

PART C – Decision under Appeal

The decision under appeal is the Ministry of Social Development and Social Innovation (the ministry) reconsideration decision dated October 1, 2013 which found that the appellant did not meet four 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. However, the ministry was not satisfied that the evidence establishes that:

- in the opinion of a medical practitioner, the appellant's impairment is likely to continue for at least two years;
- 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 ministry did not attend the hearing. After confirming that the ministry was notified, the hearing proceeded under Section 86(b) of the *Employment and Assistance Regulation*.

The evidence before the ministry at the time of the reconsideration decision included the Person With Disabilities (PWD) Application comprising the applicant information dated May 8, 2013, as well as a physician report (PR) and an assessor report (AR) both dated May 8, 2013 and completed by a physician who is a specialist in psychiatry and has known the appellant for approximately 6 months. Also included as evidence were the following:

- 1) Letter dated September 5, 2013 from the psychiatrist; and,
- 2) Request for Reconsideration- Reasons dated September 11, 2013.

Diagnoses

The appellant has been diagnosed by her psychiatrist with MDD [Major Depressive Disorder] with an onset of October 2012.

Duration

- In the PR, in response to the question of whether the impairment is likely to continue for 2 years or more, the psychiatrist checked "no" and commented: "hopefully will improve in next 6 months."
- In the additional letter dated September 5, 2013, the psychiatrist wrote: "it is hard to state the time frame for how long her disability will last" and "I do hope that her situation improves with time, but an exact prognosis cannot be given due to the fact that her symptoms have continued for some time."

Physical Impairment

- The psychiatrist reported in the PR that the appellant has not been prescribed any medication and/or treatments that interfere with her ability to perform her daily living activities (DLA), nor does she 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, and she has no limitations with the amount of lifting or with the time remaining seated.
- In the AR, the psychiatrist assessed the appellant as independent with all mobility and physical ability, including walking indoors and outdoors, climbing stairs, standing, and lifting. The psychiatrist did not assess ability with carrying and holding.
- In her self-report, the appellant wrote that she has chronic neck pain and migraine headaches. In August 2011, she was rear-ended on a highway at a high rate of speed. She has experienced neck pain and severe headaches ever since, making it difficult to do her job. Since August 2011, she has not done more than her modified job and treatments of physio, chiro, massage, and pain management, which have produced no minimizing effects.
- In the psychiatrist's letter dated September 5, 2013, he wrote that the appellant is limited by chronic pain which worsens her mood symptoms significantly.

Mental Impairment

- In the health history, the psychiatrist wrote "MDD of moderate severity: reduced mood, reduced sleep, anhedonia, reduced energy, reduced concentration, increased passive SF [social functioning]. Functionally impaired with social isolation."

- In the PR, the psychiatrist reported significant deficits with cognitive and emotional function in the areas of memory, emotional disturbance, motivation, and attention or sustained concentration, with a comment added: "secondary to MDD."
- In the additional comments to the PR, the psychiatrist reported that the appellant is "currently recovering from MDD of mod [moderate] severity: unable to work at present until in remission."
- The psychiatrist indicated that the appellant does not have difficulties with communication and, in the AR, that she has a good ability to communicate in all areas.
- In the AR, the psychiatrist assessed a major impact with cognitive and emotional functioning in the area of emotion and moderate impacts in attention/concentration and motivation, with minimal impacts in executive and memory and no impacts to the remaining 9 areas of functioning. The psychiatrist did not provide any further comments.
- The psychiatrist indicated that the appellant functions independently in all areas of social functioning, including making appropriate social decisions, developing and maintaining relationships, interacting appropriately with others, dealing appropriately with unexpected demands, and securing assistance from others.
- The psychiatrist assessed marginal functioning in both her immediate and extended social networks, with no comments provided.
- In the additional comments to the AR, the psychiatrist wrote "MDD- mod severity- slow improvement, ongoing impairment in social and occupational functioning."
- In her self-report, the appellant wrote that her chronic pain and severe headaches have led to severe depression and a hopeless feeling.
- In a letter from the psychiatrist dated September 5, 2013, he reported that the appellant suffers from a combination of depression and cluster B personality traits. Of late, she has struggled with numerous psychosocial stressors that have impacted her energy, functioning, motivation, mood, and concentration. She has had partial yet incomplete response to medications. Her functioning continues to be significantly impaired due to symptoms of depression and affective instability.
- The psychiatrist wrote that the appellant's activities, daily living and functioning are impaired at present a significant amount of time in multiple realms. It is at times hard for her to leave the house or to follow through with appropriate psychotherapeutic resources.

