

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 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

With the consent of both parties, the hearing was conducted as a written hearing, pursuant to section 22(3)(b) of the *Employment and Assistance Act*.

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 2013, a physician report (PR) and an assessor report (AR) both dated May 14, 2013 and completed by a physician who is a specialist in psychiatry and had known the appellant approximately 6 months. The following were also included:

- 1) Letter dated September 20, 2013 from the psychiatrist who completed the reports for the PWD application;
- 2) Letter dated September 20, 2013 from a social worker who has been providing weekly therapy to the appellant since June 1, 2013 to deal with the posttraumatic stress symptoms related to an assault the appellant experienced in 2007.;
- 3) Letter dated September 16, 2013 from the appellant's mother; and,
- 4) Request for Reconsideration dated September 10, 2013.

Diagnoses

The appellant has been diagnosed by her psychiatrist with MDD [major depressive disorder] with an onset of January 2013, SAD/GAD [social anxiety disorder, general anxiety disorder], C Traits (diagnostic code for personality disorder) with an onset of "many years."

Physical Impairment

- The psychiatrist 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, and she has no limitation with lifting or with remaining seated.
- In the AR, the psychiatrist assessed the appellant as independent in all areas of mobility and physical ability, including walking indoors and outdoors, climbing stairs, standing, lifting and carrying and holding.

Mental Impairment

- In the PR, the psychiatrist commented in the health history: "significant social and occupational dysfunction given significant social anxiety and MDD. Housebound at times and agoraphobic. Very poor functioning in social situations. Low mood, anhedonia, poor concentration, low energy and sleep disruption. Chronic anxiety since teenage years."
- The psychiatrist reported significant deficits with cognitive and emotional function in the areas of emotional disturbance, motivation and attention or sustained concentration, with no further comments added.
- The psychiatrist 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, including speaking, reading, writing and hearing.

- In the additional comments to the PR, the psychiatrist 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: "Chronic impairment for years. Low level of social and occupational function. Slow improvement, but clear disability."
- In the AR, the psychiatrist assessed a major impact with cognitive and emotional functioning in the area of emotion as well as a moderate impact in motivation and minimal or no impacts to the remaining 12 areas of functioning. The psychiatrist commented: "anxiety and MDD causing very limited social function, often times housebound and agoraphobic."
- In her Request for Reconsideration, the appellant wrote that her PTSD, major depressive disorder, paranoia, disorganized thoughts and speech, as well as severe general and social anxiety make it extremely difficult for her to function out in the world, even with support of family. She feels that her memory, judgments, confusion memory loss and other disorders severely impact her activities of daily living and that she requires continuous support, direction and supervision to maintain daily function. She feels that she is not employable or able to live alone.
- In the letter dated September 16, 2013, the appellant's mother wrote that the appellant has been living with her since May 2013 at which time her anxiety, paranoia, and social withdrawal (agoraphobia) made it unsafe for her to continue living alone. At this time, she believes that these disorders along with continued sleep deprivation and depression still have a major impact on her life. The appellant is not employable or capable of living alone. Agoraphobia (fear of social contact) is severe and present on a continual basis. Sleep disorder is chronically debilitating and has been present for more than a year. Her symptomatic responses to anxiety make it unsafe for her to function outside the safety of her home.
- In the letter dated September 20, 2013, the psychiatrist wrote that the appellant continues to suffer from symptoms of generalized anxiety, social anxiety, and major depression. In terms of her mental impairment, her functioning is greatly impacted the majority of the time as she spends a significant amount of the time isolated in her home. She is unable to work. She has significant emotional deficits as a result and this impacts her daily functioning.
- The psychiatrist also wrote in his letter that there is no question that this is a severe mental impairment at present time. Her anxiety is great in social situations. It has been hard for her to function independently without the support of her family. The psychiatrist wrote that the appellant's impairment is chronic although there is hope for gradual improvement as she continues to work on her difficulties.
- In the letter dated September 20, 2013, the social worker wrote that the appellant presents as a very anxious, frightened woman who suffers from paranoia, fear, and severe social anxiety. She describes confused, disoriented thoughts that make it very difficult for her to function out in the world. She is unable to live alone and depends on the support of her parents in order to feel safe. At this point in time, she does not believe the appellant to be employable.

