PART C – Decision under Appeal

The decision under appeal is the reconsideration decision of the Ministry of Social Development and Social Innovation (the ministry) dated 27 September 2013 denying the appellant designation as a person with disabilities (PWD). The ministry determined that the appellant did not meet all of the required criteria for PWD designation set out in the *Employment and Assistance for Persons with Disabilities Act*, section 2. Specifically, the ministry determined that the information provided did not establish that the appellant has a severe mental or physical impairment that in the opinion of a prescribed professional

(i) directly and significantly restricts her ability to perform daily living activities (DLA) either continuously or periodically for extended periods; and,

(ii) as a result of those restrictions, she requires help to perform those activities.

The ministry determined that the appellant satisfied the other 2 criteria: she has reached 18 years of age and her impairment in the opinion of a medical practitioner is likely to continue for at least 2 years.

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 the parties, the hearing was conducted in writing pursuant to section 22(3)(b) of the *Employment and Assistance Act.*

The evidence before the ministry at reconsideration consisted of the following:

1. The appellant's PWD Designation Application dated 21 February 2013. The Application contained:
   - A Physician Report (PR) dated 04 March 2013 completed by the appellant's psychiatrist who has seen her 2 - 10 times in the past year.
   - An Assessor Report (AR) of the same date, completed by the same psychiatrist.
   - A Self Report (SR) completed by the appellant.

2. The appellant's Request for Reconsideration, dated 18 September 2013, to which is attached:
   - A letter dated 18 September 2013 from the appellant's psychiatrist regarding the appellant's mental health condition.
   - A letter dated 19 August 2013 from a case manager of a brain injury organization describing many functional deficits resulting from the appellant's brain injury.
   - Letters from the appellant's father and mother dated July 28 and July 30 2013 describing the help and support they provide the appellant.
   - A letter from a physician dated 10 October 2008 reporting on an MRI scan of the appellant's cervical spinal canal.

The appellant filed her Notice of Appeal on 10 September 2013, with an attached letter. Also attached are the appellant's Application for Disability Assistance, Parts 1 and 2, and her Employment Plan, documents which the panel considers not relevant to this appeal.

On 09 November 2013 the appellant's advocacy organization provided the following:

- A letter dated 04 November 2013 from the appellant's psychiatrist revising his original assessment based on subsequent appointments and additional information.
- A new Assessor Report (AR2) dated15 November 2013, prepared by a registered nurse (RN) who had seen the appellant once.

In an e-mail dated 20 November 2013, the ministry stated that there would be no submission on this appeal provided by the Reconsideration Branch, as it is relying on the reconsideration decision.

[Panel note: the Record of the Ministry Decision as provided by the ministry did not contain the PWD Designation Application, including the SR, PR and AR; the panel had to rely on a copy submitted by the appellant in her appeal package. In addition, the reconsideration decision refers to a note from the appellant's case worker at the brain injury organization dated 07 August 2013; this document was also missing from the Record of the Ministry Decision.]

Summary of the evidence

The panel will first summarize the evidence from the PR and AR relating to the appellant's impairments as it relates to the PWD criteria at issue.

In the PR, the psychiatrist diagnoses the appellant with recurrent major depressive episodes for many

years.

Severity of impairment

Mental impairment

PR:
Under health history, the psychiatrist writes:

> "Has been on treatment for depression for three – four years or more, and in December 2011 she was admitted to the psychiatric unit because of a brief psychotic reaction ?hypomanic.
> Episodes of depression have occurred as a reaction to various interpersonal stresses and sometimes for no reason.
> Mood swings, panic and anxiety attacks have affected her ability to function and cope.
> Requires to be on antidepressant medication."

The psychiatrist indicates that the appellant has not been prescribed any medication and/or treatments that interfere with her ability to perform DLA.

The psychiatrist indicates that there are difficulties with the appellant's communication, commenting: "concentration and short-term memory affected by depression."

The psychiatrist indicates that there are significant deficits with cognitive and emotional function in the areas of psychotic symptoms, emotional disturbance, motivation, impulse control, and attention or sustained concentration.

AR:
The psychiatrist describes the appellant's mental impairment that impacts her ability to manage DLA as "Mood swings with depressive episodes, anxiety & panic."