Daily Living Activities (DLA)

- The psychiatrist reported in the AR that the appellant is independent in all her DLA, including personal care, basic housekeeping, shopping, meals, paying rent and bills, medications, transportation and social functioning.
- In her self-report, the appellant wrote that with the chronic pain and severe headaches, which are only sometimes controlled by medications, it is a struggle to live a normal, active life.
- In her Request for Reconsideration, the appellant wrote that the chronic pain and migraines have led to post traumatic stress, social anxiety, and severe depression that are affecting her on a daily basis. She has been trying all the offered assistance without much success because in large groups or on public service transit she has fainted from anxiety and hyperventilating. She therefore stays at home in isolation and her safe place.
- In the letter dated September 5, 2013, the psychiatrist wrote that presently the appellant's functioning is limited during a significant amount of her daily activities and that she is chronically impaired. Medication changes and ongoing support to attend psychotherapeutic resources have been recommended and the appellant is doing her best to follow through.

Need for Help

- In the reports included in the PWD application, the psychiatrist indicated that the appellant does not require an aid for her impairment, or any assistive device.

- The psychiatrist indicated in the AR that the appellant lives with family, friends or caregiver and help required for DLA is provided by family, as noted: "currently relies on family for assistance with executive functioning."

In her Notice of Appeal, the appellant expressed her disagreement with the reconsideration decision.

At the hearing, the appellant submitted the following additional documents:

- 1) Letter dated February 3, 2013 from the appellant's family physician prepared as a comprehensive medical legal report regarding the appellant's injuries and complaints relating to a Motor Vehicle Accident (MVA) in which she was involved on August 24, 2011. The general practitioner last saw the appellant on January 17, 2013 and, at that visit, she complained of daily headaches with pain radiating down both arms with decreased upper extremity strength. She was getting little relief of her headaches taking Aleve daily and had been referred to a neurologist because of the persistence of her headaches. The appellant has not been back to work since October 23, 2012 primarily because of depression and anxiety. Her headaches have been exacerbated by her depression and anxiety and have resulted in significant disability. She has been unable to return to her job, and her activities outside her work environment have been significantly curtailed. Her depression and anxiety are being treated with antidepressants and she is currently seeing a counselor as well as a psychiatrist. Until her comorbidities are successfully treated, her prognosis remains guarded;
- 2) Letter dated March 26, 2013 from a neurologist to the general practitioner stating in part that the appellant was in a MVA in the spring of 2010 with transient neck and shoulder pain and then a second MVA in August 2010 (correction noted for 2011) and, since then, she has had daily headaches. Once every two weeks she gets a severe attack and is confined to bed with nausea and photophobia. She also has neck pain but this is not as bad as the headaches, which she treats with medication. The impression is post traumatic headache with migraine;
- 3) Letter dated June 11, 2013 from the same neurologist stating in part that the appellant is taking medication and is improving but still gets daily headaches with migraines every week or week and a half. These respond well to medication. He gave her 200 units of Botox which should be repeated regularly every 3 months and continued for at least 5 to 7 treatments for progressive results;
- 4) Letter dated June 12, 2013 from another neurologist to the appellant advising of the \$125 injection fee for Botox;
- 5) Letter dated October 31, 2013 from the psychiatrist who completed the PR stating in part that the appellant is presently under enormous stress due to chronic pain, migraines, and ongoing depression. She currently continues to have depressive symptoms in the context of numerous family stressors and medical concerns. Her current condition could be considered to be chronic and prolonged. She will be unable to work in the future. Her level of impairment appears to prohibit her from leaving the house at times and causes significant symptoms of anxiety and energy changes. The significant financial burden of her illnesses continues to limit her greatly.