Daily Living Activities (DLA)

- In the AR, the psychiatrist provided a brief summary of the mental or physical impairments that impact the appellant's ability to manage DLA as: "significant MDD, SAD, GAD, anxiety and depression impairing function greatly."
- In the AR, the psychiatrist indicated that all tasks of the DLA personal care, basic housekeeping, meals, management of finances and medications are performed independently

with no need for assistance.

- The appellant is assessed as taking significantly longer than typical with 2 of 5 tasks of shopping, namely going to and from stores and making appropriate choices (note: "limited due to anxiety"), while being independent with reading prices and labels, paying for purchases and carrying purchases home. The psychiatrist included an additional comment that the appellant "often relies on family to help with shopping secondary to anxiety."
- The psychiatrist indicated that the appellant takes significantly longer than typical with 2 of 3 tasks of transportation, in particular using public transit and using transit schedules and arranging transportation (note: "secondary to anxiety").
- With respect to social functioning, the psychiatrist indicated that the appellant functions independently in making appropriate social decisions, and requires periodic support/supervision with developing and maintaining relationships, interacting appropriately with others, dealing appropriately with unexpected demands, and securing assistance from others. The psychiatrist noted: "Anxiety causes her to rely on family." Asked to describe the support/supervision required to help maintain the appellant in the community, the psychiatrist wrote: "ongoing support via family and mental health resources."
- The psychiatrist assessed functioning as 'very disrupted' in both the appellant's immediate and extended social networks.
- In the additional comments to the AR, the psychiatrist wrote: "significant anxiety; greatly diminished functioning. Impairment has been chronic for years."
- In her Request for Reconsideration, the appellant wrote that her judgments, confusion, memory loss and other disorders severely impact her ADL's and she requires continuous support, direction, and supervision to maintain daily functions. She feels she is not employable or that she is able to live alone.
- In the letter dated September 20, 2013, the psychiatrist wrote that the appellant has difficulty looking after her instrumental activities of daily living. She requires assistance for extended periods of time from her family and she is seeing a counselor on a regular basis. It has been hard for her to function independently without the support of her family.

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 alone and help required for DLA is provided by family with a note that "significant reliance on family to help with IADL's [instrumental activities of daily living]."

In her Notice of Appeal, the appellant expressed her disagreement with the reconsideration decision. She wrote that she believes that she has a severe mental impairment that directly and significantly restricts her DLA. Assistance is required with DLA, as a result, from family. The appellant attached a letter dated October 14, 2013 in which her mother wrote:

- The letter from the psychiatrist dated September 20, 2013 should be considered more relevant and accurate of the current situation as he intended to clarify specific issues.
- The appellant has returned to live with her. The appellant is unable to maintain most of the basic DLA (i.e. preparing meals, manage finances, shop for personal needs, moving about outdoors, maintain personal hygiene, manage medications, make decisions, relate, communicate and interact with others, etc.) without significant daily support.

- It became unsafe for the appellant to continue to live alone. The appellant's mother pointed out that the psychiatrist's written comments in the PR and AR support her claims and, in other areas, especially the check marks in the forms, do not correspond and appear contradictory, inconsistent and confusing.