Physical impairment

PR:
The psychiatrist reports that the appellant can walk 4+ blocks unaided, climb 5+ steps lift 5 to 15 pounds and remain seated for less than one hour

Restrictions in the ability to perform DLA and help required

PR:
The psychiatrist reports that the appellant is restricted on a periodic basis in her ability to perform the following DLA: personal self care, meal preparation, basic housework, mobility outside the home, use of transportation, management of finances, and social functioning. He reports that she is not restricted for the DLA of management of medications, daily shopping, and mobility inside the home. The psychiatrist explains that the periodic restrictions "may be due to difficulty facing personal stresses or due to episodes of depression for no reason." He explains the restrictions in social functioning as "related to severity of her depression & presence of anxiety (panic attacks)."

AR:
With respect to the appellant's ability to communicate, the psychiatrist assesses the appellant's speaking, reading, writing and hearing as good.

As to mobility and physical ability, the psychiatrist assesses the appellant as independent for walking indoors, walking outdoors, climbing stairs, standing, lifting, and carrying and holding.

Regarding the degree to which the appellant's mental impairment restricts her daily functioning, the psychiatrist assesses a major impact in the areas of emotion and motivation. He assesses a moderate impact in the following areas: bodily functions, consciousness, impulse control, insight and judgment, attention/concentration, executive, memory, and motor activity. Minimal impact is assessed for language and psychotic symptoms and no impact for other neuropsychological problems. The psychiatrist comments: "All above related to depression & anxiety."

The psychiatrist assesses the appellant as independent in all listed tasks of the DLA for personal care, housekeeping, shopping, meals, paying rent and bills, medications, and transportation.

As to social functioning, he assesses the appellant's mental impairment as resulting in her requiring periodic support/supervision for making appropriate social decisions, ability to develop and maintain relationships, interacting appropriately with others, ability to deal appropriately with unexpected demands, and ability to secure assistance from others. He describes the appellant's relationship with her immediate and extended social networks as marginal functioning. The psychiatrist comments: "This application has been based on her own reported self-assessment, but she is capable of working at [customer service job] 4 hrs/day x 2."

The psychiatrist indicates that the appellant receives help from friends, with no further commentary.

Self Report

The appellant writes:

> "I suffer from double depression. It impacts my life in many ways: inability to concentrate, inability to communicate, or to work effectively on my own or as part of a team. It has impacted friendships, working relationships, & family relationships. The medications have been switched recently so am also suffering with symptoms from withdrawal – queasy, nausea headaches & balance problems. It affected my life in a huge way in December of 2011, when I was committed under the Mental Health Act. I have suffered numerous panic attacks which affect daily life."

She goes on to list the following as affecting her life and her ability to take care of herself: mood swings; low energy; trouble concentrating; suicidal thoughts; panic/anxiety attacks; fearful of going outside; tired; canceling things she's supposed to attend; no interest in hobbies, friends; sleep is interrupted; not hungry; don't "get ready" (shower, etc.); medication changes & withdrawal symptoms; outbursts of anger or sadness; terrible decision-making that can affect $, friends, family, work; little to no motivation for housework; trouble with auditory and visual sensitivity; compulsivity; confusion; and trouble asking for help.

Evidence submitted at reconsideration

In her Request for Reconsideration, the appellant writes that since her committal in 2011, she has tried returning to work. She worked approximately 8 hours per week. While she tried it, it was too hard for her to continue improving her health, while attending various appointments at the mental health clinic and the brain injury organization and trying to get all her reconsideration paperwork together. She was also evicted twice this year and recently had to give up both her pets as she could not afford to keep them in the manner they deserve. Her parents have been helping support her financially but this cannot continue as they are elderly and trying to support their own selves on one pension. She also recently started an art therapy program and will start grief counseling with another agency soon.

In his letter of 18 September 2013 the psychiatrist stated that when he completed the PR and AR on 04 March 2013 the appellant happened to be somewhat better than when seen previously in February and more recently. He stated that the appellant was attempting to work a job for about eight hours per week. His assessment was based on this and her own reported self-assessment. Since then she has been unable to continue working and is not fit to do so. Other assessments have come to light, especially the one from the brain injury organization. When seen by him on 13 September 2013 her mental state and functioning were in keeping with this assessment.