At the hearing, the appellant and her advocate stated that:

- The advocate has been counsel for the appellant regarding a MVA and has been assisting her with a process that has been overwhelming to her. The additional letters provided have been completed with a view to showing the cause for the appellant's injuries, but also providing more detail about her conditions. The difficulty on the MVA litigation is that the appellant had a pre-existing vulnerability to these conditions and the courts have, in these cases, relieved ICBC of liability. The appellant had experienced headaches and some depression prior to the MVA.
- The letter from the psychiatrist shows that he has been treating the appellant for depression and anxiety and that his tone changes, and that he is seeing her more often. While ongoing counseling may often occur with a psychologist, these sessions can cost around \$150, whereas the psychiatrist is covered through the Medical Services Plan.
- In terms of the time horizon of 2 years, the statement by the psychiatrist was highlighted, that he is of the opinion that "she will be unable to work in the future," which is indicative of an indefinite impairment.

- An application was also made for CPP disability benefits but the first application was declined and they will likely apply again. All the avenues of support need to be pursued for mitigation purposes, but the application for PWD was pursued for her immediate financial need.
- The appellant was distraught at the hearing and spoke haltingly. She stated that she has headaches every day and some days they are more severe than others. Some days she cannot get out of bed.
- She cannot be in big crowds. She does not want to go out of the house. She stays at home on the couch or in her bed.
- She takes medication on a daily basis, including pain killers and sleeping pills. The side effects from the medications have included short-term memory loss, fatigue and insomnia. She is trying two different anti-depressants.
- She experiences heightened anxiety when out of the house. For example, she was in a store with another person who walked away at one point. The appellant thought she was going to faint because she became so anxious. If someone tries to talk to her, she has to leave the situation.
- Two years ago, she was healthy and loved her job. Now she cannot drive unless she really has to get somewhere. Often, she will call and cancel an appointment. Her psychiatrist tries to encourage her.
- After the accident, she tried to keep working because she was caring for a quadriplegic and felt a sense of duty to return. The work was very physically demanding, and the appellant's pain got worse. She had to go on sick leave. She tried physiotherapy and muscle massage but nothing was helping. She had headaches that would last 4 to 5 days and she had to be in the dark with no one talking to her.
- Currently, her headaches get worse about every other week and can last for 3 to 4 days.
- She is currently taking a class once a week to assist her in dealing with her depression/anxiety and will start another one next month. She is hoping that with the medications and classes she will be able to stifle some of the emotions that overwhelm her and be able to do some of the things she used to do.
- She has received Botox injections at various points in her head and it is hoped that this treatment will ease her symptoms over time. She has no money coming in, and that is why she had to apply for income assistance.
- With regard to meal preparation, the appellant stated that she never really has much of an appetite. Her roommate makes the meals and helps her with laundry and cleaning. Her room-mate allows her to relax and is the only person she has to talk to. Her room-mate is her life-line right now. She started living with her room-mate in March 2013.
- At the time the psychiatrist completed the PR and AR for the PWD application, she had only seen him about 4 times and he did not know much about her. He has gotten to know her better since then. He did not have a copy of the Medical-Legal Report of the general practitioner dated February 3, 2013.
- She knows that her conditions are getting worse and that the deterioration has accelerated. Due to her social anxiety, when someone says hello to her, she feels she has nothing to say. She does not feel well enough to do anything or go anywhere.

The panel admitted the documentary and oral evidence on behalf of the appellant as further detail of her condition and being in support of the information and records before the ministry on reconsideration, pursuant to section 22(4) of the *Employment and Assistance Act*.

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 that 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 that, in the opinion of a medical practitioner, is likely to continue for at least 2 years, 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.

Duration

The appellant's position is that the psychiatrist stated in the letter dated October 31, 2013 that he is of the opinion that the appellant "...will be unable to work in the future," which is indicative of an indefinite impairment. The advocate also pointed out that the general practitioner stated, in the letter dated February 3, 2013, that the appellant's prognosis remains guarded.

The ministry's position is that the appellant's physician has not indicated that her impairment will continue for two years. The ministry argued that the psychiatrist indicated in the PWD application that the appellant's impairment will hopefully improve in 6 months and, as indicated in the September 5, 2013 letter, that it is hard to state the time frame for how long the appellant's disability will last.