Prior to the hearing, the appellant provided the following additional evidence:

- 1) Letter dated November 1, 2013 from the psychiatrist who completed the reports with the PWD application. The psychiatrist wrote that:
 - He has enclosed an updated PWD application. Since the previous form was filled out, there have been subsequent developments, including more information provided by the appellant and her family.
 - In his opinion, the appellant continues to be significantly impaired by her ongoing mood and anxiety disorders. The impairment appears to be chronic and significantly limits her activities of daily living and functioning.
 - In his opinion, there is no doubt that she should qualify for PWD and the updated application is based on newer information and more collateral information from the appellant and her family;
- 2) Second applicant information, with the following change made: reference is made to the letter from the appellant's mother dated November 1, 2013. In the letter, the appellant's mother wrote that:
 - At the time the psychiatrist prepared his assessment, he was not aware of the recent changes in the appellant's condition, living situation, and daily support requirements. His September 20, 2013 letter was intended to clarify and update that information.
 - This is the second time this year that it has become necessary for the appellant to be moved into her home and, at this time, it seems that it will be a prolonged arrangement. There was a 6-week period when the appellant tried again to live on her own, but it became obvious that she was not capable of maintaining that independence since anxiety, sleep disorder, and agoraphobia issues had become extreme.
 - Symptomatic responses were quite severe and they have a major impact on the appellant's basic DLA, as supported by the psychiatrist and the social worker in their letters.
 - For the past year, and more so over the last 6 months, the appellant's anxiety disorder has been particularly disabling for her. It causes significant impairment to her cognitive functions on a daily basis.
 - The appellant's anxiety can be triggered by a variety of things, i.e. loud or unexplained noises, frightening thoughts or memories, the sight of an unfamiliar vehicle parked near the house, an unexpected visitor at the house, fear of "people" and public places, fear that someone is watching her, fear of being alone. Any of these can cause extreme anxiety during which times her behavior becomes almost "child-like."
 - Agoraphobia is ever present and the appellant is housebound 90% of the time. She has minimal social contact outside of the home and relies on family support to do so.
 - During periods of high anxiety, the appellant is unable to function independently. Her perceptions, judgments and reactions are not reliable. The appellant's mother wrote that she would not trust that the appellant could respond appropriately in an emergency or cognitively demanding situation. She becomes mentally distracted, unable to focus, confused, has difficulty with comprehension, unable to make decisions, and has great difficulty communicating, disjointed speech, incomplete thoughts, irrational/confused thinking. She may become non-verbal and/or reclusive (retreats to her room or to her

bed) for extended periods, unable to relate or interact. Often locked up in her own thoughts and unable to cope, the appellant may be unable to perform (or even to participate in) the most basic of daily functions.

- The appellant requires significant support to help manage anxiety, provide a sense of safety or security, to monitor behavior, provide direction, supervision, motivation and assistance with decision making, planning, meals, shopping, maintaining personal hygiene, maintaining medications and schedules, attending to personal finances and to relate and interact with others.
- The appellant attends one-on-one trauma therapy sessions once per week and has since June 2013. Progress is gradual and therapy may be required for many months or years to come.

3) Second PR, with the following changes made: The psychiatrist made the same diagnoses as in the original PR and added the following assessments:

- In the health history, the psychiatrist added: "Severe social and generalized anxiety, comorbid MDD. Significant and chronic impairments in social and adapting function. Reliant on family for constant care and support."
- The psychiatrist added significant deficits with cognitive and emotional function in the areas of consciousness, executive and memory and added comments: "Severe anxiety significantly impacting above."
- In the additional comments to the PR, the psychiatrist 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 added: "Again, chronic and severe impairment. Mostly housebound secondary to agoraphobia. Relies on family almost constantly for IADL support."