The letter from the case worker at the brain injury organization reports that the appellant has had three motor vehicle accidents in 1990's. She suffered a whiplash and headaches. She has also had several falls. The case worker states that she works with the appellant on a weekly basis to assist her with her daily living and also paperwork. She states that the appellant has been dealing with many functional deficits resulting from her brain injury. She lists and describes the following:

- difficulty concentrating/attention
- memory problems
- slowed thinking and processing
- flooding/overwhelmed
- perseveration
- communication difficulties
- executive functions – difficulties multitasking, decision-making, planning
- fatigue/energy crash
- auditory perception
- balance/coordination
- headaches
- impulsivity
- rigid thinking, anxiety and stress

[No information is provided regarding whether the case manager has the credentials of a prescribed professional.]

The 2008 letter regarding the MRI scan reports that there is a small central right-sided disc herniation at C5/6 with foraminal encroachment at C6/7. The physician states that it is probable that the small right-sided disc herniation is the culprit for the appellant's right arm pain.

In his letter, the appellant's father states that he assists the appellant frequently in her daily living by

driving her to appointments – medical clinics, support groups, food bank, shopping, etc. He also drives her to the parents' home for respite and encouragement, plus occasional meals. In her letter the mother states that she tries, as she feels able, to give emotional support to her daughter and act as a sounding board. This is occurring with increasing frequency, by telephone and during her visits to their home. When severely anxious and stressed the appellant overnights with them. She also offers the appellant help in her decision-making.

Evidence submitted on appeal

In her letter submitted with her Notice of Appeal, the appellant reviews the chronology of her application and, referring to the reconsideration decision findings on physical impairment, states that she does not suffer from this type of disability. She goes on to write:

> "Depression, anxiety, panic & brain injuries are complex. I may "report" to my psychiatrist feeling "well" one day. This doesn't mean that I felt well the day before I saw him or two weeks after. I don't have the $ or luxury to be seen by a professional on a daily basis. I try the best I can on any given day. Some days I don't get out of bed. Other days I see my case manager at the [brain injury organization]. Other days I am crying my eyes out. Other days I am OK. for part of the day. Other days I have been able to "pull off" a four-hour shift at a part-time job. Other days I have had to go to the ministry to fill out paperwork to receive an assistance cheque, show proof of employment, show proof of moving, come back to sign the reconsideration. I show up. It doesn't mean I feel well; it is because I need to..... I feel this appeal should be given consideration without opening old wounds and scars and digging into my whole personal medical history..."

In his letter of 04 November 2013, the psychiatrist writes:

> "Further contact with [the appellant], and supported by information from other sources, now clearly indicates that her presentation to me prior to my completion of the medical portion of her initial application was not in keeping with the real nature of her disability at that time, and certainly since then..... Much of my initial assessment was based on that interview, and at that time there was nothing else that challenged this. Subsequent appointments plus additional information confirms a picture that does indeed support her claim to be considered as a person with a disability. [The appellant] herself has since indicated that she felt she did not fully disclosed to me the full impact of her condition at the time I was asked to complete the medical portion of the application.
>
> It should be noted that between December 2011 and January 2012 she was treated in hospital for an acute psychotic episode. Before that she had experienced many years suffering from symptoms of a Major Depression. At times when this is most severe, and this will occur at least once a week, she feels terrible, her head is spinning, she is plagued by negative thoughts, she feels nauseated, she is shaky, and she panics. This causes her to just want to stay in bed, and she may do so for all day. Then she will not eat or look after her basic needs. There is usually no constant single reason for these most serious episodes to occur, and this is been the pattern for a number of years.
>
> It has becoming recently obvious that [the appellant] has cognitive difficulties that impair her concentration, attention to detail and decision-making. She has no self-confidence and has to rely on family and others to help her make sense of and to organize her daily life.
>
> In addition to feeling profoundly depressed, she experiences lightheadedness in the sense

of being less aware of her surroundings. An electrocardiogram done earlier this year showed an ectopic atrial rhythm, and she appears to have hypotensive reactions, that are worse when she is severely depressed to the point of not being able to function or look after herself properly....."

The assessor report (AR2) completed by a registered nurse, a prescribed professional, and submitted with the psychiatrist's letter on appeal, is very detailed. The panel has summarized the salient points of this report as follows (the RN's comments regarding specific assessments are shown in parentheses):

Living environment
The appellant lives alone but her parents helped her move into the suite in the same building as they live so they can keep an eye on her.

