

PART C – Decision under Appeal

The decision under appeal is the Ministry of Social Development and Social Innovation (the ministry) reconsideration decision dated October 8, 2013 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:

- the appellant has a severe physical or mental impairment;
- 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; and,
- as a result of these restrictions, 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.

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 included the Person With Disabilities (PWD) Application comprised of the applicant information dated May 13, 2013, a physician report (PR) dated May 13, 2013 and an assessor report (AR) dated May 23, 2013, both completed by the appellant's family physician of approximately 4 years, as well as the following:

Request for Reconsideration letter dated September 25, 2013 from the appellant and her advocate also signed by her physician and attaching page 10 of the PR and pages 16 and 19 of the AR, with changes made to the assessments and initialed by the physician.

Diagnoses

The appellant has been diagnosed by her general practitioner with chronic anxiety with an onset of October 2003 and low back pain/ sciatica, with an onset of November 2012.

Physical Impairment

- In the health history, the general practitioner wrote that the appellant has lower back pain radiating to her right leg since November 2012 "...which precludes standing, sitting or walking for more than 1 hour."
- The general practitioner reported that the appellant has not been prescribed any medications or treatments that interfere with her ability to perform her daily living activities (DLA) and she does not require a prosthesis or aid for her impairment.
- Functional skills reported in the PR indicated that the appellant can walk 4 or more blocks unaided on a flat surface, climb 5 or more steps unaided, she can lift 7 to 16 kg (15 to 35 lbs.) and can remain seated 1 to 2 hours.
- In the additional comments to the PR, the general practitioner responded to the request for information relevant to an understanding of the significance of the appellant's medical condition, the nature and extent of the impairment and the impact these have on her daily functioning by writing: "well outlined in patient's description of limitations."
- In the AR, the general practitioner assessed the appellant as independent with walking indoors and outdoors and standing. The general practitioner assessed the appellant as requiring periodic assistance from another person with climbing stairs and lifting and carrying and holding. Although it appears that there are comments added, these are too faint to be legible, and the author is unknown.
- The general practitioner noted "N/A" or not applicable to the section of the AR relating to assistance provided through the use of an assistive device.
- In her self-report, the appellant wrote that she is unable to sit for 2 hours at a time, that she can manage 4 to 6 blocks walking, after which her legs starts to tighten and become painful. She can only stand for 45 minutes to an hour at a time.
- The appellant wrote that she is taking medication which helps with the pain but does not make the issue go away.
- In the letter dated September 25, 2013, the advocate wrote that the appellant walks 2 to 3 blocks but her pain starts in the third block, and she feels pain after lifting 14 lbs. and she tries to avoid lifting. The appellant can only sit less than 1 hour and usually after 45 minutes her back is painful. The appellant has difficulty walking up stairs, can only do 2 to 5 steps and feels pain about the fourth step and holds on to the rail for assistance.
- The advocate wrote that the appellant has approximately 20 bad days per month.
- In the new page from the PR, the general practitioner changed his assessment of the appellant's functional skills to being able to walk 2 to 4 blocks unaided, to climb 2 to 5 stairs, and to remain seated less than 1 hour. His assessment for lifting has not changed.