4) Second AR, with the following changes made: The psychiatrist made the same assessment of the appellant's ability to communicate as good in all areas, and as independent in all areas of mobility and physical ability and added the following assessments:

- The psychiatrist assessed major impacts with cognitive and emotional functioning in the areas of bodily functions, emotion, attention/concentration, executive, and motivation as well as moderate impacts in memory and motor activity and minimal or no impacts to the remaining 6 areas of functioning. The psychiatrist commented: "MDD and anxiety causing major impact on sleep, concentration, motivation, planning, organization and self care. Almost totally dependent on family."
- The psychiatrist indicated that all tasks of the DLA personal care remain independent.
- The appellant requires continuous assistance from another person with the DLA basic housekeeping, with no further comment added.
- For shopping, the appellant requires continuous assistance from another person with 3 of 5 tasks, namely going to and from stores, making appropriate choices, and paying for purchases (note: "reliant on family secondary to extreme anxiety and agoraphobia"), while being independent with reading prices and labels, and carrying purchases home. The psychiatrist added a comment that the appellant "cannot go out to stores without family secondary to agoraphobia."
- The appellant requires periodic assistance from another person with 3 of 4 tasks of meals, in particular meal planning, food preparation, and cooking, while being independent with safe storage of food. No further comment is added.
- For paying rent and bills, the appellant requires continuous assistance from another

- person with all tasks, with no further comment provided.
- The appellant requires periodic assistance from another person with 1 of 3 tasks of medications, in particular filling/refilling prescriptions, while being independent with taking medications as directed and safe handling and storage. No other comment is provided by the psychiatrist with this DLA.
 - The psychiatrist indicated that the appellant requires continuous assistance from another person with 2 of 3 tasks of transportation, in particular using public transit and using transit schedules and arranging transportation, while remaining independent with getting in and out of a vehicle. The psychiatrist commented: "Again, severe and chronic anxiety preventing independent function in these areas."
 - With respect to social functioning, the psychiatrist indicated that the appellant does not function independently in any area. She requires periodic support/supervision with making appropriate social decisions, and requires continuous support/supervision with developing and maintaining relationships, interacting appropriately with others, dealing appropriately with unexpected demands, and securing assistance from others. The psychiatrist noted: "Completely reliant on family secondary to significant anxiety."
 - In the additional comments to the AR, the psychiatrist wrote: "The severity of her impairment is chronic and disables her in many realms. Almost totally dependent on family."
 - The psychiatrist indicated in the AR that the appellant lives with family, friends or caregiver and help required for DLA is provided by family with a note that "family manages her daily living."
 - Under approaches and information sources, the psychiatrist wrote: "I recently updated my opinion of her disability status secondary to more information from patient and family."

Prior to the hearing, the ministry provided a submission that stated the original reconsideration decision was based on the information present at the time of adjudication. After reading the appellant's submission combined with the letter and the revised PWD application form from the medical practitioner, the ministry would have approved PWD designation. The ministry raised no objection to the admissibility of the new evidence on behalf of the appellant.

The panel reviewed the additional documents, namely letters from the appellant's mother dated October 14, 2013 and November 1, 2013, as well as a letter from the psychiatrist dated November 1, 2013, and a second PWD application with revised applicant information, PR and AR, and the panel admitted the documentary evidence on behalf of the appellant as further detail of her originally diagnosed conditions 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 panel considered the ministry's submission as argument.

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 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

Admissibility

As part of the evidence provided after the date of the reconsideration decision, the appellant supplied a second set of reports as part of a PWD application prepared by the same psychiatrist who had prepared the reports in support of the initial application. While a second set of reports would normally be considered a new application for the PWD designation and not admissible on appeal, the panel has accepted it as information in support of the information and records before the ministry on reconsideration for two main reasons: 1) the diagnoses are identical in each PR so that no new medical conditions have been introduced, and 2) the psychiatrist explained that there had been a deterioration in the appellant's condition since the time of his initial assessment. In the second AR, the psychiatrist wrote that he recently updated his opinion due to more information from the appellant and her family and, in an accompanying letter, that there have been subsequent developments and new information, including more information provided by the appellant and her family.

