this case, because of her restrictions the Appellant requires significant help or supervision from others. The Panel finds that the family doctor, the prescribed professional, provided detailed evidence about the help that the Appellant needs and obtains from others. In the AR, the doctor wrote for laundry and basic housekeeping - done by family, for going to and from stores - help by family, for carrying purchases home - done by family, for social functioning - friends help with safety, and friends and family assist with safety and basic socialization. He wrote that assistance is necessary with mobility outside of the home, shopping, meals, laundry and social networks. In the January 2013 letter, the doctor provided the following descriptions of the help the Appellant needs: "she is unable to independently shop for personal needs and relies on support from friends and family with attending appointments", "has limited short term memory and requires the support of her family to ensure that she is meeting her responsibilities on a frequent and ongoing basis", "she requires frequent and continuous assistance to perform basic housekeeping", "she requires continuous assistance with meal preparation and cleanup" and "she is physically unable to transport groceries alone and must rely on support while shopping for personal needs".

Notably, the doctor specifically wrote that the Appellant "is highly dependent on her family to complete activities requiring communication and interaction, basic housekeeping, transportation, meal preparation and basic personal management. It is my opinion that without significant support [the Appellant] would not be able to complete many of the most basic daily activities required to subsist at an adequate level". Based on all of this evidence from the prescribed professional, the Panel finds that it was not reasonable for the Ministry to conclude that the Appellant does not require the significant help or supervision of another person to perform restricted daily living activities.

Conclusion

After considering all of the evidence and the applicable legislation, the Panel finds that the Ministry's reconsideration decision was not reasonably supported by the evidence. Therefore, the Panel overturns that decision in favour of the Appellant and she is successful in her appeal.