Mental Impairment

- In the PR, the general practitioner commented in the health history: "chronic anxiety since [teen years] which impairs the patient's ability to be in crowds, public places and hence limits ability to work with the public or use public transportation."
- The general practitioner reported significant deficits with cognitive and emotional function in the areas of emotional disturbance and attention or sustained concentration, with no further comments added.
- The general practitioner indicated that the appellant does not have difficulties with communication and, in the assessor report, that she has a good ability to communicate in all areas.
- In the additional comments to the PR, the general practitioner responded to the request for information relevant to an understanding of the significance of the appellant's medical condition, the nature and extent of the impairment and the impact these have on her daily functioning and wrote: "well outlined in patient's description of limitations."
- In the AR, the general practitioner assessed a major impact with cognitive and emotional functioning in the area of emotion as well as a moderate impact in bodily functions and minimal or no impacts to the remaining 11 areas of functioning. The general practitioner provided no further comment.
- The general practitioner indicated that the appellant functions independently in 3 of 5 areas of social functioning, including making appropriate social decisions, interacting appropriately with others and securing assistance from others. The appellant requires periodic support/ supervision in the areas of developing and maintaining relationships (note added: "anxiety can preclude trust, intimacy") and dealing appropriately with unexpected demands (note: "can decompensate when unexpected stress occurs").
- The general practitioner assessed marginal functioning in both her immediate social network with a comment: "recently exposed to physical/emotional abuse from ex-partner." The general practitioner also assessed marginal functioning in her extended social networks and commented: "hampered issues with trusts."
- In her self-report, the appellant wrote that she was diagnosed with Social Anxiety Disorder in her teens and she was taught "coping mechanisms" which worked right up until she had her son and, since then, she has only been able to hold two jobs for 3 months at a time.
- The appellant wrote that her anxiety has lead her to suffer from agoraphobia and that she finds her anxiety causes her to take twice as long to get things done.
- In the letter dated September 25, 2013, the advocate wrote that there is new medical information confirming the appellant has Post Traumatic Stress Disorder (PTSD) which was diagnosed in mid-August 2013. The advocate wrote that the diagnosis intensifies the appellant's anxiety and insomnia. The appellant has a hard time concentrating, lack of motivation, emotional instability, and severe environmental stresses. She continues to be agitated and nervous.
- In the new pages from the AR, the general practitioner has added a significant deficit with cognitive and emotional functioning in the areas of memory and motivation. The impacts to cognitive and emotional functioning have changed for bodily functions, from moderate to major, for attention/concentration from no impact to moderate, for memory from no impact to moderate and for motivation from minimal impact to major impact.
- For social functioning, the general practitioner has changed his assessment of the appellant's ability to interact appropriately with others from independent to needing periodic support/ supervision and noted "form corrected."

Daily Living Activities (DLA)

- In the PR, the general practitioner reported that the appellant is restricted on a periodic basis in the areas of basic housework, daily shopping, mobility outside the home and use of transportation. For an explanation of "periodic", the general practitioner wrote: "1) shopping and housework not possible on bad days re back pain, 2) mobility/ transportation hampered by anxiety and fear of crowds, i.e. public

transport." Regarding the degree of restriction, the general practitioner wrote: "well described in patient's letter (attached)."

- The general practitioner reported that the appellant is not restricted in the areas of personal self care, meal preparation, management of medications, mobility inside the home, management of finances, and social functioning.
- In the AR, the general practitioner indicated that all tasks of the DLA personal care, meals, management of finances and medications are performed independently with no need for assistance.
- The appellant is assessed as requiring periodic assistance from another person with basic housekeeping and with 1 of 3 tasks of transportation, being using public transit. The comments regarding housekeeping are illegible as appearing very faint on the page, have an unknown author and, with respect to using public transit, state: "has hard time with public (illegible)"
- The general practitioner indicated that the appellant requires continuous assistance from another person with 2 of 5 tasks of shopping, in particular going to and from stores and carrying purchases home and the related comments are illegible as appearing faint on the page. The appellant is assessed as requiring continuous assistance with using transit schedules and arranging transportation, with the comment added: "relies on relatives for transportation."
- In her self-report, the appellant wrote that she finds that her anxiety causes her to take twice as long to get things done. Simple things, like going grocery shopping, are a much bigger feat for her. The appellant wrote that she can easily get herself dressed and ready but convincing herself that it will be a quick trip to the store ends up leading to small anxiety-induced issues (feeling nervous, tight chest and light-headed) and ends up taking twice as long to get out the door.
- The appellant wrote that if she has lots of errands to deal with at once, she has to ask for assistance from family members or friends for familiar faces, which helps, and who help if her anxiety worsens.
- The appellant wrote that this only effects her and has no effects on her young child or her parenting abilities. When she takes her son to new places, she takes family and friends along which helps her agoraphobia anxiety issues.
- In the letter dated September 25, 2013, the advocate wrote that during the approximate 20 bad days per month, the appellant needs assistance from family and friends for shopping, housework, mobility and transportation. Approximately 60 hours per week.
- The advocate wrote that as bad days are over 20 days a month, the appellant relies on the assistance of her family and friends to do her DLA. "This assistance averages out to approximately 3 hours per day. For other DLA she takes significantly longer, or unable. Approximately 2 to 3 times longer than typical."
- The general practitioner signed a statement in the letter that the appellant gets assistance from family and friends over 20 days a month to assist with completing her DLA.