Weight

In its submission on the appeal, the ministry did not object to the admissibility of the new evidence and, rather, placed significant weight on the updated information. The ministry stated that, after reading the appellant's submission combined with the letter and the revised PWD application form from the medical practitioner, the ministry would have approved PWD designation. Although the panel must make its own evaluation of the reasonableness of the ministry's reconsideration decision in light of the new evidence, the panel is likewise persuaded that more weight be placed on the new evidence, for a number of reasons. Firstly, as set out above, the psychiatrist explained in the AR and in an additional letter that the appellant's condition had deteriorated since his initial assessment and indicated in the AR that the appellant was no longer living alone. The appellant's mother explained in her letter that the appellant had since moved in to live with her as it had become unsafe for her to live alone and, at the time the psychiatrist prepared his assessment, he was not aware of the recent changes in the appellant's condition, living situation, and daily support requirements. Secondly, the appellant's diagnosed conditions are mental disorders and the medical practitioner who has prepared both sets of reports is a specialist in psychiatry, having specialized knowledge of the impacts from these disorders. He has also had time to develop more familiarity with the appellant's condition since the time of the initial reports in May 2013. Thirdly, the checkmark assessments made by the psychiatrist in the second set of reports appear to be more consistent with the narrative he provided in both sets of reports.

Severe Physical Impairment

The appellant did not advance a position regarding a severe physical impairment.

The ministry's position is that the appellant's physical functioning is unrestricted and independent as the functional skill limitations reported by the psychiatrist are not restricted and all areas of mobility and physical ability are reported as independent.

Panel Decision

The medical practitioner, the appellant's psychiatrist, did not diagnose a physical health condition. In both copies of the PR, the psychiatrist assessed the appellant's functional skills as being able to walk 4 or more blocks unaided, to climb 5 or more stairs, and as having no limitations with lifting or remaining seated. In both copies of the AR, the psychiatrist assessed the appellant as independent with all areas of mobility and physical ability. The appellant does not use an assistive device or an aid to help compensate for a physical impairment. The panel finds that the ministry reasonably determined that the appellant's 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 psychiatrist's diagnosis of MDD, SAD/GAD and C Traits, and the evidence that these conditions are affecting the appellant's day-to-day functioning significantly.

The ministry's position is that a severe mental impairment has not been established by the information provided, and the impacts described by the psychiatrist are more in keeping with a moderate degree of impairment. The ministry argued that the psychiatrist reported major impacts to cognitive and emotional functioning in the areas of sleep disturbance and emotion, with moderate impact to motivation, minimal impacts to attention/concentration, executive and memory, and no impact to the remainder of her cognitive and emotional functioning. The ministry argued that the psychiatrist reported no difficulty with communication. The ministry argued that while the psychiatrist wrote that the appellant's significant anxiety, depression, SAD, GAD and mood disorder impairs her function greatly and causes limited social functioning, he also indicated that the appellant needs periodic support with social functioning. The ministry pointed out that the psychiatrist, the social worker, and the appellant's mother all indicated that the appellant is unable to work and argued that employability is not an eligible criterion for designation as a PWD.

Panel Decision

The psychiatrist diagnosed the appellant with major depressive disorder with an onset of January 2013, social anxiety disorder, general anxiety disorder, and a personality disorder (C Traits), described in the health history as "severe social and generalized anxiety, co-morbid MDD; significant and chronic impairments in social and adapting function." In the updated PR, the psychiatrist assessed significant deficits with cognitive and emotional function in the areas of consciousness, executive, memory, emotional disturbance, motivation and attention or sustained concentration and commented: "severe anxiety significantly impacting above." In the updated AR, the psychiatrist reported major impacts to cognitive and emotional functioning in the areas of bodily functions, emotion, attention/concentration, executive, and motivation, as well as a moderate impacts to memory and motor activity and minimal or no impacts to the remaining 6 areas of functioning. The psychiatrist commented: "MDD and anxiety causing major impact on sleep, concentration, motivation, planning, organization and self care; almost totally dependent on family."