Ability to communicate
The RN assesses the appellant's speaking, reading, and writing ability as poor and her hearing as satisfactory to poor. (Distracted easily, difficulty focusing sometimes. On the bad day has no desire to talk it up or eat. Reads to distract brain from depression/panic. Otherwise poor concentration, lack of comprehension. Only writes if absolutely has to. Parents proofread to ensure it makes sense. Doesn't always understand what people said, gets distracted, doesn't hear entirety of sentences. Problem when surrounded by noise)
The RN states that the bad days occur at least once a week, sometimes 3 – 4 days/week. Overall just wants no one to look at her or talk to her. Often gets frustrated and angry with communications.

Mobility and physical ability
The RN assesses the appellant as independent for walking indoors, climbing stairs and lifting, with periodic assistance required for walking outdoors, standing, and carrying and holding. The RN explains that the appellant has balance problems exacerbated by moods and medications; she trips a lot but has not fallen. She also has numerous hypotensive episodes requiring slower changes in position. Regarding standing, waiting makes her irritated and she wants to pace. If she is taking too long at the food bank line up, her father will come in and remove her, and buy her food – he knows she can't tolerate standing well.

Mental impairment impacts on daily functioning

Major impact:

- Bodily functions – eating problems (little to nothing on bad day due to nausea {anxiety} and reduced motivation); poor hygiene (difficult on bad day or impossible); toileting problems (has defecated on own welcome mat before); sleep disturbance (some insomnia).
- Emotion – anxiety and depression.
- Executive – (generally lets world happen; difficulty with appointments).
- Memory – (requires memory book; is constantly looking at it and needs parents to look at it).
- Motivation
- Psychotic symptoms – (episodic).

Moderate impact:

- Consciousness.

- Impulse control – (coping strategies with her social functioning).
- Insight and judgment – (doesn't always know when she's bad; relies on check-ins with parents, sisters, psychiatry).
- Attention/concentration – (can focus for a while if she has to on a good/mediocre day).
- Language – (see ability to communicate).

Minimal impact:

- Motor activity – lack of movement, extreme tension.

Other comments:
Consciousness – a few times a week the appellant feels overwhelmed "like on too much coffee."
Psychosis – appellant has been hospitalized for "acute psychosis" in 2011 – "unpredictable, tangential, unusual behavior" according to the psych assessment at the time.
One suicide attempt ~ 2000 (took pills); generally has no thoughts of active suicide, gets very frightened if the thoughts do occur.

Daily living activities

- Personal care – independent in all aspects except continuous assistance from another person required or unable on bad days for dressing and grooming and periodic assistance required for regulating diet (parents will give her food, to ensure that she is eating).
- Basic housekeeping – independent except on bad days when continuous assistance from another person is required (if her house is a mess she knows she is not doing well).
- Shopping – independent for reading prices and labels and paying for purchases; periodic assistance (bad days: continuous) from another person required for going to and from stores, making appropriate choices and carrying purchases home (Dad makes her go out. On her own she would go only at night – fewer people – and only if she absolutely had to).
- Meals – periodic assistance from another person required for meal planning, food preparation and cooking (bad day: continuous) (Parents assist with at least one meal a week. She feels guilty that she has to accept so much of their help and resources. Bad day: just eats crackers. Even on good day she must always set times for everything to remember).
- Pay rent and bills –. Assistance from another person required for banking, budgeting, and paying rent and bills (Sometimes needs help banking; poor judgment has led to credit issues).
- Medications – periodic assistance required for filling/refilling prescriptions; independent for taking as directed and safe handling and storage (Must use a daily pill box because she doesn't remember if she takes them).
- Transportation – independent for getting in and out of the vehicle and using public transit (bad day: unable); periodic assistance required for using transit schedules (Even on a good day using public transit is difficult. Avoids rush-hour, lunchtime and uses headphones to try to cope with all the noise. Will still get off early quite often. Still gets confused between similar bus routes).

The RN comments that the above DLA are extremely difficult to impossible on the appellant's bad days, up to 4 days/week, minimum 1 day/week. She suspects good days are also difficult, but she is able to force herself to "be productive" or "be normal," whereas on bad days she cannot do even that.