Need for Help

- In the reports included in the PWD application, the general practitioner indicated that the appellant does not require an aid for her impairment, or any assistive device.
- The general practitioner indicated in the AR that the appellant lives alone and help required for DLA is provided by family and friends with a note that "full time childcare assistance is not available."

In her Notice of Appeal, the appellant expressed her disagreement with the reconsideration decision. She wrote that she believes that not everything is being taken into proper consideration and she would like to verbally explain her disability.

The appellant stated that she was not able to get a hold of the advocate who had helped prepare the additional letter but the appellant confirmed that she wished to proceed with the hearing and she was prepared to represent herself. The appellant consented to the attendance of a ministry observer at the hearing.

At the hearing, the appellant stated that:

- With respect to the suggestion by the ministry that a personal grocery cart would help to transport purchases home when shopping, this would be impossible for her. The appellant stated that she already pushes her son in a stroller and puts groceries in the basket and there is no way she could push another cart full of groceries.
- She had been assaulted by her ex-partner and this physical abuse followed a long period of emotional abuse and started the PTSD symptoms and a diagnosis. The PTSD makes her insomnia worse since she gets flashbacks of the assault and starts to cry and this makes her anxiety worse. Even talking about it makes her feel emotional. It makes it harder to fall asleep and to stay asleep. She wakes up with anxiety, has a panic attack and then is mentally alert and cannot fall back to sleep.
- Since she only gets 4 to 6 hours of sleep on a good night, she is mentally and physically exhausted, her motivation is gone and only those things that really need to get done, get done.
- The appellant stated that anyone who has cared for a young child knows how difficult and exhausting it can be.
- She has a hard time expressing herself and she found that, even with the advocate and the doctor helping her with the additional information, she feels that some things have still been overlooked.
- Although she can walk 2 to 4 blocks, the sciatica issue starts to cause pain after 2 blocks and she has to push through the pain if she has to walk to the store to get milk for her son, for example.
- She is unable to work since the subsidy only pays for day care or preschool and she is trained for an occupation that does not offer 9:00 am to 5:00 pm hours. She mentions her inability to work because the financial stress adds to her overall stress level and makes her insomnia worse.
- Her parents live about 3 blocks away from the appellant's residence. If they are having a family dinner, her mother will pick her up rather than have her walk that distance. She has to take it slowly getting in and out of a vehicle because of her back pain. Her parents do not have the option of having the appellant and her son live with them.
- She avoids using public transportation but, if she has to, she can use it if she has someone with her. Getting on a bus can cause a panic attack and then she will lose motivation for the rest of the day.
- It is difficult to take her son to the park because she starts to over-analyze what will happen and this can induce a panic attack. She learned coping mechanisms as a teenager and one thing that helps is carrying her iPod with her and listening to music to distract her attention. She can take her son to preschool.
- She is frustrated that the doctor did not provide more information but the whole process has been rushed. She was diagnosed with PTSD after the PWD application was submitted. Her doctor confirmed over the telephone with the advocate that she has been diagnosed and was supposed to provide a letter but nothing was sent. She feels it is not right that she could be "screwed" because of the way the doctor answered the questions.
- Although her insomnia and agoraphobia were not mentioned in the doctor's reports, she talked about it in her letter and the doctor confirmed the information. The doctor underlined sleep disturbance under impacts to bodily functions in the AR. Her doctor often wants her to try other techniques rather than medication, like yoga, but it does not help. He eventually prescribed a medication and wanted a follow-up, but he has since retired and she has been waiting for an appointment with his replacement. He has been her doctor since she was a teenager but she went to another province for a couple of years and his office records started in 2009.
- When the advocate asked her about her "bad days," she meant that due to both her mental and physical conditions she has a difficult time, but it is mostly due to her anxiety. This varies week-by-week but it is roughly 20 days each month that she has these bad days. Sometimes she can have a panic attack every day because of the PTSD. Something like fireworks will trigger her PTSD, then she has flashbacks of her assault and she has an anxiety attack.
- In the 20 bad days per month, it is about 80% of the time that she will need assistance from her family and friends to talk her out of a panic attack.
- Her doctor is not sure of the cause of the pain in her low back pain. At first he thought it was a pinched

sciatic nerve that would resolve over time but, because she is still experiencing pain, he has placed her on the waiting list to have an MRI to look into it further. She may need surgery.