Panel Decision

The legislation requires that, in the opinion of a medical practitioner, the impairment is likely to continue for at least two years. In the physician report dated May 8, 2013, in response to the question whether the impairment is likely to continue for 2 years or more, the general practitioner indicated "no" and commented: "hopefully will improve in next 6 months." In the additional letter dated September 5, 2013, the psychiatrist wrote: "it is hard to state the time frame for how long her disability will last" and "I do hope that her situation improves with time, but an exact prognosis cannot be given due to the fact that her symptoms have continued for some time." In the letter dated October 31, 2013, the psychiatrist stated that the appellant currently continues to have depressive symptoms in the context of numerous family stressors and medical concerns, that her current condition could be considered 'chronic and prolonged' and she 'will be unable to work in the future'. The advocate pointed out, the general practitioner stated, in the letter dated February 3, 2013, that the appellant's prognosis remains guarded. The panel finds that the evidence demonstrates a persistence to the appellant's conditions since the MVA in August 2011 but the information from the medical practitioners falls short of providing an opinion that the appellant's impairment is likely to continue for at least 2 years, as required by the legislation. Therefore, the panel finds that the ministry reasonably determined that the medical practitioner does not confirm that the appellant's impairment will likely continue for 2 years or more.

Severe Physical Impairment

The appellant's position is that a severe physical impairment is established by the evidence of her chronic neck pain and migraine headaches. The appellant argued that she has headaches every day and some days they are more severe than others, that some days she cannot get out of bed.

The ministry's position is that a severe physical impairment has not been established by the information provided. The ministry pointed out that the psychiatrist diagnosed the appellant with MDD and wrote that the appellant has a moderate to severe MDD with decreased mood, sleep, energy, concentration and passive social functioning. The ministry argued that, in terms of physician functioning, the psychiatrist indicated that the appellant is able to walk 4 or more blocks unaided, climb 5 or more steps unaided, and has no limitations in lifting or in remaining seated. The ministry argued that the appellant is assessed as independent in all

aspects of mobility and physical abilities.

Panel Decision

The diagnosis of a medical condition is not in 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 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 psychiatrist, did not diagnose a physical health condition in the PR. In the psychiatrist's letter dated September 5, 2013, he wrote that the appellant is limited by chronic pain which worsens her mood symptoms significantly. In the letter dated February 3, 2013, the general practitioner indicated that the appellant's headaches have been exacerbated by her depression and anxiety and have resulted in significant disability. The neurologist, to whom the appellant was referred, reported in his letter dated March 26, 2013 that once every two weeks the appellant gets a severe attack and is confined to bed with nausea and photophobia. The neurologist's diagnosis is post traumatic migraine headache.

In terms of impact from her conditions, the 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, and that she has no limitations with the amount of lifting or with the time remaining seated. As well, in the AR the psychiatrist assessed the appellant as being independent in all mobility and physical ability, including walking indoors and outdoors, climbing stairs, standing, and lifting, although there was no assessment for carrying and holding. The appellant does not use an assistive device or an aid to help compensate for her impairment. The appellant explained that, at the time the psychiatrist completed the PR and AR for the PWD application, she had only seen him about 4 times and he did not know much about her; however, the psychiatrist's detailed assessment of functional skills was not updated in his October 31, 2013 letter. Considering the evidence currently available, 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's position is that a severe mental impairment is established by the psychiatrist's diagnosis of MDD [Major Depressive Disorder] and the evidence that these conditions are affecting the appellant's day-to-day functioning significantly. The advocate argued that the psychiatrist indicated in his letter dated October 31, 2013 that the appellant's level of impairment appears to prohibit her from leaving the house at times and causes significant symptoms of anxiety and energy changes.

The ministry's position is that a severe mental impairment has not been established by the information provided. The ministry argued that the psychiatrist reported one major impact to cognitive and emotional functioning in the area of emotion, and moderate impacts to attention/concentration and motivation, minimal impacts to executive and memory and no impacts to the remainder of her cognitive and emotional functioning. The ministry argued that the psychiatrist reported no difficulties with communication.

Panel Decision

The psychiatrist diagnosed the appellant with MDD [Major Depressive Disorder] with an onset of October 2012. In the health history, the psychiatrist wrote "MDD of moderate severity: reduced mood, reduced sleep, anhedonia, reduced energy, reduced concentration, increased passive SF [social functioning]. Functionally impaired with social isolation." In the additional comments to the PR, the psychiatrist reported that the appellant is "currently recovering from MDD of mod severity: unable to work at present until in remission." In the AR, the psychiatrist assessed a major impact with cognitive and emotional functioning in the area of emotion and moderate impacts in attention/concentration and motivation, and with minimal or no impacts to the remaining 11 areas of functioning. The psychiatrist did not provide any further comments. In the additional comments in the AR, the psychiatrist wrote "MDD- mod severity- slow improvement, ongoing impairment in social and occupational functioning." Despite the comments about social isolation, the psychiatrist reported that the appellant is independent in all areas of social functioning, including making appropriate social decisions, developing and maintaining relationships, interacting appropriately with others, dealing appropriately with unexpected demands, and securing assistance from others. The psychiatrist assessed the appellant with marginal functioning in both her immediate and extended social networks, with no further comment. The panel finds that, in the PWD application, the psychiatrist characterized the degree of severity of the appellant's condition as moderate, and related her decreased functioning primarily to her inability to work.