Social functioning

- Making appropriate social decisions – periodic support/supervision required (Has suffered physical and emotional abuse at hands of others, of "friends," had too many draining

friendships. Tends to trust people too quickly).

- Ability to develop and maintain relationships – periodic support/supervision required (has avoided making new friendships. Keeps making the same mistakes, is trying to work on keeping herself healthy. Ruined friendships due to lack of function).
- Interacting appropriately with others – periodic support/supervision required. (She feels she does not. RN would agree with her assessment. She tries and is somewhat capable of communicating self in calm, quiet, safe environment.)
- Ability to deal appropriately with unexpected demands – periodic to continuous support/supervision required. (Lack of ability to plan, troubleshoot, focus, plus communications difficulties. Without parents, she should have weekly or possibly daily input from advocate).
- Ability to secure assistance from others – periodic to continuous support/supervision required (Without her parents, the RN feels the appellant requires weekly check-ins with mental health team).

The RN assesses how the appellant's mental impairment impacts her relationship with her immediate social network as marginal functioning. (Certainly her relationship with her parents is needed and helpful, but she can also be argumentative; she is very needy.)

The RN assesses how the appellant's mental impairment impacts her relationship with her extended social network as very disrupted functioning. (Without her parents, the appellant would very much struggle to fulfill her basic needs, possibly not managing even that. Certainly in the past she has lacked that ability.)

Help required

The RN writes that the appellant requires a weekly check-in with a mental health team. If her parents become ill she will need more frequent check-ins, perhaps a supervised, very quiet self-contained living space. She needs to continue her art therapy and needs counseling or a psychologist every two weeks.

The RN also writes that even with medication, appellant cannot meet her own daily life needs without help, mental health check-ins and interventions from her parents. Her parents are aging and support needs to be in place to stabilize her now. In the RN's opinion the appellant is disabled to the point where she cannot manage on her own; she has been trying to cope for a long time and is finally admitting to herself – and now to others – that she is not able to cope.

Admissibility of evidence

The panel notes that the ministry was given the opportunity to state a position on the admissibility of the new information provided by the appellant at appeal and made no objection. The panel finds that the new information in the psychiatrist's letter and by the RN in AR2 is in support of the information before the ministry at the time of the reconsideration. At reconsideration, the psychiatrist wrote that the appellant's mental condition was worse than when he completed the first assessment, referring to new information which had come to light, specifically the assessment by the brain injury organization case worker. His letter submitted on appeal elaborates in more detail how and to what extent his assessment has changed. The reference to the appellant having severe episodes of Major Depression, causing her to just want to stay in bed, which she may do for all day at least once a week, clarifies his diagnoses in the PR of recurrent major depressive episodes for many years. The

AR2, prepared by the RN, further elaborates upon much the same ground of cognitive and emotional deficits and impacts as that covered in the letter available to the ministry at reconsideration from the brain injury organization case worker, but using the AR format. The description of the appellant's reliance on help from her parents is further to the information provided by them in their letters submitted at reconsideration. The panel therefore admits this evidence pursuant to Section 22(4)(b) of the *Employment and Assistance Act*.

PART F – Reasons for Panel Decision

The issue in this appeal is whether the ministry reasonably determined that the appellant is ineligible for PWD designation because she did not meet all the requirements in section 2 of the EAPWDA. Specifically the ministry determined that the information provided did not establish that the appellant has a severe mental or physical impairment that in the opinion of a prescribed professional

(i) directly and significantly restricts her ability to perform daily living activities either continuously or periodically for extended periods; and,

(ii) as a result of those restrictions she requires help to perform those activities.

The ministry determined that she met the 2 other criteria in *EAPWDA* section 2(2) set out below.

The following section of the *EAPWDA* applies to this appeal:

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.

The following section of the EAPWDR applies to this appeal:

2 (1)For the purposes of the Act and this regulation, **"daily living activities"**,

(a) in relation to a person who has a severe physical impairment or a severe mental impairment, means the following activities:

(i) prepare own meals;

(ii) manage personal finances;

(iii) shop for personal needs;

(iv) use public or personal transportation facilities;

(v) perform housework to maintain the person's place of residence in acceptable sanitary condition;

(vi) move about indoors and outdoors;

(vii) perform personal hygiene and self care;

(viii) manage personal medication, and
(b) in relation to a person who has a severe mental impairment, includes the following activities:
(i) make decisions about personal activities, care or finances;
(ii) relate to, communicate or interact with others effectively.