- For her DLA, she can shower and get herself ready and she can cook. Cleaning "is a hassle" but she can clean up small messes, if her son spills something for example, but her mother comes over once a week and does the heavier cleaning. Her mother will also take her laundry and do it at her place to save her some expense, but the appellant will fold the laundry.
- She can manage her medications because she is not taking that many and it is straightforward.
- For shopping, she has family or friends go with her. They also help with transportation.
- Her residence is an apartment that is all on one level so she has no stairs to climb and can get around.
- For social functioning, she has family and friends that support her but she does not go out socially.

The ministry relied on its reconsideration decision.

PART F – Reasons for Panel Decision

The issue on the appeal is whether the ministry's reconsideration decision, which found the appellant is not eligible for designation as a person with disabilities (PWD), was reasonably supported by the evidence or was a reasonable application of the applicable enactment in the circumstances of the appellant. The ministry found that the appellant does not have a severe mental or physical impairment and that her 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

In the reconsideration decision, the ministry considered the new submission prepared by the appellant's advocate and signed by the general practitioner on September 25, 2013 in conjunction with the original PWD application. While the ministry addressed the new information provided by the doctor in the amended pages of the PR and AR, there was little weight placed on the evidence provided by the advocate regarding the appellant's need for assistance. The appellant stated that the doctor confirmed the PTSD diagnosis with the advocate over the telephone and was going to provide a separate letter but had retired and no letter was sent. The appellant stated that the process was rushed because her doctor was retiring and she was frustrated because the information was not as complete as it could have been.

Panel decision

The panel finds that the information provided by the advocate consists of three parts, being written submissions by the advocate also signed by the appellant, a signed statement by the general practitioner, and three pages from the PWD application which have been amended by the general practitioner and initialed by him. The panel finds that the evidence in the written submissions by the advocate is essentially an additional self-report by the appellant and is, therefore, not the evidence of a prescribed professional. The signed statement by the general practitioner adds some detail about the assistance received by the appellant with DLA. For the amendments made by the general practitioner to the PR, the advocate explained that the appellant "was very honest when answering the questions from the Doctor, she should have explained the pain level to him," and implies that the new assessment reflects the appellant's experience of pain with these activities. However, the panel finds that the new evidence provided by the advocate regarding functional skills is not consistent with either the evidence of the appellant in her original self-report, or with the general practitioner in his revised assessment and, therefore, placed little weight on this information.

For the amendments to the AR, the impacts to cognitive and emotional functioning have been changed in several areas, such as a change from no impact to a moderate impact in the area of memory, with no notes provided by the general practitioner. The assessment of social functioning was amended in the area of interacting appropriately with others from independent to a need for periodic support/ supervision and the general practitioner wrote "form corrected." The appellant stated that a recent physical assault resulted in a diagnosis of PTSD, which has aggravated her anxiety and insomnia, and the ministry appears to have accepted the amended assessments by the general practitioner as reflecting an exacerbation in the appellant's condition. The panel finds that the explanations for the changes in the assessment, as provided by the advocate and the appellant as well as the general practitioner, while wanting in detail from the general practitioner, together provide a reasonable basis for the ministry to weigh the new information relating to cognitive and emotional functioning along with that in the PWD application.

Severe Physical Impairment

The appellant's position is that a severe physical impairment is established by the evidence of low back pain. The advocate argued, in the letter dated September 25, 2013, that the appellant can walk 2 to 3 blocks but

her pain starts in the third block, and she tries to avoid lifting as she feels pain after lifting 14 lbs. The advocate argued that the appellant can only sit less than 1 hour and usually after 45 minutes her back is painful. She has difficulty walking up stairs, can only do 2 to 5 steps and feels pain about the fourth step and holds on to the rail for assistance. The advocate argued that the appellant has approximately 20 bad days per month.

The ministry's position is that the functional skill limitations reported by both the appellant and the general practitioner are not significantly restricted and are more in keeping with a mild impairment. The ministry argued that, in terms of physician functioning, the general practitioner indicated that the appellant is able to walk 2 to 4 blocks unaided, to lift 15 to 35 lbs. and to sit for less than an hour. The ministry pointed out that in the appellant's self-report, she stated that she is able to sit no more than 2 hours at a time, to walk 4 to 6 blocks before her leg starts to hurt and to stand for about 45 minutes to an hour after which she needs to take a break. The ministry argued that the appellant does not routinely use an assistive device to help compensate for an impairment. The ministry argued that the appellant is assessed as independently able to walk indoors and outdoors, with periodic help to climb stairs and to lift/carry/hold.