In the letter dated September 5, 2013, the psychiatrist reported that the appellant suffers from a combination of depression and cluster B personality traits. He indicated that the appellant struggles with numerous psychosocial stressors that have impacted her energy, functioning, motivation, mood, and concentration and that she has had partial yet incomplete response to medications. The psychiatrist wrote that her functioning continues to be significantly impaired, that her activities, daily living, and functioning are "impaired at present a significant amount of time in multiple realms" and "it is at times hard for her to leave the house." The psychiatrist reported, in his letter dated October 31, 2013, that the appellant is presently under enormous stress due to chronic pain, migraines, and ongoing depression; she continues to have depressive symptoms in the context of numerous family stressors, medical and financial concerns and the possibility that she will be unable to work in the future. At the hearing, the appellant stated that she knows that her conditions are getting worse and the deterioration has accelerated. With her social anxiety, for example, when someone says hello to her, she feels as though she has nothing to say, and she does not want to do anything or go anywhere. While the advocate pointed out that the updated evidence demonstrates a persistence and deterioration in the appellant's mental impairment, the panel finds that the psychiatrist also highlighted situational stressors and did not provide details of the impacts to the appellant's social functioning, or the periodic exacerbations of the appellant's symptoms.

In the PWD application, the psychiatrist reported that the appellant has no difficulties with communication and has a good ability in all areas. In the AR, the psychiatrist 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 more detailed evidence from the psychiatrist that the appellant is independent in all areas of daily functioning, 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, namely her room-mate.

The ministry's position is that as all of the appellant's DLA are performed independently and there was no indication that they take the appellant significantly longer to perform, 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 psychiatrist also indicated that the appellant is independent in all aspects of social functioning and has marginal functioning in both her immediate and extended social networks. The ministry argued that although the psychiatrist wrote in the letter dated September 5, 2013 that the appellant's DLA are impaired significantly in multiple realms and at times it is hard for the appellant to leave the house or follow through with psychotherapeutic resources, no information is provided regarding which DLA the appellant requires assistance with or the type of assistance required.

Panel Decision

The evidence of the appellant's psychiatrist, as the prescribed professional, is that the appellant is independent in performing all of her DLA, including preparing her own meals, managing her personal finances, shopping for personal needs, using public or personal transportation facilities, performing housework to maintain her place of residence in an acceptable sanitary condition, moving about indoors and outdoors, performing personal hygiene and self care, and managing her personal medication. For those DLA which relate to a mental impairment, the appellant is also assessed in the AR as independent in making decisions about her personal activities, care and finances, as well as relating to, communicating or interacting with others effectively.

The appellant pointed out that at the time the PR and AR were prepared by the psychiatrist he did not know the appellant that well and her impairment has worsened over time. In the letter dated September 5, 2013, the psychiatrist wrote that presently the appellant's functioning is limited during a significant amount of her daily activities and that she is chronically impaired; however, no further detail is provided of the particular DLA involved or the extent of the impact. The appellant stated at the hearing that her roommate makes her meals and helps her with doing laundry and cleaning, and she is the only person the appellant has to talk to, that her room-mate is "her life-line right now." The psychiatrist provided an updated letter of October 31, 2013 and reported that the appellant's level of impairment appears to prohibit her from leaving the house at times, and that she is unable to work in the future, but the impacts to DLA, as described by the appellant, are not confirmed by the psychiatrist, as the prescribed professional, as is required by the legislation. Therefore, the panel finds that the ministry reasonably concluded that there is not enough evidence from the prescribed professional 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. The ministry argued that no assistive devices are 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 with family, friends or caregiver and receives assistance required for DLA from her family. The psychiatrist noted that the appellant "currently relies on family for assistance with executive functioning." 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.