For social functioning, the psychiatrist indicated in the updated AR, that the appellant does not

function independently in any area. She requires periodic support/supervision with making appropriate social decisions, and requires continuous support/supervision with developing and maintaining relationships, interacting appropriately with others, dealing appropriately with unexpected demands, and securing assistance from others. The psychiatrist noted: "Completely reliant on family secondary to significant anxiety." In both copies of the AR, the psychiatrist assessed functioning as 'very disrupted' in both the appellant's immediate and extended social networks. In the additional comments to the updated AR, the psychiatrist wrote: "The severity of her impairment is chronic and disables her in many realms. Almost totally dependent on family."

In her letter dated September 16, 2013, the appellant's mother wrote that the appellant has been living with her since May 2013 at which time the appellant's anxiety, paranoia, and social withdrawal (agoraphobia) made it unsafe for her to continue living alone. In her letter dated November 1, 2013, the appellant's mother wrote that this is the second time this year that it has become necessary for the appellant to be moved into her home and it seems that it will be a prolonged arrangement. There was a 6-week period when the appellant tried again to live on her own, but it became obvious that she was not capable of maintaining that independence since anxiety, sleep disorder, and agoraphobia issues had become extreme. In the letter dated September 20, 2013, the social worker who has been providing weekly trauma therapy for the appellant wrote that the appellant presents as a very anxious, frightened woman who suffers from paranoia, fear, and severe social anxiety.

The psychiatrist indicated in both the original and updated reports that the appellant does not have difficulties with communication and that she has a good ability to communicate in all areas. However, in her November 1, 2013 letter, the appellant's mother described periods of high anxiety, triggered by a variety of events, whereby the appellant's perceptions, judgments and reactions become unreliable. The appellant's mother wrote that the appellant becomes mentally distracted, unable to focus, confused, has difficulty with comprehension, unable to make decisions, and has great difficulty communicating, disjointed speech, incomplete thoughts, irrational/confused thinking. She may become non-verbal and/or reclusive for extended periods and unable to relate or interact. The appellant's mother wrote that for the past year, and more so over the last 6 months, the appellant's anxiety disorder has been particularly disabling for her.

In the updated AR, the psychiatrist indicated that the appellant requires assistance from another person to manage all of the listed "mental" tasks of daily living. She requires periodic assistance with making appropriate social decisions, and continuous assistance with making appropriate choices and paying for purchases when shopping, periodic assistance with filling/refilling her prescriptions, and continuous assistance with conducting all tasks of her banking and budgeting. The appellant's mother wrote in her November 1, 2013 letter that agoraphobia is ever present and the appellant is housebound 90% of the time. In his September 20, 2013 letter, the psychiatrist wrote that the appellant has difficulty looking after her instrumental activities of daily living and she requires assistance for extended periods of time from her family.

While the panel finds that the ministry reasonably held that employability is not a factor in assessing eligibility for PWD designation, the updated assessment by the psychiatrist does not refer to the appellant's employability but rather focuses on her basic daily functioning. Considering the updated evidence from the psychiatrist and the appellant's mother that demonstrates the appellant's condition has deteriorated and that she is not able to live alone at this time, the panel finds that the ministry's conclusion that there was insufficient evidence to establish a severe mental impairment under section 2(2) of the EAPWDA was not reasonable.

Restrictions in the ability to perform DLA

The appellant's position is that her mental impairment directly and significantly restricts her ability to perform DLA on an ongoing basis to the extent that she requires the significant assistance of another person.

The ministry's position is that as the majority of DLA are performed independently, 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 while the psychiatrist wrote that the appellant relies on her family to help with IADL's, he indicated that the appellant takes significantly longer with going to/from stores, making appropriate choices, using public transit and using transit schedules and arranging transportation without providing information on how much longer it takes the appellant. The ministry argued that although the psychiatrist indicated that the appellant requires periodic assistance with several areas of social functioning, he does not provide information regarding how often the appellant requires assistance.