Panel Decision

The diagnosis of a medical condition is not itself determinative of a severe impairment. To assess the severity of an impairment one must consider the nature of the impairment and its impact on the appellant's ability to manage her DLA as evidenced by functional skill limitations, the restrictions to DLA, and the degree of independence in performing DLA. The ministry describes this approach well when it defines the word "impairment" in the physician report as being "a loss or abnormality of psychological, anatomical or physiological structure or function causing a restriction in the ability to function independently, effectively, appropriately or for a reasonable duration." This definition is not set out in legislation and is not binding on the panel, but in the panel's view it quite appropriately describes the legislative intent.

The legislation clearly provides that the determination of severity of impairment is at the discretion of the minister, taking into account all of the evidence including that of the appellant. However, the legislation is also clear that the fundamental basis for the analysis is the evidence from a prescribed professional respecting the nature of the impairment and its impact on daily functioning.

The medical practitioner, the appellant's general practitioner of more than 4 years, diagnosed the appellant with low back pain/ sciatica, with an onset of November 2012. In the PR, the general practitioner wrote that the appellant has lower back pain radiating to her right leg "...which precludes standing, sitting or walking for more than 1 hour." At the hearing, the appellant stated that her doctor is not sure of the cause of the pain in her low back pain, that at first he thought it was a pinched sciatic nerve that would resolve over time but, because she is still experiencing pain, he has placed her on the waiting list to have an MRI to look into it further. In the updated page from the PR, the general practitioner changed his assessment of the appellant's functional skills to being able to walk 2 to 4 blocks unaided, to climb 2 to 5 stairs, and to remain seated less than 1 hour, and has left his assessment of ability to lift at 7 to 16 kg (15 to 35 lbs.). In the additional comments in the PR, the general practitioner responded to the request for information relevant to an understanding of the significance of the appellant's medical condition, the nature and extent of the impairment and the impact these have on her daily functioning and wrote: "well outlined in patient's description of limitations." In the appellant's self-report, described her limitations as being unable to sit for no more than 2 hours at a time, that she can manage 4 to 6 blocks walking after which her legs starts to tighten and become painful and that she can only stand for 45 minutes to an hour at a time. At the hearing, the appellant stated that although she can walk 2 to 4 blocks, the sciatica issue starts to cause pain after 2 blocks and she has to push through the pain if she has to go to the store to get milk for her son, for example.

In the AR, the general practitioner assessed the appellant as independent with walking indoors and walking outdoors and standing. The general practitioner assessed the appellant as requiring periodic assistance from another person with climbing stairs and lifting and carrying and holding and, although there are further

comments added, these are not legible. The panel finds that the requirement for assistance would be for those skills outside the appellant's range of abilities in lifting 15 to 35 lbs. or climbing more than 2 to 5 stairs. While the advocate argued, in the written submission dated September 25, 2013, that the appellant has approximately 20 bad days per month, the appellant stated at the hearing that these relate mostly to her panic attacks as a result of her chronic anxiety and it is, therefore, difficult to determine the extent of the appellant's need for assistance in these areas. The appellant does not use an assistive device or an aid to help compensate for her impairment. Considering all the evidence presented by the general practitioner together with that of the appellant, the panel finds that the ministry reasonably determined that the appellant's level of independent physical functioning does not establish that the appellant has a severe physical impairment under section 2(2) of the EAPWDA.

Severe Mental Impairment

The appellant argued that a severe mental impairment is established by the general practitioner's diagnosis of chronic anxiety, insomnia and PTSD, and the evidence that these conditions are affecting the appellant's day-to-day functioning significantly. The advocate argued, in the letter dated September 25, 2013, that the PTSD intensifies the appellant's anxiety and insomnia and the appellant has a hard time concentrating, lack of motivation, emotional instability, and severe environmental stresses.

The ministry's position is that a severe mental impairment has not been established by the information provided. The ministry argued that the general practitioner reported major impacts to cognitive and emotional functioning in the areas of bodily functions, emotion, and motivation, with moderate impact to attention/concentration and memory, and that there are a number of aspects with no impact at all. The ministry argued that the general practitioner reported no restrictions to social functioning and no difficulties with communication. The ministry argued that the appellant's anxiety would likely be heightened by situational stressors, such as having recently been exposed to physical/emotional abuse from her ex-partner and financial stress from being an unemployed single parent, although she is in receipt of regular income assistance. The ministry acknowledged that the appellant's symptoms may impact certain types of employment but noted that an application for PWD is not intended to assess employability or vocational abilities.