The panel will consider each party's position regarding the reasonableness of the ministry's decision under the applicable PWD criteria at issue in this appeal.

Severity of impairment

For PWD designation, the legislation requires that a severe mental or physical impairment be established. The determination of the severity of impairment is at the discretion of the minister, taking into account all the evidence, including that of the applicant. However, the starting point must be medical evidence, with the legislation requiring that a medical practitioner (in this case, the appellant's psychiatrist) identify the impairment and confirm that impairment will continue for at least two years.

In the discussion below concerning the information provided regarding the severity of the appellant's impairments, the panel has drawn upon the ministry's definition of "impairment." This definition consists of "cause" and "impact" components: "impairment is a loss or abnormality of psychological, anatomical or physiological structure or function [the cause] causing a restriction in the ability to function independently, effectively, appropriately or for a reasonable duration [impact]." 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 cause is usually set out as a disease, condition, syndrome, injury or even a symptom (e.g. pain or shortness of breath). A severe impairment requires the identified cause to have a significant impact on daily functioning.

The panel also notes that the legislation requires that for PWD designation, the minister must be "satisfied" that the person has a severe mental or physical impairment. For the minister to be "satisfied" that the person's impairment is severe, the panel considers it reasonable for the ministry to expect that the information provided presents a clear and complete picture of the nature and extent of the impacts of the person's medical conditions on daily functioning.

Physical impairment

The position of the ministry is that there is not enough evidence from the appellant's psychiatrist to confirm a severe physical impairment. The appellant's position, as set out in her Notice of Appeal, is that she does not suffer this type of disability, but rather a severe mental impairment.

The panel notes that the psychiatrist has not diagnosed a physical condition as an impairment. While there is some evidence of a history of herniated disc, this is not reflected in any difficulties with respect to her mobility and physical abilities (able to walk 5+ blocks, etc.) reported by the psychiatrist. Considering the available evidence and the appellant's position respecting this criterion, the panel finds the ministry reasonably determined that a severe physical impairment had not been established.

Mental impairment

In the reconsideration decision, the ministry reviewed the information set out in the PR and AR,

noting that the appellant's psychiatrist had indicated that her impairment has a moderate, minimal to no impact on the majority of her cognitive and emotional functioning, with a major impact in the areas of emotion and motor activity (sic). The position of the ministry is that, as the psychiatrist has indicated that the appellant can independently manage all of her DLA and requires only periodic assistance with social functioning, evidence of a severe mental impairment has not been provided.

The position of the appellant is that the new information provided by her psychiatrist and the RN demonstrates that her recurrent Major Depression significantly restricts her daily functioning, clearly establishing that she has a severe mental impairment..

Panel findings

The panel takes as a starting point the psychiatrist's diagnosis that the appellant has recurrent Major Depressive episodes. In his letter of 04 November 2013, he explains that "....she had experienced many years suffering from symptoms of a Major Depression. At times when this is most severe, and this will occur at least once a week, she feels terrible, her head is spinning, she is plagued by negative thoughts, she feels nauseated, she is shaky, and she panics. This causes her to just want to stay in bed, and she may do so all day. Then she will not eat or look after her basic needs." The RN confirms this frequency of "bad days," stating that it could be as many as 3 – 4 days/week. The psychiatrist in the PR identified significant deficits in cognitive and emotional function and the RN assessed and described major and moderate impacts on daily functioning relating to these deficits, particularly in the areas of memory, motivation, insight and judgment and concentration. Even on days which are not "bad days," the RN described difficulties experienced by the appellant with communications and social functioning – particularly in the areas of decision-making and relating appropriately to others – to the point where the RN states that she believes that the appellant needs to check in with her mental health team at least once a week. The RN also described how the appellant relies on the help, support and supervision from her parents, from making sure she eats properly to intervening when she gets distressed standing in the food bank line up.

Based on this evidence, it is difficult for the panel not to conclude that the appellant's mental health condition profoundly restricts her ability to function effectively, appropriately and independently. While the ministry did not have the benefit of the information provided at appeal, the panel finds that the ministry was unreasonable in determining that a severe mental impairment had not been established.

Significant restrictions in the ability to perform DLA.