Panel Decision

The evidence of the appellant's psychiatrist in the updated AR and letter more consistently reflects the narrative in the initial report where the appellant's psychiatrist provided a brief summary of the mental or physical impairments that impact the appellant's ability to manage DLA as: "significant MDD, SAD, GAD, anxiety and depression impairing function greatly." While the appellant is assessed as physically independent with walking outdoors more than 4 blocks, in the updated PR, the psychiatrist 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 with the comment: "Again, chronic and severe impairment. Mostly housebound secondary to agoraphobia. Relies on family almost constantly for IADL support."

In the updated AR, the psychiatrist indicated that the appellant requires continuous assistance from another person or she is unable to perform those DLA and tasks of DLA that require going into the community. For shopping, the appellant requires continuous assistance from another person with going to and from stores, making appropriate choices, and paying for purchases (note: "reliant on family secondary to extreme anxiety and agoraphobia"), while being independent with reading prices and labels, and carrying purchases home. The psychiatrist added a comment that the appellant "cannot go out to stores without family secondary to agoraphobia." For paying rent and bills, the appellant requires continuous assistance from another person with all tasks, including banking, budgeting, and paying rent and bills. The psychiatrist indicated in the updated AR that the appellant requires continuous assistance from another person with 2 of 3 tasks of transportation, in particular using public transit and using transit schedules and arranging transportation, while remaining independent with getting in and out of a vehicle. The psychiatrist commented "Again, severe and chronic anxiety preventing independent function in these areas." The appellant is assessed as requiring continuous assistance from another person with basic housekeeping, with no further comment by the psychiatrist. The appellant's mother described the periods of high anxiety the appellant experiences and where she may retreat to her room or to her bed for extended periods, unable to relate or interact and she may be unable to perform (or even to participate in) the most basic of daily functions.

The appellant is assessed by the psychiatrist as requiring periodic assistance from another person

with filling/refilling prescriptions, while being independent with taking medications as directed and safe handling and storage. The appellant also requires periodic assistance from another person with 3 of 4 tasks of meals, in particular meal planning, food preparation, and cooking, while being independent with safe storage of food. While no specific comment is provided by the psychiatrist in the AR regarding how much or how long assistance is required with these tasks of DLA, the panel finds that the narrative throughout the reports supports a need for periodic assistance for extended periods of time. In the letter dated September 20, 2013, the psychiatrist wrote that the appellant has difficulty looking after her IADL's and she requires assistance for extended periods of time from her family.

For those DLA which relate to a mental impairment, there is evidence that the appellant is restricted in making decisions about her personal activities, care or finances, and with relating to, communicating or interacting with others effectively. The appellant is assessed in the updated AR as requiring periodic support/supervision with making appropriate social decisions and continuous support/supervision with her financial decisions. While the psychiatrist assessed a good ability to communicate in all areas, particularly speaking, reading, writing and hearing, he also indicated that the appellant requires continuous support/supervision with developing and maintaining relationships and interacting appropriately with others, which points to the lack of effectiveness of her communication.

Considering the updated assessments by the psychiatrist, as the prescribed professional, the panel finds the ministry's conclusion that there is not enough evidence 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, was not reasonable.

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 her family and receives assistance required for DLA from her family. In the original AR, the psychiatrist indicated that there is: "significant reliance on family to help with IADL's." In the updated PR, the psychiatrist commented that the appellant "relies on family almost constantly for IADL." Therefore, the panel finds that the ministry's determination that the evidence does not show that the appellant requires the significant help of another person to perform DLA was not reasonable.

Conclusion

Having reviewed and considered all of the evidence, including the updated information from the psychiatrist and the appellant's mother, and the relevant legislation, the panel finds that the ministry's reconsideration decision which determined that the appellant was not eligible for PWD designation was not reasonably supported by the evidence, and therefore rescinds the decision. Therefore, the decision is overturned in favour of the appellant.