Panel Decision

The general practitioner diagnosed the appellant with chronic anxiety with an onset of October 2003 "which impairs the patient's ability to be in crowds, public places and hence limits ability to work with the public or use public transportation." In her self-report, which the general practitioner endorsed, the appellant wrote that her anxiety has lead her to suffer from agoraphobia. Although the advocate and appellant also referred to a diagnosis of PTSD, the general practitioner has not provided an opinion that this condition is likely to continue for at least 2 years. The panel finds that only the conditions confirmed by the medical practitioner as likely to continue for 2 or more years can be considered as meeting the legislative criteria of sufficient duration. The appellant also wrote that she was taught "coping mechanisms" in her teens to cope with her anxiety and these worked until she had her son and, since then, she has only been able to hold two jobs for 3 months at a time. The appellant stated that she mentioned her difficulties with maintaining employment to explain the financial stress that she is also under as a single parent.

In the AR, the general practitioner assessed a major impact with cognitive and emotional functioning in the area of emotion as well as a moderate impact in bodily functions and minimal or no impacts to the remaining 11 areas of functioning and no further comment. The appellant pointed out at the hearing that the general practitioner underlined the words "sleep disturbance" under bodily functions to indicate her difficulties with insomnia. In the new pages from the AR completed September 25, 2013, the general practitioner has amended his assessment of impacts to cognitive and emotional functioning in the areas of bodily functions, which has changed from moderate impact to major, for attention/ concentration from no impact to moderate impact, for memory from no impact to moderate impact, and for motivation from minimal impact to major impact.

For social functioning, the general practitioner indicated in the PR that there are no restriction and, in the AR, that the appellant functions independently in 3 of 5 areas of social functioning, including making appropriate social decisions, interacting appropriately with others and securing assistance from others. The general practitioner reported that the appellant requires periodic support/ supervision in the areas of developing and maintaining relationships and dealing appropriately with unexpected demands (note: "can decompensate when unexpected stress occurs"). The general practitioner assessed marginal functioning in the appellant's immediate social network with a comment: "recently exposed to physical/emotional abuse from ex-partner." The general practitioner also assessed marginal functioning in her extended social networks and commented: "hampered issues with trusts." The appellant stated at the hearing that she has close family and friends that assist her but she does not go out socially.

In the new assessment dated September 25, 2013, the general practitioner indicated that the appellant's ability to interact appropriately with others has changed from independent to needing periodic support/ supervision; however, the general practitioner did not provide additional comments about how often this periodic support or supervision is needed by the appellant or for how long. The panel finds that the comments made by the general practitioner indicate that the appellant's anxiety is exacerbated by situational stressors, or "unexpected stress", such as having recently been exposed to physical/emotional abuse from her ex-partner. At the hearing, the appellant explained that her "bad days" are mostly due to her anxiety and this varies week-by-week but it occurs roughly 20 days each month. In the 20 'bad days' per month, it is about 80% of the time that she will need assistance from her family and friends to talk her out of a panic attack. The appellant stated that she has learned coping techniques, such as listening to music on her iPod, when she goes out so that she can take her young child to school or to the park.

The general practitioner reported that the appellant has no difficulties with communication and has a good ability in all areas. In the AR, the general practitioner indicated that the appellant independently manages all of the listed "mental" tasks of daily living, including making appropriate social decisions, making appropriate choices and paying for purchases when shopping, managing her medications, and conducting her banking and budgeting. Given the evidence from the general practitioner that the appellant is reasonably independent in managing her daily functioning, and the evidence of the appellant that there are no effects on her parenting and ability to care for her young child, the panel finds that the ministry reasonably determined that the information provided did not establish a severe mental impairment under section 2(2) of the EAPWDA.

Restrictions in the ability to perform DLA

The appellant's position is that her physical and mental impairments directly and significantly restrict her ability to perform DLA on an ongoing basis to the extent that she requires the significant assistance of another person. The advocate argued that the court decision in *Hudson v. EAAT* (2009) BCSC 1461 is authority for the position that there must be evidence from a prescribed professional indicating a direct and significant restriction on at least two DLA and there is no statutory requirement that more than two DLA be restricted.