The position of the ministry is that, on reviewing the information provided in the PR and AR, there is not enough evidence from her psychiatrist to establish that the appellant's impairments directly and significantly restrict her DLA either continuously or periodically for extended periods and that therefore this legislative criterion has not been met.

The appellant's position is that the information provided by her psychiatrist in the PR and in his subsequent letters and by the RN amply demonstrates that this criterion has been met.

Panel findings

The panel notes that, according to the legislation, the direct and significant restriction in the ability to

perform DLA must be a result of a severe impairment, a criterion which the panel has found to have been established in this appeal. This DLA criterion must also be considered in terms of the preceding legislative language of section 2 of the *Act*, which provides that the minister may designate a person as a person with disabilities "if the minister is satisfied that" the criteria are met, including this one. In exercising the discretion conferred by the legislation, it is reasonable that the minister would expect that the opinion of a prescribed professional be substantiated by information from the prescribed professional that would satisfy the minister that there are direct and significant restrictions in the ability to perform DLA, either continuously or periodically for extended periods, by presenting a clear and complete picture of the nature and extent of these restrictions.

It is clear to the panel that both the psychiatrist and the RN are of the opinion that the appellant's ability to manage her DLA is significantly restricted. The psychiatrist wrote: "She has no self-confidence and has to rely on family and others to help her make sense of and to organize her daily life." And " ...she appears to have hypotensive reactions, that are worse when she is severely depressed to the point of not being able to function or look after herself properly....." The RN wrote that in her opinion the appellant is disabled to the point where she cannot manage on her own; she has been trying to cope for a long time and is finally admitting to herself – and now to others – that she is not able to cope. These opinions have been substantiated by numerous descriptions and examples that provide a clear picture of the appellant's restrictions: "bad day" frequency at least once a week, sometimes 3 - 4 days/week, when she cannot manage at all most DLA; staying in bed on a "bad day," eats little or nothing on a "bad day;" avoids crowds; difficulties with memory, requiring a memory book that parents must also check as well; problems with communication, attention/concentration, easily distracted; very disrupted functioning with her extended social network; needs periodic to continuous supports/supervision from her parents to deal appropriately with unexpected demands and secure assistance from others – without them she would have to find weekly and perhaps even daily support/supervision from someone else.

Given the information provided by the RN, the panel finds that there is sufficient evidence to conclude that the appellant is significantly restricted in the 2 DLA applicable to a person with a severe mental impairment -- making decisions about personal activities, care or finances or relating to, communicating or interacting with others effectively. The panel notes that there is other evidence that points to the appellant being restricted in the DLA applicable to a person with a severe physical or mental impairment. These restrictions are pervasive on "bad days," but also arise on other days, such as avoiding crowds when shopping or using public transit, inability to tolerate standing in line at the food bank, or poor judgment in budgeting.

The panel considers the restrictions in the appellant's abilities to manage her DLA are continuous – her "bad days" are frequent and, according to the psychiatrist, random. Whether it's a "bad day" or otherwise, the background Major Depression, with its impacts in such areas as, memory, attention/ concentration, insight and judgment and motivation are with her every day.

Taking into account all the evidence, it is difficult for the panel to conclude that the appellant's restrictions in her overall ability to manage DLA are anything other than "significant." While the ministry did not have the benefit of the new information provided by the psychiatrist and the RN, the panel finds that the ministry was unreasonable in determining that this criterion had not been met.

Help with DLA

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

The appellant's position is simply that the evidence clearly shows that she requires the help of her parents and her mental health team to function on a daily basis

Panel findings

The panel notes that the legislation requires that in the opinion of a prescribed professional the need for help must arise from direct and significant restrictions in the ability to perform DLA that are either continuous or periodic for extended periods. The panel has found that that criterion has been met. The evidence from the psychiatrist and the RN is that the appellant relies on the help/support/supervision of her parents for her daily functioning. As the psychiatrist wrote: "... [she] has to rely on family and others to help her make sense of and to organize her daily life." The panel therefore finds that the ministry was not reasonable in finding that this criterion had not been met.

Conclusion

Having reviewed and considered all of the evidence and the relevant legislation, the panel finds that the ministry's decision that the appellant was not eligible for PWD designation was not reasonably supported by the evidence. The panel therefore rescinds, or overturns, the ministry's decision.