The ministry's position is that as the majority of DLA are performed independently or require little help from others, the information from the prescribed professional does not establish that impairment significantly restricts DLA either continuously or periodically for extended periods. The ministry argued that the general practitioner indicated that periodic help is needed with laundry, basic housekeeping and using public transit and continuous help is required to go to and from stores, to carry purchases home and to use transit schedules and that the need for help from others is for longer distances and heavier items outside the appellant's functional skills' range. The ministry argued that there is no description of the degree and duration of the support/ supervision required with aspects of social functioning and no information describing the need for psychiatric assessment.

Panel Decision

The evidence of the appellant's general practitioner is that the appellant is not restricted in several DLA, with no need for assistance with personal care, meals, management of finances and medications. In the AR, the general practitioner assessed the appellant as independent with walking indoors and outdoors and, in the amended PR, that she can walk 2 to 4 blocks unaided. The appellant is assessed as requiring periodic assistance from another person with basic housekeeping and the appellant stated that her mother comes once a week to do the heavier cleaning. She also requires periodic assistance with using public transit which the appellant explained as accompanying her so that she does not have a panic attack. In the PR, in explaining the periodic restrictions noted, the general practitioner wrote: "1) shopping and housework not possible on bad days re back pain, 2) mobility/ transportation hampered by anxiety and fear of crowds, i.e. public transport." In the letter dated September 25, 2013, the advocate wrote that during the approximate 20 bad days per month, the appellant needs assistance from family and friends for shopping, housework, mobility and transportation. The general practitioner signed a statement in the letter that the appellant gets assistance from family and friends over 20 days a month to assist with completing her DLA. At the hearing, the appellant stated that in the 20 bad days per month, it is about 80% of the time that she will need assistance from her family and friends to talk her out of a panic attack. However, in the PR the general practitioner related the appellant's bad days to her back pain, and the panel finds that the information regarding the need for periodic assistance is not sufficiently consistent to allow the ministry to determine that that it is required for extended periods of time for these tasks of DLA. Continuous assistance is indicated by the general practitioner for two of 5 tasks of shopping, going to and from stores and carrying purchases home, and with one of three tasks of managing transportation, namely using transit schedules and arranging transportation.

For those DLA which relate to a mental impairment, the appellant is assessed in the AR as independent with making appropriate social and financial decisions and with communicating with others, as well as with securing assistance from others. While the general practitioner indicated in the updated page from the AR that appellant now requires periodic support/supervision to interact appropriately with others, whereas she had been independent, there is no additional narrative provided by the general practitioner allow the ministry to gauge the nature and extent of the assistance required. The advocate argued that the court decision in *Hudson v. EAAT* (2009) BCSC 1461 is authority for the position that there is no statutory requirement that more than two DLA to be restricted; however, the panel finds that the ministry reasonably exercised its discretion to determine that the evidence from the prescribed professional is not sufficient to establish the necessary degree of restriction to the appellant's ability to perform DLA overall, having considered her functioning in all the listed tasks of DLA. The panel finds that the ministry reasonably concluded that there is not enough evidence from the prescribed professionals to establish that the appellant's impairment significantly restricts her ability to manage her DLA either continuously or periodically for extended periods, thereby not satisfying the legislative criterion of section 2(2)(b)(i) of the EAPWDA.

Help to perform DLA

The appellant's position is that she requires the significant assistance of another person to perform DLA.

The ministry's position is that because it has not been established that DLA are significantly restricted, it cannot be determined that significant help is required.

Panel Decision

Section 2(2)(b)(ii) of the EAPWDA requires that, as a result of direct and significant restrictions in the ability to perform DLA, a person requires help to perform those activities. Help is defined in subsection (3) as the requirement for an assistive device, the significant help or supervision of another person, or the services of an assistance animal in order to perform a DLA.

The evidence of the prescribed professionals establishes that the appellant lives alone with her young child and receives assistance required for DLA from her family and friends. The panel finds that the ministry

reasonably determined that as direct and significant restrictions in the appellant's ability to perform DLA have not been established, it cannot be determined that the appellant requires help to perform DLA as a result of those restrictions, as defined by section 2(3)(b) of the EAPWDA.

Conclusion

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